

In the Matter of the Rehabilitation of:

Segregated Account of
Ambac Assurance Corporation

Case No. 10 CV 1576

**ORDER DENYING REHABILITATOR'S MOTION FOR CONFIRMATION
OF PLAN OF REHABILITATION FOR LACK OF JURISDICTION**

This matter came before the Court on the motion (the "Motion") of the Wisconsin Office of the Commissioner of Insurance ("OCI") to confirm the Plan of Rehabilitation for the Segregated Account of Ambac Assurance Corporation (the "Plan"). Based on the Court's review of the Plan, as well as the testimony and exhibits admitted into evidence, and the argument of counsel on confirmation of the Plan, and for other good cause, IT IS HEREBY FOUND AND DETERMINED THAT:

1. The RMBS Policyholders, the LVM Bondholders, and Freddie Mac appealed this Court's May 27, 2010 Order. That appeal is pending in the Wisconsin Court of Appeals, case number 2010AP001291.
2. The LVM Bondholders and Wells Fargo Bank, National Association, as Trustee for the LVM Bonds, appealed this Court's June 16 Order. That appeal is pending in the Wisconsin Court of Appeals, case number 2010AP002022. On October 8, 2010, the Court of Appeals consolidated case number 2010AP001291 with case number 2010AP002022.
3. On November 5, 2010, Depfa Bank PLC filed a Notice of Appeal to appeal this Court's October 20, 2010 and October 26, 2010 Orders.
4. The Orders that have been appealed from decide, among other things, that the formation of the Segregated Account and the transfer of certain policies to the Segregated

Account was lawful. Therefore, the legality of the creation of the Segregated Account and transfer of certain policies to the Segregated Account are issues currently before the Court of Appeals.

5. Pursuant to Wisconsin Statute § 808.075, after the record was transmitted to the Court of Appeals, this Court was divested of jurisdiction over issues directly related to the subject matter of the appeal. This Court only retains the power to act in the circumstances permitted by the statute, none of which include consideration of the Plan.

6. Determining whether or not to approve the Plan is directly related to and dependent on the legality of the Segregated Account, an issue over which the Court of Appeals, not this court, has jurisdiction.

7. A circuit court's authority to act on issues pending on appeal is a matter of jurisdiction, not competency. Therefore, the argument cannot be waived. *See, e.g. In re John Doe Proceeding*, 2003 WI 30, ¶ 58 n.16, 260 Wis. 2d 653, 687, 660 N.W.2d 260 (2003) ("As a general rule, in the context of a direct appeal pursuant to Wis. Stat. § 808.03, service of a notice of appeal strips the circuit court of all jurisdiction regarding the case, except where there is a specific grant of authority permitting the trial court to act. Wis. Stat. § 808.075.")

8. To the extent a party can waive the court's lack of competency, the RMBS Policyholders have not waived this argument by participating in the rehabilitation proceedings while the appeal was pending. The actions taken by the RMBS Policyholders after their appeal was filed—seeking discovery, seeking leave to file a complaint in a different court, and requesting a different scheduling order—were not inconsistent with their position that the issues raised by the OCI's motion are the subject of their pending appeal.

9. The Court's determination of whether or not to approve the Plan will be stayed until all appeals that relate to the creation and legality of the Segregated Account have been resolved through final, non-appealable orders.

Dated: _____

BY THE COURT

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