

In the Matter of the Rehabilitation of:

Segregated Account of Ambac Assurance
Corporation

Case No. 10-CV-1576

Appeal No. _____

NOTICE OF APPEAL

To:

Mr. Carlo Esqueda
Dane County Circuit Court
215 S Hamilton St.
Room 1000
Madison, WI 53703

A. John Voelker
Acting Clerk of Court of Appeals
P.O. Box 1688
Madison, WI 53701-1688

Office of the Commissioner of Insurance
Theodore K. Nickel, Commissioner of
Insurance
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David G. Walsh
Matthew R. Lynch
Foley & Lardner LLP
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Ambac Assurance Corporation
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and

and

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Emily L. Saffitz
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PLEASE TAKE NOTICE that pursuant to Wis. Stat. § 809.10(1)(a), Eaton Vance Management, Eaton Vance Municipal Income Trust, Eaton Vance Municipal Bond Fund, and Eaton Vance Municipal Bond Fund II (together, "Eaton Vance")

appeal to the Wisconsin Court of Appeals, District IV, from the whole and final order entered on January 24, 2011 in the Circuit Court of Dane County, the Honorable William D. Johnston presiding, titled "Decision And Final Order Confirming The Rehabilitator's Plan Of Rehabilitation, With Findings Of Fact And Conclusions Of Law," denying Eaton Vance's objections to the Rehabilitator's Plan of Rehabilitation for the Segregated Account of Ambac Assurance Corporation, as set forth in the Objections filed by Eaton Vance, other bondholders and the bond trustee.

This is not an appeal within Wis. Stat. § 752.31(2).

This is not an appeal entitled to preference by statute.

Dated this 9th day of March, 2011.

QUARLES & BRADY LLP

By: 

Gregory T. Everts, SBN 1001636

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Case Caption (Case Name) In the Matter of the Rehabilitation of: Segregated Account of Ambac Assurance Corporation	<h2 style="margin:0;">DOCKETING STATEMENT</h2> Circuit Court Case No. <u>10CV1576</u> Case Number Issued by Court of Appeals
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Appellant(s) (Cross-Appellant) Eaton Vance Management, Eaton Vance Municipal Income Trust, Eaton Vance Municipal Bond Fund, and Eaton Vance Municipal Bond Fund II	Attorney's Name and Address Gregory T. Everts, SBN 1001636 Quarles & Brady LLP 33 East Main Street, Suite 900 P.O. Box 2113 Madison, WI 53701-2113 Attorney's Telephone Number (608) 283-2460	(Space for file stamp.)
Respondent(s) (Cross-Respondent) Office of the Commissioner of Insurance of the State of Wisconsin, Sean Dilweg, Commissioner of Insurance of the State of Wisconsin and Ambac Assurance Corporation	Attorney's Name and Address Michael B. Van Sicklen, SBN 1017827 Naikang Tsao, SBN 1036747 Matthew R. Lynch, SBN 1066370 Foley & Lardner LLP 150 East Gilman Street P.O. Box 1497 Madison, WI 53701 (608) 257-5035 Daniel W. Stolper, SBN 1016462 222 West Washington Ave., Suite 900 P.O. Box 1784 Madison, WI 53701-1784 (608) 259-2620 Attorney's Telephone Number	

CRITERIA FOR EXPEDITED APPEALS

- This Docketing Statement is used solely to determine whether an appeal should be placed on the expedited appeal calendar. The respondent is not required to respond to the Docketing Statement. Generally, an appeal is appropriate for the expedited appeal calendar if:
 1. no more than 3 issues are raised;
 2. the parties' briefs will not exceed 15 pages in length; and
 3. the briefs can be filed in a shorter time than normally allowed.
 These requirements can be modified somewhat in appropriate cases.
- Parties should assume that the appeal will proceed under regular appellate procedure unless the court notifies them that the appeal is being considered for placement on the expedited appeals calendar.

JURISDICTION

- Has judgment or order appealed from been "entered" (filed with the clerk of circuit court)?
 Yes No If yes, date of entry January 24, 2011
- Is appeal timely? (See §808.04, Wisconsin Statutes)
 Yes No
- Is judgment or order final (does it dispose of the entire matter in litigation as to one or more of the parties)?
 Yes No (If "no", explain jurisdiction basis for appeal on separate sheet.)

NATURE OF ACTION – Briefly describe the nature of action and the result in circuit court:

On October 8, 2010, the Wisconsin Commissioner of Insurance, as the court-appointed Rehabilitator for the Segregated Account of Ambac Assurance Corporation (“Ambac”) filed a Plan of Rehabilitation (the “Plan”). Municipal bondholders, including Appellant, whose bonds are supported by insurance policies (the “LVM Bond Policies”) issued by Ambac objected to the Plan on various grounds including the following:

- (a) The bondholders’ bonds were impermissibly allocated to the Segregated Account, (b) the Plan impermissibly requires the bondholders to assign contractual rights to Ambac, (c) the Plan is not fair and equitable to, and impermissibly discriminates against, holders of long-dated claims, and (d) the Plan improperly affords priority to holders of credit default swaps.

By Order entered on January 24, 2011, the Circuit Court confirmed the Plan and denied the bondholders’ objections. This appeal seeks review of certain rulings made by the Circuit Court regarding the order and opinion confirming the Plan and various other determinations and rulings made by the Circuit Court in connection with the opinion and order confirming the Plan.

ISSUES – Specify the issues to be raised on appeal: (*Attach separate sheet if necessary.*)

(Failure to include any matter in the docketing statement does not constitute waiver of that issue on appeal. The court may impose sanctions if it appears available information was withheld. Court of Appeals Internal Operating Procedures, sec. VII(2)(b).)

- 1) Did the Circuit Court err in denying Eaton Vance’s request (1) to intervene pursuant to Wis. Stat. § 803.09, (2) to modify the order for Temporary Injunctive Relief, and (3) for further relief relating to the lawfulness of certain actions taken by the Rehabilitator and Commissioner relating to creation of the Segregated Account and certain property rights of Eaton Vance?
- 2) Did the Circuit Court err by depriving Eaton Vance of its due process rights, including denying Eaton Vance the right to conduct any discovery in order to ascertain the basis and jurisdiction for the creation of the Segregated Account and relevant information regarding the Rehabilitator’s Plan?
- 3) Did the Circuit Court err by failing to properly exercise its discretion in scheduling a final hearing on the confirmation of the Rehabilitator’s proposed Plan approximately one month after it was filed, thereby providing Eaton Vance only a month to evaluate and object to the proposed Plan?
- 4) Did the Circuit Court err in granting the Rehabilitator’s Motion to Confirm the Plan pursuant to Wis. Stat. § 645.33?
- 5) Did the allocation of the Insurance Policies to the Segregated Account violate Wisconsin’s Segregated Account Statute, Wis. Stat. § 611.24?
- 6) Do the provisions of the plan (a) violate the Wisconsin “made whole doctrine,” *Ruckel v. Gassner*, 2002 WI 67, ¶ 17, 253 Wis.2d 280, 287-88, 646 N.W.2d 11, 15, (b) exceed the Rehabilitator’s authority under Wisconsin’s Rehabilitation Statute, Chapter 645 of the Wisconsin Statutes, (c) constitute an unconstitutional taking of Eaton Vance’s and other LVM Bondholders’ property in violation of the Fifth and Fourteenth Amendments to the United States Constitution, as well as Article I, § 13, of the Wisconsin Constitution, or (d) violate any other Wisconsin or federal statute and/or the Constitutions of Wisconsin or United States?
- 7) Did the Circuit Court err by confirming the Plan which provides “Policy Claim” treatment for CDS claims that have not already been settled, because the holders of CDS claims are merely creditors who must, under Wisconsin statutory law, be subordinated to policyholder claims?
- 8) Eaton Vance reserves the right to raise, brief, and seek review of any and all other errors that occurred in the circuit court or by the circuit court in connection with this rehabilitation proceeding.

STANDARD OF REVIEW – Specify the proper standard of review for each issue to be raised, citing relevant authority:

- * Whether to allow or deny intervention as of right is a question of law. *Helgeland v. Wis. Municipalities*, 2008 WI 9, ¶ 41, 307 Wis.2d 1, 23, 745 N.W.2d 1, 11. This Court’s review of questions of law underlying the circuit court’s decision is *de novo*. *Kocken v. Wis. Counsel 40, AFSCME, AFL-CIO*, 2007 WI 72, ¶ 26, 301 Wis.2d 266, 278-79, 732 N.W.2d 828, 835.
- * Whether the circuit court erred in establishing and handling the schedule for final hearing on confirmation of the proposed plan, which is reviewed for an erroneous exercise of discretion. *Alexander v. Riegert*, 141 Wis.2d 294, 298, 414 N.W.2d 636, 638 (1987).
- * Questions of statutory interpretation and constitutional issues are reviewed *de novo*. *State v. McClaren*, 2009 WI 69, ¶ 14, 318 Wis.2d 739, 748, 767 N.W.2d 550, 554.
- * The application of a statute to a given set of facts is a question of law, which is reviewed *de novo*. *Thorp v. Town of Lebanon*, 2000 WI 60, ¶ 18, 235 Wis.2d 610, 623, 612 N.W.2d 59, 67.
- * The application of a constitutional standard to a given set of facts is a question of law, which is reviewed *de novo*. *Kamps v. Wisconsin Dept. of Revenue*, 2003 WI App. 106, ¶ 23, 264 Wis.2d 794, 812, 663 N.W.2d 306, 314.
- * Whether the circuit court erred by denying Eaton Vance its due process rights by, among other things, denying Eaton Vance any discovery, is a questions of law, which is reviewed *de novo*. *Xerox Corp. v. Wisconsin Dept. of Revenue*, 2009 WI App. 113, ¶ 12, 321 Wis.2d 181, 192, 772 N.W.2d 677, 683.

Do you wish to have this appeal placed on the expedited appeals calendar? (See Criteria For Expedited Appeals.)
 Yes No If "no", explain : The appeal is not appropriate for the expedited appeals calendar under the Criteria for Expedited Appeals because the parties' briefs are likely to exceed 15 pages in length.

Will a decision in this appeal meet the criteria for publication in Rule 809.23(1)?

Yes No

Will you request oral argument?

Yes No

List all parties in trial court action who will not participate in this appeal:

<u>Party</u>	<u>Attorney's Name and Telephone Number</u>	<u>Reason for not Participating</u>
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There are many parties that have been involved in the rehabilitation proceedings in the circuit court. It is not expected that any of them will participate in this appeal, unless it is consolidated with other currently pending or later filed appeals.

Are you aware of any pending or completed appeal arising out of the same or a companion trial court case that involves the same facts and the same or related issue?

Yes No

Name of Case Sean Dilweg and Office of the Commissioner of Ins. v. Wells Fargo Bank, et al.

Appeal Number Cons. App. 2010 AP 1291 / 2010 AP 2022 / 2010 AP 2835 / 2011 AP 0300
2010 AP 2164 / 2010 AP 2722

Signature of Person Preparing Docketing Statement

Gregory T. Everts

Name Printed or Typed

March 9, 2011

Date

Appellant Note:

You MUST attach a copy of the following trial court documents to this form:

1. Trial court's judgment or order and findings of fact.
2. Conclusions of law.
3. Memorandum decision or opinion upon which the judgment or order is based.

You MUST also furnish all opposing counsel with a copy of this completed Docketing Statement and attached trial court documents.