
In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

**NOTICE OF HEARING ON MOTION TO APPROVE COMMUTATION
OF POLICY NO. AB0960BE**

PLEASE TAKE NOTICE that the Rehabilitator of the Segregated Account has scheduled a hearing before the Court on Wednesday, June 23, 2010, at 1:30 p.m. before Judge William D. Johnston at the Lafayette County Courthouse, 626 Main Street, Darlington, Wisconsin at which the Rehabilitator will ask the Court to grant his Motion for Approval to Commute Policy No. AB0960BE as detailed more fully in the Rehabilitator's accompanying Motion.

Dated this 11th day of June, 2010.

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MOTION TO APPROVE COMMUTATION OF POLICY NO. AB0960BE

**By the Commissioner of Insurance of the State of Wisconsin,
as Rehabilitator of the Segregated Account of Ambac Assurance Corporation**

By this motion, the Commissioner of Insurance of the State of Wisconsin, as court-appointed rehabilitator (the "Rehabilitator") of the Segregated Account (the "Segregated Account") of Ambac Assurance Corporation ("Ambac"), seeks court approval of the commutation of Ambac Certificate Guaranty Insurance Policy No. AB0960BE, which was allocated to the Segregated Account on March 24, 2010.

In support of this motion, the Rehabilitator states as follows:

1. The background facts relating to Ambac, its deterioration, the decision to create and allocate impaired policies to the Segregated Account, and the rehabilitation of the Segregated Account are set forth in Findings of Fact Nos. 1-6, 19-32, 36 of this Court's May 27, 2010 Findings of Fact and Conclusions of Law (Dkt. 136), and are incorporated herein by reference.

2. Ambac is the insurer of a December 23, 2005 film securitization facility (the "Facility") entered into by The Weinstein Company LLC ("TWC"), HSBC Bank USA, National Association (the "Agent"), as agent for the lender, The Weinstein Portfolio Funding Company LLC (the "WPFC"), a special purpose subsidiary of TWC, and Ambac.

3. The Facility has provided \$500 million of funding for WPFC. The current outstanding principal amount under the Facility is \$450,300,000. Ambac's policy of insurance, Certificate Guaranty Insurance Policy no. AB0960BE dated December 23, 2005 (the "Policy"), guaranties timely payment of interest and ultimate repayment of principal. As noted above, the Policy was allocated to the Segregated Account.

4. TWC is an independent motion picture company founded in 2005. TWC's primary business is to develop, produce and distribute motion pictures in the United States and abroad. The proceeds of funding under the Facility were used to acquire a library of films from TWC and to fund the production and distribution of additional TWC films.

5. Based on information available to the Rehabilitator, it appears that the sole lender in the Facility is, and the entire outstanding principal amount of debt of WPFC is currently held by, Morrigan TRR Funding LLC ("Morrigan"), a wholly owned subsidiary of Goldman Sachs. On information and belief, Assured Guaranty, Ltd ("Assured") has guaranteed repayment to Morrigan of, or has provided credit protection to Morrigan in respect of, a portion of such unpaid principal and interest thereon.

6. Viewed in the aggregate, the films TWC transferred to WPFC have lost money and have not generated the level of revenues or profits that TWC projected. Based on audited financial statements, TWC has lost money and had negative operating cash flow in every year since its inception.

7. The consequence of these losses and negative operating cash flow is that TWC has exhausted its liquidity, which has impaired its ability to fund the production and distribution of motion pictures. In 2009 and 2010, TWC's management repeatedly advised Ambac of its dire financial situation.

8. An event of default first occurred under the Facility as early as August 2006, and numerous events of default under the Facility have occurred since and are continuing. As a result of these defaults, Ambac and TWC entered into twenty-five amendment and waiver agreements, and engaged in lengthy discussions over a period of approximately a year to restructure the Facility. Those discussions broke down and ended in March 2010.

9. Following the failure of its restructuring negotiations with TWC, Ambac commenced commutation negotiations with Morrigan and Assured. The Rehabilitator and his advisors have monitored those negotiations with the Office of the Commissioner of Insurance (“OCI”). Ambac has now successfully negotiated with Morrigan and Assured a proposed settlement (the “TWC Settlement”) of its potential exposure on the Policy. Under the proposed TWC Settlement, Ambac will be fully and completely released from its Policy guaranteeing payments under the \$500 million Facility in exchange for a cash payment of \$65 million and delivery of \$50 million in principal amount of surplus notes. The TWC Settlement is subject to this Court’s approval. The Rehabilitator anticipates that the TWC Settlement will close, if approved, immediately following such approval. The surplus notes will be issued from the Segregated Account and rank *pari passu* with any surplus or contribution notes or similar obligations of the Segregated Account or of Ambac’s General Account. Payments of principal and interest on the surplus notes are subject to the prior approval of OCI.

10. As will be discussed in greater detail in supplemental materials that will be filed early next week, the Rehabilitator believes that the TWC Settlement is in the best interests of policyholders and the Segregated Account for several reasons:

- The TWC Settlement caps Ambac’s liability under the Policy at a favorable amount as compared to the projected claims on the Policy Morrigan would have (discounted to its present value).

- The TWC Settlement resolves the risks to the Segregated Account posed by TWC's financial condition and by the projected decline expected by the Rehabilitator in the value of WPFC's film library, which serves as collateral for the indebtedness under the Facility.
- The amount of cash and surplus notes to be paid by Ambac under the TWC Settlement is substantially less than the amounts Morigan would receive on its projected claims on the Policy (discounted to its present value) under the Rehabilitator's projected plan of rehabilitation for the Segregated Account.
- The Agent, HSBC, has filed an interpleader complaint in this rehabilitation proceeding, asking the Court to resolve disputes between Ambac and TWC regarding the entitlement to various funds under the Facility and related documents. An additional benefit of the TWC Settlement is that it would moot this dispute and avoid the time, expense and disruption associated with this collateral litigation.

11. Time is of the essence in obtaining prompt approval of the TWC Settlement. The Rehabilitator anticipates that the present advantageous terms will not be available to the Rehabilitator if approval is not obtained by Friday, June 25, 2010, for a number of reasons, including the fact that amortization and other payments under the Facility are due on the following business day.


12. As discussed in the Commissioner's March 24, 2010 Brief in Support of Entry of Order for Rehabilitation (*see* Dkt. 6 at 8-11), the Commissioner has broad discretion to rehabilitate an insurer such as the Segregated Account under Wis. Stat. Ch. 645. For the reasons stated above, and in the supplemental materials the Commissioner will file early next week, the Commissioner requests the Court's approval of the proposed commutation of Policy No. AB0960BE.

WHEREFORE, the Rehabilitator respectfully requests that the Court grant the Rehabilitator approval to proceed to close and consummate the TWC Settlement.

Dated this 11th day of June, 2010.

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