

## Case Caption (Case Name)

In the Matter of the Rehabilitation of:

**DOCKETING STATEMENT**

Segregated Account of Ambac Assurance Corporation

Circuit Court Case No. 10CV1576

Case Number Issued by Court of Appeals

## Appellant(s) (Cross-Appellant)

Aurelius Capital Management, LP, Fir Tree, Inc., King Street Capital, LP, King Street Capital Master Fund, Ltd., Monarch Alternative Capital, LP, and Stonehill Capital Management LLC

## Attorney's Name and Address

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## Respondent(s) (Cross-Respondent)

Office of the Commissioner of Insurance of the State of Wisconsin, Commissioner of Insurance of the State of Wisconsin,

and

Ambac Assurance Corporation

## Attorney's Name and Address

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**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 November 10, 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:

The Wisconsin Commissioner of Insurance, as rehabilitator of the Segregated Account of Ambac Assurance Corporation, requested authority from the Circuit Court to proceed in accordance with a Mediation Agreement and related agreements, which require Ambac to pay its shareholder millions of dollars and which require OCI, the Rehabilitator, Ambac, and the Segregated Account to release unconditionally, fully, and completely Ambac's shareholder and its shareholders' creditors' committee from any and all claims and causes of action. The RMBS Holders and others objected to the approval of the Mediation Agreement and related agreements.

The Circuit Court granted the Rehabilitator's Motion, authorizing the Rehabilitation and the Segregated Account to proceed in accordance with the terms of the Mediation Agreement and other agreements. The Circuit Court also ordered that Ambac's obligations under the agreements shall be provided administrative expense status in any future delinquency proceeding involving Ambac.

This appeal is taken from the order granting the Motion, which is a final order.

**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).)

The issues to be raised on appeal include the following issues and will be set forth more fully in the brief.

- (1) Whether the Circuit Court erred in approving agreements that require Ambac to pay millions of dollars to its shareholder while policyholder claims are unpaid, in violation of Wisconsin's absolute priority rule?
- (2) Whether the Circuit Court erred in granting administrative expense treatment to Ambac's shareholder's claims under the Mediation Agreement and related agreements?

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

(1) The appellate court's review of questions of law underlying the Circuit Court's decision is de novo. *Zizzo v. Lakeside Steel & Mfg. Co.*, 2008 WI App 69, ¶6, 312 Wis. 2d 463, 752 N.W.2d 889. Questions of statutory interpretation are reviewed de novo. *Awve v. Physicians Ins. Co. of Wis., Inc.*, 181 Wis. 2d 815, 821, 512 N.W.2d 216, 218 (Wis. Ct. App. 1994). 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.

(2) A question concerning the Circuit Court's jurisdiction is a question of law that the appellate court reviews de novo. *Vidal v. Labor and Industry Review Com'n*, 2002 WI 72 ¶ 14, 253 Wis.2d 426, 435, 645 N.W.2d 870, 875.

Do you wish to have this appeal placed on the expedited appeals calendar? *(See Criteria For Expedited Appeals.)*

Yes  No If "no", explain : The issues raised in this appeal relate to the pending appeals arising out of the same rehabilitation proceeding for the Segregated Account of Ambac Assurance Corporation. Attached is a list of the related appeals.

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>
Several other parties participated in the trial court action. It is unknown whether any other party will join in this appeal, file their own appeals, or move to consolidate with this appeal or other appeals in this case.		

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 Please See Attached List of Related Cases.

Appeal Number \_\_\_\_\_



Signature of Person Preparing Docketing Statement

Jessica Hutson Polakowski

Name Printed or Typed

November 28, 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.

*Pending or Completed Appeals Arising  
Out of the Same or a Companion Trial Court Case*

- *Ted Nickel v. Assured Guaranty Re Ltd.*, Appeal No. 2011AP001486
- *Ted Nickel v. United States of America*, Appeal No. 2011AP000987 (pending in Wisconsin Supreme Court)
- *Ted Nickel v. Depfa Bank, plc*, Appeal No. 2011AP000561
- *Ted Nickel v. One State Street LLC*, Appeal No. 2011AP000300
- *Ted Nickel v. Depfa Bank, plc*, Appeal No. 2010AP002835
- *Sean Dilweg v. Access to Loans for Learning Student Loan Corp.*, Appeal No. 2010AP2721
- *Sean Dilweg v. Wells Fargo Bank/Trustee of Bondholders*, Appeal No. 2010AP2164
- *Ted Nickel v. Wells Fargo Bank*, Appeal No. 2010AP002022
- *Ted Nickel v. Wells Fargo Bank*, Appeal No. 2010AP001291