

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

In the Matter of the Rehabilitation of:

Segregated Account of
Ambac Assurance Corporation

Case No. 10 CV 1576

NOTICE OF APPEAL BY CUSTOMER ASSET PROTECTION COMPANY

To: John Voelker, Acting Clerk
 Wisconsin Court of Appeals
 P.O. Box 1688
 Madison, WI 53701-1688

Carlo Esqueda, Clerk
Dane County Circuit Court
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Madison, WI 53703-3285

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PLEASE TAKE NOTICE that Customer Asset Protection Company (“CAPCO”) appeals to the Court of Appeals, District IV, from the whole of the final Order entered against it on January 24, 2011, in the

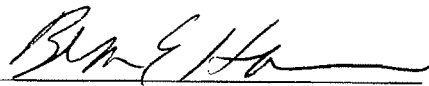
Circuit Court for Dane County, the Honorable William D. Johnston of the Circuit Court for Lafayette County presiding by designation, entitled “Decision and Final Order confirming the Rehabilitator’s Plan of Rehabilitation, with Findings of Fact and Conclusions of Law” (“Rehabilitation Plan Order”), including without limitation, any and all preliminary and procedural orders entered by the Circuit Court relating to the proceeding that culminated in the entry of the Rehabilitation Plan Order.

This is not an appeal within Wis. Stat. § 752.31(2).

This is not an appeal entitled to preference by statute.

Dated this 8th day of March, 2011.

GASS WEBER MULLINS LLC
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Protection Company (“CAPCO”)



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Case Caption (Case Name)

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

DOCKETING STATEMENT

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

Circuit Court Case No. 10-CV-1576

Case Number Issued by Court of Appeals

Appellant(s) (~~Cross-Appellant~~)

Customer Asset Protection Company

Attorney's Name and Address

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(Space for file stamp.)

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Respondent(s) (~~Cross-Respondent~~)

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

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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 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:

This appeal arises from the insolvency of Ambac Assurance Corporation ("Ambac"), a financial guaranty insurance company domiciled in Wisconsin. The statutory responsibility to commence and administer legal proceedings arising from Ambac's insolvency falls to the Wisconsin Office of the Insurance Commissioner ("OCI"). Such insolvency proceedings, and the OCI's administration and regulation of Ambac, must be conducted in compliance with the provisions of the Wisconsin Insurance Statutes, Chapters 600 through 655.

This appeal, and the other appeals from the Circuit Court proceedings currently pending in the Court of Appeals as Consolidated Appeal Nos. 2010-AP-1291; and appeals numbers 2010AP-2835, 2011-AP300, along with the most recent appeal filed by Depfa, plc, on March 1, 2011, seek review of certain rulings the by the Circuit Court which reject claims and assertions that OCI, acting in both the capacity as Insurance Commissioner and as the court-appointed Rehabilitator of the Segregated Account of Ambac Assurance Corporation ("Segregated Account"), violated and continues to violate the Wisconsin Insurance Statutes. In particular, CAPCO objected to the Rehabilitator's argument that CAPCO's reinsurance claims should be prioritized as a fifth level (general claims) status, when in fact losses under reinsurance contracts are "policy claims" as intended to be prioritized at the statute's third level, "Loss Claims.

CAPCO is an insurance company formed by various securities firms for the purpose of providing additional protection to the firm clients for losses in the event that the firm should fail. Such clients already were provided coverage by the Securities Investor Protection Corporation ("SIPC"); CAPCO was created to provide supplemental or "excess" protection for losses that exceeded the coverage provided by SIPC. CAPCO's contract with Ambac provides that Ambac would assume some of the risk that CAPCO would have to pay for claims made by brokerage firm clients under the terms of the bonds. All of the outstanding bonds issued by CAPCO expired by February of 2009. No claims have been made against CAPCO at any time, and none can be made except possibly under bonds issued to Lehman Brothers Inc. and Lehman Brothers International (Europe). Because insolvency proceedings were commenced against these two entities prior to the expiration of the relevant bonds, customers of those firms may have claims as beneficiaries under the bonds. Because of the Lehman bankruptcy, it is likely to be at least several years before CAPCO can determine whether it has any claim against Ambac under the terms of its reinsurance contract.

As part of its Plan of Rehabilitation, OCI placed CAPCO's contract with Ambac in the Segregated Account, along with several other reinsurance agreements. Before the circuit court, and now on appeal CAPCO challenges this subordination of its contract as a "general claim," instead of giving it the proper priority as a "loss claim."

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).)

Under the order of priority established by Wis. Stat. § 645.68, is a claim under a reinsurance contract to be treated as a loss claim under subsection (3)?

STANDARD OF REVIEW – Specify the proper standard of review for each issue to be raised, citing relevant authority: The Commissioner’s interpretation of Wis. Stat. § 645.68 is a question of law which is not binding upon a reviewing court. Local 695 v. LIRC, 154 Wis. 2d 75, 82, 452 N.W.2d 368 (1990). The courts generally apply one of three levels of deference to an agency’s statutory interpretations. Sauk County v. WERC, 165 Wis. 2d 406, 413, 477 N.W.2d 267 (1991). This Court applies the de novo standard when the matter is one of first impression for the agency and where the agency lacks special expertise or experience in determining the question presented. Jicha v. DILHR, 169 Wis. 2d 284, 291, 485 N.W.2d 286 (1992); WSEU v. WERC, 189 Wis. 2d 406, 411, 525 N.W.2d 783(Ct. App. 1994).

Do you wish to have this appeal placed on the expedited appeals calendar? (See Criteria For Expedited Appeals.)
 Yes No If “no”, explain : Describing the factual background, as well as arguing the statutory interpretation question is very likely to consume more than the 15 pages permitted by the expedited appeals criteria.

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>
There are a myriad of parties who have been involved in the proceedings in the circuit court. Appellant believes none of them will participate in this appeal, unless it is consolidated with other currently pending or later filed appeals.		

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, 2010AP2835, 2011AP300 and Depfa, plc appeal filed March 3, 2011



Signature of Person Preparing Docketing Statement

Beth Ermatinger Hanan, SBN 1026989

Name Printed or Typed

March 8, 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.