
In the Matter of the Rehabilitation of:

Case No. 10-CV-1576

Segregated Account of Ambac Assurance Corporation

OBJECTION OF AMBAC ASSURANCE CORPORATION
TO RMBS POLICYHOLDERS' NOTICE OF INTENT TO
OBTAIN COMMISSION TO TAKE DEPOSITIONS

Ambac Assurance Corporation ("Ambac"), by its attorneys, hereby objects to RMBS Policyholders' Notice of Intent to Obtain Commission to Take the Depositions of Non-Resident, Third-Party Witnesses in the State of New York. The grounds for this objection are as follows:

1. The RMBS Investors¹ seek to take certain discovery (*i.e.*, depositions of New York witnesses coupled with a notice of intent to obtain a commission from this Court to do so) as if they were parties to these proceedings. Yet, as mere investors insured by Ambac, they are not "parties" to this Rehabilitation matter. This Court has previously ruled that policyholders do not have standing as parties in these types of proceedings. *In re Liquidation of Am. Star Ins. Co.*, No. 92-CV-4579 (Wis. Cir. Ct. Dane County Nov. 20, 1998) (the Honorable William D. Johnston presiding by judicial assignment) (adopting the arguments presented in the Liquidator's Brief in Opposition to Motions by Pacific Bank (Dkt. 137 (Oct. 19, 1998)), at 1). *A fortiori*, investors, who are one step removed from being policyholders do not have standing as parties.

¹ Although the movants refer to themselves as the "RMBS Policyholders," they are not, in fact, "policyholders." Rather, they are investors who have chosen to purchase notes in transactions insured by Ambac.

2. Although the RMBS Investors have petitioned this Court to intervene, persons who petition to intervene are not yet parties to the action, and only become parties if the petition is granted. *Becker v. Becker*, 66 Wis. 2d 731, 735, 225 N.W.2d 884 (1975).

3. The Wisconsin Statutes allow discovery to be made only by *parties*. See e.g., Wis. Stat. §§ 804.01 ("Parties may obtain discovery . . ."), 804.08 ("[A]ny party may serve upon any other party written interrogatories . . ."), 804.09 ("Any party may serve on any other party a request (a) to produce and permit the party making the request, or someone acting on the party's behalf to inspect . . .") (emphasis added).

4. Because RMBS Investors are not parties, they have no right to conduct discovery and no right to take depositions. See also the argument made in:

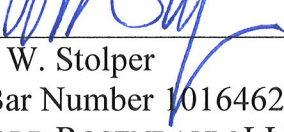
- a) Ambac Assurance Corporation's Brief in Opposition to (i) Certain RMBS Investors' Motion Seeking Expedited Relief and to Modify Order for Temporary Injunctive Relief; and (ii) LVM Bondholders' Emergency Motion to Enjoin Consummation of the Proposed Settlement Between Ambac and Certain CDS Counterparties, dated May 20, 2010; and
- b) OCI's Brief in Opposition to RMBS Policyholders' and LVM Bondholders' Emergency Motions for Injunctive and Other Relief, dated May 20, 2010.

5. This objection is without prejudice to Ambac's right to raise any and all other objections to this discovery request or any other discovery requests.

6. Ambac will be prepared at the hearing before the Court on May 25, 2010 to explain to the Court why it should deny the requested intervention and why it should preclude all non-parties from taking any discovery.

WHEREFORE, Ambac requests that this Court deny the RMBS Policyholders' Notice of Intent to Obtain Commission to Take the Depositions of Non-Resident, Third-Party Witnesses in the State of New York.

Dated: May 24, 2010.

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