
In the Matter of the Rehabilitation of:

Case No. 10-CV-1576 – B

Segregated Account of Ambac Assurance Corporation

[PROPOSED] FINDINGS OF FACT & CONCLUSIONS OF LAW

This matter came before the Court on the motion (the “Motion”) of the Wisconsin Office of the Insurance Commissioner (“OCI”) to confirm the Plan of Rehabilitation for the Segregated Account of Ambac Assurance Corporation (the “Plan”). Having reviewed 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 hearings on confirmation of the Plan, and for good cause shown, IT IS HEREBY FOUND AND DETERMINED THAT:

1. On October 8, 2010, OCI filed the Plan with this Court pursuant to Wis. Stat. § 645.33(5) and moved for its confirmation. OCI also filed a Disclosure Statement summarizing the OCI’s findings and conclusions regarding this rehabilitation;
2. On October 8, 2010, OCI provided written notice to all policyholders and other known parties-in-interest about the filing of the Plan, the Disclosure Statement and the Motion, and that the hearing to consider the confirmation of the Plan would be scheduled;
3. On October 14, 2010, a hearing was held to set the schedule for the Plan confirmation proceedings. A group of General and Segregated Account policyholders requested modest discovery regarding the Plan in advance of any proposed confirmation hearing; this request was opposed by OCI, and the Court deferred to OCI’s opposition to limited discovery,

and set the schedule for briefing and hearing the OCI's motion to confirm the Plan according to the schedule requested by the OCI, as set forth in the scheduling order entered October 20, 2010;

4. On October 21, 2010, in accordance with the briefing schedule set by the Court at the request of OCI, OCI filed further documents in support of its motion to confirm the Plan, but these materials did not include a liquidation value analysis or an amendment to the Plan to include a liquidation value opt-out option for policyholders;

5. OCI has amended the Plan and Disclosure statement multiple times since they were first filed, including amendments filed at the close of business on Friday, November 12, 2010, further reducing or effectively eliminating the policyholders' time allotted to review, evaluate, and object to the Plan prior to the commencement of the confirmation hearing on Monday, November 15, 2010;

7. OCI has refused to provide the factual documentation necessary for the policyholders to perform their own liquidation value analysis;

8. The Plan does not contain an opt-out provision for policyholders who do not wish to participate in the rehabilitation, but would be willing to accept the liquidation value of their policies;

9. Ambac's parent company, Ambac Financial Group, filed for bankruptcy on November 8, 2010 (the day objections to the Plan were due), putting the safety of the Ambac General Account assets (the sole source of payment of claims by Segregated Account policyholders) into jeopardy and threatening the long-term viability of the Plan;

10. The Segregated Account has no assets and was formed solely to sequester some, but not all, of Ambac's liabilities in order to effectuate an orderly run-off of those liabilities by,

among other things, granting Ambac significant leverage in commutation settlement negotiations with Segregated Account policyholders;

11. The settlement and commutation process created by the Commissioner is skewed in Ambac's favor, as OCI will only approve settlements that are more favorable than Ambac's reserves and projected loss estimates, which reserves and lost estimates OCI witnesses testified were too low;

12. The Plan includes assignment and control right provisions that will operate to confiscate policyholders' trust collateral in amounts that exceed what will be paid in cash to policyholders under the Plan, thereby discouraging the filing of claims or encouraging Ambac to exercise its control rights in order to disadvantage policyholders and capitalize on the new rights afforded to Ambac under the Plan;

13. The Surplus Notes under the Plan effectively compel Segregated Account policyholders to make a high-risk loan of funds to Ambac for the benefit of the policyholders of the General Account;

14. RMBS, LVM Bondholders, Freddie Mac, Wells Fargo Bank, N. A., Access to Loans for Learning Student Loan Corporation, Lloyds Bank, Plc., and Depfa Bank, plc have all appealed issues arising from the creation and rehabilitation of the Segregated Account;

15. Therefore, the legality of the creation and rehabilitation of the Segregated Account, as well as transfer of certain policies to the Segregated Account are issues currently pending before the Court of Appeals;

16. The underlying appellate record has been transmitted in at least some, if not all, of these appeals;

17. Therefore, pursuant to Wisconsin Statute § 808.075, after the record was transmitted to the Court of Appeals, this Court was divested of jurisdiction over issues directly related to the subject matter of the appeals referenced above. This Court only retains power to act in the circumstances permitted by statute, which do not include consideration of the Plan, which is related to and dependent on the legality of the Segregated Account.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The OCI's motion to confirm the Plan is denied.
2. Any subsequent ruling on the confirmation of the Plan will be stayed until all appeals that relate to the creation and legality of the Segregated Account have been resolved by final order of the Court of Appeals.

Dated: _____

BY THE COURT

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