



FOLEY & LARDNER LLP

ATTORNEYS AT LAW

VEREX PLAZA
150 EAST GILMAN STREET
MADISON, WI 53703-1481
POST OFFICE BOX 1497
MADISON, WI 53701-1497
608.257.5035 TEL
608.258.4258 FAX
foley.com

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HAND DELIVERED

WRITER'S DIRECT LINE
608.258.4206
mvansicklen@foley.com EMAIL

CLIENT/MATTER NUMBER
092281-0101

David R. Schanker, Clerk
Wisconsin Court of Appeals
110 East Main Street, Suite 215
Madison, Wisconsin 53703

Re: *In the Matter of the Rehabilitation of Segregated Account of Ambac Assurance Corporation*; Dane County Case No. 2010-CV-1576; Court of Appeals Case No. 2010-AP-1291-LV

Dear Mr. Schanker:

Enclosed for filing on behalf of the 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, are the original and four copies of the following document:

- Amended Motion to Dismiss the RMBS Note Holders' Purported Appeal of Right of Trial Court's Non-Final Denial of Temporary Injunctive Relief

By copy of this letter, counsel of record are being served with this document by email and first-class mail.

Thank you for your attention to this matter.

Very truly yours,

FOLEY & LARDNER LLP

Michael B. Van Sicklen

Enclosures

cc: The Honorable William D. Johnston (with enclosures, via first-class mail)
Bryan K. Nowicki (with enclosures, via email and first-class mail)
David M. Greenwald (with enclosures, via email and first-class mail)

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June 11, 2010

Page 2

Patrick J. Trostle (with enclosures, via email and first-class mail)
Daniel W. Stolper (with enclosures, via email and first-class mail)
William G. Primps (with enclosures, via email and first-class mail)
Stephen L. Morgan/Brittany S. Ogden (with enclosures, via email and first-class mail)
Steven T. Whitmer/Kevin A. Wisniewski (with enclosures, via email and first-class mail)
Noreen J. Parrett (with enclosures, via email and first-class mail)
Philip Bentley (with enclosures, via email and first-class mail)
Paul E. Benson (with enclosures, via email and first-class mail)
John M. Rosenthal (with enclosures, via email and first-class mail)
Thomas Armstrong (with enclosures, via email and first-class mail)
Robert A. Zeavin (with enclosures, via email and first-class mail)
Marcia D. Alazraki (with enclosures, via email and first-class mail)
James A. Friedman (with enclosures, via email and first-class mail)
Donald S. Bernstein (with enclosures, via email and first-class mail)
Laura E. Callan (with enclosures, via email and first-class mail)
Dale C. Christensen, Jr. (with enclosures, via email and first-class mail)
William J. Toman (with enclosures, via email and first-class mail)

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

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

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

**AMENDED MOTION TO DISMISS THE RMBS NOTE HOLDERS'
PURPORTED APPEAL OF RIGHT OF TRIAL COURT'S NON-
FINAL DENIAL OF TEMPORARY INJUNCTIVE RELIEF**

FOLEY & LARDNER LLP

Michael B. Van Sicklen, SBN 1017827
Matthew R. Lynch, SBN 1066370

*Attorneys for the 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*

Foley & Lardner LLP
150 East Gilman Street
Post Office Box 1497
Madison, Wisconsin 53701
Telephone: (608) 257-5035
Facsimile: (608) 258-4258

The Wisconsin Office of the Commissioner of Insurance, as regulator of Ambac Assurance Corporation (“Ambac”), and the Commissioner of Insurance of the State of Wisconsin, as the court-appointed Rehabilitator (collectively “OCI”) hereby amend their previously filed Motion to Dismiss that portion of the Appeal filed by the RMBS note holders (hereinafter “Movants”) dated May 28, 2010, that relates to the circuit court’s non-final denial of movants’ motion for temporary injunctive relief. OCI reiterates the grounds set forth in its original motion to dismiss, and additionally alleges a further basis for dismissal on the ground that the relief sought by Movants is no longer available, thereby rendering this matter moot. This motion is based upon the following:

1. This appeal stems from an unsuccessful effort by Movants to enjoin a proposed multi-billion dollar settlement between Ambac and fourteen bank policyholders of Ambac. The motion for injunctive relief was denied by the circuit court in an order dated May 27, 2010.
2. Movants immediately attempted to appeal from that order, and OCI responded by filing its initial motion to dismiss with this Court on the ground that the portion of Movants’ appeal relating to the denial of the motion for injunctive relief is an attempted appeal from a non-final order.

3. At the same time that they appealed from the circuit court's non-final denial of their motion for injunctive relief, Movants requested this court to grant injunctive relief pending appeal. That motion for injunctive relief was denied by this Court on June 2, 2010.

4. The transaction which Movants unsuccessfully sought to block in the Circuit Court and in this court by motions for injunctive relief has now been consummated. As set forth in the attached Rehabilitator's Report Regarding Closing of the Bank Group Settlement recently filed with the Dane County Circuit Court along with the accompanying Affidavit of Roger A. Peterson ("Peterson Aff."), the settlement was fully closed and consummated on June 7, 2010. As noted in the Peterson Aff. (at ¶ 5):

The motions by the LVM Bondholder Group and the RMBS Note Holders to temporarily enjoin the Bank Group Settlement are moot because that Settlement has been fully closed and consummated. There is nothing left to enjoin with respect to the Bank Group Settlement transaction.

5. "An issue is moot when its resolution will have no practical effect on the underlying controversy." *PRN Associates LLC v. Department of Administration*, 709 WI 53, ¶ 25, 317 Wis. 2d 656, 766 N.W.2d 559. To determine whether the resolution sought can have any practical effect on the existing controversy, the reviewing court does not address the factual and legal issues underlying the controversy; instead, it

considers whether any of the relief sought can now be granted. *Id.* ¶¶ 30-31.

6. *PRN Associates* addressed a situation similar to the case at hand. PRN was an unsuccessful bidder for a State of Wisconsin building contract. While administrative review proceedings addressing PRN’s challenge to the rejection of its bid were pending, the State signed a building contract with another contractor, who ultimately performed the job that PRN had bid. *Id.* ¶ 18. The circuit court dismissed a petition for judicial review challenging the Department of Administration’s action as moot, concluding, *inter alia*, that injunctive relief was unavailable because the contract had already been let to another bidder and performed. *Id.* ¶ 22. The Court of Appeals affirmed, stating “we cannot unravel a contract when it has already been fully performed.” *Id.* ¶ 40.

7. One distinction between this case and *PRN Associates* is that PRN, unlike the Movants, did not seek a temporary injunction to maintain the *status quo* pending its legal challenge. *Id.* ¶ 42. The fact that Movants in this case sought, and failed, to obtain an injunction, both in the circuit court and this Court, does not change the bottom line, however: the relief that Movants sought—an order blocking OCI from approving the multi-billion dollar settlement between Ambac and fourteen bank policyholders of Ambac—is no longer available.

8. The transaction which Movants sought to block was fully closed and consummated on June 7, 2010. (Peterson Aff. ¶¶ 2-3.) There is nothing left to enjoin with respect to that transaction. (*Id.* ¶ 3.)

9. Because the relief sought by Movants is no longer available to them, their claim for relief is, by definition, moot.

10. Questions regarding whether the bank policyholders would have been entitled to policyholder status had the settlement not been consummated are also moot. As the circuit court noted, the settlement was “a compromise of many potential litigation considerations and other factors.” (OCI App. 8.) The settlement was entered to avoid the delays and risks involved in such litigation (*id.*), and the consummation of the settlement makes it unnecessary to engage in the moot exercise of engaging in the very litigation that were avoided through settlement.

WHEREFORE, OCI requests that this Court dismiss the portion of Movants’ appeal relating to the denial of their Motion for Injunctive Relief.

Dated this 11th day of June, 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*

Foley & Lardner LLP
150 East Gilman Street
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Madison, Wisconsin 53701
Telephone: (608) 257-5035
Facsimile: (608) 258-4258