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In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

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**STIPULATION TO SUPPLEMENT THE RECORD**

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The Commissioner of Insurance of the State of Wisconsin, as Rehabilitator of the Segregated Account of Ambac Assurance Corporation (the "Rehabilitator"), Assured Guaranty Corp. and Assured Guaranty Re Ltd. (collectively "the Assured Reinsurers"), by their respective counsel, stipulate and agree as follows:

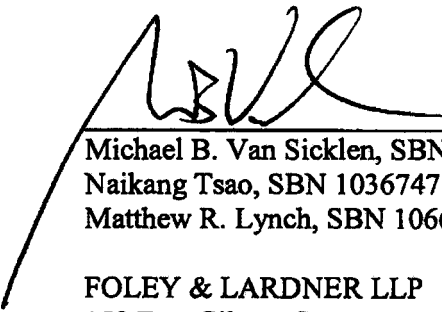
1. The documents attached here as Exhibits 1-5 were all filed with the Court and served on all parties in interest. The Rehabilitator and the Assured Reinsurers join in requesting that the clerk include these documents in the record sent to the court of appeals in connection with the Notice of Appeal filed by the Assured Reinsurers on June 28, 2011.

2. If this Stipulation meets with the Court's approval, the parties request that the Court sign and enter the proposed Order below without further notice or proceeding herein.

3. On July 25, 2011, the Assured Reinsurers filed a Motion of the Assured Reinsurers to Supplement the Record and [Proposed] Order. The relief the Assured Reinsurers sought in their July 25 motion is encompassed by the relief the Rehabilitator

and Assured Reinsurers seek jointly here. If the Court enters the attached Order, the Assured Reinsurers' July 25 motion thus can be disregarded as moot.

Dated this 28<sup>th</sup> day of July, 2011.




---

Michael B. Van Sicklen, SBN 1017827  
Naikang Tsao, SBN 1036747  
Matthew R. Lynch, SBN 1066370

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Post Office Box 1497  
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*Attorneys for Commissioner of Insurance of the  
State of Wisconsin, as Rehabilitator of the  
Segregated Account of Ambac Assurance  
Corporation*

Dated this 28<sup>th</sup> day of July, 2011.



---

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*Of counsel:*

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*Attorneys for Assured Guaranty Re Ltd. and  
Assured Guaranty Corp.*

Note: Assured Guaranty Re Ltd. appears without  
waiving its right to object to personal jurisdiction.

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In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

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**ORDER**

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Based upon the Stipulation to Supplement the Record filed jointly by the Rehabilitator and the Assured Reinsurers, IT IS ORDERED that the record transmitted to the court of appeals in connection with Appeal No. 2011-AP-1486-LV shall include the following documents:

1. Attorney Michael B. Van Sicklen's letter dated April 15, 2011 to Jody Baux, Ambac Clerk, Dane County Circuit Court (1 page).
2. The Rehabilitator's proposed Order Granting Motion to Enforce Injunction Against Assured Guaranty Corp. and Assured Guaranty Re Ltd (6 pages).
3. Attorney Matthew J. Splitek's letter dated May 9, 2011 to Jody Baux, Ambac Clerk, Dane County Circuit Court (2 pages).
4. The Assured Reinsurers' proposed Order Denying Rehabilitator's Motion to Enforce Injunction Against Assured Guaranty Corp. and Assured Guaranty Re Ltd (8 pages).
5. The Assured Reinsurers' proposed Order granting leave to file an overlong brief (1 page).

Copies of these documents are attached as Exhibits 1-5 to the original Stipulation to Supplement the Record on file with the clerk of courts.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

BY THE COURT:

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

# **EX. 1**

**ATTORNEYS AT LAW**

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608.258.4258 FAX  
foley.com

April 15, 2011

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

Jody Baux  
Ambac Clerk, Dane County Circuit Court  
Dane County Courthouse  
215 South Hamilton Street  
Madison, Wisconsin 53703

Re: *In the Matter of the Rehabilitation of Segregated Account of Ambac Assurance Corporation*; Dane County Circuit Court Case No. 10 CV 1576

Dear Ms. Baux:

Enclosed for filing in the above-referenced matter are the following documents:

1. Notice of Motion and Motion to Enforce Injunction Against Assured Guaranty Corp. and Assured Guaranty Re Ltd.;
2. Brief in Support of Motion to Enforce Injunction Against Assured Guaranty Corp. and Assured Guaranty Re Ltd.;
3. Affidavit of Matthew R. Lynch in support of Motion to Enforce Injunction Against Assured Guaranty Corp. and Assured Guaranty Re Ltd.; and
4. Proposed Order Granting Motion to Enforce Injunction Against Assured Guaranty Corp. and Assured Guaranty Re Ltd..

Thank you for your attention to this matter.

Very truly yours,

FOLEY & LARDNER LLP



Michael B. Van Sicklen

Enclosures

cc: Honorable William D. Johnston (with enclosures, via first-class mail)  
All Counsel of Record (with enclosures via email)  
Steven Klugman/Ana L. Frischtak (with enclosures via email)

BOSTON  
BRUSSELS  
CHICAGO  
DETROIT

JACKSONVILLE  
LOS ANGELES  
MADISON  
MIAMI

MILWAUKEE  
NEW YORK  
ORLANDO  
SACRAMENTO

SAN DIEGO  
SAN DIEGO/DEL MAR  
SAN FRANCISCO  
SHANGHAI

SILICON VALLEY  
TALLAHASSEE  
TAMPA  
TOKYO  
WASHINGTON, D.C.

# **EX. 2**

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In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

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**ORDER GRANTING REHABILITATOR'S MOTION TO ENFORCE INJUNCTION  
AGAINST ASSURED GUARANTY CORP. AND ASSURED GUARANTY RE LTD.**

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This matter came before the Court on the Rehabilitator's motion (the "Motion") to enforce this Court's March 24, 2011 Order for Temporary Injunctive Relief (the "Injunction"), as made permanent by Section 10.02 of the Plan of Rehabilitation and paragraph 9 of this Court's January 24, 2011 Order confirming the Plan, against parties-in-interest Assured Guaranty Corp. ("AGC") and Assured Guaranty Re Ltd. ("AGRe") (collectively, "Assured"). Having considered the arguments of the parties and the briefs, affidavits, and other written materials on file in these proceedings, and for good cause shown, the Motion is hereby GRANTED and relief is ordered as set forth below.

In connection with this Motion, the Court hereby makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Assured is a party to two reinsurance agreements (the "Agreements") with Ambac Assurance Corporation ("Ambac"), whereby Assured reinsures exposures related to certain Ambac financial guaranty insurance policies that have been allocated to the Segregated Account of Ambac (the "Segregated Account") and are subject to payment pursuant to the Plan of Rehabilitation.

2. Under the Plan, the Segregated Account makes a portion of claims payments in cash and the remaining portion in surplus notes. The Plan also permits the Rehabilitator to reach settlements with policyholders that are payable in both cash and surplus notes.

3. Under the Agreements, Assured is “liable for its proportionate share of the risk associated with each Policy, including all Losses under the Policies.” “Losses” include “the amount of liability paid or to be paid with respect to claims, losses, [or] liabilities . . . including, with limitation, any settlements or compromises[.]”

4. The Agreements include identical insolvency clauses, which state: “In the event of the insolvency of the Company or of Proceedings . . . against the Company pursuant to Chapter 645 of the Wisconsin Insurance Code . . . , the reinsurance under this Agreement shall be payable to the Company (or its manager) or to its liquidator, receiver or statutory successor, on the basis of the liability of the Company under Policies reinsured without diminution because of the insolvency of or Proceedings against the Company, or because the liquidator, receiver or statutory successor of the Company has failed to pay all or any part of a claim.”

5. The Agreements include identical arbitration provisions, which state: “Except as provided . . . in the event of the Company being subject to Proceedings, any dispute or claim arising out of this Agreement shall be submitted to arbitration[.]”

6. On March 14, 2011, the Rehabilitator and Ambac reached a settlement with the holder and beneficiaries of Segregated Account policy number AB0632BE (the “Northstar Settlement”), whereby the policy was terminated in exchange for a one-time payment of \$7 million (\$4 million in cash and \$3 million in surplus notes). Assured reinsured the policy

exposure and was liable to Ambac for a 6.66667 percent share of the \$7 million settlement, which amounted to \$446,667.

7. On March 22, 2011, Assured informed the Rehabilitator that it would not pay its share of the portion of the settlement paid in surplus notes, contending that payment in surplus notes did not constitute payment giving rise to a “loss” under the Agreements. Assured also indicated that it would maintain this position with regard to future payments under the Plan of Rehabilitation, which will consist of a combination of cash and surplus notes.

8. On April 7, 2011, Assured sent Ambac letters demanding arbitration over the scope of Assured’s reinsurance obligations. The next day, Assured filed a petition to compel arbitration against Ambac in the New York Supreme Court for New York County.

9. Assured was properly served with notice of this rehabilitation and the Injunction in March 2010, it has participated in this proceeding, and it has been informed regarding developments in this proceeding since its commencement.

### **CONCLUSIONS OF LAW**

10. The Injunction, including paragraphs 1 and 7 thereunder, was entered pursuant to Wisconsin law regulating the business of insurance. The Injunction preempts and renders inapplicable any conflicting contractual provisions or conflicting federal statutes, if those statutes do not specifically relate to the business of insurance. The Federal Arbitration Act does not specifically relate to the business of insurance, and is therefore preempted and rendered inapplicable to this dispute.

11. Paragraph 1 of the Injunction states: “All persons are entities are enjoined and restrained from commencing or prosecuting any actions, claims, lawsuits or other formal legal proceedings . . . against Ambac . . . in respect of the Segregated Account or policies

(including financial guarantee insurance policies and surety bonds), contracts or liabilities allocated to the Segregated Account. . . . This Court has exclusive jurisdiction over any such actions, claims or lawsuits.” Demands for, and petitions to compel, arbitration constitute legal proceedings outside this Court.

12. By demanding arbitration and filing a petition to compel arbitration in another forum to litigate issues in respect of the Segregated Account and policies allocated to the Segregated Account, Assured has violated paragraph 1 of the Injunction. Further prosecution of such proceedings will result in a continuing violation of the Injunction.

13. Paragraph 7 of the Injunction states: “All persons and entities are enjoined and restrained from withholding or failing to pay or setting-off premiums or other payments (including without limitation recoveries[ and] reimbursements) owed (or that would have been owed but for the occurrence of the [rehabilitation] or the financial condition of the Segregated Account, . . . or the Ambac General Account) to . . . the Ambac General Account under or in connection with policies or contracts allocated to the Segregated Account[.]” Reinsurance agreements with Ambac that cover Segregated Account policy exposures or liabilities constitute agreements to pay Ambac in connection with policies allocated to the Segregated Account.

14. By withholding amounts owed under the Agreements for payments made in surplus notes on the Northstar Settlement, AGC has violated paragraph 7 of the Injunction. Further withholding of amounts owed under the Agreements for payments made in surplus notes that relate to Segregated Account policies will result in continuing violation(s) of the Injunction.

15. In addition, and in the alternative, the insolvency clauses of the Agreements are applicable, and the arbitration clauses inapplicable, under the circumstances of this proceeding. Under the specific terms of the Agreements’ insolvency and arbitration clauses,

this rehabilitation constitutes “Proceedings . . . pursuant to Chapter 645 of the Wisconsin Insurance Code” against the part of Ambac’s business (the Segregated Account) from which the present dispute arises. The insolvency clauses require Assured to make reinsurance payments “without diminution” on account of these proceedings or because the Rehabilitator “has failed to pay all or any part of a claim.”

16. In addition, and in the alternative, payments made by Ambac, the Segregated Account, or the Rehabilitator constitute “claims paid or to be paid” within the meaning of the Agreements.

17. Section 4.04 of the Plan establishes that a Segregated Account claim payment made in whole or in part with surplus notes constitutes full payment and satisfaction of that claim. By failing to object to confirmation of the Plan, Assured has waived any objection to the legal characterization of such payments described therein.

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the above-described written materials and arguments, and for good cause shown, it is hereby ORDERED as follows:

1. Within 14 days, Assured shall remedy its present violation of paragraphs 1 and 7 of the Injunction, as described herein.
2. Assured’s failure to timely remedy its present violations of the Injunction, or to take any recurring or future actions in violation of the Injunction, will result in sanctions.
3. Assured shall not withhold, suspend, or disallow any reinsurance payment to Ambac or the Segregated Account relating to any policy exposure or other liability that is allocated to the Segregated Account, on the basis that (1) Ambac, the Segregated Account, or the Rehabilitator has or will pay all or any part of the claim or settlement of that policy exposure or

other liability in a form other than cash, or (2) that the Segregated Account or the Rehabilitator has failed to pay such claim in part or in full. This paragraph does not apply to the extent Assured takes actions or exercises rights that are expressly permitted by the Plan of Rehabilitation or the Ceded Reinsurance Guidelines on file with this Court.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2011.

BY THE COURT:

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

# EX. 3



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Milwaukee and Madison, Wisconsin*

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May 9, 2011

**BY HAND DELIVERY**

Jody Baux  
Ambac Clerk, Dane County Circuit Court  
Dane County Courthouse, Room 1000  
215 South Hamilton Street  
Madison, WI 53703

**RE: In the Matter of the Rehabilitation of the Segregated Account of Ambac Assurance Corporation, Dane County Case No. 10-CV-1576**

Dear Ms. Baux:

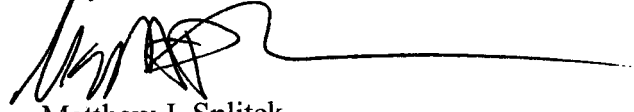
Please find the following documents enclosed for filing in the action referred to above:

1. the Brief of Assured Guaranty Re Ltd. and Assured Guaranty Corp. in Opposition to Rehabilitator's Motion to Enforce Injunction,
2. the Appendix of Assured Guaranty Re Ltd. and Assured Guaranty Corp. in Opposition to Rehabilitator's Motion to Enforce Injunction,
3. the Compendium of Cases Cited in the Brief of Assured Guaranty Re Ltd. and Assured Guaranty Corp. in Opposition to Rehabilitator's Motion to Enforce Injunction,
4. the Affidavit of James M. Michener,
5. the Affidavit of Alexander R. Cochran,
6. a proposed Order Denying Rehabilitator's Motion to Enforce Injunction Against Assured Guaranty Corp. and Assured Guaranty Re Ltd.,
7. the Notice of Motion and the Assured Reinsurers' Motion for Leave to File Excess Pages, and

Jody Baux  
May 9, 2011  
Page 2

8. a proposed Order granting the motion for leave to file excess pages.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Matthew J. Splitek', with a long horizontal line extending to the right.

Matthew J. Splitek

MJS:ljs  
Enclosures

cc (w/ encls.): Honorable William D. Johnston (by UPS overnight)  
All counsel of record (by e-mail)

# **EX. 4**

In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

---

**ORDER DENYING REHABILITATOR’S MOTION TO ENFORCE INJUNCTION  
AGAINST ASSURED GUARANTY CORP. AND ASSURED GUARANTY RE LTD.**

---

This matter came before the Court on the Rehabilitator’s motion (the “Motion”) to enforce this Court’s March 24, 2011 Order for Temporary Injunctive Relief (the “Injunction”), as made permanent by Section 10.02 of the Plan of Rehabilitation and paragraph 9 of this Court’s January 24, 2011 Order confirming the Plan, against Assured Guaranty Corp. (“Assured Guaranty”) and Assured Guaranty Re Ltd. (“AG Re”). Having considered the arguments of the parties and the briefs, affidavits, and other written materials on file in these proceedings, the Court hereby makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. AG Re, an affiliate of Assured Guaranty, is a company engaged in underwriting financial guaranty reinsurance, organized under the laws of Bermuda, with its principal place of business in Bermuda.
2. AG Re does not have an office in the United States and does not do business in the United States.
3. In 2004, AG Re and Ambac entered into a reinsurance agreement, the Facultative Reinsurance Agreement (the “Facultative Agreement”). Under this agreement, AG Re agreed to reinsure a portion of certain insurance policies that were issued by Ambac Assurance Corporation (“Ambac”).

4. Ambac's principal office is in New York City.
5. AG Re's dealings in connection with the Facultative Agreement have been with Ambac representatives at Ambac's headquarters in New York City, not in Wisconsin.
6. AG Re makes reinsurance payments to Ambac in New York.
7. The Facultative Agreement requires AG Re to send notices to Ambac in New York.
8. AG Re has not appeared in this proceeding.
9. The Rehabilitator has never served AG Re with a summons.
10. In 2003, Assured Guaranty and Ambac entered into a reinsurance agreement, the Second Amended and Restated Surplus Share Agreement (the "Surplus Share Agreement"). Pursuant to this agreement, Assured Guaranty agreed to reinsure a portion of certain insurance policies that were issued by Ambac.
11. Both the Surplus Share Agreement and the Facultative Agreement (together, the "Reinsurance Agreements") contain arbitration agreements under which the parties agreed to arbitrate all disputes under those agreements, with certain narrow exceptions.
12. On or about March 24, 2010, Ambac placed a number of insurance policies that it had issued, some of which were policies reinsured under the Surplus Share Agreement or the Facultative Agreement, into a Segregated Account pursuant to § 611.24 of the Wisconsin Statutes.
13. On or about March 24, 2010, the Rehabilitator commenced a proceeding in which the Segregated Account was placed in rehabilitation pursuant to Chapter 645 of the Wisconsin Statutes.
14. Neither the Facultative Agreement nor the Surplus Share Agreement has been allocated to the Segregated Account.
15. Neither Assured Guaranty nor AG Re (together, the "Assured Reinsurers") assert any interest in or make any claims against the Segregated Account.

16. In May and June 2010, counsel for the Assured Reinsurers sought confirmation from counsel for the Rehabilitator that the Reinsurance Agreements were not allocated to the Segregated Account and that the “Injunction” did not apply to these agreements since it “d[id] not apply to policies or other contracts which remain in the Ambac General Account.”<sup>1</sup>

17. Counsel for the Rehabilitator told counsel for the Assured Reinsurers that the Reinsurance Agreements remained in Ambac’s General Account.

18. In June 2010, counsel for the Assured Reinsurers discussed with counsel for the Rehabilitator whether the Injunction affected the Assured Reinsurers’ contract rights under the Reinsurance Agreements, including their rights to arbitrate disputes with Ambac.

19. Following this discussion, counsel for the Rehabilitator sent an email stating the Rehabilitator’s position:

[T]he reinsurance agreements between Ambac Assurance Corporation, as ceding company and affiliates of Assured Guaranty, as reinsurer, have not been allocated to the Segregated Account and therefore are not subject to the rehabilitation proceeding. Accordingly, the temporary injunction does not apply to enjoin any actions that Assured Guaranty or its affiliates may take under the insurance agreements (including . . . demanding arbitration in accordance with the terms of the agreement).

20. Relying on the Rehabilitator’s interpretation of the Injunction, the Assured Reinsurers did not object to the Injunction.

21. On October 8, 2010, the Plan of Rehabilitation (the “Plan”) was filed.

22. Counsel for the Assured Reinsurers sought confirmation from counsel for the Rehabilitator that the Plan would not be construed to limit the Assured Reinsurers’ contractual rights under the Reinsurance Agreements.

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<sup>1</sup> It is the Assured Reinsurers’ position that ¶¶1-15 & 28-35 of these proposed Findings of Fact, as well as ¶¶1, 5-6, 9, 11-13, 15 & 17-18 of the proposed Conclusions of Law below, present a sufficient basis for an order denying the Rehabilitator’s motion. The remaining paragraphs in the proposed Findings of Fact and Conclusions of Law are offered for the Court’s reference in the event it decides the issues referred to in those paragraphs.

23. On November 5, 2010, counsel for the Assured Reinsurers discussed with counsel for the Rehabilitator the effect of the Plan on the Assured Reinsurers' rights under the Reinsurance Agreements.

24. In a follow-up email, counsel for the Assured Reinsurers summarized his understanding of the Rehabilitator's position:

[W]e just wanted to confirm your view that the plan of rehabilitation will not alter the contractual provisions of the reinsurance agreements between Ambac Assurance Corporation, as ceding company and affiliates of Assured Guaranty as reinsurer or enjoin any actions that Assured Guaranty or its affiliates may take under such reinsurance agreements (including exercising contractual netting and set-off provisions, or demanding arbitration in accordance with the terms of such reinsurance agreements).

25. Counsel for the Rehabilitator responded in a November 6, 2010 email as follows: "Generally we agree with your summary . . ." and that "general disagreements will remain subject to arbitration (consistent with the contract)."

26. Counsel for the Rehabilitator added what he termed a "caveat" about potential disputes over "underlying policy liabilities" for insurance policies allocated to the Segregated Account. If the Assured Reinsurers wanted to step into Ambac's shoes and contest claims by holders of underlying policies, he pointed out, the Plan required them to do so in this Court: "[t]he additional rights your client has under the insolvency clause (right to notice and to interpose a defense) necessarily must be exercised in the rehabilitation court, as this is where the underlying policy liability is located."

27. Relying on this confirmation that the Plan did not adversely affect their contractual rights under the Reinsurance Agreements, the Assured Reinsurers did not object to the Plan.

28. A dispute has arisen between Ambac and the Assured Reinsurers regarding the extent of the Assured Reinsurers' payment obligations to Ambac under the Reinsurance Agreements.

29. There also is a dispute between Ambac and the Assured Reinsurers over whether the arbitration agreements in the Reinsurance Agreements are effective. Ambac asserts that it has no obligation to arbitrate these disputes because an exception to the arbitration agreements in the Reinsurance Agreements applies, and the Assured Reinsurers assert that Ambac has an obligation to arbitrate.

30. On April 7, 2011, Assured and AG Re demanded arbitration of the dispute pursuant to Article 15 of the Facultative Agreement and Article 16 of the Surplus Share Agreement.

31. On April 8, 2011, Assured and AG Re filed a petition to compel arbitration in New York State court.

32. In this proceeding, the Rehabilitator has presented evidence and argument that the Office of the Commissioner of Insurance brought this proceeding as a rehabilitation of the Segregated Account, as opposed to a rehabilitation of Ambac or a liquidation of either the Segregated Account or Ambac because any of those approaches would have led to "the pulling of default triggers" – that is, a rehabilitation or liquidation of Ambac would have enabled other parties to invoke contract provisions that would have been disadvantageous to Ambac and its policyholders.

33. In seeking confirmation of the Plan, the Rehabilitator argued that there was a benefit to Ambac's policyholders from limiting the rehabilitation to the Segregated Account because a rehabilitation of Ambac (which he referred to as a "full rehabilitation") would have enabled contract parties to assert such rights against Ambac, taking value from Ambac policyholders:

Recognizing that a full rehabilitation or liquidation would have triggered covenants across almost all policies and caused other

adverse consequences and collateral damages, OCI determined that a segregated account approach would have the most beneficial outcome for all policyholders.

34. The Rehabilitator took the position that those adverse consequences were avoided by limiting the rehabilitation to the Segregated Account.

35. In granting the motion to confirm the Plan, the Court adopted the Rehabilitator's proposed findings and conclusions. The Court found that a rehabilitation of Ambac would have triggered certain provisions in Ambac contracts, whereas a rehabilitation of the Segregated Account would not, and rested its decision to confirm the Plan on that legal distinction.

### **CONCLUSIONS OF LAW**

1. This Court does not have personal jurisdiction over AG Re.
2. Under Wis. Stat. § 611.24(3)(e), the Segregated Account is a separate insurer for purposes of proceedings under Chapter 645 of the Wisconsin Statutes.
3. Only the Segregated Account is subject to this rehabilitation proceeding.
4. There is no rehabilitation under Chapter 645 against Ambac.
5. The Injunction should be strictly construed, with any close questions of interpretation resolved in favor of the enjoined party.
6. By its terms, the Injunction granted in this case “does not apply to policies or other contracts which remain in the Ambac General Account. The injunctive relief specified . . . pertains to the Segregated Account, and policies, contracts, assets and liabilities allocated to the Segregated Account.”
7. Paragraph 1 of the Injunction does not enjoin the Assured Reinsurers from arbitrating their disputes with Ambac under the Reinsurance Agreements.
8. Paragraph 7 of the Injunction does not enjoin the Assured Reinsurers from not paying the amount that Ambac says are due under the Reinsurance Agreements.

9. By arbitrating their disputes with Ambac and by seeking to compel such arbitration, AG Re and Assured Guaranty have not violated the Injunction.

10. The Rehabilitator is equitably estopped from arguing that the Injunction bars the Assured Reinsurers from seeking arbitration of disputes arising under the Reinsurance Agreements.

11. Wis. Stat. § 645.04(3) does not prohibit the enforcement of the arbitration provision of the Reinsurance Agreements because neither Ambac nor the General Account of Ambac is “subject to a delinquency proceeding.” Only the Segregated Account is “subject to a delinquency proceeding.”

12. Enforcing the Federal Arbitration Act to compel Ambac to arbitrate its disputes with the Assured Reinsurers would not invalidate, impair or supersede § 645.04(3) because this dispute does not involve arbitration against an insurer that is “subject to a delinquency proceeding.”

13. Because no Wisconsin statute prohibits the enforcement of an arbitration clause in a contract between two private parties that are not subject to delinquency proceedings, there is no reverse preemption under the McCarran-Ferguson Act, 15 U.S.C. §§ 1101 *et seq.*

14. Because the arbitration agreement in the Facultative Agreement is subject to Article II of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3 (the “New York Convention”), which is not an “Act of Congress,” there is no reverse preemption under the McCarran-Ferguson Act with respect to enforcement of that arbitration agreement pursuant to the New York Convention.

15. This Court previously noted the distinction between its roles in an ordinary, adversarial litigation and in a rehabilitation proceeding. Resolving the contract disputes between Ambac and the Assured Reinsurers would call on the Court to adjudicate claims in adversarial litigation.

16. Chapter 645 of the Wisconsin Insurance Law does not authorize the Court to hear and resolve, as part of this rehabilitation proceeding, these contract disputes between Ambac and the Assured Reinsurers.

17. The contract disputes between Ambac and the Assured Reinsurers should be decided either in an arbitration or in ordinary, adversary litigation, not in a motion to a court supervising the rehabilitation of the Segregated Account of Ambac.

18. Accordingly, this Court declines to hear or resolve the contract disputes between Ambac and the Assured Reinsurers

NOW THEREFORE, based upon the foregoing findings of Fact and Conclusions of Law, the above-described written materials, and the written and oral arguments of the parties, it is hereby ORDERED that the Rehabilitator's Motion to Enforce the Injunction Against Assured Guaranty Corp. and Assured Guaranty Re Ltd. is DENIED.

Dated this \_\_\_\_\_ day of May, 2011.

BY THE COURT:

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

**EX. 5**

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

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In the Matter of the Rehabilitation of:

Case No. 10-CV-1576

Segregated Account of Ambac Assurance Corporation

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**ORDER**

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Upon the Motion of Assured Guaranty Re Ltd. and Assured Guaranty Corp. (the “Assured Reinsurers”) for leave to file a response brief in excess of 40 pages,

IT IS HEREBY ORDERED that the Assured Reinsurers are granted leave to file a brief exceeding 40 pages in opposition to the Rehabilitator’s Motion to Enforce Injunction Against Assured Guaranty Corp. and Assured Guaranty Re Ltd.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2011.

BY THE COURT:

---