

November 9, 2010

HAND DELIVERY

John A. Volcker, Clerk  
Wisconsin Court of Appeals  
110 East Main Street, Suite 215  
P.O. Box 1688  
Madison, WI 53701-1688

Re: *In the Matter of the Rehabilitation of Segregated Account  
of Ambac Assurance Corp.*, App. No. 2010AP2721  
Dane County Circuit Court, Case No. 10-CV-1576

Dear Mr. Volcker:

I am one of the lawyers for Access to Loans for Learning Student Loan Corporation and Lloyds TSB Bank plc (together, the “petitioners”) in the above case. On November 3, 2010, we filed a petition for permissive review and a request for a stay of circuit court proceedings pending the Court’s decision on whether or not to grant review. On November 5, 2010, the respondent Office of the Commissioner of Insurance (“OCI”) wrote to the Court to state that it intended to respond within eleven days based on its understanding of the Wisconsin Rules of Appellate Procedure. Its non-response, however, argued in support of its “strong oppos[ition]” to the requested stay. Subject to the Court’s permission, the petitioners submit this letter briefly responding to OCI’s assertions about procedure for seeking a stay and the merits of a stay.

The petitioners requested in the Petition a stay of the Rehabilitation Plan confirmation hearing scheduled to begin on November 15, 2010. (*E.g.* Petition at 2.) In doing so, they followed the procedure prescribed by Wis. Stat. § 809.52 of the Wisconsin Rules of Civil Procedure:

Rule (Temporary Relief). A petitioner may request in a petition filed under s. 809.50 or 809.51 that the court grant temporary relief pending disposition of the petition. The court or a judge of the court may grant temporary relief upon the terms and conditions it considers appropriate.

OCI states that it will submit its opposition within the 11-day “timeframe provided by Wis. Stat. § 809.14(1), unless the Court of Appeals directs otherwise.” The 11-day period from the November 3, 2010 filing and service of the Petition ends on November 14, 2010 – the Sunday

before the November 15, 2010 start of the hearing. OCI can, of course, respond when it chooses, but even if the request brought pursuant to § 809.52 is also deemed to be a motion under § 809.14(1), “[a] motion for a procedural order may be acted upon without a response to the motion.” Wis. Stat. § 809.14(2).

On the merits, the petitioners contends that permissive review is appropriate because a decision by this Court on the lawfulness of the Segregated Account is critical to a reasonable, efficient, and fair insurance rehabilitation proceeding. The existence of multiple appeals on the fundamental question of whether the Segregated Account is even a proper entity for rehabilitation given the circumstances of its creation, the blanket denial by the circuit court of all information and discovery requests not approved by OCI, and the unfair rush to judgment in this highly-complex case establish, the petitioners contend, the satisfaction of the criteria for permissive review. Unquestionably, moreover, they support a stay of the plan confirmation hearing during the short period it generally takes this Court to decide requests for permissive appeal.

Contrary to OCI’s assertion, a continuance will not inconvenience the policyholders who have appeared in this case, nor will it inconvenience others. As stated in the Petition, the policyholders and other interested parties who participated in the scheduling conference, supported the need for information disclosure before a final schedule is set. As one party started in an attachment to its docketing statement to this Court,

[a]s a result of these actions by OCI, Ambac and the Circuit Court, the entire Plan confirmation hearing process for the Rehabilitation of the Ambac Segregated Account -- a Plan that appears to have been developed by OCI over a number of years and that impacts a myriad of parties and tens of billions of dollars in potential liability -- will be held (and concluded) only about a month after OCI’s filing of its proposed Plan, about one month after the proposed Plan was first disclosed to Ambac policyholders and interested parties, less than one month after the entry of the Circuit Court’s Scheduling Order, and without any discovery whatsoever, all over the objection of nearly all Ambac policyholders and interested parties who have appeared in the Circuit Court proceedings.

(Depfa’s Notice of Appeal and Docketing Statement, AAC Policyholder Website (November 5, 2010, Attachment to Docketing Statement at 5-6). (See Petition at 3 n.2 for internet citation to the AAC Policyholder website.)

The rush to judgment is also reflected by actions taken by OCI during the past two days. On November 8, OCI filed an *ex parte* Motion for Temporary Injunctive Relief and to amend the

“Plan of Operation” for the Segregated Account with respect to “new threats to the financial stability of the Segregated Account” that have “the potential to disrupt its orderly rehabilitation.” (Motion for Temporary Supplemental Injunctive Relief, AAC Policyholder Website (Nov. 8, 2010.))The *ex parte* motion, together with a hearing held without advance notice regarding a significant threat to the Segregated Account, obviously suggests caution in moving forward to a final hearing on an already controversial and complex plan of rehabilitation.

Finally, OCI’s stated concern in its letter for the convenience of all involved with this case is belied by its decision to seek a quick hearing date without having satisfied a condition precedent to holding the hearing. As stated in its Notice of Status of SEC No-Action Letter Request, submitted yesterday, November 8, 2010, OCI still has not receive a “no-action letter” that is required before the confirmation hearing can be held. (AAC Policyholder Website (Nov. 8, 2010.)) It expects to receive by November 12, 2010 – the Friday before the Monday scheduled start of the hearing – a response from the SEC. (In an email a short while ago, it says it is “increasingly optimistic” it will receive the no-action letter in time for the hearing.) If convenience of the parties were truly its concern, OCI would have paused to assure the satisfaction of conditions precedent before proposing on October 14, 2010, a plan confirmation hearing to begin on November 15, 2010.

Thank you for your consideration of this letter.

Thank you.

Very truly yours,

/s/

Lawrence Bensky

Enc.

cc: Michael Van Sicklen  
Daniel Stolper  
Circuit Court Email Service List