

July 8, 2010

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**HAND DELIVERED**

Carlo Esqueda, Clerk of Circuit Court  
Attn: Jody Baux, Roving Clerk  
Dane County Circuit Court  
215 South Hamilton Street  
Madison, Wisconsin 53703

Re: *In the Matter of the Rehabilitation of Segregated Account of  
Ambac Assurance Corporation, Case No. 10CV1576  
(Dane County Circuit Court)*

Dear Mr. Esqueda:

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 following documents:

- Rehabilitator's Brief in Opposition to the Emergency Motion to Postpone the July 9, 2010 Hearing;
- Affidavit of Matthew R. Lynch; and
- Revised Proposed Order Denying Motions of Wells Fargo Bank and Certain LVM Bondholders.

The revised proposed order is submitted in response to the concerns of Attorneys Kern, Bensky, and Goodchild that the initial proposed order, if entered, might have had what they felt was an unfairly prejudicial effect on their clients' arguments. (Dkt. 278, 279, 282.) The revised proposed order attempts to address their concerns. The Rehabilitator does not mean to be presumptuous in proposing a form of order and of course recognizes that the Court is free to rule and enter an order on the pending motions on whatever grounds and in whatever form it deems appropriate. The Rehabilitator is submitting this revised proposed order for the Court's consideration and convenience and to address the other parties' concerns.

By copy of this letter, counsel of record are being served with these documents by email. A copy of these documents is being faxed and mailed to Judge Johnston.



FOLEY & LARDNER LLP

Carlo Esqueda, Clerk  
Dane County Circuit Court  
July 8, 2010  
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Please contact me if you have any questions. Thank you.

Very truly yours,

FOLEY & LARDNER LLP

A handwritten signature in black ink, appearing to read 'Michael B. Van Sicklen', written over a horizontal line.

Michael B. Van Sicklen

Enclosures

cc: Honorable William D. Johnston (with enclosures, via facsimile)  
Counsel of Record (with enclosures, by email)

In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

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**REHABILITATOR'S BRIEF IN OPPOSITION TO THE EMERGENCY MOTION  
TO POSTPONE THE JULY 9, 2010 HEARING**

**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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July 8, 2010

FOLEY & LARDNER LLP

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*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*

The Wisconsin Office of the Commissioner of Insurance and the Commissioner, as the court-appointed Rehabilitator (collectively the “Rehabilitator”), submit this brief in opposition to the Emergency Motion filed on the afternoon of Friday, July 2, 2010 by Knowledgeworks Foundation and the Treasurer of the State of Ohio on behalf of the State of Ohio (collectively, the “Knowledgeworks Movants”), joined by the Access to Loans for Learning Corporation (“ALL”) and Lloyds TSB Bank plc (“Lloyds”) (collectively the “ALL Movants”), seeking postponement of the July 9 hearing regarding the motions of Wells Fargo Bank, N.A. (“Wells Fargo”) and certain funds holding Las Vegas Monorail bonds (the “LVM Funds”) insured by the Segregated Account of Ambac Assurance Corporation (the “Segregated Account”). That hearing will address those arguments that Wells Fargo and the LVM Funds have not withdrawn—namely, their arguments that the establishment of the Segregated Account was unconstitutional and contrary to Wisconsin law insofar as it allegedly discriminates among policyholders of the same purported “class” or “type” of insurance, and that Wells Fargo and the LVM Funds have a right to intervene and take discovery in this proceeding.

Any supposed “emergency” is entirely of the Knowledgeworks and ALL Movants’ making. The affiant for the Knowledgeworks Movants, Donald J. Kohne, was served with notice of the rehabilitation and the injunction via first-class mail on March 26, two days after commencement of the rehabilitation proceeding. (*See* Joint Affidavit of Service (dkt. 30), at 98.) The affiant for ALL, Martha Peterson, was sent the same notice on March 25 (*id.* at 4), while Lloyds was sent three copies at two different addresses by overnight mail on March 30 (*id.* at 140-41). The mailed notices included a cover letter informing the recipients of the rehabilitation of the Segregated Account, enclosing a copy of the Court-approved notice of the rehabilitation proceeding (dkt. 3, 10) and a copy of the Order for Temporary Injunctive Relief

(dkt. 9), and instructing the recipients to visit the Web site for these proceedings, <http://ambacpolicyholders.com>, for further information. (Affidavit of Matthew R. Lynch (“Lynch Aff.”) ¶ 2.)

Wells Fargo filed the motion to be decided at the July 9 hearing on April 5 (dkt. 17), and the upcoming hearing has been on the Court’s calendar since April 16 (dkt. 27). That information has been publicly available on the Court’s Web site (CCAP) and the [ambacpolicyholders.com](http://ambacpolicyholders.com) site since that time. (Lynch Aff. ¶ 3.) The LVM Funds’ addition of another statutory challenge to the Segregated Account to be decided on July 9 (dkt. 166-67), and Wells Fargo’s withdrawal of certain portions of its motion that were previously decided by the Court’s May 27 Findings of Fact and Conclusions of Law (dkt. 200), were filed on June 9 and 20, respectively, and similarly available since those dates. (Lynch Aff. ¶ 3.)

Rather than taking a position on those issues when they were raised, whether in April by Wells Fargo or by other parties prior to the May 25 hearing regarding related challenges to the Segregated Account, the Knowledgeworks and ALL Movants chose to stay silent. Though apparently secretly harboring the same objections to the Segregated Account that other parties previously made, the Knowledgeworks and ALL Movants did not speak up regarding any of those challenges until June 22—the very last day for filing objections *to the injunction* issued by this Court,<sup>1</sup> and almost three months after obtaining notice of this proceeding. Then, on the Friday afternoon before the 4th of July holiday weekend and one week before a hearing that has

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<sup>1</sup> The Knowledgeworks and ALL Movants’ purported motions to dissolve or modify the Injunction Order do not independently challenge any specific provisions of the injunction, as contemplated by the 90-day deadline the Court imposed for filing objections. Instead, their objections raise generalized challenges to the establishment of the Segregated Account (dkt. 240, at 3; dkt. 234 at 9-20), and take issue with specific provisions of the injunction only insofar as those provisions might somehow affect their ability to challenge the validity of the Segregated Account (dkt. 240 at 16-19).

been scheduled since April, the Knowledgeworks Movants filed an emergency motion in which they claim that the long-awaited July 9 hearing “might” have a prejudicial effect on their motions and somehow deny them their “rights to due process to be heard on the important issues raised in those motions.” (Knowledgeworks Movants’ Emergency Mot., dkt. 279, ¶ 9.) The ALL Movants filed a “me too” emergency motion late the same day, without submitting arguments of their own. (Dkt. 278.)

As noted above, the Knowledgeworks and ALL Movants have had notice of the hearing for more than two months. At no time did they seek, nor were they denied, an opportunity to be heard on the issues to be decided at that hearing. Indeed, to this day there is nothing to prevent them from attending the hearing and arguing for or against the position of Wells Fargo and the LVM Funds. If the arguments of other parties on other motions “strike at the very heart” of the Knowledgeworks and ALL Movants’ positions, as they contend (Knowledgeworks Movants’ Emergency Mot. ¶ 7), then it is their responsibility to come forward and defend their positions—not the responsibility of the Rehabilitator, this Court, or other movants to obtain the Knowledgeworks and ALL Movants’ permission before deciding any issues in this expansive proceeding.

This is particularly valid here, because neither the Knowledgeworks Movants nor the ALL Movants explain what arguments or authority they would contribute on these issues that was not already brought to the Court’s attention by other movants. In their motion challenging the Segregated Account, the Knowledgeworks Movants assert that “the Creation of the Segregated Account and the Transfer of Policies to It Are Contrary to Law For Reasons Stated By Other Interested Parties,” which include the reasons described in the motions of Wells Fargo and the LVM Funds, as well as the already decided motion of certain RMBS note holders. (Dkt.

240 at 14-16.) The ALL Movants' challenges to the Segregated Account mirror (in some cases word-for-word) the arguments regarding the lawfulness of the Segregated Account previously raised by Wells Fargo and the RMBS note holders and rejected by this Court. (*See generally* dkt. 234.) In short, there is no reason for delay when neither the Knowledgeworks Movants nor the ALL Movants have demonstrated that they have anything to add to the arguments presently before the Court for consideration at the July 9 hearing.

**CONCLUSION**

For the foregoing reasons, the Emergency Motion should be denied and the July 9, 2010 hearing should go forward as scheduled.

Dated this 8th day of July, 2010.

FOLEY & LARDNER LLP

By:



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

In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

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**AFFIDAVIT OF MATTHEW R. LYNCH**

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STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF DANE )

Matthew R. Lynch, being first duly sworn on oath deposes and states as follows:

1. I am an attorney with Foley & Lardner LLP, and I am one of the Foley attorneys representing the Rehabilitator in the above-captioned proceeding. Unless otherwise indicated, I have personal knowledge of the matters described herein.


2. As indicated in the Affidavit of Service on file with this Court (dkt. 30), the Rehabilitator caused notice to be sent to all entities with a known possible interest in this proceeding following the Court's entry of the Order for Rehabilitation, the Order for Temporary Injunctive Relief, and the Order Approving Form of Notice on March 24, 2010. The notices included a copy of the Order for Temporary Injunctive Relief, a copy of the Court-approved Notice of this proceeding (which indicates in paragraph 3 that all filings are to be served on Michael B. Van Sicklen and me as counsel for the Rehabilitator), and a cover letter signed by me. The cover letters described the ongoing proceeding, referenced the documents enclosed in the notice, and referred recipients to the official Web site for this proceeding, <http://ambacpolicyholders.com> (the "Site"), for further information.

3. At all times since the commencement of this proceeding, the Site has included copies of all substantive Court filings and orders, as well as a schedule for upcoming hearings and the subject of such hearings. Substantive filings are generally posted on the Site within two business days of their service upon counsel for the Rehabilitator, or within two days of their filing if filed by the Rehabilitator.

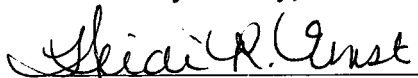
4. According to their affidavits on file with this Court, Donald J. Kohne is a member of Kohne O'Neill LLC, which acts on behalf of Knowledgeworks Foundation in its role as administrator of an Ohio education loan program. (Dkt. 238, ¶ 2.) Martha Peterson is the Chief Financial Officer of Access to Loans for Learning Student Loan Corporation ("ALL"). (Dkt. 233, ¶ 2.)

5. As indicated in the Joint Affidavit of Service on file with this Court, Mr. Kohne was served with notice of the rehabilitation and injunction on March 26, 2010 via first-class mail. Ms. Peterson was served with notice of the rehabilitation and injunction on March 25, 2010 via first-class mail. Lloyds TSB Bank was served with notice of the rehabilitation and injunction on March 30, 2010 via overnight mail. (See dkt. 30.)

DATED this 8th day of July, 2010.

  
Matthew R. Lynch

Subscribed and sworn to before me  
this 8th day of July, 2010.

  
Notary Public, State of Wisconsin.  
My Commission: 9.5.2010

In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

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**ORDER DENYING MOTIONS OF WELLS FARGO BANK AND  
CERTAIN LVM BONDHOLDERS**

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This matter came before the Court on various motions of Wells Fargo Bank, N.A. and certain institutional holders of some Las Vegas Monorail bonds (collectively, “Movants”), challenging the inclusion of the policy or policies insuring the LVM bonds (the “LVM Bond Policy”) in the Segregated Account, seeking to modify the injunction in force in this matter as to the LVM Bond Policy, and seeking to conduct discovery and to intervene as parties. Movants join each other’s motions in the respects detailed in their respective motion papers. Based upon the briefing of the parties, other materials and affidavits on file, oral argument presented, and for other good cause, IT IS HEREBY ORDERED THAT:

1. The Court reaffirms its May 27, 2010 Decision, Findings of Fact and Conclusions of Law in this matter (particularly Findings 19-31 and 36 and Conclusions 2-5 and 8-9), and further holds as follows.

2. The allocation of the LVM Bond Policy to the Segregated Account was lawful, and did not violate any provision of the Constitutions of either Wisconsin or the United States.

3. Movants have not established legal grounds or good cause for being permitted to intervene or conduct discovery in regard to their motions. This denial of

intervention does not preclude these Movants from asking to be heard in this matter at future proceedings pertaining to the Rehabilitator's plan of rehabilitation.

**WHEREFORE, IT IS HEREBY ORDERED** that the above-referenced motions are denied.

Dated: \_\_\_\_\_

BY THE COURT

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