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December 28, 2011

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You are hereby notified that the Court has entered the following order:

2011AP2708

Ted Nickel v. Aurelius Capital Management LP

Before Higginbotham, J.

The co-appellants appeal from a November 10, 2011 order authorizing the Rehabilitator and the Segregated Account to proceed with certain agreements with Ambac Assurance Corporation, Ambac Financial Group, Inc., and the Official Committee of Unsecured Creditors. Leave to appeal the November 10, 2011 order as a nonfinal order was also sought and denied by an order dated December 16, 2011. The circuit court's November 10, 2011 order states that "the Rehabilitator's Motion is **GRANTED**," and authorizes all transactions necessary to effectuate certain agreements. This court questions whether appellate jurisdiction exists.

An appeal as of right can be taken only from a final order or judgment; an order or judgment is final if it disposes of the entire matter in litigation as to one or more of the parties. WIS. STAT. § 808.03(1). It is not clear how the November 10, 2011 order serves to dispose of the litigation as to one or more of the parties. Under *Wambolt v. West Bend Mutual Ins. Co.*, 2007 WI 35, ¶35, ¶35 n.14, 299 Wis. 2d 723, 728 N.W.2d 670, "language that merely grants a motion

for summary judgment does not suffice to dispose of an entire matter in litigation,” and some language is necessary to complete the important task of actually disposing of claims by dismissing or adjudging them.

The November 10, 2011 order in this case does not contain any language “dismissing” or “adjudging” the underlying litigation. The order merely addresses a motion and does not reflect how, if in any way, it affects the rights and interests of the co-appellants in the litigation. Because the same co-appellants have appealed an order approving the Rehabilitation Plan and consequently determining their rights and interests, this court questions how the November 10, 2011 order terminates the litigation between the parties to this appeal. This court concludes that the parties shall file memoranda addressing whether the order appealed from is final. Therefore,

IT IS ORDERED that the co-appellants shall file memoranda within fourteen days of the date of this order. The respondents shall file a response within fourteen days of receipt of the last filed co-appellants’ memoranda.

A. John Voelker
Acting Clerk of Court of Appeals