

December 23, 2010

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CLIENT/MATTER NUMBER  
092281-0101

**HAND DELIVERED**

A. John Voelker, Acting Clerk  
Wisconsin Court of Appeals  
110 East Main Street, Suite 215  
Madison, Wisconsin 53703

Re: *In the Matter of the Rehabilitation of the Segregated Account  
of Ambac Assurance Corporation; Appeal Nos. 2010-AP-1291  
and 2010-AP-2022*

Dear Mr. Voelker:

Enclosed for filing are the original and four copies of OCI's Objection to RMBS Appellants' Motion to File Oversized Reply.

By copy of this letter, counsel for all parties are being served with OCI's Objection.

Very truly yours,

FOLEY & LARDNER LLP

  
Michael B. Van Sicklen

Enclosure

cc: Honorable William D. Johnston (with enclosure *via U.S. mail*)  
Counsel of Record (with enclosure *via email*)

COURT OF APPEALS OF WISCONSIN  
DISTRICT IV  
Appeal No. 2010-AP-1291 and Appeal No. 2010-AP-2022

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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 Corporation,  
Interested Party-Respondent,

v.

Wells Fargo Bank/Trustee of Bondholders, Bank of New York  
Mellon and Deutsche Bank National Trust Company,  
Defendants,

Federal Home Loan Mortgage Corporation,  
Defendant-Petitioner-Co-Appellant,

Aurelius Capital Management LP, Fir Tree Inc., King Street  
Capital Master Fund, Ltd., King Street Capital, L.P.,  
Monarch Alternative Capital LP and Stonehill Capital  
Management LLC,

Defendants-Petitioners-Appellants,  
Eaton Vance Management, Nuveen Asset Management,  
Restoration Capital Management LLC and Stone Lion Capital  
Partners LP,

Defendants-Co-Appellants-Petitioners.

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

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**OCI'S OBJECTION TO RMBS APPELLANTS'  
MOTION TO FILE OVERSIZED REPLY BRIEF**

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## **INTRODUCTION**

For the reasons detailed below, Commissioner Sean Dilweg and the Office of The Commissioner of Insurance (collectively “OCI”) oppose the Motion of the RMBS Appellants to file an oversized reply brief.

## **BACKGROUND INFORMATION**

On September 20, 2010, OCI and Ambac filed a motion to consolidate Appeal Nos. 2010-AP-1291 and 2010-AP-22 for joint disposition and briefing on the ground that consolidation and joint briefing would eliminate duplication of effort and promote judicial efficiency. As noted in OCI/Ambac’s motion (which was served on all parties including the RMBS Appellants), the appeals arose out of the same circuit court proceedings, had a substantial identity of parties and issues and, absent consolidation, OCI and Ambac would be entitled to file up to three briefs of up to 11,000 words each between the two appeals. As part of their Motion to Consolidate, OCI and Ambac requested that each of them be granted permission to file one brief with a maximum length of 16,000 words, which essentially cut the total length in half.

On October 1, 2010, LVM Bondholders, who are appellants in both appeals, filed a response, which essentially agreed to the motion for consolidation and joint briefing with a few minor changes. LVM’s response indicated that its proposal was based on discussions with all other appellants in this matter, including the RMBS Appellants. The Conclusion of the LVM’s Response indicated that it was made on behalf of the LVM Bondholders and the RMBS Appellants. Among other things, the Response agreed to consolidation, required OCI and Ambac to each file a single brief of no more

than 16,000 words and proposed that LVM Bondholders file either one or two reply briefs, but with a total word limit of 4,800 words (which is less than the 6,000 words they would ordinarily be entitled to if they filed two separate reply briefs). The Response proposed no modification of the RMBS Appellants' right to file one reply brief of no more than 3,000 words. The Response was filed with this Court as a joint proposal supported by all the parties on appeal. On October 8, 2010, this Court issued an order consistent with the parties' request, consolidating the appeals and granting the request to modify the maximum word length of the briefs to be filed by OCI, Ambac and LVM Bondholders.

Now, over two months later, the RMBS Appellants want to revisit the prior joint proposal and the Order to which they had never expressed any disagreement, moving that the length of their reply brief be doubled from a maximum of 3,000 words to a maximum of 6,000 words.

**ARGUMENT:  
NEITHER EQUITY NOR ECONOMY WARRANT INCREASING THE LENGTH  
OF RMBS APPELLANTS' REPLY BRIEF.**

The RMBS Appellants ignore the fact that the 16,000 page limit granted to OCI and Ambac is substantially less than the total word limit that they would have been entitled to had these appeals not been consolidated. Between the two appeals, there were five appellants which between them filed three long opening briefs.<sup>1</sup> Rather than

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<sup>1</sup> Two of the five appellants—Freddie Mac and Wells Fargo—chose to adopt opening briefs of other co-appellants rather than file their own. Freddie Mac, which initially chose to adopt the position set forth in the opening brief of the RMBS Appellants, has recently filed a *(footnote continued on following page)*

expanding the length of the briefs that could be filed by OCI and Ambac, this Court's stipulated order restricted them to a maximum of 16,000 words each, roughly half the total length they otherwise could have filed. OCI and Ambac gave up the right to file more lengthy arguments as part of the joint proposal that this matter be consolidated to promote economy to both the parties and the Court.<sup>2</sup>

The RMBS Appellants are the appellant in only one of the two appeals. Their belated argument that they should be allowed to double the length of their reply brief when the other parties in this case already have reduced the length of their briefs flies in the face of logic, equity and economy.

In addition, the RMBS Appellants should be estopped from increasing the length of their reply brief. The RMBS Appellants failed to respond or dispute in any way, either the Motion to Consolidate and Modify Briefing filed by OCI and Ambac or the Response to that motion filed by LVM Bondholders. In addition, the RMBS Appellants failed to respond or object in any way to this Court's order of October 8, 2010, granting consolidation and modifying the briefing page limits. The protestation of the RMBS Appellants over two months later that a 3,000 word reply brief is insufficient

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full-length (2,764 word reply brief) regarding the same issues as to which its co-appellants, the RMBS Appellants, now seek to file a 6,000 word reply brief.

<sup>2</sup> This is also true of LVM which had the right to file reply briefs of 3,000 words maximum in each of the appeals, but agreed to a reduced total of 4,800 words between those two appeals.

to respond to a 16,000 word respondents' brief is belated and ignores the fact that they are a party to only one of the two consolidated appeals.

The RMBS Appellants' request also ignores the fact that the response filed by the LVM Bondholders on October 1, 2010, specifically expressly spoke for all appellants, including the RMBS Appellants.<sup>3</sup> In addition, the position currently taken by the RMBS Appellants ignores the statement at page 6 of the LVM Bondholders' Response that the modification of the word counts for OCI, Ambac and LVM “. . . would not effect the permissible length of the reply briefs to be filed by the RMBS Appellants and Freddie Mac in Appeal No. 2010-AP-1291, which would continue to be governed by the Wisconsin Appellate Rules.”

Finally, the suggestion of the RMBS Appellants that it would be unfair to deny them permission to file a longer reply brief ignores the unfairness to Ambac and OCI which would result if an enlargement is granted. This is a textbook case of estoppel. The RMBS Appellants should not now be able to now seek permission to file a significantly more lengthy reply brief where their acquiescence to the OCI/Ambac motion and the LVM response led this Court to order that OCI and Ambac file briefs with word limits significantly less than could have been filed given the multiple appellants and multiple appeals in this case.

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<sup>3</sup> The conclusion of that response begins as follows “for the reasons set forth above, the LVM Bondholders, on behalf of themselves as well as the RMBS Appellants and Freddie Mac.”

## CONCLUSION

WHEREFORE, OCI requests that the Court deny the Motion of the RMBS Appellants to file an oversized reply brief.

Dated this 23rd day of December, 2010.

FOLEY & LARDNER LLP



Michael B. Van Sicklen, SBN 1017827

Matthew R. Lynch, SBN 1066370

*Attorneys for Wisconsin Office of the Commissioner of Insurance and Sean Dilweg, Commissioner of Insurance of the State of Wisconsin, as Rehabilitator of the Segregated Account of Ambac Assurance Corporation*

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