

## Case Caption (Case Name)

In the Matter of the Rehabilitation of:  
Segregated Account of Ambac Assurance Corporation:

**DOCKETING STATEMENT**Circuit Court Case No. 10-CV-1576

The Office of the Commissioner of Insurance of the State of  
Wisconsin, Theodore K. Nickel, Commissioner, and Ambac Assurance  
Corporation

Case Number Issued by Court of Appeals

## Appellant(s) (Cross-Appellant)

Bank of America, N.A., in Its Capacity as  
Trustee and in Similar Capacities for Certain  
Residential Mortgage-backed Securities Trusts

## Attorney's Name and Address

Jane C. Schlicht  
Cook & Franke S.C.  
660 East Mason Street  
Milwaukee, WI 53202-3877

(Space for file stamp.)

Michael E. Johnson  
Alston & Bird LLP  
90 Park Avenue  
New York, New York 10016

## Attorney's Telephone Number

414-227-1291  
212-210-9584

## Respondent(s) (Cross-Respondent)

The Office of the Commissioner of Insurance  
of the State of Wisconsin, Theodore K. Nickel,  
Commissioner, and Ambac Assurance  
Corporation

## Attorney's Name and Address

Counsel for OCI  
Michael B. Van Sicklen  
Matthew R. Lynch  
Foley & Lardner LLP  
150 East Gilman Street  
Madison, WI 53701

Counsel for Ambac  
Daniel W. Stolper  
Stafford Rosenbaum LLP  
222 West Washington Avenue, Suite 900  
Madison, WI 53701-1784

William G. Primps  
Emily L. Saffitz  
Allison H. Weiss  
Peter A. Ivanick  
Lynn Roberts  
Dewey & Leboeuf LLP  
1301 Avenue of Americas  
New York, NY 10019

## Attorney's Telephone Number

608-258-4206  
608-259-2620

**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:

See Attachment A.

**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).)

See Attachment A.

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

See Attachment A.

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

Yes  No If "no", explain : Argument of the legal issues in this case will require significantly more pages than the 15-page limitation allowed for briefs under the expedited appeals guidelines.

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>
Many interested parties have appeared in the Circuit Court Action. Appellants do not know at this time who will and will not participate.		

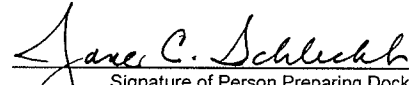
Are you aware of any pending or completed appeal arising out of the same or a companion trial court case that involves the same facts and the same or related issue?

Yes

No

Name of Case In the Matter of Rehabilitation of Segregated Account of Ambac, et al.

Appeal Number 2010AP1291&2022;2010AP2835;2011AP30 0

  
Signature of Person Preparing Docketing Statement

Jane C. Schlicht

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.

## ATTACHMENT A

### NATURE OF ACTION

This appeal arises from the insolvency of Ambac Assurance Corporation (“Ambac”), a financial guaranty insurance company domiciled in Wisconsin. On March 24, 2010 the Office of Commissioner of Insurance (“OCI”) commenced the rehabilitation proceeding in Dane County Circuit Court. That same day OCI and Ambac created a Segregated Account. Ambac allocated to the Segregated Account numerous policies and other liabilities it considered to have “material projected impairments”, such as residential mortgage-backed securities, collateralized debt obligations and certain credit default swaps. Other policies and obligations, together with all of Ambac’s assets, were kept in Ambac’s “General Account”.

Also on March 24, 2010, OCI moved the Circuit Court to enter an *ex parte* Order for Injunctive Relief, which motion was granted. Among other terms, the Injunction Order precludes any person or entity from commencing proceedings against the Segregated Account, Ambac or OCI under penalty of forfeiture.

A variety of Interested Parties filed motions challenging the Segregated Account, the terms of the Injunction Order and the Rehabilitation proceeding. These challenges were rejected and are at least in part the subject of other pending appeals in Wisconsin and before the Seventh Circuit Court of Appeals.

On October 8, 2010, OCI filed its proposed Plan of Rehabilitation for the Ambac Segregated Account. A hearing on the proposed plan was held the week of November 15-19, 2010 and on November 30, 2010. On January 24, 2011 the Circuit Court entered its Decision and Final Order Confirming the Rehabilitator’s Plan of Rehabilitation.

## ISSUES

1. Did the Circuit Court err in granting OCI's motion to confirm the Rehabilitator's proposed Plan of Rehabilitation for the Segregated Account filed on October 8, 2010 and entering its Decision and Final Order Confirming the Rehabilitator's Plan of Rehabilitation on January 24, 2011?
2. Was it error for the Circuit Court to allow Ambac to satisfy policy claims through the delivery of Surplus Notes in lieu of cash?
3. Did the Circuit Court err in concluding that policyholders would be better off under the Plan than in liquidation?
4. Was it error for the Circuit Court to deny policyholders the opportunity to opt out of the Plan?
5. Was it error for the Circuit Court to allow Ambac to demand reimbursement of past paid claims in cash while Ambac is paying policy claims in part with Surplus Notes?
6. Was it error for the Circuit Court to allow Ambac an indefinite period of time to evaluate and pay claims in contravention of policy terms that require claims be paid in a finite period of time?
7. Was it error for the Circuit Court to allow the subordination of the Surplus Note claims to current claims made on the policies?
8. Was it error for the Circuit Court to enjoin trustees and similarly situated parties from enforcing policy and insurance agreement terms that would deny Ambac direction or control rights following a payment or similar default?

9. Was it error for the Circuit Court to require appellants to undertake new responsibilities and incur additional out-of-pocket expenses without adequate remuneration or indemnification?

**Standard of Review**

The findings of fact in the Decision and Final Order are reviewed under the “clearly erroneous standard.” Wis. Stat. § 805.17(2). The conclusions of law are reviewed de novo. *City of Muskego v. Godec*, 167 Wis. 2d 536, 545, 482 N.W.2d 79, 83 (1992). The standard for mixed questions of fact and law is great weight/clearly erroneous for factual issues and de novo review for legal issues. *Department of Revenue v. Exxon Corp.*, 90 Wis. 2d 700, 713, 281 N.W.2d 94, 101 (1979), *aff’d* 447 U.S. 207 (1980).

439668:710:9972-1