

COURT OF APPEALS OF WISCONSIN
DISTRICT IV

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

SEAN DILWEG and OFFICE OF THE
COMMISSIONER OF INSURANCE,

Plaintiffs-Respondents, et al.,

v.

Appeal No. 2010-AP-1291
and Appeal No. 2010-AP-2022

WELLS FARGO BANK/Trustee of
Bondholders,

Defendants, et al.

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

**MOTION TO CONSOLIDATE APPEALS AND MODIFY BRIEFING
REQUIREMENTS**

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Commissioner of Insurance and Sean Dilweg,
Commissioner of Insurance of the State of
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Respondents Sean Dilweg and Office of Commissioner of Insurance and Ambac Assurance Corporation, jointly move the Court pursuant to Rules 809.10(3), 809.14(1) and 809.82(2) for an order consolidating Appeal Numbers 2010 AP 1291 and 2010 AP 2022 for joint disposition and briefing by Respondents, on the ground that consolidation and joint briefing will eliminate duplication of effort and promote judicial efficiency.

Both appeals arise from continuing proceedings in the Circuit Court for Dane County, the Honorable William Johnston, presiding. The first appeal—2010 AP 1291—arises from an Order entered May 27, 2010, denying motions for an injunction and to intervene and rejecting various legal challenges to the establishment of the Segregated Account. The appellants in the first appeal are funds referring to themselves as the LVM Bondholders and the RMBS Policyholders, as well as Freddie Mac. Respondents are Sean Dilweg and the Office of Commissioner of Insurance, and Ambac Assurance Corporation. The second appeal—2010 AP 2022—arises from an Order of July 16, 2010 in the same proceedings which also addressed intervention and legal challenges to the Segregated Account. The appellants are the same LVM Bondholders and Wells Fargo Bank, N.A. as trustee for the LVM Bondholders. The respondents are Sean Dilweg and the Office of Commissioner of Insurance, and Ambac Assurance Corporation.

There is, therefore, a substantial identity of parties in both appeals. Both arise from the same continuing proceedings in the same court, both involve at least one of the same appellants and both involve the same respondents.

In addition, there is a substantial identity of issues. The first appeal challenges the denial of intervention and the legality of the Segregated Account. The second appeal also challenges the denial of intervention and the use of the Segregated Account under Wisconsin law. Both appeals address the proper interpretation of Wis. Stat. § 611.24 and whether the statute, as applied, violates the Wisconsin and United States Constitutions. The extent to which the specific arguments raised by the five Appellants may differ is all the more reason to consider them together so that the Court may factor any variations into a consistent and definitive decision.

As currently situated, Respondents will be entitled to file a total of five briefs each between these two appeals: three each in Case No. 1291 and two each in Case No. 2022. Moreover, because two of the appellants in Case No. 1291 filed their brief on September 13, 2010, but the third appellant (Freddie Mac) has been granted an extension of time for filing its brief, Respondents' briefs in the first appeal will be filed on different dates.

Given the substantial similarity of parties and issues between these two appeals, it is the Respondents' request that they each be allowed to file one responsive brief addressing all of the issues raised by the multiple appellants in both appeals, instead of filing individual briefs at different times responding to the various Appellants' briefs. Not only will this simplify the task for the Respondents, it will simplify the task of this Court, which will have fewer briefs to review, and which can dispose of both appeals in a single consolidated appeal before the same panel, thus promoting judicial efficiency and consistency of result.

Based on the foregoing, Respondents move for an Order as follows:

1. Consolidating Appeal Numbers 2010 AP 1291 and 2010 AP 2022 for joint disposition.
2. Allowing the individual Respondents each to file one brief addressing the issues contained in all Appellants' Briefs, and having that Brief due thirty days after the filing of the last Appellant's Brief in Appeal Number 2010 AP 2022.
3. Extending the page limits of each Respondents' single brief from a maximum of 11,000 words to 16,000 words to accommodate the response to multiple briefs.

In the event this Court chooses not to consolidate these appeals and grant the above relief, Respondents request the Court to order the following, alternative relief:

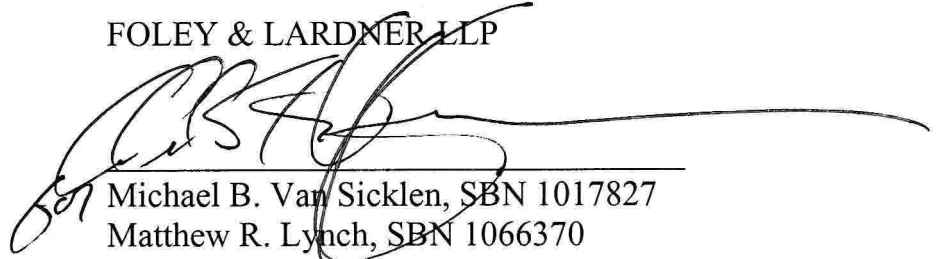
1. Allow the individual Respondents each to file a single brief responding jointly to the three Appellants' Briefs in Appeal Number 2010 AP 1291, with an extended page limit of 15,000 words.

2. Extend the time for filing Respondents' Brief in Appeal Number 2010 AP 1291 so that the single Brief is due forty days after the filing of the last Appellant's Brief. The reason for this requested extension is that both attorneys Michael B. Van Sicklen and Matthew Lynch, the attorneys for Respondents Sean Dilweg and Office of Commissioner of Insurance with day-to-day working knowledge of this complex litigation, will be out of the office through the end of September for, respectively, a previous planned family vacation and a wedding/honeymoon.

Counsel is authorized to file this Motion on behalf of all
Respondents.

Dated this 20th day of September, 2010.

FOLEY & LARDNER LLP

A large, stylized handwritten signature in black ink, appearing to read 'MBS', is written over a horizontal line. The signature is positioned to the left of the typed names and extends across the width of the typed text.

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