

OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

STATE OF WISCONSIN

In the Matter of the Acquisition of Control of

Ambac Assurance Corporation, the "Domestic Insurer"

by

American Acorn Corporation (American Acorn), American Acorn Holdings LLC,
Oaktree Opportunities Fund XII Holdings (Delaware), L.P.,
Oaktree Fund GP, LLC, Oaktree Fund GP I, LP, Oaktree Capital I GP, LLC, Oaktree Capital
Holdings, LLC,
Oaktree Capital Group Holdings, LP,
Oaktree Capital Group Holdings GP, LLC, Bruce Karsh,
Howard Marks, and Sheldon Stone

Petitioner.

OCI Case No. 25-C46550

ORDER DENYING MOTIONS TO BE ADMITTED AS A PARTY

Introduction

On June 28, 2024, the above-named individuals and entities filed a Form A with the Wisconsin Office of the Commissioner of Insurance ("OCI") seeking the acquisition and control of the Ambac Assurance Corporation ("the Oaktree Form A"). A Form A is a regulatory filing submitted to a state insurance department by any person or entity seeking to acquire control of a domestic insurer. A prehearing conference on this matter was held before the hearing examiner on August 4, 2025. The prehearing conference was held to consider any procedural matters pursuant to Wis. Admin. Code § Ins 5.33. A prehearing conference memorandum was issued separately on August 5, 2025. A class 1 hearing on the Oaktree Form A will be held before Rebecca Easland, duly appointed hearing examiner, on September 3, 2025.

Prior to the prehearing conference, three groups filed motions to be admitted as parties to the Oaktree Form A hearing:

1. Ambac Financial Group, Inc. ("AFG") and Ambac Assurance Corp. ("AAC") (together, the "Ambac Intervenors") submitted a conditional motion to intervene stating an interest in participating in the Oaktree Form A hearing "in the event that the Hearing Examiner grants any other motion to intervene."

2. CQS (UK) LLP, CQS (US), LLC, Deutsche Bank Securities Inc., FFI Fund Ltd., FYI Ltd., Intermarket Corporation, Deltroit Asset Management (UK) LLP, Mudrick Stressed Credit Master Fund, L.P. ("Mudrick"), Olifant Fund, Ltd., Shenkman Tactical Credit Master Fund LP, Shenkman Opportunistic Credit Master Fund LP, Four Points Multi-Strategy Master Fund, Inc., Shenkman Multi-Asset Credit Select Master Fund LP, and Three Court Master, LP (collectively, the "Ad Hoc Group"). The Ad Hoc Group seeks to intervene in this matter as the collective holders or beneficial owners of over 54% of the surplus notes issued by AAC.

3. ESM Management LLC ("ESM") and Align Private Capital ("Align") (together, "ESM and Align"). ESM and Align seek to intervene in this matter as the holders of approximately 27% of the surplus notes issued by AAC.

Discussion

The controlling authority determining whether any of the movants may intervene in the Oaktree Form A hearing provides: "Any person whose substantial interest may be affected by the decision following the hearing shall, upon the person's request, be admitted as a party." Wis. Stat. § 227.44(2m).

In Wisconsin, whether one has standing to participate in an administrative proceeding is not narrowly or restrictively construed. Sierra Club v. Wisconsin Dep't of Nat. Res., 2025 WI App 39, ¶ 17. The test for whether one has standing to participate in an

administrative hearing is similar to the test for whether one has standing to challenge an administrative decision. The Supreme Court of Wisconsin has established a two-part analysis for determining whether parties seeking to challenge an administrative rule have standing. "The first step is to determine 'whether the decision of the agency directly causes injury to the interest of the petitioner. The second step is to determine whether the interest asserted is recognized by law.'" Fox v. Wisconsin Dep't of Health & Soc. Servs., 112 Wis. 2d 514, 524, 334 N.W.2d 532, 537 (1983).

The first determination is: does the movant allege it will suffer an injury in fact? The Supreme Court of Wisconsin has adopted the following restriction: "Abstract injury is not enough. The plaintiff must show that he 'has sustained or is immediately in danger of sustaining some direct injury' as the result of the challenged official conduct and the injury or threat of injury must be both 'real and immediate,' not 'conjectural' or 'hypothetical.'" Fox v. Wisconsin Dep't of Health & Soc. Servs., 112 Wis. 2d 514, 525, 334 N.W.2d 532, 537 (1983). In its brief, ESM and Align state an interest in the proceedings "as long-term investors in the Surplus Notes, Proposed Intervenor are committed to the success of AAC – but whether the transaction under review will so result depends on transparency and participation." ESM and Align Brief at 3. In its motion, the Ad Hoc Group states: "the structure of the proposed transaction ensures that the value being paid by the buyer is paid exclusively to Holdco, and not to AAC [...and] there is no independent fiduciary acting on behalf of AAC's creditors." Ad Hoc Group Motion at 3. Both groups state that they hold a significant financial interest in AAC. However, the legal standard turns on whether *the decision of the agency directly causes injury* to the interest of the movant. Id. Both groups of noteholders admit that since the

issuance of the surplus notes in 2010, AAC has made payments only twice and none since 2018. Furthermore, the contractual rights of the noteholders will remain intact through the proposed transaction, the transaction being approved or disapproved would have no bearing on their contractual obligations. Even applying a liberal interpretation of injury in fact, speculation that AAC's capital position might either improve or worsen as a result of the proposed transaction amounts to a hypothetical concern, not a concrete injury. Such conjectural claims do not establish the type of direct and particularized harm necessary to confer standing in an administrative proceeding.

The second determination is: whether the interest asserted is recognized by law? This requires an analysis of whether the purported injury is an "injury to an interest of a type recognized, regulated, or sought to be protected." Waste Mgmt. of Wisconsin, Inc. v. State of Wis. Dep't of Nat. Res., 144 Wis. 2d 499, 507, 424 N.W.2d 685, 688 (1988). The Supreme Court of Wisconsin directs the analysis to the text of the statute under review as the source of legally protected interests which operate to grant standing. Friends of Black River Forest v. Kohler Co., 2022 WI 52, ¶ 31, 402 Wis. 2d 587, 615, 977 N.W.2d 342, 356 (2022).

The relevant statute in the Oaktree Form A hearing is Wis. Stat. § 611.72(3)(am) which creates a five-part test for the Commissioner to use when evaluating the proposed acquisition of AAC. It reads:

(3) Grounds for disapproval. (am) The commissioner shall approve the plan if the commissioner finds, after a hearing, unless a hearing is not required under sub. (3m), that it would not violate the law or be contrary to the interests of the insureds of any participating domestic corporation or of the Wisconsin insureds of any participating nondomestic corporation and that:

1. After the change of control, the domestic stock insurance corporation or any domestic stock insurance

corporation controlled by the insurance holding corporation would be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

2. The effect of the merger or other acquisition of control would not be to create a monopoly or substantially to lessen competition in insurance in this state;

3. The financial condition of any acquiring party is not likely to jeopardize the financial stability of the domestic stock insurance corporation or its parent insurance holding corporation, or prejudice the interests of its Wisconsin policyholders;

4. The plans or proposals which the acquiring party has to liquidate the domestic stock insurance corporation or its parent insurance holding corporation, sell its assets, merge it with any person or make any other material change in its business or corporate structure or management, are fair and reasonable to policyholders of the domestic stock insurance corporation or in the public interest; and

5. The competence and integrity of those persons who would control the operation of the domestic stock insurance corporation or its parent insurance holding corporation are such that it would be in the interest of the policyholders of the corporation and of the public to permit the merger or acquisition of control.

In their brief, ESM and Align state their position is supported by the general notion that “public policy favors the enforcement of contracts.” ESM and Align Brief at 11. However, none of the five statutory considerations before the Commissioner at the Oaktree Form A hearing include the protection of private contractual rights. The Ad Hoc Group similarly states, “Without intervention by the Ad Hoc Group, the hearing record will lack any input from a party that has interests aligned with those of AAC. This input is critical in order to allow for a proper evaluation of whether the proposed transaction satisfies the public interest standard and financial integrity safeguards required under Wis. Stat. § 611.72.” Ad Hoc Group’s motion at 3-4. The movants’

interest in AAC as investors, while acknowledged, is not the type of interest that the governing statute recognizes as a valid ground for standing in this proceeding.

The statute does require the Commissioner consider the "public interest" Wis. Stat. § 611.72(3)(am)4. Party status is not conferred upon individuals merely by virtue of their membership in the public at large. Extending party status on that basis would undermine and effectively nullify the standing analysis. Rather, the Commissioner, with the benefit of broad public discussion, is entrusted to balance all the competing interests and make a determination of whether the proposed plan is not in the public interest. To this end, public comment on the Oaktree Form A is welcome in advance of and at the public hearing. This will assist the Commissioner in making the determination of whether the post-transaction plans to change the business structure are "fair and reasonable to policyholders of the domestic stock insurance corporation or in the public interest." Id.

None of the noteholder movants have demonstrated a substantial interest, distinct from the general public interest, that would be directly affected by the approval or disapproval of the Oaktree Form A. The interests asserted are adequately protected by the statutory review process which includes their participation through the public comment process. Any comments received prior to and at the public hearing will be weighed in making a determination in this matter and will be made part of the record in these proceedings.

The Ambac Intervenor's motion was filed on a conditional basis, meaning it was dependent upon the approval of the other motions to intervene. Because those motions have been denied, the Ambac Intervenor's request no longer presents a live issue for consideration. As a result, it is unnecessary to reach the merits of the Ambac Intervenor's

motion, and no further discussion is required.

Accordingly, it is so ORDERED:

The motions to be admitted as parties filed by the Ambac Intervenors, ESM and Align, and the Ad Hoc Group are DENIED.

8/22/2025 | 9:09 AM CDT

Date

Signed by:

Rebecca Easland

1EE83E0DD6FF415...

Rebecca Easland
Hearing Examiner