
In the Matter of the Rehabilitation of:

Segregated Account of
Ambac Assurance Corporation

Case No. 10 CV 1576

**[FREDDIE MAC'S PROPOSED] ORDER DENYING MOTION FOR CONFIRMATION
OF PLAN OF REHABILITATION**

This matter came before the Court on the Motion ("Motion") of the Wisconsin Insurance Commissioner, as Rehabilitator ("Rehabilitator") of the Segregated Account of Ambac Assurance Corporation ("Ambac"), to confirm the Rehabilitator's proposed Plan of Rehabilitation (the "Plan") for the Segregated Account which was filed on October 8, 2010. Based on this Court's review of the Plan and the briefs, affidavits, exhibits, and other materials on file in this proceeding, as well as the testimony and argument presented at the hearing on confirmation of the Plan, the Motion is hereby **DENIED**.

The Rehabilitator's discretion to fashion a plan of rehabilitation is not unfettered. The Court is required to conduct a meaningful review of the Plan under Wis. Stat. § 645.33(5) to ensure that the Plan does not exceed the Rehabilitator's authority and otherwise is fair and equitable to policyholders. The Court may not affirm the Rehabilitator's exercise of power if "the power has been abused or exercised beyond the limits conferred by the legislature." *State ex rel. Knudsen v. Bd. of Educ., Elmbrook Sch., Joint Common Sch. Dist. No. 21*, 43 Wis. 2d 58, 67, 168 N.W. 2d 295, 299 (Wis. 1969); *see also Sheely v. Wis. Dep't of Health & Social Servs.*, 150 Wis. 2d 320, 339, 442 N.W. 2d 1, 10 (Wis. 1989) (an administrative official's exercise of authority "will not be sustained if it has no basis in 'the appropriate and applicable law'"). In addition, as recognized by the Rehabilitator at page 3 of its Motion for Confirmation, a "Commissioner's plan for rehabilitation cannot be implemented without a court finding that it is fair and equitable [to all parties concerned.]" *LaVecchia v. HIP of N.J., Inc.*, 324 N.J. 85, 91,

734 A. 2d 361, 364 (N.J. Super. Ct. Ch. Div. 1999).

The Rehabilitator has not demonstrated that the Plan treats policyholders “fairly and equitably,” which is a basic purpose of Wisconsin’s Insurance Code. Wis. Stat. § 601.01(2). Most fundamentally, the Rehabilitator has failed to demonstrate that policyholders will receive at least the liquidation value of their claims under the Plan, and the Plan fails to provide that policyholders may dissent from the Plan and receive the liquidation value of their claims, as required by *Carpenter v. Pac. Mut. Life Ins. Co. of Cal.*, 74 P. 2d 761, 778 (Cal. 1937), *aff’d sub nom Neblett v. Carpenter*, 305 U.S. 297 (1938).

In addition, the Plan contains a number of provisions which are beyond the Rehabilitator’s legal authority and/or are unfair and inequitable to policyholders. In particular:

- The Plan impermissibly requires policyholders to surrender significant rights without first being paid in full, thus foregoing the consideration required by Wis. Stat. § 611.24(h), contradicting the “made whole” doctrine in subrogation law as set forth in *Ruckel v. Gassner*, 2002 WI 67, 253 Wis. 2d 280, 646 N.W. 2d 11 (Wis. 2002), and contradicting principles of basic fairness and equity in violation of Wis. Stat. § 601.01(2).
- The Plan impermissibly and unfairly reduces the priority of policyholder claims by subordinating them to a status lower than that of general creditor claims in the event of an ultimate liquidation, in violation of Wis. Stat. § 601.01(2) and Wis. Stat. § 645.68.
- The provisions in Article 9 of the Plan providing for immunity and indemnification of Ambac are impermissibly overbroad and inequitable to policyholders, in violation of Wisconsin law.
- The Plan impermissibly treats credit default swap counterparties as policyholders, without any basis for placing them in the same priority class as policyholders, in violation of Wis. Stat. § 645.68.

Accordingly, the Plan cannot be confirmed on the current record or in its current form. The Plan must be further supported, and modified, in the following respects before it may be resubmitted to the Court for further consideration.

1. The Rehabilitator must provide evidence of whether the Plan affords Segregated Account policyholders at least the liquidation value of their claims. Furthermore, the Plan must be amended to provide that Segregated Account policyholders may dissent from the Plan and receive the liquidation value of their claims.

2. The Plan and the form Surplus Note to be issued in connection with Policy Claims must be amended to provide that (1) an assignment of a policyholder's rights to Ambac will be deemed to occur only to the extent of the cash distributions actually received by the policyholder, (2) any litigation recovery can be retained by Ambac only to the extent of the cash distributions actually received by the policyholder, with the balance to be paid over by Ambac to the appropriate RMBS trust, and (3) reimbursement to Ambac from the RMBS trust will be allowed only to the extent of the cash distributions actually received by the policyholder.

3. The Plan and the form Surplus Note to be issued in connection with Policy Claims must be modified to specifically provide that the holder shall have the right to make a claim based on the Surplus Note in the capacity of a policyholder if the Segregated Account is made subject to a liquidation proceeding.

4. The immunity and corresponding indemnity given to Ambac and its related persons and entities must be modified to permit policyholders to seek damages for any conduct which damages the Segregated Account.

5. The Plan must be revised to reflect the need for an evidentiary hearing before any credit default swap counterparty is treated as a policyholder, to determine whether the counterparty is, in fact, a policyholder.

WHEREFORE, IT IS HEREBY ORDERED that the Motion is Denied.

Dated: _____

By THE COURT

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