

COURT OF APPEALS OF WISCONSIN  
DISTRICT IV

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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,

Appeal Nos. 2010AP001291,  
2010AP002022

Plaintiffs-Respondents,

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AMBAC ASSURANCE,

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 CASE NO. 2010-CV-1576**  
**THE HONORABLE WILLIAM D. JOHNSTON PRESIDING**  
**LAFAYETTE COUNTY CIRCUIT COURT, PRESIDING BY JUDICIAL**  
**ASSIGNMENT**

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**RMBS POLICYHOLDERS' REPLY IN SUPPORT OF**  
**THEIR MOTION TO FILE AN OVERSIZED BRIEF**

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The RMBS Policyholders, by their attorneys, submit this reply in support of their request to file a 6,000 word reply brief in response to the two briefs – totaling nearly 32,000 words – filed by the respondents, OCI and AAC.

In this reply, we address OCI's two arguments: (1) that equity does not support filing a 6,000 word reply brief in response to the briefs totaling nearly 32,000 words submitted by respondents; and (2) that the RMBS policyholders are estopped from seeking this relief because they did not raise the issue earlier.

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Neither argument has merit.

**1. An Oversized Brief Is Warranted In The Circumstances Of This Appeal.**

The Court has before it two consolidated appeals. The RMBS Policyholders are one of three appellants in the first set of appeals from the Circuit Court's May 27 Order ("First Appeal"). They are not parties to the separate appeal from the July 16 Order filed by the LVM Bondholders and Wells Fargo ("Second Appeal"). On September 20, 2010, OCI and AAC sought leave to consolidate the appeals so that they might file single briefs addressing the issues raised in each appeal. The RMBS Policyholders did not object.

As permitted by the Court, OCI and AAC each filed response briefs totaling nearly 32,000 words on November 18, 2010. The bulk of those briefs addressed the issues raised in the First Appeal. For example, of the 51 pages of argument in OCI's response brief, 45 addressed the issues raised in the First Appeal.

After having reviewed those briefs and drafted a reply, we concluded that a 6,000 word brief is necessary to respond to the multiple arguments raised by OCI in its 15,833 word brief and by AAC in its 15,741 word brief. We have edited our brief to make it as concise as possible. Nonetheless, in order to represent our clients and present a reply to the voluminous briefs filed by OCI and AAC, we believe a 6,000 word brief is appropriate.<sup>1</sup>

In their response, OCI points out that two other appellants – the LVM Bondholders and Freddie Mac – were satisfied with 4,800 word and 3,000 word reply briefs, respectively. Those comparisons are not relevant. Those parties did not present all of the issues raised in the RMBS Policyholders’ brief. The LVM Bondholders used 4,678 words on only two issues: whether the Circuit Court erred in holding that the allocation of their LVM bond policy to the Segregated Account was lawful and whether the Circuit Court erred in approving the CDS Settlement. Freddie Mac submitted a 2,764 word brief on the CDS Settlement alone.

## **2. There Is No Estoppel.**

OCI also claims that the RMBS Policyholders are estopped from asking for leave to file an oversized brief because they did not do so when OCI and AAC sought to consolidate the appeals in September. At that time, requesting an oversized brief would have been premature. OCI and AAC had not filed their response briefs. The RMBS Policyholders had no idea whether an oversized brief

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<sup>1</sup> The appellants’ opening briefs – all of them -- totaled 26,484 words. The responses of OCI and AAC were substantially longer: 31,574 words. In light of this history, a 6,000 word reply brief is not excessive.

would be necessary. They did not anticipate that OCI would devote 45 of its 51 page argument to the First Appeal, and only 6 pages to the Second Appeal, or that AAC would devote 51 of its 61 page argument section to the First Appeal and only 10 pages to the Second Appeal. In total, OCI and AAC, whose interests are aligned, devoted 96 pages of argument to the First Appeal and therefore, had a much broader platform for their responses than they would under the Wisconsin rules.

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The RMBS Policyholders are not estopped for not troubling the Court in September with an issue relating to the size of a brief to be filed in December, particularly when the briefs to which they would be responding had not been submitted. OCI submits no authority, and we are aware of none, for its position that failing to anticipate that AAC and OCI would concentrate their arguments on the issues raised in the First Appeal, necessitating an oversized brief, constitutes an estoppel.

WHEREFORE, the RMBS Policyholders respectfully request to file a brief of not more than 6,000 words in response to the two oversized reply briefs filed by OCI and AAC.

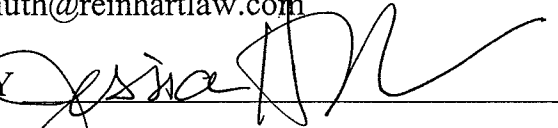
Dated this 27th day of December, 2010.

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