

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) Federal National Mortgage Association (Fannie Mae)	Attorney's Name and Address Rodney Carter SBN 1001258 Steven Laabs SBN 1068937 Davis & Kuelthau, s.c. 300 N. Corporate Drive, Suite 150 Brookfield, WI 53045-5804  David M. Schlecker Reed Smith LLP 599 Lexington Avenue New York, NY 10022 Attorney's Telephone Number (262) 792-2400	<i>(Space for file stamp.)</i>
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 Michael B. Van Sicklen, SBN 1017827 Matthew R. Lynch, SBN 1066370 Foley & Lardner LLP 150 East Gilman Street P.O. Box 1497 Madison, WI 53701 (608) 257-5035  Karen M. Gallagher, SBN 1007676 William F. Bauer, SBN 1023834 Coyne, Schultz, Becker & Bauer, S.C. 150 East Gilman Street, Suite 1000 Madison, WI 53703 (608) 255-1388  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 June 4, 2012.

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 the Circuit Court to approve the exercise of two call options for the purchase of certain surplus notes by Ambac in the amount of approximately \$789 million, finding that said note purchase was in the best interests of Fannie Mae and other segregated account policyholders. The Circuit Court determined that the note purchase did not violate Wisconsin's priority scheme, set forth in Wisconsin Statute section 645.68. Fannie Mae and others objected to the approval of the purchase of the surplus notes.

The Circuit Court granted the Rehabilitator's Amended Motion, authorizing the Rehabilitator and the Segregated Account to proceed with purchase of the surplus notes under the terms detailed in the Rehabilitator's Amended Motion.

This appeal is taken from the order granting the Amended 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 authorizing the purchase of approximately \$789 million in surplus notes prior to payment of other priority claimants.
- (2) Whether the Circuit Court violated Wisconsin's priority scheme set forth in Wisconsin Statute section 645.68 in authorizing the purchase of the surplus notes.

**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:

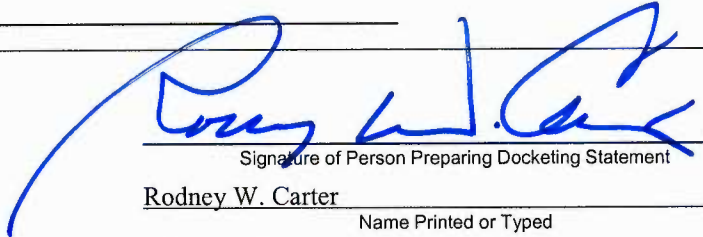
<u>Party</u>	<u>Attorney's Name and Telephone Number</u>	<u>Reason for not Participating</u>
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Several other parties participated in the trial court action. It is unknown whether any other party will join in this appeal, file their own appeals, or move 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

Rodney W. Carter  
Name Printed or Typed

July 3, 2012  
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. Aurelius Capital Management LP* 2011AP002708
- *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

In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

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**ORDER GRANTING REHABILITATOR'S AMENDED MOTION TO  
APPROVE PURCHASE OF SURPLUS NOTES**

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This matter came before the Court for a hearing on June 4, 2012 on the Rehabilitator's Amended Motion to Approve Purchase of Surplus Notes (the "Amended Motion"). The Amended Motion came before the Court on proper advance written notice for hearing in open court. Appearances were noted on the record. All interested parties were afforded the opportunity to appear and be heard on the Amended Motion.


Prior to the hearing, certain parties-in-interest filed and served written statements in which they did not object to the Court granting the Rehabilitator's Amended Motion, but reserved their litigation positions generally in all other respects and specifically in regard to the positions as previously briefed by them in the appeals presently pending before the Wisconsin Court of Appeals with respect to certain prior orders of this Court.

Two parties-in-interest filed timely objections to the Rehabilitator's Amended Motion: (1) the Federal National Mortgage Association ("Fannie Mae") and (2) a group of affiliated entities referred to in their objection papers as the "Glenview Funds."

The Court having considered the Rehabilitator's Amended Motion, the objections from Fannie Mae and the Glenview Funds, and the oral arguments, testimony and other information provided at the hearing, it is hereby **ORDERED** that the objections advanced by Fannie Mae and the Glenview Funds are denied and the Rehabilitator's Amended Motion is **GRANTED**. The statements, findings and conclusions made by the Court at the hearing are incorporated here as part of the Court's decision.

Dated this 4<sup>th</sup> day of June, 2012.

BY THE COURT:



Honorable William D. Johnston  
Lafayette County Circuit Court Judge  
Presiding by Judicial Appointment