

COPY

STATE OF WISCONSIN
SUPREME COURT

In the Matter of the Rehabilitation of:

Segregated Account of
Ambac Assurance Corporation,

TED NICKEL and OFFICE OF THE
COMMISSIONER OF INSURANCE,

Plaintiffs/Respondents,

AMBAC ASSURANCE CORPORATION,

Interested Party/Respondent,

v.

EATON VANCE MANAGEMENT,
EATON VANCE MUNICIPAL INCOME
TRUST, EATON VANCE MUNICIPAL
BOND FUND, EATON VANCE
MUNICIPAL BOND FUND II, NUVEEN
ASSET MANAGEMENT,
RESTORATION CAPITAL
MANAGEMENT, LLC, STONE LION
CAPITAL PARTNERS, LP,

Appellants/Petitioners,

WELLS FARGO BANK/Trustee of
Bondholders,

Co-Appellant/Petitioner,

FEDERAL HOME LOAN MORTGAGE
CORPORATION, AURELIUS CAPITAL
MANAGEMENT, LP, FIR TREE, INC.,
KING STREET CAPITAL, L.P., KING
STREET CAPITAL MASTER FUND,
LTD., MONARCH ALTERNATIVE

CAPITAL, LP, STONEHILL CAPITAL
MANAGEMENT LLC,

Defendants;

DEPFA BANK, PLC,

Interested Party/Appellant,

ACCESS TO LOANS FOR LEARNING
STUDENT LOAN CORPORATION,
AURELIUS CAPITAL MANAGEMENT
LP, BANK OF AMERICA, N.A.,
CUSTOMER ASSET PROTECTION
COMPANY ("CAPCO"), DEUTSCHE
BANK NATIONAL TRUST COMPANY,
DEUTSCHE BANK TRUST COMPANY
AMERICAS, EATON VANCE, FEDERAL
HOME LOAN MORTGAGE
CORPORATION ("Freddie Mac"),
FEDERAL NATIONAL MORTGAGE
ASSOCIATION ("Fannie Mae"), FIR
TREE INC., KING STREET CAPITAL
MASTER FUND, LTD., KING STREET
CAPITAL, L.P., LLOYDS TSB BANK
PLC, MONARCH ALTERNATIVE
CAPITAL LP, ONE STATE STREET LLC,
STONEHILL CAPITAL MANAGEMENT
LLC, U.S. BANK NATIONAL
ASSOCIATION, WELLS FARGO BANK,
N.A., WELLS FARGO BANK, N.A., as
Trustee for the LVM Bondholders,
WILMINGTON TRUST COMPANY, and
WILMINGTON TRUST FSB,

Interested Parties/Co-Appellants.

**APPEAL FROM THE OCTOBER 24, 2013
CONSOLIDATED RULING OF
THE COURT OF APPEALS, DISTRICT IV
Appeal Nos. 2010AP1291, 2010AP2022,
2010AP2835, 2011AP561**

**MOTION OF APPELLANTS/PETITIONERS
WELLS FARGO/EATON VANCE
FOR LEAVE TO FILE SHORT REPLY**

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Petitioners Wells Fargo Bank, National Association (“Wells Fargo”), in its capacity as Trustee for the LVM Municipal Bonds, and Eaton Vance Management, Eaton Vance Municipal Income Trust, Eaton Vance Municipal Bond Fund, and Eaton Vance Municipal Bond Fund II (collectively, “Eaton Vance”), respectfully move for leave to file the attached short reply in support of their petition for review for the sole purpose of addressing certain misstatements in the Commissioner’s response.

1. On November 25, 2013, Wells Fargo and Eaton Vance filed their petition for review in this matter.

2. The Commissioner filed his response on December 6, 2013.

3. Petitioners recognize that the rules do not provide, as a matter of right, for the filing of a reply brief in support of a petition for review. Petitioners believe, however, that a short reply is necessary to advise this Court of the several material misstatements of fact contained in the Commissioner’s response.

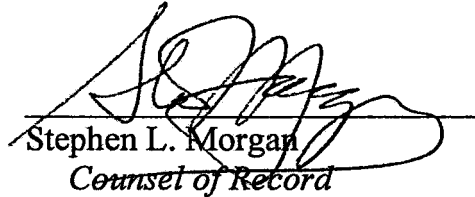
4. The misstatements that petitioners seek leave to correct concern the following five issues:

- The response states that “party” status is necessary to have standing before this Court, but this Court has not taken such a restrictive position, including in this rehabilitation proceeding.
- The response incorrectly states that petitioners have only a 6.5% interest in the LVM bonds at issue.
- The response erroneously questions whether the LVM policy is a “municipal” bond policy and whether virtually every municipal bond policy remained in the General Account.
- The response implies that petitioners’ appeal is “moot,” but the Commissioner himself has admitted that the effective date of the plan has not yet occurred.
- The response states that petitioners will be made whole by the issuance of surplus notes, but ignores the admission of the Commissioner’s own representative to the contrary.

5. Petitioners therefore respectfully seek leave to file the attached reply to correct the record with respect to these facts.

6. This motion is made in the interest of justice and not for purpose of delay.

Respectfully submitted this 20th day of December,
2013.

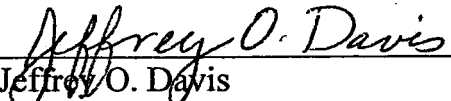


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4819-4136-1943, v. 1

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SUPREME COURT

In the Matter of the Rehabilitation of:

Segregated Account of
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Appellants/Petitioners,

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Bondholders,

Co-Appellant/Petitioner,

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ACCESS TO LOANS FOR LEARNING
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ASSOCIATION, WELLS FARGO BANK,
N.A., WELLS FARGO BANK, N.A., as
Trustee for the LVM Bondholders,
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**APPEAL FROM THE OCTOBER 24, 2013
CONSOLIDATED RULING OF
THE COURT OF APPEALS, DISTRICT IV
Appeal Nos. 2010AP1291, 2010AP2022,
2010AP2835, 2011AP561**

**REPLY BRIEF IN SUPPORT OF
PETITION FOR REVIEW OF
APPELLANTS-PETITIONERS,
WELLS FARGO AND EATON VANCE
MANAGEMENT**

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1. *Petitioners’ standing in this Court.* The circuit court’s denial of these policyholders’ motions to intervene, in connection with their request for discovery, does not bar them from seeking review in this Court of the rulings upholding placement of their policies in the Segregated Account. (*See* Resp. at 10-13.) The Commissioner does not deny that (a) these petitioners actively participated in both the circuit court and the Court of Appeals, and (b) the Court of Appeals’ ruling affirming relegation of their policies to the Segregated Account was adverse to them. In this same rehabilitation proceeding, this Court granted a petition for review filed by a

non-party, the Internal Revenue Service. *See In the Matter of the Rehab. of: Segregated Account of Ambac Assurance Corp.*, 2012 WI 22 (Mar. 8, 2012). The Commissioner cites no precedent that bars aggrieved policyholders in a rehabilitation proceeding from seeking review in this Court of a Court of Appeals ruling that indisputably impairs their interests.

2. *Petitioners' substantial interest.* The Commissioner misleadingly portrays these petitioners' interest as trivial when he incorrectly asserts that they hold only a 6.5% interest in the LVM municipal bonds. (*See Resp.* at 8, 13 fn.7; *see also Resp.* at 1, defining Eaton Vance and Wells Fargo as "Eaton".) The Commissioner's statement is misleading because it completely ignores that the petitioners here include Wells Fargo, which is the trustee for 100% of the first-tier LVM bondholders. (*See Pet.* at 12; *Petitioners' Appendix ("Pet. App.")* A00060; *Opinion* at ¶125; *Pet. App.* A668.) Although approximately 70-75% of those bondholders have settled with Ambac and the Commissioner, the remaining 25-30% of the bondholders have not. The Ambac insurance policy guaranteeing payment of these LVM

municipal bonds was in the amount of \$451 million, and Ambac issued an additional surety bond of \$21 million. (Pet. App. A669-70.) Accordingly, petitioners' interest is anything but minimal.

3. *Plan singling out petitioners' policy for discriminatory treatment.* The Commissioner's representation that the LVM bond policy is not a "municipal" policy (Resp. at 15) is belied by Ambac's sworn testimony that "Ambac insured the payment of scheduled amounts of principal and interest on the 1st Tier Bonds pursuant to its *Municipal* Bond Insurance Policy Number 17548BE, dated September 20, 2000." (Pet. App. A260 (emphasis added).) Moreover, contrary to the Commissioner's argument, these petitioners have not asserted that the LVM municipal bond policy was the "only" policy insuring a public risk that was allocated to the Segregated Account. (Resp. at 16.) Instead, petitioners have correctly asserted that the vast majority of such policies were allocated to the General Account. (Pet. at 1, 14, 29.) The accuracy of this statement is confirmed by Ambac's own press release: "While certain structured finance asset classes and other credits have been segregated for

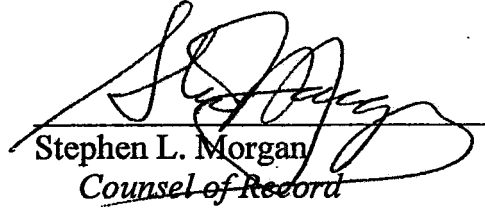
rehabilitation, virtually the entire Insured municipal portfolio remains outside the rehabilitation proceedings.” (Pet. App. A240.)

4. *Plan not effective yet.* The Commissioner represents that petitioners’ appeal is “moot” because “the Commissioner has managed and moved the rehabilitation forward in reliance upon the past unstayed orders of the rehabilitation court.” (Resp. at 1-2 and 34.) The Commissioner’s representation is simply inaccurate because the rehabilitation plan still has not become effective. The plan lists several conditions precedent to effectiveness, and, as the Commissioner admitted in his latest June 2013 Annual Report, some of those conditions have not yet occurred. (Pet. App. A454-55; Annual Report on the Rehab. of the Segregated Account of Ambac Assurance Corp., 3:13-cv-00325-bbc, Docket No. 9 at 5, *available at* <http://ambacpolicyholders.com/storage/courtfilings/6-4-13CorrectedAnnualReport.pdf>.) Thus, the Commissioner lacks a factual basis for his alleged “mootness concerns.” (Resp. at 34.)

5. *Petitioners have not been “made whole.”* The Commissioner states that these petitioners will be “made whole,” even though the plan provides for payment of 25 cents on the dollar in cash with the remaining 75 cents on the dollar “paid” with surplus notes that mature in June of 2020. (Resp. at 20-21; *see also* Pet. App. A643.) In his 2010 in-court testimony on this matter, the Commissioner’s witness, Roger Peterson, agreed that the present value of those surplus notes was just “cents on the dollar.” (Pet. App. A297-98; *see also* Transcript of Continued Confirmation Hearing, Appellate Record Docket No. 562 at 61, *available at* <http://ambacpolicyholders.com/storage/courtfilings/hearingtranscripts/Ambac11-17-10.pdf>.) Even though the value of those notes has increased since then, there is no evidence indicating that they will make petitioners “whole.” Until such time as Ambac has made petitioners *truly* whole, it should be precluded from competing with petitioners for reimbursement from the primary obligor.

Respectfully submitted this 20th day of December,

2013.



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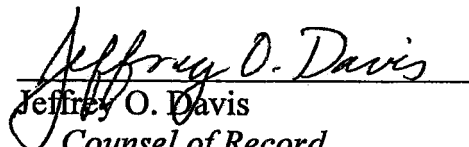
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