

In the Matter of the Rehabilitation of:

Case No. 10-CV-1576

Segregated Account of Ambac Assurance Corporation.

**MOTION OF THE BANK INSUREDS
FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE**

Certain holders (the “Bank Insureds”)¹ of financial guaranty insurance policies (the “Policies”) issued by Ambac Assurance Corporation (“AAC”) move this Court for leave to participate as amicus curiae in this rehabilitation proceeding in order to respond to the emergency motions for injunctive and other expedited relief (the “Emergency Motions”) filed by certain holders of residential mortgage-backed securities (the “RMBS Bondholders”) and certain holders of the Las Vegas Monorail Project Revenue Bonds (the “LVM Bondholders”), respectively. The Bank Insureds have conferred with the Wisconsin Office of the Commissioner of Insurance (“OCI”) and AAC, and both consent to the grant of this motion.

IDENTITY AND INTERESTS OF THE AMICUS CURIAE

The Policies guarantee payments by Ambac Credit Products, LLC (“ACP”), a wholly-owned subsidiary of AAC, under certain credit default swap agreements between ACP and the Bank Insureds (the “CDS Agreements”). Under the CDS Agreements, ACP agreed to compensate the Bank Insureds for losses resulting from defaults or other credit events related to the underlying reference obligations. Under the Policies, AAC insured all amounts due to the Bank Insureds

¹ The Bank Insureds consist of the following financial institutions: Banco Bilbao Vizcaya Argentaria, S.A.; Banco Santander, S.A.; Barclays Bank PLC; BNP Paribas; Canadian Imperial Bank of Commerce; Citibank, N.A.; Citigroup Global Markets Limited; Commerzbank AG London Branch; Crédit Agricole Corporate and Investment Bank; Natixis; Natixis Financial Products Inc.; The Royal Bank of Scotland PLC; Société Générale; and UBS AG, London Branch.

from ACP under the CDS Agreements, including any payments due in the event of the termination of any CDS Agreement. In other words, the Policies guarantee the obligations of ACP for the benefit of the Bank Insureds.

Months of negotiations among the Bank Insureds, AAC, ACP and the OCI have resulted in a proposed settlement that reflects significant compromises by the Bank Insureds and that entails, among other things, commutation of the Policies in exchange for \$2.6 billion in cash and \$2.0 billion in surplus notes issued to the Bank Insureds (the “Proposed Settlement”).² The Bank Insureds have had for some time, and continue to have, the right to assert claims against ACP and AAC that exceed \$12 billion in the aggregate.³ To permit time to finalize the Proposed Settlement that the RMBS Bondholders and the LVM Bondholders now challenge, the Bank Insureds entered into an agreement to forbear temporarily from terminating the CDS Agreements and asserting claims against AAC.

The Bank Insureds move for leave to participate as amicus curiae to respond to the Emergency Motions. In particular, the Bank Insureds seek leave to file an amicus curiae brief and to participate in the May 25, 2010 hearing and any subsequent hearings on the Emergency Motions. The Bank Insureds’ proposed amicus curiae brief clarifies certain facts related to the Proposed Settlement and establishes that the Proposed Settlement is consistent with the Bank Insureds’ status as policyholders and is beneficial to all policyholders. In this regard, the Bank Insureds’ proposed amicus curiae brief will help inform the Court of the relevant facts and legal issues.

² The Proposed Settlement involves the Bank Insureds and other similarly-situated financial institutions. (*See* Affidavit of Roger A. Peterson (“Peterson Aff.”) ¶¶ 16-24 (filed May 20, 2010).)

³ These aggregate claims include the claims of the Bank Insureds and the claims of other similarly-situated financial institutions. (*See* Peterson Aff. ¶¶ 16-24.)

Amicus status is the most appropriate form of participation for the Bank Insureds. Policyholders and other creditors generally do not have standing to intervene as parties to a proceeding under chapter 645. *See In the Matter of the Liquidation of American Star Insurance Co.*, No. 92-CV-4579 (“*American Star*”), Order Denying The Pacific Bank’s Motions (Dane County Cir. Ct. Nov. 24, 1998); *see also American Star*, Transcript of Oral Argument, 22:19-25:25, 37:7-13, 75:17-25 (Dane County Cir. Ct. Nov. 12, 1998). The Bank Insureds’ limited role as amicus curiae also is appropriate because the Policies are not in the segregated account that is the exclusive subject of this rehabilitation proceeding.

RELIEF REQUESTED

NOW, THEREFORE, the Bank Insureds move this Court for leave to participate as amicus curiae pursuant to the terms set forth in the Proposed Order. To facilitate the Court’s review of the relevant facts and legal issues in advance of a hearing on the Emergency Motions, the Bank Insureds have filed their proposed amicus curiae brief with this motion.⁴

⁴ The Bank Insureds do not seek to appear as parties in this rehabilitation proceeding. Further, the Bank Insureds do not intend to confer jurisdiction on this Court or any other court in Wisconsin by virtue of their participation as amicus curiae including, but not limited to, the filing of this motion, the filing of the proposed brief, and participation in any hearing on the Emergency Motions. If the Court is not inclined to permit the Bank Insureds to preserve their jurisdictional defenses and to grant leave pursuant to the terms set forth in the Proposed Order filed with this motion, the Bank Insureds respectfully withdraw this motion.

Dated this 24th day of May 2010.

Respectfully submitted,
GODFREY & KAHN, S.C.

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