

In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

FOURTH AFFIDAVIT OF ROGER A. PETERSON
Director of the Bureau of Financial Analysis and Examinations
for the Wisconsin Office of the Commissioner of Insurance

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

Roger A. Peterson, being first duly sworn on oath deposes and states as follows:

1. I am the Director of the Bureau of Financial Analysis and Examinations for the Wisconsin Office of the Commissioner of Insurance ("OCI"), where I have worked for more than 20 years. During that time, I have had extensive, increasing regulatory responsibilities in regard to Ambac Assurance Corporation ("Ambac"). The statements in this affidavit are based on personal knowledge and information.

2. In my first affidavit in this proceeding, dated May 19, 2010, I explained OCI's approval of the establishment of the Segregated Account of Ambac Assurance Corporation (the "Segregated Account"), allocation decisions, and facts and circumstances demonstrating the need for injunctive relief to accomplish the purposes of this rehabilitation proceeding. I re-affirm that the statements in my affidavit of May 19 are true and correct, and incorporate them here by reference. I make the following additional statements below in response to statements contained in the motion papers filed by certain parties-in-interest on June 22, 2010.

3. I understand that One State Street, LLC (“One State”) has argued that OCI abused its discretion in approving the allocation of Ambac’s disputed lease liability with One State to the Segregated Account. Earlier this year, Ambac’s parent company, Ambac Financial Group, Inc. (“AFGI”)—the tenant under a lease with One State—publicly announced that it was contemplating whether to file for bankruptcy. As OCI and its advisors were aware at that time (and as One State has confirmed in the briefing on its motion), in the event AFGI filed for bankruptcy and rejected the lease, One State may have attempted to pursue a claim against Ambac for AFGI’s liability under the lease. If successful notwithstanding Ambac’s defenses to it, such a claim could include immediate, accelerated damages of \$50 to \$90 million. Therefore, like all other material, short-term threats to Ambac’s claims-paying resources, the One State contingent liability was allocated to the Segregated Account for treatment pursuant to the rehabilitation.

4. Despite One State’s representations to the contrary, its disputed lease liability was not the only non-insurance policy liability allocated to the Segregated Account. As noted in the Plan of Operation and its exhibits, OCI also approved the allocation of certain reinsurance agreements and Ambac’s liability as guarantor of a lease in London with British Land. It would have been inequitable to Segregated Account policyholders to leave these non-policy, Class 5 contractual liabilities in the General Account (where they would have been paid in full if Ambac’s liability were proven) while Class 3 policyholders in the Segregated Account were paid on a cash-note split basis in accordance with a rehabilitation plan. Therefore, all material, non-policy contractual liabilities such as the disputed lease liability with One State were allocated to the Segregated Account.

5. I understand that Access to Loans for Learning Student Loan Corporation (“ALL”), as well as Lloyds TSB Bank plc (“Lloyds”) and Depfa Bank plc (“Depfa”), which claim interests in student loan revenue bonds issued by ALL, have argued that OCI abused its discretion in approving the allocation of two Ambac policies insuring those bonds (the “ALL Policies”) to the Segregated Account. OCI approved the allocation of the ALL Policies because they are expected to incur substantial losses due to the structure of the transaction. Based on that structure, Depfa’s and Lloyds’ purchase of the bonds insured by the ALL Policies caused the bonds to bear interest at higher rates than were in effect prior to their acquisition, and the principal on the bonds became subject to an accelerated payment schedule that moves their respective maturity dates from 2040 and 2041, to 2013 and 2018.

6. Further, the ALL student loan trust (the “ALL Trust”) is using payments of principal received on the underlying student loans to pay current interest on the bonds, which is negatively impacting the transaction and increasing the exposure on the policies. When the principal payments become due, OCI and its advisors projected (and continue to project) a substantial shortfall for which claims will arise on the ALL Policies. At the end of 2009, the liabilities exceeded the assets in the ALL Trust by approximately \$15.4 million. As of June 30, 2010, the outstanding liabilities are approximately \$19.8 million higher than the asset balance in the ALL Trust. Moreover, if the ALL Policies had not been allocated to the Segregated Account (where they are subject to the Injunction Order), both Depfa and Lloyds would have had the contractual right to increase the bank bond rates payable on the ALL Bonds for which they are the respective liquidity providers to even higher default rates, which would have further materially deteriorated the assets in the ALL Trust. Thus, allocating the ALL Policies to the Segregated Account prevented further deterioration of the ALL Trust.

7. I understand that KnowledgeWorks Foundation and the Treasurer of the State of Ohio (the “Treasurer”) have argued that OCI abused its discretion in allocating to the Segregated Account a policy pertaining to student loan-backed bonds issued by the Treasurer, No. SW0240BE. The policy at issue is a swap policy, which faces a contractual trigger that could result in the issuer having to make an immediate termination payment if the policy were not assigned to the Segregated Account and the trigger not enjoined. As noted at paragraph 14 of my May 19, 2010 affidavit, more than 150 such swap policies were allocated to the Segregated Account, in which Ambac insures scheduled (and sometimes termination) payments in respect of certain swap contracts between municipalities or other public finance issuers and financial institutions.

8. I understand that parties-in-interest have raised questions and doubts regarding the assessment process for certain student loan-related policies identified in the Plan of Operation for the Segregated Account. As noted in the Plan of Operation, a 180-day assessment period began after the entry of the Order for Rehabilitation. During the assessment period, and for a period of 90 days thereafter, any policy subject to the assessment may be allocated to the Segregated Account.

9. The assessment process is underway, and OCI and Ambac are reviewing those policies subject to the assessment in order to determine whether they carry material risks of incurring losses for any reason. As with pre-rehabilitation allocations, those student loan policies with projected losses, triggers, or other characteristics that pose threats to the fair and equitable distribution of Ambac’s claims-paying resources will be subject to allocation.

10. Both the ALL policies and the swap policy relating to bonds issued by the Treasurer would have faced allocation under any of the assessment criteria OCI has considered in the student loan assessment process.

11. I understand that institutional trustees for various Ambac-insured obligations allocated to the Segregated Account have objected to provisions of the Injunction Order in this matter that preserve certain of the insurer's contractual rights under various transactional documents that enable the insurer to exercise a greater level of control and access to information than parties on the creditor side (commonly called "control rights"). Although the control rights tend to differ from transaction to transaction, typical control rights include the right to exercise control over the loan servicer (including the right to receive information such as loan files, and the right to terminate the servicer for failure to meet certain criteria), the authority to direct the trustee to assert rights under the transaction documents, the right to consent to amendments and waivers under the transaction documents, and the right to declare events of default, trigger events, and early amortization events.

12. Retention of control rights is essential to the Rehabilitator's statutory duties to manage the business of the insurer and to "protect the interests of insureds, creditors, and the public generally, with minimum interference with the normal prerogatives of proprietors." Wis. Stat. §§ 645.01(4) & 645.33(2). Access to information, management of waivers and amendments, and the ability to assert contractual rights and enforce contractual duties are all necessary tools for the day-to-day management of the Segregated Account in the collective best interests of policyholders and the public.

13. The preservation of these control rights is also necessary to adequately protect claims-paying resources from unnecessary losses—such as those that might accompany an

untimely termination and liquidation of collateral, or an underperforming servicer—and to engage in remediation efforts to recover losses caused by third parties' misrepresentations, breaches of warranty, or other acts or omissions. These remediation efforts, if successful, would serve the interests of Segregated Account policyholders by reducing potential strains on claims-paying resources. The loss of control rights would impede and possibly prevent attempts to remediate certain transactions.

14. In addition, the loss of the insurer's control rights would not result in a corresponding gain for holders of the insured obligations. Under the transaction documents, once the insurer's control rights are lost, some of those rights are lost entirely; the holders do not acquire the right to exercise them. Those rights that are transferred to the holders may be difficult to exercise effectively due to contractual requirements for the consent of a majority, super-majority, or 100 percent of holders to the exercise of rights in some transactions. Further, if holders were able to exercise such rights, they would be under no duty to exercise them in a way that promotes (or at least does not hinder) the remedial goals of this rehabilitation.

15. Finally, I am aware that one policyholder, Depfa, has raised arguments pertaining to settlements. It has and remains the position of OCI and the Rehabilitator that they will not approve commutations or other settlements subject to their discretionary review (as established by the Plan of Operation and its accompanying exhibits), that are unfair to non-settling policyholders. During the course of this proceeding, the Rehabilitator and OCI have not approved any commutations on terms that are more financially generous to the settling policyholder than would likely result if the policyholder did not settle and instead made claims pursuant to an approved rehabilitation plan.

16. From March 24, 2010 (the date the Verified Petition was filed) through the end of July 2010, Ambac paid less than \$13 million with respect to claims presented in the ordinary course as to policies in the General Account. (This number is gross of recoveries with respect to those policies, so the net loss to Ambac may actually be smaller.) By contrast, during the same time period, more than \$784 million in claims were presented with respect to policies allocated to the Segregated Account (\$740 million net of the approximately \$44 million in recoveries on those policies, which include reimbursements and other payments obtained through securitization trusts). The Injunction Order preserves the right to continue receiving payments included in the approximately \$44 million in recoveries on these policies.

Dated this 16 day of August, 2010.

Roger A. Peterson
Roger A. Peterson

Subscribed and sworn to before me
this 16 day of August, 2010.

[Signature]
Notary Public, State of Washington.
My Commission: Aug 15, 2011

