

JENNER & BLOCK

BY COURIER

SEPTEMBER 8, 2010

Jenner & Block LLP
353 N. Clark Street
Chicago, IL 60654-3456
Tel 212-891-1600
www.jenner.com

Chicago
Los Angeles
New York
Washington, DC

Honorable William D. Johnston
Lafayette County Circuit Court
Lafayette County Courthouse
626 Main Street
Post Office Box 40
Darlington, Wisconsin 53530-0040

David M. Greenwald
Tel 312-923-2774
Fax 312-840-7774
dgreenwald@jenner.com

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

Dear Judge Johnston:

This letter is in response to Mr. Michael B. Van Sicklen's letter to the Court, dated September 3, 2010. The purpose of this letter, as discussed in more detail below, is to respectfully request that the Court issue a briefing schedule and a hearing date following briefing for: (1) Motion to Clarify Order for Temporary Injunctive Relief (the "Motion to Clarify"); and (2) Rehabilitator's Objection to the August 30, 2010 Motion of the RMBS "Policyholders" Regarding This Court's Injunction Order ("OCI's Objection").

Jenner & Block LLP represents Aurelius Capital Management, LP, Fir Tree, Inc., King Street Capital, L.P., King Street Capital Master Fund, Ltd., Monarch Alternative Capital LP, and Stonehill Capital Management LLC (collectively, the "RMBS Policyholders"), which are owners or managers of funds that own in excess of \$1 billion in par value of residential mortgage-backed securities ("RMBS") and other indebtedness insured by Ambac Assurance Corporation ("AAC"). On August 30, 2010, the RMBS Policyholders filed their Motion to Clarify, respectfully requesting that the Court enter an Order clarifying that the Court's March 24, 2010 Order for Temporary Injunctive Relief (the "March 24 TRO") does not enjoin the RMBS Policyholders from filing and prosecuting a fraudulent transfer complaint against Ambac Financial Group, Inc. ("AFG") or certain Unknown Preferred Shareholders substantially in the form and substance of the Fraudulent Transfer Complaint attached at Appendix 1 to the Motion to Clarify.

There is no reason to wait to set a briefing schedule until the Court can hold an in-person hearing sometime in October, as OCI proposes. Instead, the RMBS Policyholders respectfully request that the Court enter a briefing schedule now (complete with appropriate protective

measures, such as a procedure for filing confidential and proprietary documents under seal) and hold a substantive hearing on the merits in mid-to-late October. The RMBS Policyholders recognize that counsel for OCI, Mr. Van Sicklen, has a pre-planned vacation scheduled for the week of September 20, 2010. To accommodate this, they respectfully propose that OCI be given until October 1, 2010 to respond to the Motion to Clarify. The RMBS Policyholders propose that they then have until October 8, 2010 to file a reply. At that point, the Court may schedule a hearing on the merits in mid to late October, as its schedule permits.

Expedition resolution of this significant issue is critical. In quarterly reports filed August 9, 2010, AAC's parent, AFG, stated that it is pursuing a pre-packaged bankruptcy. Therefore, steps must be taken *now* to prevent leakage of value to AFG and preserve AAC's assets. This confirmation of AFG's looming bankruptcy was not available as of the June 22, 2010 deadline for modifying the TRO. Moreover, the RMBS Policyholders do not seek to modify or dissolve the TRO, but only to clarify its inapplicability to their proposed fraudulent transfer claim. Consequently, the RMBS Policyholders timely filed the Motion to Clarify, and the Court should consider it on its merits according to a proper briefing schedule.

Moreover, the standing objections OCI raises in its September 3, 2010 filing have no bearing on the relief the RMBS Policyholders seek in the Motion to Clarify, which simply asks the Court to confirm that the March 24 TRO does not bar them from bringing that action in New York against a non-party to these proceedings. If the RMBS Policyholders' standing to bring the fraudulent transfer complaint is an issue at all, it is for the New York court to decide in connection with the merits of that action. In objecting to the RMBS Policyholders' standing, OCI ignores the relief sought in the Motion to Clarify and instead challenges the underlying merits of the RMBS Policyholders' fraudulent transfer complaint regarding the leakage of value from AAC to its parent, AFG. OCI should not be permitted to circumvent the normal briefing process by filing these premature and inapt objections.

In any event, the RMBS Policyholders' standing to bring the fraudulent transfer complaint should not be in dispute. The RMBS Policyholders have already demonstrated that they collectively hold more than \$1 billion in par value in RMBS and other indebtedness insured by AAC. (*See* Affidavit of Dan Gropper, Managing Director of Aurelius Capital Management, LP, in Support of Motion to Modify Order for Temporary Injunctive Relief Filed by Certain RMBS Policyholders and Motion Seeking Expedited Relief, filed April 30, 2010, at p. 2 ¶ 3.) Even if their standing in the rehabilitation proceedings is at issue for purposes of the fraudulent transfer complaint (which it is not), the RMBS Policyholders would necessarily have standing to seek clarification of the scope of the TRO if, as OCI insists, they are bound by its terms.

Should the Court nevertheless decide that additional argument as to this issue is necessary, that argument (and OCI's objections) are appropriately handled through the briefing schedule that the RMBS Policyholders propose above. In addition, the RMBS Policyholders are willing to provide to the Court and OCI, under seal and with a proper protective order, information regarding the specific trusts in which they hold AAC-insured RMBS.

For these reasons, the RMBS Policyholders respectfully request that the Court set a briefing schedule now with a hearing date to follow in mid-to-late October. A proposed order is to this effect is attached.

For these reasons, the RMBS Policyholders respectfully request that the Court set a briefing schedule now with a hearing date to follow in mid-to-late October. A proposed order is to this effect is attached.

Sincerely,

A handwritten signature in black ink, appearing to read "David M. Greenwald". The signature is fluid and cursive, with a large initial "D" and "G".

David M. Greenwald

cc: All Counsel of Record, including those on the attached Service List (via email)
Carlo Esqueda, Dane County Clerk (via courier)

Service List

<p><i>Ambac Assurance Corporation</i> c/o Daniel W. Stolper Stafford Rosenbaum LLP 222 W Washington Ave., Suite 900 P.O. Box 1784 Madison, WI 53701-1784 dstolper@staffordlaw.com</p> <p>and</p> <p>c/o William G. Primps Emily L. Saffitz Allison H. Weiss Peter A. Ivanick Lynn Roberts Dewey & Leboeuf LLP 1301 Avenue of the Americas New York, NY 10019 wprimps@dl.com</p>	<p><i>Sean Dilweg, Commission of Insurance of the State of Wisconsin</i> c/o David G. Walsh Michael B. Van Sicklen Matthew R. Lynch Foley & Lardner LLP 150 East Gilman Street Madison, WI 53701 dwalsh@foley.com</p> <p>and</p> <p>c/o Kevin G. Fitzgerald Andrew A. Oberdeck Foley & Lardner LLP 777 East Wisconsin Avenue Milwaukee, WI 53202 kfitzgerald@foley.com</p>
<p><i>Wells Fargo Bank, as Trustee of Bondholders</i> c/o Steven T. Whitmer Kevin A. Wisniewski Lock Lord Bissell & Liddell LLP 111 South Wacker Drive Chicago, IL 60606 swhitmer@lockelord.com</p> <p>and</p> <p>c/o Stephen L. Morgan Brittany S. Ogden Murphy Desmond S.C. 33 East Main Street, Suite 500 Madison, WI 53703 smorgan@murphydesmond.com</p>	<p><i>LVM Bondholders</i> c/o Philip Bentley Amy Caton Susan Jacquemot Kramer Levin Naftalis & Frankel LLP 1177 Avenue of the Americas New York, NY 10036 pbentley@kramerlevin.com acaton@kramerlevin.com sjacquemot@kramerlevin.com</p> <p>and</p> <p>c/o Noreen J. Parrett Parrett & O'Connell, LLP 10 East Doty Street, Suite 621 Madison, WI 53703 nparrett@parrettoconnel.com</p>

Bank of New York Mellon
c/o Laura E. Callan
Solheim Billing & Grimmer SC
One South Pinckney Street, Ste. 301
Madison, WI 53701
lcallan@sbgllaw.com

and

c/o Dale C. Christensen, Jr.
Thomas Ross Hooper
Seward & Kissel LLP
One Battery Park Plaza
New York, NY 10004
christensen@sewkis.com

*U.S. Bank National Association AND
Deutsche Bank National Trust
Company, solely in its capacity as
Trustee AND Deutsche Bank Trust
Company Americas, solely in its
capacity as Trustee*

c/o Paul E. Benson

Paul A. Lucey

Nathan L. Moenck

Michael Best & Friedrich LLP

100 East Wisconsin Ave, Ste. 3300

Milwaukee, WI 53202

pebenson@MichaelBest.com

and

c/o John M. Rosenthal

Kristine Bailey

Morgan, Lewis & Bockus LLP

One Market St., Spear Street Tower

San Francisco, CA 94105

jrosenthal@morganlewis.com

and

John C. Goodchild, III

Morgan, Lewis & Bockius LLP

1701 Market Street

Philadelphia, PA 19103

jgoodchild@morganlewis.com

<p><i>Wells Fargo Bank, as Trustee of RMBS certificate holders</i> c/o Jane C. Schlicht Cook & Franke, S.C. 660 East Mason Street Milwaukee, WI 53202 schlicht@cf-law.com</p> <p>and</p> <p>c/o Michael E. Johnson William B. Macurda Cele Ogawa Alston & Bird LLP 90 Park Avenue New York, NY 10016 michael.johnson@alston.com</p>	<p><i>Federal Home Loan Mortgage Corporation</i> c/o David I. Cisar Susan E. Lovern Christopher J. Stroebel von Briesen & Roper, s.c. 411 East Wisconsin Avenue, Ste. 700 Milwaukee, WI 53202 dcisar@vonbriesen.com</p> <p>and</p> <p>c/o Robert A. Zeavin Craig S. Bloomgarden Manatt, Phelps & Phillips, LLP 11355 W. Olympic Blvd. Los Angeles, California 90064 rzeavin@manatt.com</p> <p>and</p> <p>c/o Marcia D. Alazraki Manatt, Phelps & Phillips, LLP 7 Times Square New York, NY 10036 malazraki@manatt.com</p>
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<p><i>The Bank Insureds</i> c/o James A. Friedman Brady Williamson Anthony G. Gaughan Godfrey & Kahn, S.C. One East Main Street, Suite 500 Madison, WI 53701 jfriedman@gklaw.com</p> <p>and</p> <p>Donald S. Bernstein Michael P. Carroll Avi Gesser Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 donald.bernstein@davispolk.com</p>	<p><i>HSBC Bank USA, National Association</i> c/o Randall D. Crocker Susan E. Lovern Christopher J. Stroebel von Briesen & Roper, S.C. 411 E. Wisconsin Avenue, Suite 700 Milwaukee, WI 53202 rcrocker@vonbriesen.com</p> <p>and</p> <p>c/o Pieter Van Tol Hogan Lovells US LLP 875 Third Avenue New York, NY 10022 Pieter.vantol@hoganlovells.com</p>
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*KnowledgeWorks Foundation, As The
Administrator of the Ohio Centric
Student Loan Program*
c/o Melisa A. Kern
Frost Brown Todd LLC
1103 Boundary Road
Middleton, WI 54562
MKern@fbtlaw.com

and

Greg E. Mitchell
Frost Brown Todd LLC
2800 Lexington Financial Center
250 West Main Street
Lexington, KY 40507
GMitchell@fbtlaw.com

and

Jeffery A. Lipps
Carpenter Lipps & Leland LLLP
280 Plaza Street Suite 1300
250 W. Main Street
Columbus, OH 43215
Lipps@carpenterlipps.com

PNC Bank
John Franke, Esq.
Gass Weber Mullins LLC
309 N. Water Street, Suite 700
Milwaukee, WI 53202
franke@gasswebermullins.com

and

Peter D. Laun
Jones Day
500 Grant Street, Ste. 4500
Pittsburgh, PA 59219-2514
pdlaun@jonesday.com

<p><i>Depfa Bank PLC</i> Michael C. Weed, Esq. Thomas J. Welsh, Esq. Andrew K. Davidson, Esq. Orrick, Herrington & Sutcliffe LLC 400 Capitol Mall Suite 3000 Sacramento, CA 95814-4497 mweed@orrick.com tomwelsh@orrick.com adavidson@orrick.com</p> <p>and</p> <p>Seth E. Dizard, Esq. Grant C. Killoran, Esq. Gregory J. Lyons, Esq. O'Neill, Cannon, Hallman, DeJong & Laing S.C. 111 East Wisconsin Avenue, Suite 1400 Milwaukee, WI 53202 Seth.dizard@wilaw.com Grant.killoran@wilaw.com Gregory.lyons@wilaw.com</p>	<p><i>One State Street LLC</i> Anne M. Bensky, Esq. Kathleen G. McNeil, Esq. Garvey McNeil & Associates, S.C. One Odana Court Madison, WI 53719 andie@gmmattorneys.com</p> <p>and</p> <p>Mark I. Bane Ropes & Gray LLP 1211 Avenue of the Americas New York, NY 10036</p>
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<p><i>ALL Student Loan and Lloyds TSB Bank plc</i> James C. Owen, Esq. McCarthy, Leonard & Kaemmerer, L.C. 400 S. Woods Mill Road Chesterfield, MO 63017 jowen@mlklaw.com</p> <p>and</p> <p>Lawrence Bensky, Esq. Law Office of Lawrence Bensky, LLC 10 East Doty Street, Suite 800 Madison, WI 53703 lbensky@benskyllaw.com</p>	<p><i>Assured Guaranty Corporation and Goldman Sachs & Co., Inc.</i> James A. Bartzen, Esq. Boardman Law Firm 1 South Pinckney Street, 4th Floor Madison, WI 53701-0927 jbartzen@boardmanlaw.com</p> <p>and</p> <p>C.N. Franklin Reddick, III Akin Gump Strauss 2029 Century Park East Los Angeles, CA 90067-3010 freddick@akingump.com</p>
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In the Matter of the Rehabilitation of:

Segregated Account of
Ambac Assurance Corporation

Case No. 10 CV 1576

**[PROPOSED] ORDER SETTING BRIEFING SCHEDULE ON
RMBS POLICYHOLDERS'
MOTION TO CLARIFY ORDER FOR TEMPORARY INJUNCTIVE RELIEF**

On August 30, 2010 Aurelius Capital Management, LP, Fir Tree, Inc., King Street Capital, L.P., King Street Capital Master Fund, Ltd., Monarch Alternative Capital LP, and Stonehill Capital Management LLC (collectively, the “RMBS Policyholders”), in their capacity as owners of or managers of funds that own residential mortgage-backed securities and other indebtedness insured by Ambac Assurance Corporation, filed a motion (the “Motion”) requesting the Court enter an Order clarifying that this Court’s Order for Temporary Injunctive Relief does not enjoin the filing and prosecution of a fraudulent transfer complaint against Ambac Financial Group, Inc. and unknown preferred shareholders of Ambac Assurance Corporation. On September 3, 2010, the Commissioner of Insurance of the State of Wisconsin, as the court-appointed rehabilitator (the “Commissioner”), submitted a letter to the Court responding to the Motion, suggesting a scheduling conference, and enclosing a copy of the “Rehabilitator’s Objection to the August 30, 2010 Motion of the RMBS ‘Policyholders’ Regarding This Court’s Injunction Order.” On September 8, 2010, the RMBS Policyholders submitted a letter to the Court in reply to the Commissioner’s September 3 letter requesting that the Court enter a briefing schedule and a hearing date. Based upon the proposals of the parties, IT IS HEREBY ORDERED THAT:

1. The Commissioner, and any other parties in interest, shall file all briefs, affidavits, or other submissions in response to the Motion on or before the close of business on Friday, October 1, 2010.

2. The RMBS Policyholders shall file their reply brief and any affidavits or other submissions in support on or before the close of business on Friday, October 8, 2010.

3. The Court will hold an in-person hearing on October _____, 2010 to address the merits of the Motion.

4. Either party may request that confidential and proprietary documents be filed under seal and subject to a separate protective order.

Dated: _____

BY THE COURT

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