



O'NEIL CANNON
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Wisconsin's Premier Lawyers & Litigators

COPY

Gregory W. Lyons
Attorney at Law

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June 22, 2010

DELIVERED VIA MESSENGER

Mr. Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
215 South Hamilton Street
Madison, Wisconsin 53703-3285

Re: *In the Matter of the Rehabilitation of:
Segregated Account of Ambac Assurance Corporation
Dane County, Wisconsin, Circuit Court Case No. 10-CV-1576*

Dear Mr. Esqueda:

Enclosed find for filing an original and one copy of Depfa Bank, plc's Notice of Motion and Second Motion to Intervene and To Modify March 24, 2010 Order for Temporary Injunctive Relief, plus supporting brief and materials. Please return the file-stamped copies to me via our messenger.

By copy of this letter, counsel for the State of Wisconsin Office of the Commissioner of Insurance is being served. We also are serving a courtesy copy of this filing upon Judge William D. Johnston, care of the Lafayette County Clerk of Circuit Court.

We thank you for your courtesies in this matter. If you have any questions, please contact Grant Killoran or Seth Dizard of this office, or me.

Sincerely,


Gregory W. Lyons

GCK/kas
Enclosures

c: Hon. William D. Johnston c/o Clerk of Lafayette County Circuit Court
(w/enc.) (via express delivery)
Michael B. Van Sicklen, Esq. (w/enc.) (via e-mail)

In the Matter of the Rehabilitation of:

Case No. 10-CV-1576

Segregated Account of Ambac Assurance Corporation

**DEPFA BANK, PLC'S NOTICE OF MOTION AND SECOND
MOTION TO INTERVENE AND TO MODIFY MARCH 24, 2010
ORDER FOR TEMPORARY INJUNCTIVE RELIEF**

TO: Michael B. Van Sicklen, Esq.
David G. Walsh, Esq.
Matthew R. Lynch, Esq.
Foley & Lardner LLP
Verex Plaza
150 East Gilman Street
Madison, Wisconsin 53701

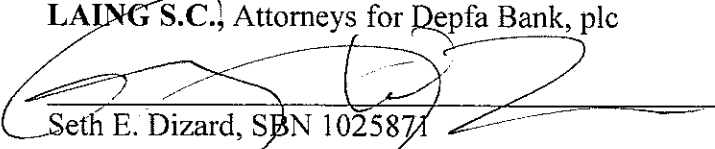
Attorneys for State of Wisconsin
Office of the Commissioner of Insurance

PLEASE TAKE NOTICE that, at a time and date to be set by the Dane County Circuit Court, the Honorable William D. Johnston of the Lafayette County Circuit Court presiding by designation, Depfa Bank, plc ("Depfa"), as an interested party, will move the Court pursuant to Paragraph 12 of the Court's March 24, 2010 Order for Temporary Injunctive Relief ("Temporary Injunction") to modify Paragraph 9(c)(1)(ii), and any other related paragraphs, of its Temporary Injunction, yet specifically reserving all rights to challenge jurisdiction, to allow Depfa to actively participate in an interpleader action recently filed and currently pending in the United States District Court for the Southern District of New York, entitled *The Bank of New York Mellon Trust Company, N.A. v. Depfa Bank PLC and Lloyds TSB Bank PLC*, Case No. 10-CIV-4424 ("Interpleader Litigation"), including allowing Depfa to file a compulsory counterclaim due on or about August 3, 2010 and other appropriate pleadings.

Depfa Bank makes this motion for the reasons set forth in its supporting brief and materials submitted herewith.

Dated this 22nd day of June, 2010.

**O'NEIL, CANNON, HOLLMAN, DeJONG &
LAING S.C.**, Attorneys for Depfa Bank, plc



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Grant C. Killoran, SBN 1015503

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Gregory W. Lyons, SBN 1000492

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111 East Wisconsin Avenue, Suite 1400

Milwaukee, Wisconsin 53202

Telephone: 414.276.5000

Facsimile: 414.276.6581

In the Matter of the Rehabilitation of:

Case No. 10-CV-1576

Segregated Account of Ambac Assurance Corporation

**DEPFA BANK, PLC'S BRIEF IN SUPPORT OF SECOND MOTION TO
INTERVENE AND TO MODIFY MARCH 24, 2010 ORDER FOR
TEMPORARY INJUNCTIVE RELIEF**

Depfa Bank, plc ("Depfa") brings this motion to modify Paragraph 9(c)(1)(ii), as well as any related paragraphs, of the Order for Temporary Injunctive Relief entered by this Court on March 24, 2010 ("Temporary Injunction").

While Depfa recognizes the Commissioner is vested with statutory discretion to regulate the insurance industry, his authority derives from a legislative grant and is therefore limited to and by that legislative grant. Here, the Commissioner's recent actions in regard to litigation pending in the United States District Court for the Southern District of New York entitled, *The Bank of New York Mellon Trust Company, N.A. v. Depfa Bank PLC & Lloyds TSB Bank PLC*, Case No. 10-CIV-4424 ("Interpleader Action" or "New York Federal Litigation"), and his interpretation of the Temporary Injunction, violate the letter and spirit of the Wisconsin insurance rehabilitation statutes, as well as Federal and State constitutional protections and basic notions of fairness and equity.

Depfa brings this Motion as an "interested party" under Paragraph 12 of the Temporary Injunction, in which the Court ruled:

This Order shall remain effective until further order of this Court. If any interested parties believe any portion of this Order is unwarranted by the facts or the law, such parties may seek modification or dissolution of part or all of this Order by filing a written motion with this Court no later than 90 days following the issuance of this Order. If one or more such timely motions are received, the

Court may set a schedule for responsive briefing and a hearing regarding the modifications or dissolutions sought. The originals of any such motions shall be filed with the Dane County Circuit Court (with courtesy copies mailed to the undersigned, care of the Clerk of the Lafayette County Circuit Court) and served on counsel for the Commissioner.

Depfa requests that this Court clarify or modify the Temporary Injunction and allow Depfa to participate fully in the New York Federal Litigation, including filing claims in that litigation it deems appropriate to protect its interests. Depfa notes that it has attempted to resolve this matter with the Commissioner, but has been unable to do so prior to the motion filing date established by Paragraph 12 of the Court's Temporary Injunction. See Affidavit of Seth E. Dizard, attached hereto, at Exhibits 2 and 3.

BACKGROUND INFORMATION

The Bank of New York Mellon Trust Company, N.A. ("BNY" or "Trustee") is the successor trustee under a trust indenture between Access to Loans for Learning ("ALL") and JPMorgan Chase Bank, National Association, as Trustee, securing Student Loan Program Revenue Bonds (Series V), dated as of August 1, 2005 ("Indenture"). Dizard Aff.; Ex. 1, ¶ 6.

Under this Indenture, ALL issued five series of bonds: the Senior Series V-A-1, V-A-2, V-A-3, V-A-4 and V-A-5 ("Bonds"). Under the terms of the standby bond purchase agreement, dated as of August 1, 2005 (the "Depfa Liquidity Facility"), Depfa is the beneficial owner of all of the Bonds in Senior Series V-A-1 and V-A-2. Under a separate standby bond purchase agreement, dated as of August 1, 2006 (the "Lloyds Liquidity Facility"), Lloyds TSB Bank, plc ("Lloyds") is the beneficial owner of all of the Bonds in Senior Series V-A-3, V-A-4 and V-A-5. The Bonds are secured under the Indenture by certain assets, consisting primarily of federally guaranteed student loans. *Id.*, ¶ 7.

Ambac Assurance Corporation ("Ambac") provided insurance policies to the Trustee for the Bonds providing for payment at maturity for that portion of the principal of and interest on

the Bonds which shall become due for payment but shall be unpaid by reason of nonpayment. Thus, Ambac is only required to pay claims on the policy for any Bonds that have not been paid by ALL when the Bonds reach maturity.

On or about June 3, 2010, BNY filed its Interpleader Complaint against Depfa and Lloyds in the Interpleader Action. Dizard Aff., Ex. 1. The Interpleader Complaint alleges, among other things, that, pursuant to Section 5.2 of the Indenture, ALL had established several trust accounts with BNY, including an account identified as the Revenue Account (“Revenue Account”) and an account identified as the Payment Account (“Payment Account”). *Id.*, ¶ 8. The Interpleader Complaint also alleges that BNY currently holds approximately \$7.5 million in the Payment Account which it is required to use to pay the principal of Bonds due by reason of sinking fund redemption. *Id.*, ¶ 11.

The Interpleader Complaint further alleges that by letter dated November 27, 2009, Depfa informed the Trustee that Depfa believed that ALL has no legal right to make any redemption payments to Lloyds until ALL repaid Depfa any and all amounts due on the outstanding bonds in ALL Series V-A-1 and V-A-2. *Id.*, ¶ 15. Depfa reiterated this position by letter to the Trustee dated April 6, 2010. *Id.*, ¶ 17. By letter to the Trustee dated May 18, 2010, Lloyds demanded that the Trustee resume redemption payments. *Id.*, ¶ 19. Seemingly as a result of these competing claims, the Trustee filed the Interpleader Complaint to request that the Court intervene in the dispute and order Depfa and Lloyds to interplead their respective claims. *Id.*, Ex. 1.

Answers to the Interpleader Complaint by Depfa and Lloyds are due on August 3, 2010. Dizard Aff., ¶ 2. Depfa anticipates filing an answer, counterclaims against the Trustee, and a Third-Party Complaint against ALL. The underlying dispute between Depfa and ALL arises

from ALL's breach of its obligations under the signed and executed Depfa Liquidity Facility by entering into an unauthorized amendment that has improperly diverted payments from the pool of trust assets that Depfa is contractually entitled to receive. Depfa's counter-claims against the Trustee will be for breach of its contractual obligations and fiduciary duty under the Depfa Liquidity Facility, based on the Trustee's improper redemption payments from the trust assets. Affidavit of Attorney Richard A. Rosen, attached hereto, at ¶¶ 9-10.

Under the Depfa Liquidity Facility, Depfa was contractually obligated to serve as the buyer of last resort for all outstanding bonds in ALL Series V-A-1 and V-A-2. In consideration for Depfa's commitment to purchase all outstanding bonds under certain circumstances, ALL agreed to repay Depfa through semiannual mandatory redemptions from the trust's revenue fund (the "Revenue Fund") until the debt was discharged over a maximum ten-year period. The Depfa Liquidity Facility explicitly prohibited ALL from modifying or amending the Trust Indenture without the prior written consent of Depfa. *Id.*, ¶ 5.

One year later, however, as of August, 1, 2006—without Depfa's written consent and in breach of their respective contractual obligations—ALL and the Trustee entered into a second standby bond purchase agreement with Lloyds, the Lloyds Liquidity Facility, which amended the Trust Indenture through a second supplemental indenture ("Second Supplemental Indenture Relating to ALL V and Amending the Trust Indenture"). *Id.*, ¶ 6.

The Lloyds Liquidity Facility provided for a significantly faster repayment schedule than ALL's agreement with Depfa. Specifically, Lloyds was entitled to quarterly mandatory redemptions and full repayment over five years, whereas Depfa had received only semiannual mandatory redemptions over a ten year repayment period. Thus, even though the Lloyds Liquidity Facility initially increased the assets in the ALL V Trust, because the redemption

payments to Depfa and Lloyds were drawn from the same collateralized pool of ALL V assets, each time ALL and the Trustee made a redemption payment to Lloyds, they reduced the amount of funds available to pay Depfa, thereby disadvantaging Depfa. ”). *Id.*, ¶ 7.

ALL informed Depfa that it was unable to make mandatory redemption payments to Depfa due to insufficient funds in the Revenue Fund and an inability to calculate the amount in the Revenue Fund on the mandatory redemption payment dates. Although ALL claimed it was unable to make mandatory redemption payments to Depfa, the Trustee—at ALL’s direction—began making optional redemption payments to both Depfa and Lloyds. With each optional redemption payment made to Lloyds, ALL and the Trustee drew down the funds in the Revenue Fund from which Depfa also was entitled to repayment. ALL and the Trustee made these optional payments despite the fact that Depfa’s right to mandatory redemptions had not been satisfied. ”). *Id.*, ¶ 8.

In the New York Federal Litigation, Depfa will seek to recover damages caused by ALL’s breach of its contractual obligations, and the Trustee’s breach of both its contractual obligations and its fiduciary duty. Depfa will also seek to enforce its contractual rights under the Depfa Liquidity Facility and the Trust Indenture. ”). *Id.*, ¶ 9.

None of the claims in the Interpleader Complaint or in Depfa’s anticipated counterclaims and third-party complaint against ALL should have any material effect on Ambac or any effect on whether or in what amount default interest may be due and owing. Depfa’s claims relate to whether Depfa or Lloyds is entitled to priority of payment from assets held by ALL. Ambac, as the insurer of the bonds, will be required to pay either Depfa or Lloyds for any money that is not paid on the principal and interest of the Bonds. It should be irrelevant to Ambac whether a greater amount of potential claim is held by Depfa or held by Lloyds. ”). *Id.*

ARGUMENT¹

A. The Temporary Injunction Should Be Modified To Allow Depfa To Protect Its Rights In The New York Federal Litigation.

The Commissioner's discretion to regulate the affairs of insurance companies is not an unlimited grant of authority. The Commissioner only may exercise the power and authority given to him by the Wisconsin legislature and found in the Wisconsin Insurance Code. *See Duel v. State Farm Mut. Auto. Ins. Co.*, 240 Wis. 161, 170, 1 N.W. 2d 887, 891 (1942) ("the insurance commissioner has only such powers as are conferred by statute and . . . these must be found within the four corners of the statute.") (citations omitted). The Commissioner's decisions and actions cannot be allowed if they (1) are outside the range delegated to the agency by law; (2) are inconsistent with an agency rule or prior agency practice; (3) deviate from agency practice or prior policy and are not adequately explained; or (4) violate a constitutional or statutory provision. *See, e.g., Nat'l Motorists Ass'n v. Office of the Comm'r of Ins.*, 2002 WI App 308 ¶ 22, 259 Wis. 2d 240, 655 N.W. 2d 179 (citing Wis. Stat. § 227.57(8)).

Depfa is unaware of any authority that empowers the Commissioner, in concert with an imperiled insurer, to force Depfa to allow its rights to protect its interest in the New York Federal Litigation to expire by missing a compulsory responsive pleading deadline established by the Federal Rules of Civil Procedure in a New York Federal case that does not impact Ambac or the

¹ Any claim by Ambac or the Commissioner that Depfa's motion or the merits of Depfa's arguments somehow already have been pre-judged by prior rulings by this Court is contrary to Paragraph 12 of the Court's Temporary Injunction giving parties like Depfa until June 22, 2010 to file motions for modification or dissolution of the Temporary Injunction. No reasonable reading of Paragraph 12, or any consideration of due process and fairness, would allow Ambac or the Commissioner to successfully argue that Depfa's motion somehow already has been decided. Similarly, any claim by Ambac or the Commissioner that Depfa does not have the right to bring this motion or the ability to seek the relief requested in it also is contrary to the language of Paragraph 12. Any such claims by Ambac or the Commissioner also would be inconsistent with the position taken by the Commissioner on page 3 of his March 24, 2010 Brief in Support of Motion for Temporary Injunctive Relief ("Temporary Injunction Brief") in which the Commissioner justifies his motion by stating that interested parties will have the ability to "file a motion seeking to dissolve or modify the temporary injunctive relief." *See also* Temporary Injunction Brief at p. 7, fn. 4.

Wisconsin proceedings. Yet, this is precisely what the Commissioner is doing by his current position in regard to the Interpleader Action. Because the Commissioner's actions violate these standards, and the Temporary Injunction infuses his actions with the force of law, the Temporary Injunction must be modified to allow Depfa to protect its rights in the New York Federal Litigation.

The Commissioner's wildly broad interpretation of the Temporary Injunction to prevent Depfa from taking statutorily required actions to protect itself in the New York Federal Litigation is unheard of, is clearly inequitable and is a clear abuse of the Commissioner's discretion. Depfa believes the impact of the New York Federal case against Ambac and this proceeding is non-existent. The Commissioner cannot use equity, or the Temporary Injunction issued under insurance statutes, to achieve an end not permitted by law. *See, e.g., In re Jacobs*, 149 B.R. 983, 992-93 (Bankr. N.D. Okla. 1993) (insurance commissioner cannot use regulatory authority to extort payment or punish nonpayment of a debt discharged in bankruptcy proceedings); *State ex rel. Time Ins. Co. v. Smith*, 184 Wis. 455, 481, 200 N.W. 65 (1924) (commissioner may not hold insurance license renewals hostage to effectuate reinterpretation of policy requirements).

B. Depfa Should Be Allowed To Intervene Here To Protect Its Rights

Under Paragraph 12 of the Temporary Injunction, Depfa's filing in this case is proper. The Court invited the filing and Depfa submits this motion under an express reservation of its rights to challenge jurisdictional issues.

However, out of an abundance of caution, Depfa notes it also is allowed to intervene under Wis. Stat. § 803.09(1), which permits intervention as a matter of right where a movant claims an interest relating to the property or transaction which is the subject of the action, the movant is so situated that the disposition of the action may as a practical matter impair or impede

the movant's ability to protect that interest, unless the movant's interest is adequately represented by existing parties. Wis. Stat. § 803.09(1).

As detailed above, Depfa unquestionably has significant interest in this proceeding due to recent positions taken by the Commissioner in regard to Depfa's proposed actions. Depfa's interests in that litigation are time sensitive and are being impaired by the Commissioner's interpretation of (and possible actions under) the Temporary Injunction issued in this proceeding.

Due to their position in regard to the New York Federal Litigation, neither Ambac nor the Commissioner is adequately representing Depfa's interests. On the contrary, the draconian terms of the Temporary Injunction, as interpreted and construed by the Commissioner's counsel in regard to the New York Federal Action, would prohibit Depfa from taking action needed to protect its significant interests against third parties. Such an inequitable (and absurd) result is improper and establishes that the Commissioner and Ambac are not, and have no intention of, adequately representing Depfa's interests.

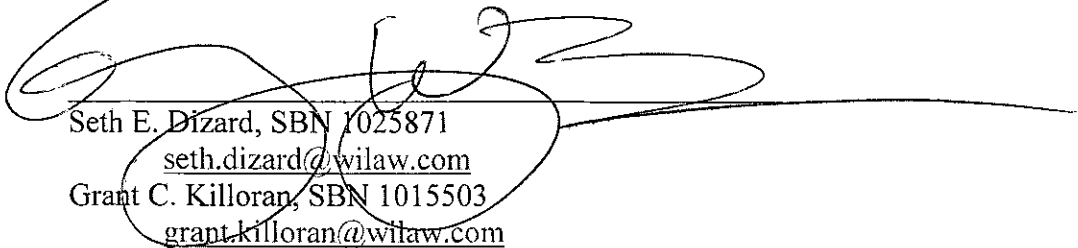
II. CONCLUSION

The Commissioner's purported objectives regarding Ambac cannot justify the means to achieve them granted to him by this Court in its March 24, 2010 Order for Temporary Injunctive Relief. The Commissioner's authority and discretion is wide, but it is not boundless. Here, the Court's Temporary Injunction must be modified as requested by Depfa as a matter of law.

For the above reasons, Depfa respectfully requests that the Court clarify and/or modify the Temporary Injunction, and allow Depfa to proceed as it deems appropriate to protect its interests in the Interpleader Litigation, including filing its compulsory counterclaim prior to the upcoming deadline for doing so.

Dated this 22nd day of June, 2010.

O'NEIL, CANNON, HOLLMAN, DeJONG & LAING S.C.
Attorneys for Depfa Bank, plc



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Grant C. Killoran, SBN 1015503
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Gregory W. Lyons, SBN 1000492
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Milwaukee, Wisconsin 53202
Telephone: (414) 276-5000
Facsimile: (414) 276-6581

In the Matter of the Rehabilitation of:

Case No. 10-CV-1576

Segregated Account of Ambac Assurance Corporation

AFFIDAVIT OF SETH E. DIZARD IN SUPPORT OF DEPFA BANK, PLC’S SECOND MOTION TO INTERVENE AND TO MODIFY MARCH 24, 2010 ORDER FOR TEMPORARY INJUNCTIVE RELIEF

STATE OF WISCONSIN)
) ss.
MILWAUKEE COUNTY)

I, Attorney Seth E. Dizard, declare on oath as follows:

1. I am a shareholder with the law firm of O’Neil Cannon Hollman DeJong & Laing, S.C., counsel for Depfa Bank, plc (“Depfa”).

2. Depfa is involved in recently filed interpleader litigation in the United States District Court for the Southern District of New York entitled, *The Bank of New York Mellon Trust Company, N.A. v. Depfa Bank PLC and Lloyds TSB Bank PLC* (“Lloyds”), Case Number 10 CIV 4424 (“Interpleader Litigation”). A copy of the Complaint in the Interpleader Litigation is attached hereto as **Exhibit 1**. Depfa’s compulsory counterclaim in the Interpleader Litigation is due on or about August 3, 2010.

3. After review of the March 24, 2010 Order for Temporary Injunctive Relief (“Temporary Injunction”) entered by the Court in the above-captioned matter, Depfa, out of an abundance of caution, asked me to contact counsel for the State of Wisconsin Office of the Commissioner of Insurance (“Commissioner”) to clarify the Commissioner’s interpretation of Paragraph 9(c)(1)(ii) of the Temporary Injunction prior to Depfa’s anticipated actions to protect its interests in the Interpleader Litigation.

4. On June 15, 2010, I initiated a telephone conversation with Attorney Michael Van Sicklen, counsel for the Commissioner, and explained Depfa's proposed filings in the Interpleader Litigation. I also explained that Depfa believes its actions in the Interpleader Litigation would not materially impact Ambac because the likely result in the Interpleader Litigation would be that the plaintiff in the Interpleader Litigation would pay money either to Depfa or to Lloyds, and such payment would not change Ambac's liabilities in any meaningful way. I explained that Ambac has no legitimate reason to care whether Depfa or Lloyds gets the interpleaded funds, or whether Lloyds and Depfa file claims against each other in the Interpleader Litigation. I also explained Depfa's concern, out of an abundance of caution, that its filing of a compulsory counterclaim in the Interpleader Litigation somehow might be construed by the Commissioner or the Wisconsin Court as a violation of the Temporary Injunction.

5. In response, Attorney Van Sicklen agreed that Depfa could send him for review a proposed stipulation allowing Depfa to file a compulsory counterclaim and other claims in the Interpleader Litigation so he could consider whether an understanding could be reached regarding same.

6. On June 16, 2010, I sent an electronic letter to Attorney Van Sicklen, a copy of which is attached hereto as **Exhibit 2**, setting forth Depfa's proposed stipulation.

7. Later on June 16, 2010, Attorney Van Sicklen sent an electronic letter to me in response, a copy of which is attached hereto as **Exhibit 3**.

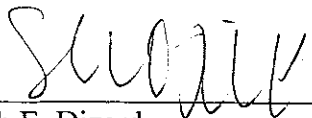
8. On June 21, 2010, Depfa learned from counsel for the plaintiff in the Interpleader Litigation, Bank of New York ("BNY"), that Attorney Van Sicklen, in an independent conversation with BNY's counsel, took the position with BNY that *any* party continuing the

Interpleader Litigation would be deemed by the Commissioner to be in violation of the Temporary Injunction.

9. This Affidavit is filed in support of Depfa's Second Motion To Intervene and to Modify March 24, 2010 Order for Temporary Injunctive Relief.

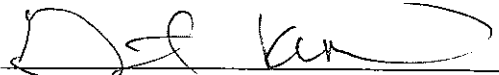
I declare under penalty of perjury that the foregoing is true and correct.

O'NEIL CANNON HOLLMAN DeJONG & LAING S.C.



Seth E. Dizard

Subscribed and sworn to before me
this 22nd day of June, 2010.



Notary Public, State of Wisconsin
My Commission: 15 perm.

Grant Killoran - Depfa/Ambac/ALL V

From: Seth Dizard
To: mvansicklen@foley.com
Date: 6/16/2010 5:19 PM
Subject: Depfa/Ambac/ALL V
CC: Grant Killoran; Greg Lyons

Mike:

This email comes to you as a follow-up to our recent telephone conversation. Thanks again for taking our call right away.

As Grant Killoran of this office and I explained, we have been retained by Depfa Bank. Depfa is a beneficiary of ALL Bond Series I and II, and LLOYDS is a beneficiary of ALL Series III-V. There is presently a dispute pending in New York Federal Court wherein the Bond Trustee has started an interpleader action and is asking the Court to adjudicate which of the beneficiaries is entitled to approximately \$7.5MM currently held in trust. The New York Federal forum also may be used to adjudicate a potential dispute between Depfa and LLOYDS regarding funds previously paid by the Trustee and related matters. I believe you mentioned in our call that you have been sent (but have not yet read) a copy of the New York Federal Complaint. If, however, you still need a copy of it, just let me know.

We do not presently have the sense that Ambac, in its capacity as the ultimate guarantor, would be affected by the result in the New York case. We believe that the dispute is limited to the question of whether payments should be made to Depfa or LLOYDS, and whether ALL or the trustee is liable for damages to Depfa for payments previously made to LLOYDS. Therefore, it ought not matter to Ambac to whom it is obligated in its capacity as guarantor.

That being said, Depfa is concerned that, by bringing compulsory counterclaims in the New York Federal case against the Plaintiff, Bank of New York Mellon Trust Co., or third party claims against ALL in that case, it might violate Par. 9(C)(1)(ii) of the Order for Temporary Injunctive Relief in the Ambac Wisconsin State Court proceeding (found on page 10 of the Order). For your ease of reference, the language that concerns us is as follows: "each Trustee and other transaction party . . . is specifically enjoined from . . . [t]aking any action to . . . exercise rights and remedies arising from or related to the ABS Transaction Documents, or exercise other rights and remedies that, but for the occurrence of the Events or the financial condition of the Segregated Account, the Allocated Subsidiaries, or the Ambac general account"

Our request is that you consider a stipulation whereby you would agree to allow Depfa to pursue its counterclaims and third party claims in the New York Federal case, so it doesn't lose them, and allow that litigation to proceed in the standard course.

For purposes of settlement discussions only, we set forth below for your review some possible proposed stipulation language. Since time is of the essence (Depfa's responsive pleadings are due in the New York case shortly before the end of June), we look forward to talking with you about this soon. Feel free to ask for either of my partners, Greg Lyons or Grant Killoran, if I'm unavailable.

Thanks again.



- Seth

STIPULATION AND AGREEMENT

Counsel for the Commissioner of Insurance for the State of Wisconsin ("Commissioner") and Depfa Bank PLC ("Depfa") stipulate and agree as follows:

WHEREAS, Depfa currently is involved in interpleader litigation in the United States District Court for the Southern District of New York entitled, *The Bank of New York Mellon Trust Company, N.A. v. Depfa Bank PLC and Lloyds TSB Bank PLC ("Lloyds")*, Case Number 10 CIV 4424; and

WHEREAS, an Order for Temporary Injunctive Relief was entered in Dane County Wisconsin Case Number 10-CV-1576, entitled *In the Matter of the Rehabilitation of: Segregated Account of Ambac Assurance Corporation*, and Paragraph 9(c)(1)(ii) of this Order specifically enjoins "without limitation issuers, borrowers, lenders, collateral agents, administrative agents, collateral administrators, swap counterparties, policyholders, and note holders" from taking any action to "exercise rights and remedies arising from or related to the ABS Transaction Documents, or exercise other rights and remedies that, but for the occurrence of the Events or the financial condition of the Segregated Account, the Allocated Subsidiaries, or the Ambac General Account, would be exercisable at the request or direction of, and with the consent of, Ambac .."; and

WHEREAS, Depfa wishes to protect its interests in the New York Federal Litigation and at the same time comply with the requirements of the Order for Temporary Injunctive Relief issued in the Wisconsin State Court proceeding;

NOW, THEREFORE, the Commissioner and Depfa stipulate and agree as follows:

Depfa may proceed in the New York Federal Litigation and may plead and pursue compulsory counterclaims against the plaintiff, Bank of New York Mellon Trust Co., as well as claims against defendant Lloyds TSB Bank PLC and claims against potential third party defendants Access to Loans for Learning Student Loan Corporation, relating to the Securing Student Loan Program Revenue Bonds issued in 2005 and 2006 and the Commissioner agrees that the Order for Temporary Injunctive Relief entered in the Wisconsin State Court action does not impact or impede Depfa's right and ability to so act in the New York Federal Case.

SO STIPULATED AND AGREED THIS ___ DAY OF JUNE, 2010:

O'NEIL, CANNON, HOLLMAN, DeJONG & LAING S.C.
Attorneys for Depfa Bank PLC

By: _____

Seth E. Dizard, SBN 1025871
Grant C. Killoran, SBN 1015503

FOLEY & LARDNER LLP
Attorneys for the Office of Commissioner of Insurance for the

State of Wisconsin

By:

Michael B. Van Sicklen, SBN 1017827
Matthew R. Lynch, SBN 1066370



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Wisconsin's Premier Lawyers & Litigators

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Grant Killoran - RE: Depfa/Ambac/ALL V

From: "Van Sicklen, Michael B." <MVanSicklen@foley.com>
To: "Seth Dizard" <Seth.Dizard@wilaw.com>
Date: 6/18/2010 9:12 AM
Subject: RE: Depfa/Ambac/ALL V
CC: "Grant Killoran" <Grant.Killoran@wilaw.com>, "Greg Lyons" <Greg.Lyons@wilaw.com>, "Fitzgerald, Kevin G." <KFitzgerald@foley.com>



Seth--- We should discuss this situation more.

We believe that the impleader should be pursued in the Wisconsin Court, not NY, and have so informed Bank of New York Mellon.

We agree with your assessment that pursuing the litigation in NY would be a violation of the injunction, and ask that you join us in directing the plaintiff trustee to pursue the impleader in the correct forum.

Mike

From: Seth Dizard [mailto:Seth.Dizard@wilaw.com]
Sent: Wednesday, June 16, 2010 5:19 PM
To: Van Sicklen, Michael B.
Cc: Grant Killoran; Greg Lyons
Subject: Depfa/Ambac/ALL V

Mike:

This email comes to you as a follow-up to our recent telephone conversation. Thanks again for taking our call right away.

As Grant Killoran of this office and I explained, we have been retained by Depfa Bank. Depfa is a beneficiary of ALL Bond Series I and II, and LLoyds is a beneficiary of ALL Series III-V. There is presently a dispute pending in New York Federal Court wherein the Bond Trustee has started an interpleader action and is asking the Court to adjudicate which of the beneficiaries is entitled to approximately \$7.5MM currently held in trust. The New York Federal forum also may be used to adjudicate a potential dispute between Depfa and LLoyds regarding funds previously paid by the Trustee and related matters. I believe you mentioned in our call that you have been sent (but have not yet read) a copy of the New York Federal Complaint. If, however, you still need a copy of it, just let me know.

We do not presently have the sense that Ambac, in its capacity as the ultimate guarantor, would be affected by the result in the New York case. We believe that the dispute is limited to the question of whether payments should be made to Depfa or LLoyds, and whether ALL or the trustee is liable



for damages to Depfa for payments previously made to Lloyds. Therefore, it ought not matter to Ambac to whom it is obligated in its capacity as guarantor.

That being said, Depfa is concerned that, by bringing compulsory counterclaims in the New York Federal case against the Plaintiff, Bank of New York Mellon Trust Co., or third party claims against ALL in that case, it might violate Par. 9(C)(1)(ii) of the Order for Temporary Injunctive Relief in the Ambac Wisconsin State Court proceeding (found on page 10 of the Order). For your ease of reference, the language that concerns us is as follows: "each Trustee and other transaction party . . . is specifically enjoined from . . . [t]aking any action to . . . exercise rights and remedies arising from or related to the ABS Transaction Documents, or exercise other rights and remedies that, but for the occurrence of the Events or the financial condition of the Segregated Account, the Allocated Subsidiaries, or the Ambac general account"

Our request is that you consider a stipulation whereby you would agree to allow Depfa to pursue its counterclaims and third party claims in the New York Federal case, so it doesn't lose them, and allow that litigation to proceed in the standard course.

For purposes of settlement discussions only, we set forth below for your review some possible proposed stipulation language. Since time is of the essence (Depfa's responsive pleadings are due in the New York case shortly before the end of June), we look forward to talking with you about this soon. Feel free to ask for either of my partners, Greg Lyons or Grant Killoran, if I'm unavailable.

Thanks again.

-Seth

STIPULATION AND AGREEMENT

Counsel for the Commissioner of Insurance for the State of Wisconsin ("Commissioner") and Depfa Bank PLC ("Depfa") stipulate and agree as follows:

WHEREAS, Depfa currently is involved in interpleader litigation in the United States District Court for the Southern District of New York entitled, *The Bank of New York Mellon Trust Company, N.A. v. Depfa Bank PLC and Lloyds TSB Bank PLC ("Lloyds")*, Case Number 10 CIV 4424; and

WHEREAS, an Order for Temporary Injunctive Relief was entered in Dane County Wisconsin Case Number 10-CV-1576, entitled *In the Matter of the Rehabilitation of: Segregated Account of Ambac Assurance Corporation*, and Paragraph 9(c)(1)(ii) of this Order specifically enjoins "without limitation issuers, borrowers, lenders, collateral agents, administrative agents, collateral administrators, swap counterparties, policyholders, and note holders" from taking any action to "exercise rights and remedies arising from or related to the ABS Transaction Documents, or exercise other rights and remedies that, but for the occurrence of the Events or the financial condition of the Segregated Account, the Allocated Subsidiaries, or the Ambac General Account, would be exercisable at the request or direction of, and with the consent of, Ambac .."; and

WHEREAS, Depfa wishes to protect its interests in the New York Federal Litigation and at the same time comply with the requirements of the Order for Temporary Injunctive Relief

issued in the Wisconsin State Court proceeding;

NOW, THEREFORE, the Commissioner and Depfa stipulate and agree as follows:

Depfa may proceed in the New York Federal Litigation and may plead and pursue compulsory counterclaims against the plaintiff, Bank of New York Mellon Trust Co., as well as claims against defendant Lloyds TSB Bank PLC and claims against potential third party defendants Access to Loans for Learning Student Loan Corporation, relating to the Securing Student Loan Program Revenue Bonds issued in 2005 and 2006 and the Commissioner agrees that the Order for Temporary Injunctive Relief entered in the Wisconsin State Court action does not impact or impede Depfa's right and ability to so act in the New York Federal Case.

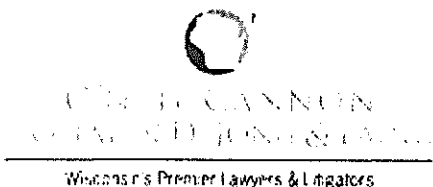
SO STIPULATED AND AGREED THIS ___ DAY OF JUNE, 2010:

O'NEIL, CANNON, HOLLMAN, DeJONG & LAING S.C.
Attorneys for Depfa Bank PLC

By: _____
Seth E. Dizard, SBN 1025871
Grant C. Killoran, SBN 1015503

FOLEY & LARDNER LLP
Attorneys for the Office of Commissioner of Insurance for the
State of Wisconsin

By: _____
Michael B. Van Sicklen, SBN 1017827
Matthew R. Lynch, SBN 1066370



Seth Dizard
Attorney at Law

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JUDGE COTE

10 CIV 4424

Attorneys for Plaintiff
The Bank of New York Mellon Trust Company, N.A.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

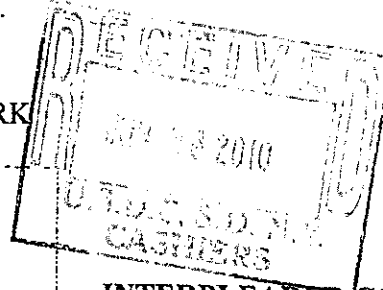
THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.

Plaintiff,

-against-

DEPFA BANK PLC and LLOYDS TSB BANK PLC,

Defendants.



INTERPLEADER COMPLAINT

Case No.:

The Bank of New York Mellon Trust Company, N.A. ("BNY Mellon"), through its undersigned attorneys, pursuant to Federal Rule of Civil Procedure 22 , alleges as follows:

THE PARTIES

1. BNY Mellon is a nationally chartered trust company with its principal place of business in Los Angeles, California.
2. Upon information and belief, DEPFA Bank plc ("DEPFA") is a public liability company organized and existing under the laws of the Republic of Ireland. Upon information and belief, its principal place of business is located in Dublin, Ireland.



3. Upon information and belief, Lloyds TSB Bank plc (“Lloyds”) is a public liability company organized and existing under the laws of England. Upon information and belief, its principal place of business is located in London, England.

JURISDICTION AND VENUE

4. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1332. At issue are specific funds in excess of \$75,000.

5. Venue is based in this district pursuant to 28 U.S.C. § 1397 and 28 U.S.C. § 1391.

FACTUAL ALLEGATIONS

6. BNY Mellon is the successor trustee under a Trust Indenture between Access to Loans for Learning Student Loan Corporation (“ALL”) and JPMorgan Chase Bank, National Association, as Trustee, Securing Student Loan Program Revenue Bonds (Series V), dated as of August 1, 2005 (the “Indenture”). On or about October 1, 2006, BNY Mellon became the successor to JPMorgan Chase Bank, N.A., as trustee under the Indenture (the “Trustee”).

7. ALL issued five series of bonds (the “Bonds”) under the Indenture: the Senior Series V-A-1, V-A-2, V-A-3, V-A-4 and V-A-5 (the “Bonds”). DEPFA is the beneficial owner of all of the Bonds in Senior Series V-A-1 and V-A-2, which ALL issued on or about August 1, 2005, and Lloyds is the beneficial owner of all of the Bonds in Senior Series V-A-3, V-A-4 and V-A-5, which ALL issued on or about August 2, 2006. The Bonds are secured under the Indenture by certain assets, consisting primarily of federally guaranteed student loans.

8. Pursuant to Section 5.2 of the Indenture, ALL established several trust accounts with the Trustee, including an account identified as the Revenue Account (the "Revenue Account") and an account identified as the Payment Account (the "Payment Account").

9. The Indenture provides that all revenues arising from the student loans and other earnings from the assets in the trust estate will be deposited promptly with the Trustee in the Revenue Account, and the Trustee will then pay funds out of the Revenue Account in the order of priority identified in Section 5.3 of the Indenture.

10. Section 5.3(B)(5) of the Indenture requires the Trustee to transfer funds remaining in the Revenue Account after the transfers ALL directs the Trustee to make pursuant to Section 5.3(B)(3) and 5.3(B)(4) into the Payment Account on each interest payment date or other payment date for the Bonds in an amount, if any, which when added to the amount already within such account, will be sufficient to pay interest on the Bonds due on such date, and to pay the principal of any Bonds due on such date, whether by reason of maturity or sinking fund redemption.

11. The Trustee currently holds approximately \$7.5 million in the Payment Account which it is required to use to pay the principal of Bonds due by reason of sinking fund redemption.

12. Section 13.3 of the Indenture provides that the Series A-1 and A-2 Bonds owned by DEPFA, are to be redeemed as provided in the Standby Bond Purchase Agreement among ALL, the Trustee and DEPFA (the "DEPFA Liquidity Facility"). The DEPFA Liquidity Facility states that these Bonds will be redeemed from money in the Payment Account in semiannual installments over ten years.

13. Section 13.3 of the Second Supplemental Indenture between ALL and JPMorgan Chase Bank, National Association, as Trustee, dated as of August 1, 2006 (the "Second Supplemental Indenture"), provides that the Series A-3, A-4 and A-5 Bonds owned by Lloyds, are to be redeemed as provided in the Standby Bond Purchase Agreement among ALL, the Trustee and Lloyds (the "Lloyds Liquidity Facility"). The Lloyds Liquidity Facility states that these Bonds will be redeemed from money in the Payment Account in quarterly installments over five years.

14. Prior to November, 2009, the Trustee made redemption payments out of the Payment Account pursuant to the instructions provided by ALL to redeem the Bonds owned by Lloyds quarterly and to redeem the Bonds owned by DEPFA semi-annually, pursuant to the Lloyds Liquidity Facility and the DEPFA Liquidity Facility, respectively.

15. By letter to ALL dated November 27, 2009, DEPFA advised ALL that DEPFA believed ALL had no legal right to make any past redemption payments to Lloyds and no right to make any future payments to Lloyds unless and until ALL repaid DEPFA any and all amounts due on the outstanding bonds in ALL Series V-A-1 and V-A-2 in full. DEPFA further advised that BNY Mellon would be in breach of its fiduciary duties and contractual obligations as Trustee if it permitted further redemption payments to Lloyds.

16. On or about December 1, 2009, Lloyds requested that payments from the Payment Account be suspended, even though it would otherwise receive a quarterly redemption payment. The Trustee received no further communications from either Lloyds or DEPFA until it learned from ALL on or about March 31, 2010 that Lloyds wanted the Trustee to resume payments. The Trustee then solicited the permission of DEPFA to communicate DEPFA's November 27, 2009

letter asserting its right to the funds in the Payment Account to Lloyds. After receiving permission, the Trustee communicated DEPFA's letter to Lloyds, ALL and Ambac Assurance Corporation, the insurer of the Bonds, and asked that the parties confirm their positions.

17. By letter to the Trustee dated April 6, 2010, DEPFA reasserted its position that ALL had no legal right to make further redemption payments on the Bonds owned by Lloyds until it redeemed all of the outstanding Bonds owned by DEPFA. DEPFA stated that ALL had never obtained DEPFA's consent to the issuance of the Bonds now owned by Lloyds, as required by the DEPFA Liquidity Facility, and the unauthorized "Lloyds Transaction" did not relieve ALL of its duty to make scheduled mandatory redemptions to DEPFA under the DEPFA Liquidity Facility.

18. Lloyds responded by letter dated April 22, 2010, and asserted that ALL was not required to obtain DEPFA's consent prior to issuing the Bonds owned by Lloyds, and even if such consent were required, payments due and owing under the Indenture were not affected by the alleged breach.

19. By letter to the Trustee dated May 18, 2010, Lloyds demanded that the Trustee resume redemption payments. Lloyds alleged that by failing to make payments to Lloyds since November 2009, the Trustee breached its contractual and fiduciary obligations to Lloyds.

20. As a result of the competing positions of DEPFA and Lloyds, the Trustee is unable to take action without being subject to claims by either bondholder.

FIRST CAUSE OF ACTION
(Against all Defendants for Interpleader)

21. BNY Mellon repeats and realleges the allegations set forth in Paragraphs 1-20 above as if fully set forth herein.

22. DEPFA has asserted that it is entitled to all the funds in the Payment Account currently reserved for the redemption of Bonds or subsequently deposited to the Payment Account for the redemption of Bonds until its Bonds are paid in full.

23. Lloyds has asserted that it is entitled to be paid from funds currently in the Payment Account or subsequently deposited to the Payment Account on the basis established in the Lloyds Liquidity Facility.

24. BNY Mellon is faced with adverse claims to the funds in the Payment Account. As a result of these adverse claims, BNY Mellon is or may be subject to potential multiple liability.

25. BNY Mellon has no interest in this dispute, but is merely a stakeholder. BNY Mellon is prepared to pay into the registry of the Court the funds currently deposited in the Payment Account reserved for the redemption of the Bonds (\$7,500,000), as well as funds subsequently deposited into the Payment Account for the redemption of Bonds. BNY Mellon has no further interest in the dispute between DEPFA and Lloyds as to which of them is entitled to the funds in the Payment Account.

26. BNY Mellon is entitled to have the Court order DEPFA and Lloyds to interplead their conflicting claims, to have the Court decide those claims as between DEPFA and Lloyds

without the need for further participation by BNY Mellon, and to an order of discharge from the Court.

SECOND CAUSE OF ACTION
(Against all Defendants for Declaratory Judgment)

27. BNY Mellon repeats and realleges the allegations set forth in Paragraphs 1-22 above as if fully set forth herein.

28. DEPFA and Lloyds assert rights to the amounts the Trustee currently holds in the Payment Account and to the amounts to be subsequently deposited to the Payment Account for the redemption of Bonds, and each has asserted that BNY Mellon will be in breach of contractual and fiduciary duties if payment is made on the terms demanded by the other party. An actual and justiciable controversy exists between DEPFA and Lloyds as to whether Lloyds is entitled to receive funds currently in the Payment Account and subsequently deposited into the Payment Account for the redemption of Bonds in accordance with the terms of the Lloyds Liquidity Facility or whether DEPFA is entitled to receive all funds currently in the Payment Account and subsequently deposited into the Payment Account for the redemption of Bonds until its Bonds are paid in full.

29. It is appropriate and necessary that the Court should declare the rights and legal relationships of the parties. BNY Mellon is entitled to a declaration as to whether Lloyds is entitled to receive the funds currently in the Payment Account and subsequently deposited into the Payment Account for the redemption of Bonds in accordance with the terms of the Lloyds Liquidity Facility or whether DEPFA is entitled to receive all funds currently in the Payment Account and subsequently deposited into the Payment Account for the redemption of Bonds until its Bonds are paid in full.

WHEREFORE, BNY Mellon demands:

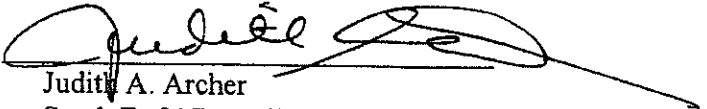
1. That the Court order DEPFA and Lloyds to interplead their respective claims with regard to the right to receive the funds currently in the Payment Account and subsequently deposited into the Payment Account for the redemption of Bonds;
2. That the Court adjudge whether DEPFA, on the one hand, or Lloyds, on the other hand, is entitled to receive the funds currently in the Payment Account and the fund to be subsequently deposited into the Payment Account for the redemption of Bonds;
3. That the Court enjoin DEPFA and Lloyds from commencing or maintaining any other action or proceeding against BNY Mellon pending adjudication by this Court of their respective claims to the funds currently in the Payment Account or subsequently deposited into the Payment Account for the redemption of Bonds;
4. That the Court grant leave for BNY Mellon to deposit the funds in the Payment Account with the Court;
5. That upon payment by BNY Mellon of the funds in the Payment Account into the Court, BNY Mellon be discharged from liability to the extent allowed by law;
6. That the Court declare whether Lloyds is entitled to receive the funds currently in the Payment Account and subsequently deposited into the Payment Account for the redemption of Bonds in accordance with the terms of the Lloyds Liquidity Facility or whether DEPFA is entitled to receive all funds currently in the Payment Account and

subsequently deposited into the Payment Account for the redemption of Bonds until its Bonds are paid in full.

7. That the Court award BNY Mellon its costs and attorneys' fees; and
8. That the Court grant such other and further relief as it deems appropriate.

Dated: New York, New York
June 3, 2010

FULBRIGHT & JAWORSKI L.L.P.

By: 
Judith A. Archer
Sarah E. O'Connell

666 Fifth Avenue
New York, New York 10103
Tel.: (212) 318-3000
Fax: (212) 318-3400

*Attorneys for Plaintiff The Bank of New York
Mellon Trust Company, N.A.*

In the Matter of the Rehabilitation of:

Case No. 10-CV-1576

Segregated Account of Ambac Assurance Corporation

**AFFIDAVIT OF RICHARD A. ROSEN IN SUPPORT OF DEPFA BANK, PLC'S
SECOND MOTION TO INTERVENE AND TO MODIFY MARCH 24, 2010 ORDER
FOR TEMPORARY INJUNCTIVE RELIEF**

STATE OF WISCONSIN)
) ss.
MILWAUKEE COUNTY)

I, Attorney Richard A. Rosen, declare on oath as follows:

1. I am a partner with the law firm of Paul, Weiss, Rifkind, Wharton & Garrison, LLP, counsel for Depfa Bank, plc ("Depfa").

2. Depfa is involved in recently filed interpleader litigation in the United States District Court for the Southern District of New York entitled, *The Bank of New York Mellon Trust Company, N.A. (the "Trustee") v. Depfa Bank PLC and Lloyds TSB Bank PLC ("Lloyds")*, Case Number 10 CIV 4424 ("Interpleader Litigation").

3. In a letter dated April 21, 2010, the Trustee indicated to Depfa that to the extent Lloyds and Depfa dispute future redemption payments from the trust assets administered by the Trustee, the Trustee would have no alternative but to deposit the disputed payments with a court of competent jurisdiction and allow the parties to establish their claims to said payments.

4. The underlying dispute between Depfa and ALL arises from ALL's breach of its obligations under the signed and executed Depfa Liquidity Facility by entering into an unauthorized amendment that has improperly diverted payments from the pool of trust assets that Depfa is contractually entitled to receive.

5. Under the Depfa Liquidity Facility, Depfa was contractually obligated to serve as the buyer of last resort for all outstanding bonds in ALL Series V-A-1 and V-A-2. In consideration for Depfa's commitment to purchase all outstanding bonds under certain circumstances, ALL agreed to repay Depfa through semiannual mandatory redemptions from the trust's revenue fund (the "Revenue Fund") until the debt was discharged over a maximum ten-year period. The Depfa Liquidity Facility explicitly prohibited ALL from modifying or amending the Trust Indenture without the prior written consent of Depfa.

6. One year later, however, as of August 1, 2006—without Depfa's written consent and in breach of their respective contractual obligations—ALL and the Trustee entered into a second standby bond purchase agreement with Lloyds, the Lloyds Liquidity Facility, which amended the Trust Indenture through a second supplemental indenture ("Second Supplemental Indenture Relating to ALL V and Amending the Trust Indenture").

7. The Lloyds Liquidity Facility provided for a significantly faster repayment schedule than ALL's agreement with Depfa. Specifically, Lloyds was entitled to quarterly mandatory redemptions and full repayment over five years, whereas Depfa had received only semiannual mandatory redemptions over a ten year repayment period. Thus, even though the Lloyds Liquidity Facility initially increased the assets in the ALL V Trust, because the redemption payments to Depfa and Lloyds were drawn from the same collateralized pool of ALL V assets, each time ALL and the Trustee made a redemption payment to Lloyds, they reduced the amount of funds available to pay Depfa, thereby disadvantaging Depfa.

8. ALL informed Depfa that it was unable to make mandatory redemption payments to Depfa due to insufficient funds in the Revenue Fund and an inability to calculate the amount in the Revenue Fund on the mandatory redemption payment dates. Although ALL claimed it was

unable to make mandatory redemption payments to Depfa, the Trustee—at ALL’s direction—began making optional redemption payments to both Depfa and Lloyds. With each optional redemption payment made to Lloyds, ALL and the Trustee drew down the funds in the Revenue Fund from which Depfa also was entitled to repayment. ALL and the Trustee made these optional payments despite the fact that Depfa’s right to mandatory redemptions had not been satisfied.


9. Through this action, Depfa will seek to recover damages caused by ALL’s breach of its contractual obligations, and the Trustee’s breach of both its contractual obligations and its fiduciary duty. Depfa will also seek to enforce its contractual rights under the Depfa Liquidity Facility and the Trust Indenture. None of the claims in the Interpleader Complaint or in Depfa’s anticipated counterclaims and third-party complaint against ALL have any effect on Ambac or any effect on whether or in what amount default interest is due and owing. Depfa’s claims relate to whether Depfa or Lloyds is entitled to priority of payment from assets held by ALL. Ambac, as the insurer of the bonds, will be required to pay either Depfa or Lloyds for any money that is not paid on the principal and interest of the Bonds. It is irrelevant to Ambac whether a greater amount of potential claim is held by Depfa or held by Lloyds.

10. Depfa anticipates filing an answer, counterclaims against the Trustee, and a Third-Party Complaint against ALL. Depfa’s counter-claims against the Trustee will be for breach of its contractual obligations and fiduciary duty under the Depfa Liquidity Facility, based on the Trustee’s improper redemption payments from the trust assets. These responsive pleadings are due on August 3, 2010, unless parties stipulate to an extension of time.

11. This Affidavit is filed in support of Depfa's Second Motion To Intervene and to Modify March 24, 2010 Order for Temporary Injunctive Relief.


I declare under penalty of perjury that the foregoing is true and correct.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP



Richard A. Rosen

Subscribed and sworn to before me
this 22nd day of June, 2010.



Notary Public, State of New York
My Commission: _____

EILEEN L. LEVIN
Notary Public, State of New York
No. 01LE4813172
Qualified in Suffolk County
Certificate Filed in New York County
Commission Expires September 30, 2013