

STATE OF WISCONSIN : CIRCUIT COURT :

DANE COUNTY

In the Matter of the Rehabilitation of:

**SEGREGATED ACCOUNT OF
AMBAC ASSURANCE CORPORATION**

**Case No. 10 CV 1576
Hon. Richard G. Niess**

REHABILITATOR'S PRETRIAL REPORT

Dated: December 11, 2017.

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Insurance of the State of Wisconsin, as the
Court Appointed Rehabilitator of the
Segregated Account of Ambac Assurance
Corporation*

I. SUMMARY

The Rehabilitator respectfully requests rulings from the Court at the Pretrial Conference on the following issues *based on the written submissions* in the following order:

1. Motion to Adjourn filed by COFINA Bondholders;
2. Letter request for discovery filed by COFINA Bondholders; and
3. Motion for Contempt filed by the Rehabilitator.

Copies of these motion papers filed to date are being delivered to chambers with this Pretrial Report for the Court's convenience.

On September 25, 2017, the Rehabilitator filed its Motion to Further Amend The Plan of Rehabilitation Confirmed On January 24, 2011 To Facilitate An Exit From Rehabilitation (the "**Motion**"). The following day, the Court entered a Scheduling Order Regarding the Rehabilitator's Second Amended Plan of Rehabilitation (the "**Scheduling Order**"), which, among other things, set a hearing on the Motion for January 4-5, 2018 to consider confirmation of the Second Amended Plan (the "**Confirmation Hearing**"), and also set a pretrial conference for December 14, 2017 at 8:30 a.m. (the "**Pretrial Conference**") to make any necessary preliminary rulings on the Motion.

The following Pretrial Report contains a Summary of Issues, Witness List, Exhibit List, Proposed Schedule for the Confirmation Hearing, and Proposed Order Confirming the Second Amended Plan. The COFINA Bondholders' and the MHPI Projects' objections to the Second Amended Plan should be ruled upon at the close of the Confirmation Hearing; the Trustees' objections have been resolved and will be withdrawn.

II. ISSUES BEFORE THE COURT

A. THE MOTION TO ADJOURN

On November 13, 2017, the COFINA Bondholders filed a Motion to Adjourn Proceedings (the “**Motion to Adjourn**”), seeking to delay the Confirmation Hearing either indefinitely or at least until after the United States District Court for the District of Puerto Rico renders its decision in what is known as the “Commonwealth-COFINA Dispute.” In response to the Motion to Adjourn, the Court ordered that the Motion to Adjourn would be considered and ruled upon pursuant to the requirements of the Scheduling Order. In other words, the Motion to Adjourn could be ruled upon at the Pretrial Conference if the Court decides the motion on the papers or, if necessary, at the onset of the Confirmation Hearing.

The Rehabilitator objects to and addresses the Motion to Adjourn in a separate objection, filed concurrently with this Pretrial Report. The opposition to the motion sets forth that the COFINA Bondholders are not parties to this proceeding and do not have standing to seek to adjust the schedule, and any adjournment would capsize the RESA, causing the consensual transaction to evaporate; the result would be that the Segregated Account would remain in rehabilitation indefinitely unless OCI determined that other measures were necessary and available to protect policyholders and the public interest. There is no basis to adjourn these proceedings and the Rehabilitator respectfully requests the Court to rule upon, and deny, the Motion to Adjourn at the Pretrial Conference.

B. DISCOVERY

The MHPI Projects and COFINA Bondholders have requested discovery from the Rehabilitator. Such discovery is prohibited pursuant to *Nickel v. Wells Fargo et. al. a/k/a In re Ambac Assur. Corp.*, 2013 WI App 129, ¶108, 351 Wis. 2d 539, 841 N.W.2d 482 (affirming

denial of requests for discovery “[b]ecause the interested parties [were] not parties within the meaning of the discovery statute”), and this Court’s prior Orders of April 5, 2016 and January 20, 2017. The Rehabilitator asks this Court to deny the requested discovery, for costs and fees, and for a finding of contempt against MHPI Projects and ordering further sanctions.

The MHPI Projects issued “Information Requests” to the Rehabilitator on November 24, 2017. However, this Court has already admonished the MHPI Projects for its discovery requests in this proceeding. As the Court has held previously, this proceeding is not an adversarial proceeding, the MHPI Projects are not parties, and discovery is not appropriate. Consistent with the above, the Court has issued a discovery protocol before discovery can be requested, which the MHPI Projects have failed to adhere to. As such, the Court should grant the relief requested in the accompanying Motion for Contempt filed contemporaneously with this Pretrial Report.

The COFINA Bondholders issued a letter to the Court on December 1, 2017 seeking discovery from the Rehabilitator. The COFINA Bondholders are also not parties to this proceeding and are not entitled to discovery from the Rehabilitator for the reasons more fully stated in the Opposition to the COFINA Bondholders’ Letter Request For Discovery. The Rehabilitator requests that all discovery requests be denied by the Court at the Pretrial Conference.

C. OBJECTIONS

The Scheduling Order also required that objections to the Motion be filed by November 24, 2017. Objections were filed by three groups: (a) Cyrus Capital Partners, L.P., Polygon Global Partners LLP, and Taconic Capital Advisors, LP (“**COFINA Bondholders**”), (b) certain transaction parties in the Military Housing projects (the “**MHPI Projects**”), and (c) Wells Fargo Bank, N.A., Deutsche Bank National Trust Company, Deutsche Bank Trust Company Americas,

and U.S. Bank National Association (together, “**Trustees**”). The Scheduling Order also requires the Rehabilitator to file its response (the “**Response**”) by December 11, 2017, which is being filed together with this Pretrial Report.

The Objection the Rehabilitator believes is ripe for a ruling at the Pretrial Conference is that of the MHPI Projects. The issue is whether the scope of the injunction provision, Article 6.13 of the Plan, may cure defaults alleged in cases in other jurisdictions to have been triggered by the filing of the Rehabilitation Proceedings. The Rehabilitator’s position is that such a provision is not only permissible in the Confirmation Order, but necessary to protect the integrity of these Proceedings and the durability of the exit. Moreover, the determination is a legal issue that may be decided based on the written submissions of the Parties and therefore is ripe for argument and resolution at the Pretrial Conference.

D. STANDING ISSUES FOR THE CONFIRMATION HEARING

The COFINA Bondholders lack standing. They are not policyholders of the Segregated Account; rather, they are beneficiaries of policies within the General Account, which is not a part of this Rehabilitation. Further, they do not even have current, crystalized claims pursuant to their policies and therefore no actual injury. They may not therefore object to the Second Amended Plan and delay policy claim payments to policy beneficiaries of the Segregated Account. Based on WIS. STAT. § 645.33(5), this Court should only allow the CONFINA Bondholders to appear at the Confirmation Hearing, offer evidence, and present oral argument, on their objections. In other words, the COFINA Bondholders are afforded notice and a hearing on *their* objection; they are not entitled to a hearing on the Rehabilitator’s proposed Second Amended Plan. This Court has already declined to find standing for a party to object to an issue that does not otherwise involve them and supported only by speculations that they would not get paid in full. *Nickel v.*

Aurelius Capital Mgmt. LP, Appeal No. 2011AP2708 (March 1, 2013).

E. MISCELLANEOUS ISSUES TO BE ADDRESSED

- Appearances of counsel at the Confirmation Hearing by telephone.
- Access by media and non-Interested Parties (*e.g.* Ambac investors) by telephone.

III. THE REHABILITATOR'S LIST OF WITNESSES

The Rehabilitator reserves the right to call the following witnesses at the Confirmation Hearing:

1. ***Daniel J. Schwartzer.*** Mr. Schwartzer is the Special Deputy Commissioner of the Segregated Account of Ambac Assurance Corporation, appointed pursuant to Wis. Stat. § 645.33(1). He will be called to testify regarding his general oversight of the Rehabilitation, claims payment in the Segregated Account, reconciliations of deferred amounts, investment guidelines, financial position of AAC, commutations, approval of claims, analysis and assessment of various option to exit the Segregated Account from rehabilitation, discussions with various creditor constituencies, the Consensual Transaction, the Second Amended Plan and its supporting documents, the analysis of Puerto Rico's Title III filing and natural disaster recovery efforts and their effect on AAC, and stability and long term durability of AAC as part of the Second Amended Plan, and the Rehabilitator's conclusion to support the Consensual Transaction and file its Motion.
2. ***Dennis M. McGettigan.*** Mr. McGettigan is a principal member of Gordian Group, LLC. He has acted as the primary financial advisor to the Rehabilitator throughout this Rehabilitation proceeding. He will be called to testify regarding the background of the Consensual Transaction and his involvement of the financial decision making process and meetings leading up to the Confirmation Hearing, his conclusions regarding the consideration paid to Deferred Amount holders and General Account Senior Surplus Notes holders under the Second Amended Plan, the durability of AAC including its ability to pay policy claims in full on a timely basis following consummation of the Second Amended Plan, the impact of Puerto Rico's Title III filing and recovery efforts on AAC, and any other matter discussed within or replied upon in his Expert Report dated September 22, 2017, as updated on December 11, 2017, filed with the Court.
3. ***Rebuttal Witnesses.*** The Rehabilitator reserves the right to call any rebuttal witnesses as may be necessary.

IV. LIST OF EXHIBITS

The Rehabilitator reserves the right to use the following exhibits at the Confirmation Hearing:

1. The Second Amended Plan of Rehabilitation, dated September 22, 2017.
2. The Amended Disclosure Statement Accompanying the Second Amended Plan of Rehabilitation, dated September 22, 2017, including its exhibits.
3. The December 11, 2017 Addendum to The Second Amended Disclosure Statement, including its exhibits.
4. The Affidavit of Daniel J. Schwartz in Support of Confirmation of the Second Amended Plan of Rehabilitation, including its exhibits.
5. The Expert Report of Dennis M. McGettigan, including all exhibits, attached as Exhibit C to the Affidavit of Daniel J. Schwartz.
6. The Update to Expert Report of Dennis M. McGettigan, Regarding Ambac Assurance Corporation and the Segregated Account of Ambac Assurance Corporation, dated December 11, 2017, including all updated exhibits.
7. Any document that has been previously filed in the Rehabilitation proceeding.
8. Any demonstrative exhibit.
9. Any rebuttal exhibit.

V. PROPOSED CONFIRMATION HEARING SCHEDULE

January 4, 2018.

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| <i>8:30 a.m.</i> | Appearances; procedural matters; confirmation of the order of proof and statement of the issues. |
| <i>9:00 a.m.</i> | The Rehabilitator's case in chief: direct examination of the Special Deputy Commissioner, Daniel J. Schwartz. |
| <i>1:00 p.m.</i> | The Rehabilitator's case in chief (con't): direct examination of the Rehabilitator's Expert, Dennis M. McGettigan. |
| <i>5:00 p.m.</i> | Subject to rebuttal, the Rehabilitator rests. |

January 5, 2018.

- 9:00 a.m. Objectors may offer argument and present exhibits filed with their objections.
- 1:00 p.m. The Rehabilitator's rebuttal evidence.
- 3:00 p.m. Closing Arguments (limited to 45 minutes for the Rehabilitator; 30 minutes for any party or objector). Each should each designate one attorney to deliver closing argument. The Rehabilitator shall have an allowance of 15 minutes per objector for rebuttal argument.
- 4:30 p.m. Court rulings, if any.
- 5:00 p.m. Confirmation Hearing concludes.

VI. PROPOSED ORDER CONFIRMING THE SECOND AMENDED PLAN

The Rehabilitator's Proposed Order Confirming the Second Amended Plan is being filed concurrently with this Pretrial Report as a separate document.

Dated at Milwaukee, Wisconsin this 11th day of December, 2017.

MICHAEL BEST & FRIEDRICH LLP

Electronically signed by John D. Finerty, Jr.

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