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CLERK OF COURT OF APPEALS
OF WISCONSIN

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

In the Matter of the Rehabilitation of:
Segregated Account of Ambac Assurance Corporation:

Sean Dilweg and Office of the
Commissioner of Insurance,

Plaintiffs-Respondents,

v.
Appeal No. 2016-AP-002169 LV

Carlisle/Picatinny Family Housing L.P.,
Fort Bliss/White Sands Missile Range Housing L.P.,
Fort Detrick/Walter Reed Army Medical
Center Housing LLC, Stewart Hunter Housing LLC,
Monterey Bay Military Housing LLC,
Monterey Bay Land LLC, Meade Communities LLC,
Bragg Communities LLC, Polk Communities LLC,
Rucker Communities LLC, Riley Communities LLC,
Fort Lee Communities LLC and Fort Leavenworth
Frontier Heritage Communities, II, LLC,

Interested Parties-Petitioners-Appellants.

ON APPEAL FROM THE CIRCUIT COURT OF DANE COUNTY
HON. RICHARD G. NESS PRESIDING
CIRCUIT COURT CASE NO. 10-CV-1576

THE REHABILITATOR'S RESPONSE TO THE INTERESTED
PARTIES' PETITION FOR LEAVE TO APPEAL ORDER

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Commissioner of Insurance of the State of
Wisconsin as Rehabilitator of the Segregated
Account of Ambac Assurance Corp.

The order that the Petitioners want to appeal is final. There are two prior orders of this Court that make that determination clear: A June 18, 2010 order held an appeal by three proposed interveners was final because it resolved all issues involving those appellants; and, a March 1, 2013 order noted that rehabilitation proceedings are “special proceedings” (akin to probate proceedings) that may give rise to multiple post-confirmation orders, some of which may be “final” when they dispose of the issue before the court. Because the lower court’s ruling here decided the only issue asserted by Petitioners between the Rehabilitator and Petitioners, the order appealed from is final. This needless Petition, in light of the legal standards in rehabilitation proceedings under Wis. STAT. chapter 645, should be denied.

I. INTRODUCTION

November 7, 2016.

Parties’-Petitioners’-Appellants’ Petition for Leave to Appeal Order, dated (“Commissioner” or the “Rehabilitator”), hereby responds to the Interested Rehabilitator of the Segregated Account of Ambac Assurance Corporation

The Commissioner of Insurance of the State of Wisconsin, as

This appeal is the 13th filed in Dane County Circuit Court Case Number 10-CV-1576, *In the Matter of the Rehabilitation of the Segregated Account of Ambac Assurance Corporation* (the “Rehabilitation Proceedings” or “Proceedings”). As the Court may recall, the underlying action involves the statutory rehabilitation of a segregated account established under Wis. STAT. § 611.24, which was created with the intent to avoid a liquidation of Ambac Assurance Corporation. The Commissioner, working with insurance industry experts, identified approximately 1,000 out of 15,000 Ambac “policies that imperiled Ambac’s financial stability and assigned those policies to the segregated account.” *Nickel v. Wells Fargo Bank*, 2013 WI App 129, ¶ 5, 351 Wis. 2d 539, 841 N.W.2d 482. On March 24, 2010, the Commissioner filed a Verified Petition for Rehabilitation. *Id.* ¶ 6. The circuit court subsequently issued an order for rehabilitation and appointed the Commissioner as Rehabilitator. *Id.* In a published opinion, this Court affirmed the circuit court’s confirmation of the rehabilitation plan. *Id.* ¶ 1.

II. FACTUAL BACKGROUND

A. The Underlying Rehabilitation Proceedings

B. The Order at Issue in the Petition

This particular appeal involves the Rehabilitation Court's order dated October 24, 2016 and entitled: Order Granting Rehabilitator's Motion to Confirm and Declare the Nature of These Proceedings. The Rehabilitator's motion was precipitated by allegations and arguments made by parties adverse to Ambac in collateral litigation pending in other jurisdictions that mischaracterized the circuit court's Order of Rehabilitation and the Order Confirming the Rehabilitator's Plan of Rehabilitation, as affirmed by this Court in *Nickel v. Wells Fargo*, or the Rehabilitation Proceedings generally. (Exhibit A: Motion to Confirm and Declare the Nature of These Proceedings at 2).¹ To set the record straight, the Rehabilitator filed a motion to address, "whether [the rehabilitation proceedings] are limited to the Segregated Account, or whether they instead constitute a rehabilitation of Ambac, also referred to as the General Account." (*Id.*).

The Petitioners are owners of military housing developments at 12 Army bases across the country. (Petition at 2). Most are parties to the lawsuits pending in other jurisdictions that the Rehabilitator had identified

¹ So as to avoid inundating the Court with filings unnecessary to the Court's disposition of the Petition, the relevant Motion (Exhibit A) and Response (Exhibit B) are being attached without the voluminous exhibits that had accompanied each original filing.

in its motion. Those lawsuits involve surety bonds and bond insurance policies that the Petitioners procured from Ambac (none of which policies are part of the Segregated Account that is subject to rehabilitation). (*Id.* at 3, 5). Contending that the Order that the Rehabilitator sought might impact proceedings to which they are a party in other jurisdictions, the Petitioners objected to the issuance of the Order. In particular, the Petitioners argued that the order the rehabilitator sought was an illegal “advisory opinion,” and as such the circuit court had no jurisdiction to issue it. The Petitioners also claimed that certain statements in the proposed order were not supported by the record. (Exhibit B: Response to Rehabilitator’s Motion at 10-18). Although there are multiple collateral cases in *other* jurisdictions involving Ambac, as between the Rehabilitator and Petitioners, the Rehabilitator’s motion was the *only* contested matter between them before the Rehabilitation Court.

The Rehabilitation Court held a hearing on October 11, 2016. At the hearing, the Rehabilitation Court first held that it had jurisdiction and stated as follows:

I’ve read your briefs. I reject the arguments [that the court does not have jurisdiction to enter the order]. They’re preserved for appeal. If you want to take it up to the Court of Appeals, I’m *satisfied that clarifying a prior order from this Court is not an*

advisory opinion if I'm not deciding new issues and if I'm just clarifying what – something that needs to be clarified.

(Exhibit C: Tr. of Oct. 11, 2016, hrg. at 16 (emphasis added)). The court went on to hold that its order was necessary also to protect the rehabilitation proceedings themselves; the court explained as follows:

And I think the statute, which is broadly written to give this Court supervisory authority and to give the rehabilitator broad discretion specifically contemplates orders that are deemed necessary and proper to prevent any other threatened or contemplated action that may . . . lessen the value of the insurer's assets or prejudice the administration of the proceedings. . . . I don't want because of ignorance of what has gone on here, because of lack of clarity from this Court that contributes to a lack of understanding in other courts for some court to innocently do something that pulls the thread of the fabric of this rehabilitation and unravels the whole thing. . . .

(Id. at 17 (emphasis added)).

When Petitioners' counsel nonetheless pressed their arguments

further, the court added:

You can put whatever in the record you want. I'm telling you *an order explaining and clarifying what has happened in this Court is not advisory*. I've already made the conclusion that we have jurisdiction, but you're welcome to make whatever record you want to make for the Court of Appeals.

(Id. at 18 (emphasis added)).

The parties then turned their arguments to specific objections to the

Rehabilitator's proposed order and identified two specific provisions that might be revised to address the concerns of both sides. *(Id. at 15-16, 24-*

53). When the parties could not reach agreement on the record however, the court allowed additional discussions off the record that resulted in the parties agreeing to continue negotiations out of court. (*Id.* at 53-54). The court asked the parties to submit an agreed upon order within seven (7) days or, if such an agreement could not be reached, the court would issue its own order. (*Id.* at 54).

After the hearing, the Rehabilitator submitted a revised proposed order consistent with modifications that had been discussed during the hearing. (Exhibit D: Proposed Order submitted October 18, 2016). Although the Petitioners objected to the new proposed order and submitted their own requested changes to the order, the court ultimately adopted the proposed order that the Rehabilitator had proffered. (Exhibit E-F: Order Granting Rehabilitator's Motion; accompanying cover letter dated October 24, 2016). The circuit court then signed the order and, in a letter to the parties stated that "I have adopted the Rehabilitator's draft . . . principally because it is clearly supported by the Court of Appeals decision in this case, 351 Wis. 2d 539, 558, 572-73, 587-588, 590-591." (*Id.*). That order

² In the interest of full disclosure, the Rehabilitator is also filing on November 21, 2016 a motion for a protective order to quash an unauthorized foreign subpoena that was issued by two of the Petitioners in collateral litigation pending in California. That motion, involving only 2 of the 13 petitioners here, has no bearing on the instant issue and does not render the Order non-final for purposes of appeal, as that motion involves an independent discovery dispute relating to a separate case pending in a different jurisdiction, and that dispute does not uniformly involve all the same parties.

concluded the only contested issues between the Petitioners and Rehabilitator.²

The Petitioners then filed a Notice of Appeal. Simultaneously, the Petitioners also filed a Petition for Leave to Appeal the Order, and announced that they were doing so as an alternative to their Notice of Appeal, “out of an abundance of caution,” in the event that this Court were to determine that the order that they wish to appeal is not final under Wis. STAT. § 808.03(1). Petitioners thus filed, in essence, two appeals: one as a matter of right and one discretionary. The effect of these filings is to shift the burden to the Rehabilitator and the Court to determine whether the underlying order is “final” and under which appellate rules this appeal should proceed. As set forth below, however, the underlying order of the Rehabilitation Court is final as to these parties, and the Petition should be denied.

This Court, *in this case*, has applied this standard at least twice in the context of a Chapter 645 proceeding. In doing so, this Court recognized that certain orders in the Proceedings may not fall squarely within the general parameters of “finality” but nonetheless should still be considered “final” in light of the unique nature of rehabilitation proceedings. In Appeal Number 2011AP2708, for example, this Court addressed the identical question of whether an order was final, after the appellants had filed both a notice of appeal and a petition for review of the order. There, the Court likened rehabilitation proceedings more to “a probate action

WI 35 ¶ 27, 299 Wis. 2d 723, 728 N.W.2d 670.

Only orders or judgments that are “final” are appealable as a matter of right. Wis. STAT. § 808.03(1). The familiar statutory standard is the following: An order is final if it “disposes of the entire matter in litigation as to one or more of the parties.” *Id.* Determining finality turns on the answer to two questions: (1) whether the order is final “as a matter of substantive law insofar as it disposes of the entire matter in litigation as to one or more parties;” and (2) whether the order is the final document in the litigation between the parties. *Wambolt v. West Bend Mut. Ins. Co.*, 2007

III. BASED ON THE COURT’S PRIOR DECISIONS, THE ORDER IS FINAL FOR PURPOSES OF APPEAL

involving a series of special proceedings than the typical civil case that is ended by a single final order.” (Exhibit G: Order dated March 1, 2013, at 6). The Court also wrote that “the usual test regarding whether an order disposes of all matters in litigation between the parties does not squarely apply to a rehabilitation proceeding where there are no plaintiffs and defendants, but rather a subject of the rehabilitation proceeding and various stakeholders whose interests may be affected.” (*Id.*) Against that backdrop, the Court concluded that, “[b]ecause the order from which review is sought here appears to be the final order dealing with the issue [then before it], we will accept jurisdiction over the appeal.” (*Id.*).

Similarly, in Appeal Number 2010AP1291, this Court concluded that the circuit court’s May 27, 2010 order was final as to the three groups of appellants, even though they were not formally parties to the Rehabilitation Proceedings. The order appealed from was the circuit court’s order that denied the appellants’ motion to intervene and motion for an injunction. Because that ruling resolved all issues involving those appellants, the circuit court’s order was final for purposes of appeal. (*See* Order dated June 18, 2010, attached as Exhibit 6 to the Petition.) In reaching its conclusion in both instances, this Court did not look to whether

³ This is not to say that every order that the circuit court issues should be considered final and appealable. However, the Order at issue here certainly meets the definition of finality as this Court has set forth in this matter.

Under the Court's test for determining the finality of orders issued in the Rehabilitation Proceedings, the Order at issue here is final as far as these Petitioners are concerned. As the Petitioners note, they are "not parties to the Circuit Court litigation, [their] policies are not in the

proceedings in the trial court or on later appeal").

the "longstanding rule that a decision on a legal issue by an appellate court establishes the law of the case, which must be followed in all subsequent proceedings" appeal here and going forward.³ See *Univest Corp. v. General Split Corp.*, 148 Wis. 2d 29, 38, 435 N.W.2d 234, 238 (1989) (recognizing rule can and should be considered the law of the case for purposes of the sought to be appealed as between the Rehabilitator and the appellant. That whether the order adjudicates all issues involving the subject of the order Finality in rehabilitation proceedings should be determined based on appellants and the Rehabilitator. That is the correct standard to apply here. whether the order at issue disposed all of the issues as between the appealed. Instead, the Court took a practical approach and analyzed Rehabilitation Proceedings themselves were terminated by the order being the appellants were named "parties" to the Proceedings or whether the

Segregated Account subject to rehabilitation, and [they] will not be involved in the case going forward.” (Petition at 1 n.1). In other words, the Order being appealed encompasses the only issues in the Proceedings that the Petitioners are interested in; the issues were decided in total by the Rehabilitation Court in its October 24, 2016, and no further proceedings or orders as to the Petitioners or on those issues were contemplated.

What is more, the circuit court acknowledged that its ruling would be appealed and thus recognized that the matter at hand was a singular issue from which an appeal might promptly be taken upon issuance of the Order. (Exhibit C at 16-18). The Rehabilitation Court’s recognition of the finality of its Order as far as the Petitioners are concerned should not be overlooked. Indeed, such recognition is consistent with this Court’s approach to accepting prior appeals throughout these Proceedings. Accordingly, the appeal should proceed pursuant to the Notice of Appeal and the Petition should be denied.

IV. THE PETITION IS IMPROPER AND UNNECESSARY IN LIGHT OF THE COURT’S PRIOR ORDERS

Although this Court has given potential appellants clear guidelines to

determine the finality of orders issued by the Rehabilitation Court, the Petitioners declined to take a firm stance as to the nature of their own

This issue is not merely academic: the appeal proceeds differently depending on which document controls. The filing of a notice of appeal triggers a cascade of deadlines in the appellate process, from the circuit court's filing of the circuit court record (Wis. STAT. § 809.11(2)) to the

affirmatively assert its right to file a Notice of Appeal under § 808.03(1). procedurally defective, and the appellant should be held to its decision to appellant files both a Notice and Petition, the Petition should be denied as notice of appeal and a petition for leave to appeal the same order. When an § 808.03(2) and 809.50. The statute does not contemplate filing both a final orders are only appealable by permission pursuant to Wis. STAT. orders are appealed as a matter of right under Wis. STAT. § 808.03(1). Non-*Compare* Wis. STAT. § 808.03(1) *with* Wis. STAT. § 808.03(2). Final An order is not both final and interlocutory; it is one or the other.

Rehabilitator to determine which document governed. not know what document to file and chose to leave it to the Court and the essentially acknowledged that, despite this Court's prior orders, they did requiring the Rehabilitator to file this response. In so doing, the Petitioners complicated matters by filing both a notice of appeal and the Petition, appeal. Instead of simply filing a notice of appeal, they unnecessarily

⁴ The Rehabilitator can only surmise that the Petitioners chose not to mention this particular order because in the order the Court also dismissed the appeal for lack of standing, and Petitioners would like to avoid the same fate. Nonetheless, the order clearly should have instructed and guided the Petitioners' choice of filings here.

It should not be the obligation of the Court or opposing parties to determine for the Petitioner which is the appropriate document for filing, particularly in light of this Court's prior orders. Had the Petitioners heeded the Court's March 1, 2013 order in Appeal Number 2011AP2708, it would (or should) have recognized that the Order it wanted to appeal was appealable as a matter of right under Wis. STAT. § 808.03(1).⁴ Courts of

leave to appeal is thus defective.

The filing of a petition for leave, on the other hand, triggers a separate briefing schedule, with other deadlines to be determined, if necessary, upon the Court's adjudication of the petition. Wis. STAT. § 809.50(1)-(2). In light of the Court's prior orders, the Petitioners have unnecessarily complicated this matter by filing both documents and asking the Rehabilitator to guess which deadlines apply to it. The Petition seeking

§ 809.19(1), (3), (4)).

requesting of additional portions of transcripts necessary for appeal (Wis. STAT. § 809.11(5)) to the composition and filing of the record on appeal (Wis. STAT. § 809.15), to the ultimate briefing schedule (Wis. STAT.

appeal in Wisconsin do not accept the burden, for example, to scour the trial record for evidence supporting an appellant's argument, or to refine or explain an undeveloped argument on appeal. See *Roy v. St. Lukes Medical Center*, 2007 WI App 218, ¶ 10 n.1, 305 Wis. 2d 658, 741 N.W.2d 256 (“We have no duty to scour the record to review arguments unaccompanied by adequate record citation.”); *Tam v. Luk*, 154 Wis. 2d 282, 290-91 n.5, 453 N.W.2d 158 (Ct. App. 1989) (stating that “[I]t is not the duty of this court to sift and glean the record *in extenso* to find facts which will support an [argument]”) (quotation omitted); see also *Greer v. Bd. of Education of Chicago, IL*, 267 F.3d 723, 727 (7th Cir. 2001) (noting that “a lawsuit is not a game of hunt the peanut. . . . [N]either appellate courts nor district courts are obliged in our adversary system to scour the record looking for factual disputes”) (quotation omitted). Likewise, the Court here should not do the work of an appellant, or force the Rehabilitator to assume the burden, to determine whether the Petitioners’ appeal is interlocutory or as a matter of right. For this reason, the Petition should be denied.

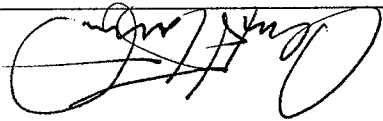
V. THE REHABILITATOR'S POSITION SHOULD NOT BE CONSTRUED AS A CONCESSION ON THE MERITS OF PETITIONERS' APPEAL

The Rehabilitation Court, as it held, had the authority and discretion to clarify its own prior orders. The Rehabilitator agrees with the circuit court's conclusion and Order in their entirety. In agreeing that the Order is final for purposes of appeal, the Rehabilitator thus does not accept the factual and legal arguments that the Petitioners advance in their Petition pertaining to the merits of the appeal. Nor does the Rehabilitator concede that the Petitioners have standing to appeal the Order. Indeed, the Petitioners have not been aggrieved by the Order that, according to its plain language, does no more than clarify the matter's prior orders and the Rehabilitation Proceedings generally. These are issues, however, that may be addressed by the parties in the normal course of arguing an appeal as a matter of right under § 809.19.

The Rehabilitator only agrees that the Order is final for purposes of appeal in the context of the Rehabilitation Proceedings. Accordingly, the Rehabilitator asks that the Court deny the Petition as unnecessary and allow the appeal to proceed as an appeal as a matter of right under WIS. STAT. § 808.03(1).

Dated this 21st day of November, 2016.

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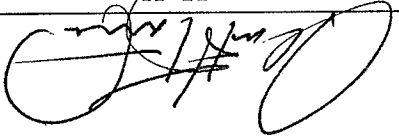
Attorneys for Plaintiff-Respondent, Office
of the Commissioner of Insurance

FORM AND LENGTH CERTIFICATION

I hereby certify that this Response is produced with a proportional

serif font and that its length, exclusive of signatures and certificates, is

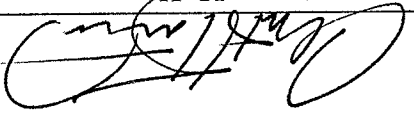
3,297 words.



Aaron H. Kastens

CERTIFICATE OF SERVICE

I, Aaron H. Kastens, an attorney employed with the law firm of Michael Best & Friedrich LLP, hereby certify under penalties of perjury that I caused a copy of the Response Petition for Leave to Appeal Order to be served by electronic transmission at Milwaukee, Wisconsin on the 21st day of November, 2016.



Aaron H. Kastens

EXHIBIT
A

should contact Heidi Ernst at (608) 258-4771.

PLEASE TAKE FURTHER NOTICE that anyone interested in appearing telephonically

served no later than August 26 2016.

should be in writing with the basis for the objection explained with specificity, and filed and

further notice that any objections to the relief requested by the Rehabilitator in this Motion

the Dane County Courthouse, 215 South Hamilton Street, Madison, Wisconsin. Please take

the Court on August 2 2016, commencing at 1:30 p.m. before the Honorable Richard Nies at

declaring the nature of these rehabilitation proceedings. The motion is scheduled to be heard by

hereby moves the Court pursuant to Wis. Stat. § 645.05(1) for an order confirming and

Wisconsin, as Rehabilitator of the Segregated Account of Ambac Assurance Corporation,

PLEASE TAKE NOTICE that the Commissioner of Insurance of the State of

TO: All Parties-in-Interest

I. Notice of Motion

**REHABILITATOR'S NOTICE OF MOTION AND MOTION TO CONFIRM
AND DECLARE THE NATURE OF THESE PROCEEDINGS**

CLERK OF COURT OF APPEALS
OF WISCONSIN

Segregated Account of Ambac Assurance Corporation

Case No. 10CV1576
NOV 21 2016

In the Matter of the Rehabilitation of:

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STATE OF WISCONSIN
DANE COUNTY CIRCUIT COURT

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II. Rehabilitator's Motion

Pursuant to Wis. Stat. § 645.05(2), the Commissioner of Insurance of the State of Wisconsin, as the court-appointed Rehabilitator (the "Rehabilitator") of the Segregated Account (the "Segregated Account") of Ambac Assurance Corporation ("Ambac" or the "General Account"), hereby moves the Court as detailed below to confirm and declare the nature of these proceedings in order to protect the interests of policyholders and creditors of the Segregated Account.

Specifically, the Rehabilitator seeks entry of the proposed order filed herewith to avoid confusion as to the nature of these Proceedings, including whether they are limited to the Segregated Account, or whether they instead constitute a rehabilitation of Ambac, also referred to as the General Account. This is not an academic question, but is an issue that has arisen in certain litigation pending in other jurisdictions in which parties adverse to Ambac have made arguments characterizing this Court's March 24, 2010 Order of Rehabilitation (the "Rehabilitation Order"), the Court's January 21, 2011 Order Confirming the Rehabilitator's Plan of Rehabilitation (the "Confirmation Order"), as affirmed by the Wisconsin Court of Appeals, 2013 WI App 129, 351 Wis. 2d 539, 841 N.W.2d 482, or the Proceedings generally.¹ The Rehabilitator recognizes that there is a potential for confusion about these matters due to the unusual nature of this rehabilitation and the interrelatedness of the Segregated Account and the General Account. Additionally, the Rehabilitator is concerned that court decisions based on misunderstandings of these Proceedings could trigger the very defaults and resulting collateral financial damage that the Rehabilitator intended to avoid by deciding to adopt the targeted approach of rehabilitating the Segregated Account. The grounds for the Motion are as follows:

¹ The Rehabilitation Order, the Confirmation Order, and the Court of Appeals' decision are attached at Tabs A, B and C for the Court's convenience.

² Wisconsin law allows an insurer to establish a segregated account "for any part of its business" with the approval of the Commissioner. Wis. Stat. § 611.24(2). A segregated account is treated as a separate insurer for purposes of entering into rehabilitation proceedings under Chapter 645. See Wis. Stat. § 611.24(3)(c).

close connection between the Segregated Account and the General Account. As described in

4. Although these Proceedings are limited to the Segregated Account, there is a

remaining in Ambac's General Account." Rehabilitation Order ¶ 2.

and does not pertain to policies, contracts, assets, equity ownership interests, and liabilities

The Rehabilitation Order states, "[t]his proceeding pertains solely to the Segregated Account . . .

Segregated Account on March 24, 2010, the same day the Segregated Account was created.

3. The Commissioner then commenced these Proceedings to rehabilitate the

App 129, ¶ 37.

and left the remaining 14,000 healthy, performing policies in the general account." 2013 WI

material projected losses, structural problems, and contractual triggers to the segregated account

assessment, the commissioner approved the allocation of approximately 1000 policies with

Order at 23-24 (¶¶ 64-69). As the Court of Appeals explained, "[a]fter completing this

to the Segregated Account and which should remain in the General Account. See Confirmation

had conducted an extensive review of Ambac's policies to determine which should be allocated

2. Before that, the Office of the Commissioner of Insurance ("OCI") and Ambac

Rehabilitation ¶ 9 & Tab 3.

Segregated Account on March 24, 2010. See March 24, 2010 Verified Petition for

Commissioner of Insurance (the "Commissioner") approved Ambac's creation of the

account established under Wis. Stat. § 611.24.² See Rehabilitation Order ¶ 2. The

1. As the Court is aware, these Proceedings are for the rehabilitation of a segregated

A. Factual Background

greater detail below, the Segregated Account was, at inception, capitalized through two instruments issued by the General Account, a Secured Note and a Reinsurance Agreement.³ See Confirmation Order at 25-27 (¶¶ 70-76).

5. Despite the limitation of these Proceedings to the Segregated Account, OCI has an interest in and continues to monitor developments in the General Account. See Confirmation Order at 27-29 (¶¶ 80-84). OCI's authority to do so rests on "OCI's regulatory authority and as a contractual party under the Secured Note and Reinsurance Agreement subject to the Rehabilitator's authority to oversee and enforce contractual obligations." *Id.* at 29 (¶ 84).

6. Accordingly, OCI has an interest in ensuring that Ambac (*i.e.*, the General Account) does not lose legal rights due to a misunderstanding or mischaracterization of these Proceedings. Because OCI is concerned that this could occur, to the detriment of both Ambac and the Segregated Account, OCI has asked this Court to clarify the nature of these Proceedings and the regulatory choices that they reflect in the hope that such clarification would be helpful to courts in other jurisdictions that must decide the legal ramifications of these Proceedings for the General Account.

B. Military Housing Litigation

7. The Rehabilitator has been informed that Ambac (the General Account) is party to certain litigations pending in other jurisdictions concerning residential housing development projects ("Projects") implemented pursuant to the Military Housing Privatization Initiative ("MHP") created under the National Defense Authorization Act of 1996. These litigations are referred to as the "MHP Cases."

8. The developers of the Projects ("the Developers") are adverse to Ambac in the

³ In May 2014, the Segregated Account drew down the last of the principal amount available under the Secured Note as a result of ongoing claims payments and expenses. The Reinsurance Agreement remains in effect.

"In some of the MHP1 Loan transactions, Ambac is referred to as "Ambac" and in others it is referred to as "Credit Enhancer." But the definition of what constitutes an "Ambac Default" or "Credit Enhancer Default" is otherwise identical.

- contains the following identical definition of "Ambac Default" or "Credit Enhancer Default":
11. As an illustration, in each of the MHP1 Loans, one of the transaction documents the Lender and thus no longer has standing to pursue its claims in the MHP1 Cases. alleged "Ambac Default," the Developers claim that Ambac can no longer exercise the rights of "Credit Enhancer Default" (collectively "Ambac Default") has occurred. As a result of this Developers' obligation to replace Ambac or to fund a reserve because an "Ambac Default" or of cash. In response, the Developers have contended that Ambac lacks standing to enforce the replace Ambac's Surety Bonds or to fund the Projects' reserve funds with the required amount in connection with the Surety Bonds in these Projects by requiring the Developers either to
10. Ambac has attempted to exercise certain contractual rights to reduce its exposure and is also an intended third party beneficiary of certain loan transaction agreements. Ambac is deemed to be the "Lender" on the MHP1 Loans with respect to certain assigned rights of the loan transaction documents, Ambac receives certain rights and protections, including that be payable from the Project's debt service reserve fund (the "Surety Bonds"). Under the terms Ambac also has issued a surety bond that guarantee payments of amounts that would otherwise connection with the loans under certain circumstances and conditions. In each of the Projects, connection with the MHP1 Loans that guarantee the payment of principal and interest in
9. In each of the Projects, Ambac issued financial guaranty insurance policies in furnish and equip U.S. military housing at several military installations across the country. Loans") with various lenders and borrowed the money necessary to construct, rehabilitate, MHP1 Cases. To finance the Projects, the Developers entered into loan agreements ("the MHP1

⁵ An excerpt from one of the transaction documents is attached as Tab E. ⁶ Indeed, the Rehabilitator's position is that, because the Ambac policies relevant to the MHPI Cases have not been allocated to the Segregated Account, but remain instead with the General Account, disputes concerning these Projects fall outside the jurisdiction of this Court and are beyond the reach of this Court's Injunction Order. If these policies had been subject to rehabilitation, the Developers would be enjoined from asserting an Ambac Default or a Credit Enhancer Default. Because these policies are not allocated to the Segregated Account, the Injunction Order does not apply.

"Ambac Default" or a "Credit Enhancer Default" are likely to be unfamiliar with these

13. Nonetheless, because the other courts that must determine whether there is an

Cases are pending,⁵

the meaning of these agreements. These issues are to be decided by the courts where the MHPI

adjudicate whether there has been an "Ambac Default" or a "Credit Enhancer Default" within

be clear, the Rehabilitator is not asking this Court to construe this contractual language or to

within the meaning of these provisions depends, in part, on the nature of these Proceedings. To

12. Whether there has been an "Ambac Default" or a "Credit Enhancer Default"

Corporation." *Id.*

In all of the MHPI Loans, "Ambac" and/or "Credit Enhancer" is defined as "Ambac Assurance

"Ambac Default" means... (a) Ambac fails to make a payment required under the Credit Enhancer Policy in accordance with its terms and such failure remains unremedied for two Business Days following the delivery of written notice of such failure to Ambac; (b) Ambac (i) files any petition or commences any case or proceeding under any provisions of any federal or state law relating to insolvency, bankruptcy, rehabilitation, liquidation or reorganization or (ii) makes a general assignment for the benefit of its creditors or (iii) has an order for relief entered against it under any federal or state law relating to insolvency, bankruptcy, rehabilitation liquidation or reorganization that is final and nonappealable; or (c) a court of competent jurisdiction or another competent regulatory authority enters a final and nonappealable order, judgment or decree (i) appointing a custodian, trustee, agent or receiver for Ambac or all or any material portion of its property or (ii) authorizing the taking of possession by a custodian, trustee, agent or receiver of Ambac (or taking possession of all or any material portion of Ambac's property)....⁵