STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

ORDER DENYING MOTIONS OF WELLS FARGO BANK AND CERTAIN LVM BONDHOLDERS AND EMERGENCY MOTIONS TO POSTPONE THE JULY 9, 2010 HEARING ON THE MOTIONS OF WELLS FARGO BANK AND CERTAIN LVM BONDHOLDERS

Oral arguments were scheduled July 9, 2010, on motions filed by certain LVM bondholders challenging the allocation of the LVM bond policy to the Segregated Account, and for an order authorizing LVM bondholders to intervene in this action and to take discovery in connection with their motion. Wells Fargo Bank, N.A., in its capacity as trustee for certain RMVS trusts on behalf of the trust certificate holders presented a motion to modify the Court's order for temporary injunctive relief. Wells Fargo in its capacity representing certain LVM bondholders, joins LVM in its motion challenging the inclusion of the policy insuring the LVM bonds in the Segregated Account, and seeks to modify the temporary injunction as to the LVM bond policy, to conduct discovery, and to intervene as parties.

By order dated June 3, 2010, this Court set oral argument on Wells Fargo Bank, N.A.'s motion to modify the temporary injunction order and to intervene for Friday, July 9, 2010 at 9:00 a.m. This was the same time as the LVM motion was scheduled for oral argument.

In this Court's March 24, 2010 Order, June 22, 2010 was set as the deadline by which any party-in-interest was required to file any challenges pertaining to the March 24, 2010 Order

for Injunctive Relief. That Order for Temporary Injunctive Relief provided at Paragraph 12 as follows:

> "12. This Order shall remain effective until further order of the 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..."

Certain movants filed motion papers with the Court on or before June 22, 2010. Those are: Depfa Bank, plc; Wells Fargo Bank, N.S., solely in its capacity as trustee for certain RMBS certificateholders; Bank of America, N.A., solely in its capacity as trustee for certain RMBS certificateholders; PNC Bank, N.A.; One State Street, LLC; Deutsche Bank National Trust Company, Solely in its capacity as trustee, and Deutsche Bank Trust Company Americas, solely in its capacity as trustee; U.S. Bank National Association, solely in its capacity as trustee for certain securitization trusts; Access to Loans for Learning Student Loan Corporation & Lloyds TSB Bank plc; The Bank of New York Mellon; and Knowledge Works Foundation and the Treasurer of the State of Ohio.

With the Wells Fargo Bank, N.A., motion to modify temporary injunction and to intervene and the Las Vegas Monorail Project Revenue Bonds' motion challenging allocation of the LVM Bond policy to the Segregated Account set for hearing on July 9, 2010, on July 2, 2010, KnowledgeWorks Foundation as the administrator of the Ohio Education Loan Program, with the Treasurer of the State of Ohio on behalf of the State of Ohio, filed an emergency motion

and notice of motion to postpone the July 9, 2010 hearing or in the alternative to withhold ruling and establish a case schedule on pending motions.

Interested party Access to Loans for Learning Student Loan Corporation ("ALL Student Loan") and Lloyds TSB Bank plc ("Lloyds Bank") moved as well for postponement of the July 9, 2010 hearing on Wells Fargo's motion to modify the temporary injunction and to intervene in the LVM motion challenging allocation of the LVM bond policy to the Segregated Account. Movant ALL sought establishment of an appropriate case schedule and hearing on all interested parties' pending motions to intervene and modify or dissolve the order for temporary injunctive relief. Interested party Deutsche Bank National Trust Company, Deutsche Bank Trust Company Americas, and U.S. Bank National Association as trustee for certain RMBS, collateralized loan obligation and/or collateralized debt obligation trust issued by Ambac, requested the Court limit the scope of the July 9, 2010 hearing to the issues presented in the LVM Bondholders' motion and defer any ruling on the separate matters raised by those trustees' motions to intervene and modify the Court's March 24, 2010 order for temporary injunctive relief to allow them to be fully briefed by the parties.

Argument was heard on the emergency motions on July 9, 2010 prior to the Court's taking up the LVM and Wells Fargo, N.A., motions that were scheduled for hearing on that date. The Court heard the arguments of the movants and the arguments against the motion.

The record shows that Wells Fargo, N.A., filed its motion for the July 9th hearing on April 5, 2010 and it had been on the Court's calendar since April 16, 2010. That information was available to the public as a matter of court record. The LVM motion was filed June 9, 2010. On June 20, 2010, Wells Fargo, N.A., withdrew certain portions of its motion that were decided by this Court's May 27, 2010 Findings of Fact and Conclusions of Law. On July 8, 2010, Eaton

Vance Management, Nuveen Asset Management, Restoration Capital Management LLC, and Stone Lion Capital Partners LP, filed an affidavit in support of LVM Bondholders' motions to be heard at oral argument on July 9, 2010. This extensive document was not received by the Court or parties timely to allow any meaningful analysis of its content and it was not received into the hearing record by the Court. After hearing argument, the Court determined that the emergency movants had sufficient time to file timely motions with the Court which would have provided all counsel an opportunity to review and respond to them. For this and other reasons stated on the record, the emergency motions to delay the hearing on the LVM and Wells Fargo, N.A. motions were denied.

The Court has now set dates for hearing the June 22, 2010 motions and a scheduling order has now been signed and sent out to the parties.

In the Preliminary Statement to its brief, the LVM Bondholders state:

> "The LVM Bondholders do not object to the principal actions taken by Ambac and the Commissioner at the commencement of this Rehabilitation: the creation of a Segregated Account, and the allocation to that account of the particular types of high-risk structured-finance obligations that were responsible for Ambac's demise – namely, the RMBS policies and the CDS agreements (other than those covered by the CDS Settlement). These actions served laudable goals, including the preservation of Ambac's claims-paying resources and the prevention of preferential payments to near-term claimants at the expense of long-tail claimants."

LVM argued that the Commissioner left the majority of the municipal bonds policies of Ambac in the General Account and allocated the LVM Bond policy to the Segregated Account on the premise that this bond was already in default and had substantial projected claims. This LVM contends was allocation on the basis of the policy's claims status rather than its insurance type,

which violated Wisconsin Statute Sec. 611.24 and the Equal Protection Clauses of the Wisconsin and U.S. Constitution. The basic argument of LVM was that the OCI was to provide similar treatment to all policies of the same type, whether in default or not. The OCI and the Rehabilitator as well as Ambac in their briefs point to Wis. Stats. Sec. 611.24(2) which states as follows:

> "**(2)** OPTIONAL SEGREGATED ACCOUNTS. With the approval of the commissioner, a corporation may establish a segregated account for any part of its business. The commissioner shall approve unless he or she finds that the segregated account would be contrary to the law or to the interests of any class of insureds."

The June 22, 2010 movants and the emergency movants at the July 9, 2010 motion hearing argue that the LVM motion challenged the allocation of the LVM Bondholders policy to the Segregated Account. Further argument was that the Court in determining this motion need not reach the issue of the validity of the Segregated Account which was the subject of the June 22, 2010 motions.

In its May 27, 2010 Findings of Facts and Conclusions of Law regarding motions of certain RMBS policyholders and certain LVM bondholders, this Court specifically addressed the establishment of the Segregated Account at Paragraph 19-31. (See also Findings of Fact 1-18 in the Court's May 27, 2010 Findings of Fact and Conclusions of Law entered regarding motions of certain RMBS policyholders and certain LVM bondholders.) The comments to Wis. Stats. Sec. 612.24(2), states:

> "Sub (2) provides for optional segregated accounts under any circumstances the corporation wishes, if the separation meets the commissioner's approval. This is effect extends to all insurance the

liberality of former s. 206.285(1), but protects insureds by requiring the commissioner's approval. S. 206.385(1) is continued expressly (with minor changes) for life insurers in s. 611.25(2).

The basic idea behind segregated accounts is that different operations can be kept independent without formally creating a separate corporation. A segregated account is in some respects like a "corporation within a corporation". Its legal nature and treatment is prescribed in sub. (3). Sub. (3)(a) requires that a segregated account be equipped with an adequate share of the corporation's capital and surplus. This is indispensable if the account is to be expected to function and survive like a separate corporation. If it carries no risks not assumed by the corporation's general account, the commissioner may set the required figure at zero under s. 611.19(1). There is no reason why a corporation which could create a subsidiary under s. 611.26(2) for any portion of its insurance business should not be permitted to achieve the desired separation by establishing a segregated account, provided it is adequately capitalized to make it independently viable, and the commissioner approves its creation."

In the motions now before this Court, neither the LVM Bondholders or Wells Fargo, N.A., argue that Wis. Stats. Sec. 611.24(2) is unconstitutional. No parties have noticed the Wisconsin Attorney General that they take this position as required under Wis. Stats. Sec. 806.04(11). Concerning these motions and the parties' motion challenging the allocation of the LVM policy to the Segregated Account, and the motion to intervene for purposes of taking discovery as to that motion, this Court noted during the July 9, 2010 motion hearing its approval of argument on these points in the brief submitted by Ambac Assurance Corporation in opposition to these motions, at pages 17 and 18:

" Even if the Court were willing to give the LVM Bondholders a second bite at the apple, the Motion makes no showing that Wisconsin law allows policyholders (or those claiming to be policyholders) to intervene in a rehabilitation proceeding. Chapter 645 itself provides no right of intervention. *See also In re Liquidation of Am. Star Ins. Co.,* No. 92-CV-4579 (Wis. Cir. Ct. Dane County Nov. 20 1998) (denying motion of sole shareholder of an insurance company to intervene in a liquidation

proceeding); Conclusions of Law ¶9. As long as policyholders have a basic right to be heard, which they do here, there is no need to intervene.

Moreover, if every policyholder allocated to the Segregated Account were able to intervene, the overarching purpose of the Chapter 645 would be frustrated, *i.e.,* "the protection of the interests of insureds, creditors, and the public generally, with minimum interference with the normal prerogatives of proprietors." Wis. Stat. §645.01(4). A rehabilitation proceeding is not an adversarial litigation designed to adjudicate the diverse and divergent interests of each policyholder. It is a formal remedial measure to "rehabilitate the business of a domestic insurer." Wis. Stat. §645.32(1). Accordingly, rehabilitation is "a very flexible procedure" that is "regarded as a management rather than a legal task. . . . [The rehabilitator] must act under the supervision of the court, of course, but the court's control should be liberal, not strict, and should be provided without cumbersome procedures." Wis. Stat. Ann. §645.32 cmt. Therefore, in relying on Wis. Stat. §803.09(1), the LVM Bondholders ignore the critical difference between ordinary, adversarial litigation and a rehabilitation proceeding.

Even if this were a standard adversarial litigation, the LVM Bondholders still would fail to meet the criteria set forth in Wis. Stat. §803.09(1). For example, intervention is generally inappropriate where the proposed intervenor is adequately represented by the existing parties. In *Helgeland v. Wisconsin Municipalities*, 2008 WI 9, 307 Wis. 2d 1, 745 N.W.2d 1, the Wisconsin Supreme Court denied intervention to certain municipalities in a lawsuit challenging the constitutionality of state employee trust fund statutes. The *Helgeland* decision explained that there is a presumption of adequate representation "when the putative representative is a governmental body or officer charged by law with representing the interests of the absentee." *Id.* at ¶91 (internal quotation omitted). Here, OCI, as rehabilitator, is responsible for acting for the benefit of *all* policyholders, including those covered by the LVM Bond Policy. *See* Findings of Fact ¶¶17-18, 26, 34-36."

Based upon the foregoing, the briefing of the parties, the materials and affidavits on file in this case, the oral arguments presented at the hearing of this motion on July 9, 2010, and for other good cause, I enter the following order:

1. Certain emergency motions filed seeking the Court to limit its ruling on the LVM and Wells Fargo, N.A. motions at the July 9, 2010 hearing, or to postpone or delay said motion hearings, for reasons stated above, those motions ARE DENIED.

2. This Court's May 27, 2010 Decision, Findings of Fact and Conclusions of Law are reaffirmed in this matter (particularly Findings 19-31 and 36 and Conclusions 2-5 and 8-9.)

3. The allocation of the LVM Bond Policy to the Segregated Account was lawful, and did not violate any provision of the Constitutions of either the State of Wisconsin or the United States of America.

4. Movants' motion to intervene or conduct discovery in regard to their motion is denied. Movants have not established legal grounds or other good cause for such relief to be granted. This denial of intervention does not preclude these Movants from asking to be heard in this matter at future proceedings pertaining to the Rehabilitator's plan of rehabilitation.

WHEREFORE, IT IS HEREBY ORDERED that the above-referenced motions are denied.

Dated this 16th day of July, 2010.

BY THE COURT

Honorable William D. Johnston
Lafayette County Circuit Court Judge
Presiding by Judicial Appointment

CC: All Parties on the Attached List > 7/19/10 gb

CC: Attorney's in Dane County Case # 10-CV-1576

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