

COURT OF APPEALS OF WISCONSIN
DISTRICT IV
Appeal No. 2010AP2835

In the Matter of the Rehabilitation of:
Segregated Account of Ambac Assurance Corporation:

Sean Dilweg and Office of the Commissioner of Insurance,
Plaintiffs-Respondents,
Ambac Assurance,
Interested Party-Respondent,

v.

Wells Fargo Bank/Trustee of Bondholders, Bank of New York
Mellon, Deutsche Bank National Trust Company, Federal
Home Loan Mortgage Corporation, Aurelis Capital
Management LP, Fir Tree Inc., King Street Capital Master
Fund, Ltd., King Street Capital, L.P., Monarch Alternative
Capital LP, Stonehill Capital Management LLC, Eaton Vance
Management, Nuveen Asset Management, Restoration Capital
Management LLC and Stone Lion Capital Partners LP,
Defendants,

Depfa Bank, PLC,
Proposed-Intervenor-Appellant,

One State Street LLC, Access To Loans for Learning Student
Loan Corporation, and Lloyds TSB Bank PLC,
Proposed-Intervenors-Co-Appellants.

Dane Court Circuit Court Case No. 2010-CV-1576
The Honorable William D. Johnston,
Lafayette County Circuit Court, Presiding by Judicial Assignment

DEPFA BANK PLC'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
ITS CONSOLIDATED OPPOSITION TO THE MOTIONS TO DISMISS FILED
BY THE OFFICE OF THE INSURANCE COMMISSIONER AND AMBAC
ASSURANCE CORPORATION

Pursuant to Wis. Stat. § 902.01(2)(b), Depfa Bank, PLC (“Depfa”) hereby respectfully requests this Court take judicial notice of the following documents¹ arising in the proceedings of the circuit court for Lafayette County, in the case entitled *In the Matter of the Rehabilitation of: Segregated Account of Ambac Assurance Corporation* (Case No. 10CV1576) (“Receivership Proceedings”), which have occurred after the institution of the instant appeal:

- Excerpts of the Plan Confirmation Hearing Transcripts for November 15, 16, 18, 19, and 30, 2010;
- Amendment No. 2 to the Plan Disclosure Statement, filed with the circuit court on November 12, 2010.

Depfa also requests this Court take judicial notice of the following documents arising from proceedings pending before this Court in Consolidated Appeal No. 2010-AP-1291 (“Appellate Proceedings”):

- Motion to Dismiss the RMBS Note Holders’ Improper Motion for Injunction Pending Appeal, filed by the Office of the Insurance Commissioner (“OCI”) on June 1, 2010;
- Motion to Dismiss RMBS Movants’ Purported Appeal of Right of Trial Court’s Non-Final Denial of Temporary Injunctive Relief, filed by the OCI on June 10, 2010;

¹ All of the documents referenced in this request are available in Depfa’s appendix, filed concurrently with this Motion and Depfa’s Consolidated Opposition to the Motions to Dismiss.

- Ambac Assurance Corporation's ("Ambac") Motion to Dismiss RMBS Investors' Purported Appeal of Right of the Circuit Court's Non-Final Denial of Temporary Injunctive Relief, filed June 11, 2010;
- Court of Appeals Order Denying Lloyd's Petition for Leave to Appeal and Motion to Stay Plan Confirmation Hearings, dated November 12, 2010.

Judicial notice of these documents is appropriate because they are official records arising from the Receivership Proceedings and Appellate Proceedings, are not reasonably subject to dispute, and are material to the Court's ultimate determination. *See* Wis. Stat. § 902.01(2)(b); *see also* *Sisson v. Hansen Storage Co.*, 313 Wis. 2d 411, 424, 756 N.W.2d 667 (Wis. App. 2008) (implicitly indicating that the fact to be judicially noticed should be "material").

DISCUSSION

Wis. Stat. § 902.01 provides that a court must grant judicial notice when (1) the requested fact is "capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned"; and (2) an affirmative and supported request for such notice is made. Wis. Stat. § 902.01(2)(b), (4). The Excerpts of the Plan Confirmation Hearing Transcripts and Amendment No. 2 to the Plan Disclosure Statement are both part of the official record established in the circuit court and would be part of this appellate

record, but for their occurring after Depfa's notice of appeal. Therefore, Depfa asserts that these documents are "capable of ready and accurate determination" from "sources whose accuracy cannot reasonably be questioned." See Wis. Stat. § 902.01(2)(b); see also *In re Termination of Parental Rights to Alexander V.*, 2004 WI 47, ¶ 46, 271 Wis. 2d 1, 678 N.W.2d 856 (judicial notice of circuit court order); *Venisek v. Draski*, 35 Wis. 2d 38, 46, 150 N.W.2d 347 (Wis. 1967) (judicial notice of court proceedings and determinations). Likewise, the appellate documents are official records arising out of the Appellate Proceedings and are therefore not reasonably subject to dispute. *Id.*

Moreover, judicial notice of the requested documents is necessary because these documents are directly relevant, and therefore material, to Depfa's Consolidated Opposition to the Motions to Dismiss and meaningfully expand the record for this Court's ultimate determination of those Motions. See *Sisson*, 313 Wis. 2d 411 at 424 (re materiality). Specifically, they contain information regarding the creation of the Segregated Account, the circuit court's imminent order confirming the Plan, the hardship suffered by Depfa because of the denial of its intervention request, the circuit court's truncated Plan approval schedule, OCI's and Ambac's prior unsuccessful attempts to dismiss similar appeals, and this Court's awareness of continuing participation of appellants in the plan confirmation process.

CONCLUSION

Therefore, because Depfa's request for judicial notice complies with Wis. Stat. § 902.01 and the requested documents would materially expand the record for the determination on the Motions, Depfa respectfully requests that this Court grant its judicial notice request.

Dated: December 10, 2010

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