

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

IN THE MATTER OF THE REHABILITATION OF
THE SEGREGATED ACCOUNT OF
AMBAC ASSURANCE CORPORATION

Case No. 10-cv-778

MOTION TO REMAND

The Commissioner of Insurance of the State of Wisconsin, as the court-appointed Rehabilitator of the Segregated Account of Ambac Assurance Corporation, moves the Court for an order remanding the above-captioned state insurance rehabilitation proceeding, in full, back to the Circuit Court for Dane County, Wisconsin, pursuant to 28 U.S.C. § 1447(c). This Motion is supported by the accompanying brief and declaration (with exhibits).

As detailed more fully in the Commissioner's brief, remand is warranted because:

1. The state insurance rehabilitation proceeding, together with orders issued in furtherance of its purposes, is not a civil action against the United States within the meaning of the removal statutes at issue, 28 U.S.C. §§ 1441 and 1442(a). Rather, it is a formal remedial measure to rehabilitate the business of a Wisconsin-domiciled insurer and equitably apportion losses to all of the thousands of parties that may have claims against the insurer;
2. To the extent the removal statutes or federal laws relating to the priority of the federal government over an insurer's assets would otherwise apply, they are reverse-preempted by the

McCarran-Ferguson Act, 15 U.S.C. § 1012, because they would operate to impair the state's comprehensive statutory structure calling for the equitable and orderly management and distribution of insurer assets in insurance delinquency proceedings; and

3. This Court should abstain from deciding issues arising out of the ongoing state proceedings in recognition of the state supremacy in insurance regulation established by the McCarran-Ferguson Act, and under the abstention doctrine established by *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943).

Dated this 17th day of December, 2010.

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