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March 19, 2012

VIA HAND DELIVERY

Diane M. Fremgen, Clerk
Wisconsin Court of Appeals
110 East Main Street, Suite 215
Post Office Box 1688
Madison, WI 53701-1688

Re: *In the Matter of the Rehabilitation of the Segregated Account of Ambac Assurance Corporation*; Appeal Nos. 2010-AP-1291, 2010-AP-2022, 2010-AP-2835, 2011-AP-561, and 2011-AP-2708

Dear Ms. Fremgen:

We write in response to the letter sent to you on March 14, 2012 by counsel for respondents Ted Nickel, the Wisconsin Commissioner of Insurance (the "Commissioner") and the Office of the Wisconsin Commissioner of Insurance ("OCI"). Under the guise of Wisconsin Rule of Appellate Procedure 809.19(10), counsel for the respondents advised this Court of the Wisconsin Supreme Court's decision last week regarding the United States' appeal of this Court's May 3, 2011 opinion. *In the Matter of the Rehabilitation of the Segregated Account of Ambac Assurance Corporation*, 2012 WI 22, ___ Wis. 2d ___, ___ N.W.2d ___ (Mar. 8, 2012) (the "IRS Appeal"). The rule cited by counsel allows parties to advise the court of "pertinent authorities decided after briefing." Contrary to counsel's statements, however, nothing in the Wisconsin Supreme Court's decision is "pertinent" to any issue in the above-referenced appeals that are pending in this Court. Moreover, the dicta in the IRS Appeal that counsel highlights – in which the Wisconsin Supreme Court provides mere contextual background information reflecting matters that were not material to the holding in the IRS Appeal, but that are highly contested in the appeals before this court – is far from an "authority" that could or should guide this Court's consideration of the pending appeals.

In the IRS Appeal, the appellant challenged this Court's ruling that it had failed properly to initiate an appeal because the notice of appeal was not signed by a lawyer admitted to practice in Wisconsin. The Wisconsin Supreme Court affirmed this Court's dismissal of the United States' appeal. The Supreme Court relied on a different ground than this Court. It found the IRS waived (or, according to Chief Justice Abrahamson in her concurrence, forfeited) review. In short, the Supreme Court ruled that because the IRS had not participated in the proceedings in the Circuit Court, and had not objected to the rehabilitation plan in the Circuit Court, it had not preserved any issue on appeal. Because the IRS had not preserved any issue concerning the rehabilitation plan, the Supreme Court's decision did not reach any issue concerning that plan,

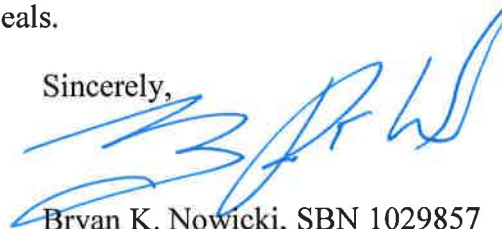
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and the Supreme Court's decision cannot be authority for any issue concerning the merits of the Circuit Court's decision.

The Wisconsin Supreme Court noted that the question it was addressing – “whether the court of appeals erred in dismissing the appeal” – was “a narrow one.” IRS Appeal ¶ 11. In its letter to this Court, counsel also acknowledged that the narrow issue of waiver or forfeiture is not present in the appeals pending in this Court.

Unlike the IRS, the appellants and the respondents in the above-referenced appeals have fully presented and briefed the relevant facts and law relating to the rehabilitation plan, both in the Circuit Court and in this Court. The Supreme Court's decision did not address any of the issues raised by the appellants in the pending appeals.

Sincerely,



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cc All Counsel of Record (*via email*)