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24 May 2010

HAND-DELIVERED-Dane County Clerk of Courts

Honorable William D. Johnston
Lafayette County Circuit Court
626 Main Street
P.O. Box 40
Darlington, WI 53530-0040

Re: In the Matter of the Rehabilitation of:
Segregated Account of Ambac Assurance Corporation
Dane County Case No. 10 CV 1576

Dear Judge Johnston:

The hearing set for Tuesday, May 25, 2010 involves emergency motions filed by certain interested parties regarding whether Ambac should be enjoined from entering into what is called the "CDS Settlement" with certain banks. On Thursday, May 20, 2010, the Commissioner submitted pleadings and arguments that attempt to resolve or seriously impact several issues pending for hearing and oral argument on other motions set for July 9, 2010.

Enclosed is a Memorandum requesting this Court to maintain the July 9, 2010 briefing and hearing schedule on the motions filed by Wells Fargo Bank, National Association, in its capacity as trustee for the benefit and protection of certain bondholders. We respectfully request that the enclosed motion be heard before the Court takes up consideration of the emergency motions.

A copy of this letter and the enclosed memorandum have been sent to counsel for all participants in this matter.

Respectfully yours,


Stephen L. Morgan

SLM:mjp

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Johnston lt4

Enclosure

cc: Honorable William D. Johnston (via facsimile 608.776.4845)

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In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

MOTION TO MAINTAIN BRIEFING AND HEARING SCHEDULE FILED BY WELLS FARGO BANK, NATIONAL ASSOCIATION, IN ITS CAPACITY AS TRUSTEE FOR THE BENEFIT AND PROTECTION OF CERTAIN BONDHOLDERS

Wells Fargo Bank, National Association, in its capacity as trustee for the benefit and protection of certain bondholders (the “Bondholders Trustee”), by its attorneys, Murphy Desmond S.C. and Locke Lord Bissell & Liddell LLP, hereby moves this Court to defer any rulings on the Segregated Account issues raised by the Bondholders Trustee until **July 9, 2010** – which is the date that the Court has scheduled those issues to be heard – and to deny the Commissioner of Insurance’s (“Commissioner”) request to have those issues heard at the **May 25, 2010** hearing. The Court should do so because: (1) the Segregated Account issues will not be fully briefed and argued until July 9, 2010, and therefore any ruling prior to then would be premature; and (2) as Ambac Assurance Corporation (“Ambac”) correctly explains, these Segregated Account issues “are entirely irrelevant” to the issues that will be before the Court at the May 25, 2010 hearing. (*See* Ambac’s May 20, 2010 Brief at 5, 19.) In support of this Motion, the Bondholders Trustee states as follows:

1. On April 5, 2010, the Bondholders Trustee filed its Motion to Modify the Temporary Injunction Order and to Intervene (the “Bondholders Trustee’s Motion”), seeking leave to intervene in this action pursuant to Paragraph 12 of the March 24, 2010 Injunction Order, and for a Court order modifying the Injunction Order by removing from the Segregated

Account those policies held by the bondholders represented by the Bondholders Trustee. In its Motion, the Bondholders Trustee explains why the transfer of the bondholders' policies to the Segregated Account was illegal and thus ineffectual based on, among other things, the following four grounds:

- A. The transfer constituted an ineffective novation;
- B. The Commissioner and Ambac did not create the Segregated Account in accordance with the provisions of the Wisconsin Insurance Code;
- C. The Commissioner exceeded his authority under the Wisconsin Insurance Code by attempting to modify Ambac's obligations before the rehabilitation proceeding and outside the supervision of this Court; and
- D. The Commissioner's approval of the Segregated Account violated the provisions of the Constitutions of the United States and Wisconsin.

2. On April 16, 2010, the Court entered an Order establishing a briefing and oral argument schedule to address these and other issues raised in the Bondholders Trustee's Motion (the "Segregated Account Disputes"). That briefing schedule provided:

- The Responses of Ambac and the Commissioner are due on or before June 4, 2010;
- The Bondholder Trustee's Reply is due on or before June 25, 2010; and
- Oral argument is set for July 9, 2010 at 2:00 p.m.

3. On April 20, 2010, the "RMBS Policyholders" filed an Emergency Motion to Modify the Order for Temporary Injunctive Relief, requesting various forms of relief. Although the RMBS Policyholders' Emergency Motion primarily addresses the issue of whether Ambac should be enjoined from entering into the "CDS Settlement" with certain banks (the "CDS Settlement Disputes"), that motion also addresses the Segregated Account Disputes and tracks

the Bondholders Trustee's Motion almost verbatim with respect to those disputes. (*See* RMBS Policyholders' April 20, 2010 Motion at 23-29.)

4. On May 5, 2010, the "LVM Bondholders" filed an Emergency Motion to Enjoin Consummation of the Proposed Settlement Between Ambac and Certain CDS Counterparties, requesting various forms of relief with respect to the CDS Settlement Disputes.

5. On May 6, 2010, attorneys for the Commissioner notified interested parties by letter that this Court had scheduled a hearing on the Emergency Motions filed by the RMBS Policyholders and LVM Bondholders on May 25, 2010 – more than a month prior to the date this Court set for oral argument on the Bondholder Trustee's Motion.

6. On May 20, 2010, the Commissioner and Ambac each filed separate briefs in opposition to the RMBS Policyholders' and LVM Bondholders' Emergency Motions. The Commissioner's Brief opposes and addresses the issues raised in the two Emergency Motions, including the Segregated Account Disputes.

7. More specifically, in his May 20, 2010 filings, the Commissioner submitted the following proposed findings of fact and conclusions of law with respect to the RMBS Policyholders' and LVM Bondholders' Emergency Motions – which would resolve or seriously impact several issues of fact and law raised in the Bondholders Trustee's Motion:

- Findings of Fact: ¶¶ 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36; and
- Conclusions of Law: ¶¶ 2, 3, 4, 5, 6(c), 6(d).

As such, the Commissioner is seeking to have the Court resolve issues of fact and law concerning the Segregated Account Disputes raised in the Bondholders Trustee's Motion at the May 25, 2010 hearing, even though the Court already set the Segregated Account Disputes for oral argument on July 9, 2010.

10. The Segregated Account Disputes are irrelevant to the CDS Settlement Disputes that will be before the Court at the May 25, 2010 hearing. The Segregated Account Disputes concern the legality of the transfer of certain policies to the Segregated Account (*see* Bondholders Trustee's April 5, 2010 Motion), while the CDS Settlement Disputes concern whether Ambac should be enjoined from entering into the CDS Settlement with certain banks (*see* RMBS Policyholders' May 5, 2010 Motion and RMBS Policyholders' May 20, 2010 Motion). Indeed, Ambac agrees with the Bondholders Trustee that the Segregated Account Disputes **"are entirely irrelevant to the matter at hand,"** and that therefore **"[t]he sole focus of the hearing on May 25, 2010 should be on the issue of whether [the RMBS Policyholders and LVM Bondholders] have any legal basis to enjoin the CDS Settlement."** (Ambac's May 20, 2010 Brief at 5, 19 (emphasis added).)

11. In sum, the Court should not rule on the Segregated Account Disputes now, because those disputes are not yet fully briefed and, therefore, the Court has not yet heard all of the pertinent arguments and facts concerning those disputes. Moreover, preserving any ruling until the Segregated Account Disputes are fully briefed and properly before this Court on July 9, 2010 will not prejudice any party to this proceeding and will serve as an efficient and just adjudication of these disputes.

CONCLUSION

For the above reasons, the Bondholders Trustee respectfully requests that this Court enter an order (1) preserving any ruling on the Segregated Account Disputes, including the Commissioner's proposed issues of fact and conclusions of law identified above, until the Bondholders Trustee's Motion is properly before this Court on July 9, 2010; (2) limiting the scope of the May 25, 2010 hearing to the CDS Settlement Disputes; and (3) maintaining the briefing and hearing schedule set by this Court in its April 16, 2010 Order on the Bondholders Trustee's Motion.

MURPHY DESMOND S.C.

*Attorneys for Wells Fargo Bank, National
Association, in Its Capacity as Trustee of
Bondholders*

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