

**GARVEY McNEIL &  
ASSOCIATES, S.C.**

ATTORNEYS AT LAW

Edward R. Garvey  
Kathleen G. McNeil  
Peter E. McKeever  
Anne M. Bensky

March 10, 2011

VIA HAND DELIVERY

A. John Voelker, Clerk  
Court of Appeals  
110 E. Main St., Ste 215  
Madison, WI, 53701

RE: *In the Matter of the Rehabilitation of  
Segregated Account of Ambac Assurance Corporation*  
Dane County Case No: 10 CV 1576

Dear Mr. Voelker:

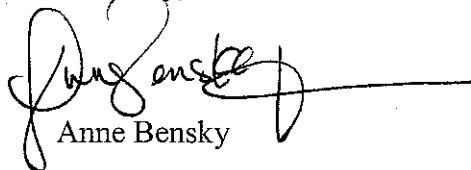
Enclosed please find the following documents submitted by One State Street  
LLC:

- Notice of Appeal
- Docketing Statement (original and one copy)
- Statement on Transcript (original and one copy)

The original Notice of Appeal and filing fees have been submitted to the Dane  
County Circuit Court Clerk.

Thank you for your attention to this matter.

Sincerely,

  
Anne Bensky

Enc.

CC: Honorable William D. Johnston (via U.S. Mail)  
Michael B. Van Sicklen (via U.S. Mail)  
Daniel Stolper (via U.S. Mail)  
Service List (via email)

In the Matter of Rehabilitation of )  
 Segregated Account of Ambac ) Case No. 10 CV 1576  
 Assurance Corporation ) Honorable William D. Johnston  
 )  
 )  
 )

**NOTICE OF APPEAL**

To: Dane County Circuit Court, Carlo Esqueda, Clerk  
 Dane County Courthouse  
 215 S Hamilton St.  
 Madison WI 53703

Office of the Commissioner of Insurance  
 Ted Nickel, Commissioner of Insurance  
 c/o Attorney Michael B. Van Sicklen  
 Foley & Lardner LLP  
 150 East Gilman Street  
 Post Office Box 1497  
 Madison, WI 53701

Ambac Assurance Corporation  
 c/o Daniel W. Stolper  
 Stafford Rosenbaum LLP  
 222 West Washington Ave, Ste 900  
 Post Office Box 1784  
 Madison, WI 53701

PLEASE TAKE NOTICE that One State Street LLC appeals to the Court of Appeals, District IV, from the whole final judgment entered on January 24, 2011, in the Dane County Circuit Court, case number 10-CV-1576, the honorable William D. Johnston presiding, in favor of the Wisconsin Office of the Commissioner of Insurance, Theodore K. Nickel, Commissioner, and against One State Street LLC. The January 24, 2011 judgment titled, "Decision and Final Order Confirming the Rehabilitator's Plan of Rehabilitation, with Findings of Fact and

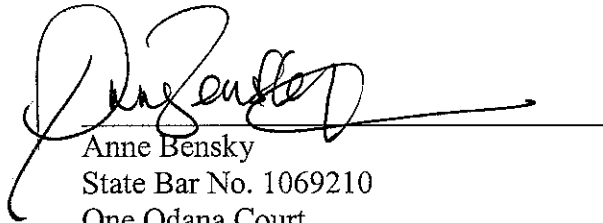
Conclusions of Law,” granted in whole the Insurance Commissioner’s motion to confirm the proposed Plan of Rehabilitation of the Segregated Account of Ambac Assurance Corporation.

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

This is not an appeal entitled to preference by statute.

Dated: March 10, 2011.

Garvey McNeil & Associates, S.C.

A handwritten signature in black ink, appearing to read "Anne Bensky", is written over a horizontal line. The signature is fluid and cursive.

Anne Bensky  
State Bar No. 1069210  
One Odana Court  
Madison, Wisconsin 53719  
Tel: (608) 256-1003  
Fax: (608) 256-0933

D. Ross Martin  
Andrew G. Devore  
Ropes & Gray LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199-3600  
Tel: (617) 951-7266  
Fax: (617) 235-0454

Mark I. Bane  
Ropes & Gray LLP  
1211 Avenue of the Americas  
New York, NY 10036-8704  
Tel: (212) 841-8808  
Fax: (646) 728-1662

COUNSEL FOR ONE STATE STREET LLC

## Case Caption (Case Name)

In the Matter of the Rehabilitation of:

**DOCKETING STATEMENT**

Segregated Account of Ambac Assurance Corporation

Circuit Court Case No. 10 CV 1576

Case Number Issued by Court of Appeals

<p>Appellant(s) (Cross-Appellant)</p> <p>One State Street LLC</p>	<p>Attorney's Name and Address</p> <p>Anne Bensky Kathleen McNeil Garvey McNeil &amp; Associates, S.C. One Odana Court Madison, WI 53705</p> <p>D. Ross Martin Andrew G. Devore Ropes &amp; Gray LLP Prudential Tower, 800 Boylston St. Boston, MA 02199</p> <p>Mark I. Bane Ropes &amp; Gray LLP 1211 Avenue of the Americas New York, NY 10036</p> <p>Attorney's Telephone Number</p> <p>608-256-1003 617-951-7266 212-841-8808</p>	<p>(Space for file stamp.)</p>
<p>Respondent(s) (Cross-Respondent)</p> <p>Wisconsin Office of the Commissioner of Insurance, Ted Nickel, Commissioner ("OCI")</p> <p>Ambac Assurance Corp.</p>	<p>Attorney's Name and Address</p> <p>Counsel for OCI Michael B. Van Sicklen Matthew R. Lynch Foley &amp; Lardner LLP 150 E. Gillman St. Madison, WI 53701</p> <p>Counsel for Ambac Assurance Corp. Daniel W. Stolper Stafford Rosenbaum LLP 222 W. Washington Ave, Ste 900 Madison, WI 53701</p> <p>Henry J. Ricardo Richard W. Reinthaler William G. Primps Emily L. Saffitz Peter A. Ivanick Dewey &amp; Leboeuf LLP 1301 Avenue of the Americas New York, NY 10019</p>	

Attorney's Telephone Number

608-257-5035

608-256-0226

212-259-8000

**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 action began in the Dane County Circuit Court, the honorable William D. Johnston of Lafayette County presiding by special appointment, on March 24, 2010, when the Wisconsin Office of the Commissioner of Insurance (OCI) filed a Verified Petition for Order of Rehabilitation and Motion for Temporary Injunctive Relief (TRO) as its first court action taken pursuant to its regulatory powers under Wis. Stat. s. 645.33, to rehabilitate Ambac Assurance Corp. (AAC), a Wisconsin domiciled insurer whose principal place of business is in New York City. One State Street LLC, the lessor of AAC's New York City headquarters building, filed a timely objection to the TRO, objecting to the placement of the contingent headquarters lease liability (Headquarters Lease) into the Segregated Account and requesting to intervene in the action. On October 26, 2010, the Court denied One State Street LLC's motion to dissolve or modify the TRO, and its motion to intervene. One State Street filed a timely notice of appeal from the October 26, 2010 order, which is currently pending as case number 11-AP-300.

On October 8, 2010, OCI filed a motion to confirm its Plan of Rehabilitation (Plan), together with the Plan itself and a disclosure statement. One State Street objected to the Plan based upon the Plan's failure to provide One State Street with the value it would obtain in a liquidation, the Plan's violation of the statutory priority scheme, and the Plan's unlawfully broad releases and immunities for the benefit of third parties, among other objections. Just five weeks after the Plan was filed, the circuit court held a six-day hearing on the Plan, over the objections of nearly all interested parties and without affording One State Street an opportunity to conduct any discovery. The circuit approved OCI's Plan on January 24, 2011, by adopting, verbatim, OCI's proposed order confirming the rehabilitator's plan of rehabilitation. This appeal seeks review of various rulings made before and during the confirmation hearing in addition to review of the circuit court's findings of fact and conclusions of law confirming the Plan.

**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).)

- 1) Whether the Circuit Court properly interpreted Wis. Stat. s. 611.24(2), which allows an insurer to create an optional segregated account for “any part of its business” to allow OCI and Ambac to place the entire Headquarters Lease into the Segregated Account when AAC, which is not in rehabilitation or liquidation, uses the headquarters building as its world headquarters and primary business address?
- 2) Whether the allocation of the Headquarters Lease to the Segregated Account violated Wisconsin’s Fraudulent Transfers law, Wis. Stat. s. 242.01 *et seq.*, New York fraudulent transfer law, N.Y. DEBT & CRED. S. 270 *et seq.* and U.S. Supreme Court precedent (see *Shapiro v. Wilgus*, 287 U.S. 348 (1932))?
- 3) Whether the OCI’s actions denied equal protection guaranteed by the 14<sup>th</sup> Amendment to the United States Constitution and/or constituted a taking in violation of the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution and Article 1, Section 13 of the Wisconsin Constitution?
- 4) Whether the Circuit Court erred in denying One State Street LLC’s motion for intervention, pursuant to the March 24, 2010 TRO and Wis. Stat. s. 803.09?
- 5) Whether a plan of rehabilitation that fails to provide creditors with at least the liquidation value of their claims violates Wisconsin law and constitutes a taking without just compensation, violates due process, and/or constitutes an impermissible impairment of contractual rights under the Wisconsin and United States constitutions?
- 6) Whether the Circuit Court erred in concluding as a matter of law that One State Street was not entitled to the value it would receive in a liquidation, a conclusion that, without explanation, reversed a previous legal conclusion the Circuit Court made in an earlier ruling in the case?
- 7) Whether various Circuit Court rulings and orders related to the Plan confirmation hearing, including but not limited to the admission of evidence provided on the eve of the hearing and the prohibition of discovery, violated One State Street’s due process rights?
- 8) Whether the Circuit Court’s verbatim adoption of OCI’s 61-page proposed findings of fact and conclusions of law was an abuse of discretion?
- 9) Whether the Circuit Court had jurisdiction to approve, and/or committed reversible error in approving, broad third-party releases and injunctions against third parties?

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

- 1 & 2) Whether a circuit court properly interpreted and applied a statute is a question of law an appellate court reviews *de novo*. *Stuart v. Weisflog's Showroom Gallery, Inc.*, 2008 WI 22, ¶ 11, 308 Wis. 2d 103, 746 N.W. 2d 762.
- 3 & 5) Whether government conduct constitutes a taking of private property without just compensation is a question of law that an appellate court reviews *de novo*. *E-L Enterprises, Inc. v. Milwaukee Metropolitan Sewerage Dist.*, 2010 WI 58, ¶ 20, 326 Wis.2d 82, 785 N.W.2d 409; the application of a constitutional standard to a given set of facts is a question of law that an appellate court reviews *de novo*. *Kamps v. Wisconsin Dept. of Revenue*, 2003 WI App 106, ¶ 23, 264 Wis. 2d 794, 663 N.W.2d 306.
- 4) Whether a circuit court properly denied intervention is a question of law that an appellate court reviews *de novo*. *Helgeland v. Wisconsin Municipalities*, 2008 WI 9, ¶ 41, 307 Wis. 2d 1, 745 N.W.2d 1.
- 6) An appellate court is not bound by a trial court’s legal conclusions, and reviews the matter *de novo*. *City of Muskego v. Godec*, 167 Wis. 2d 536, 545, 482 N.W.2d 79 (1992).
- 7) Whether the circuit court erred in evidentiary rulings made during the Plan confirmation hearing is reviewed for erroneous exercise of discretion. *City of Milwaukee v. NL Industries*, 2008 WI App 181, ¶ 64, 315 Wis. 2d 443, 762 N.W.2d 757. Whether One State Street was denied due process is reviewed *de novo*. *Xerox Corp. v. Wisconsin Dept. of Revenue*, 2009 WI App. 113, ¶ 12, 321 Wis. 2d 181, 772 N.W.2d 677.
- 8) The Court of Appeals decides as a matter of law whether a circuit court properly exercises discretion. *Schmid v. Olsen*, 111 Wis. 2d 228, 237, 330 N.W.2d 547 (1983).
- 9) Whether a circuit court lacks subject matter jurisdiction is a question of law an appellate court reviews *de novo*. *In re Carlson*, 147 Wis. 2d 630, 635, 433 N.W.2d 635 (Ct. App. 1988).

Do you wish to have this appeal placed on the expedited appeals calendar? (See Criteria For Expedited Appeals.)  
 Yes  No If "no", explain : This case involves complex legal and factual issues that cover multiple rulings and orders. To date, several different interested parties have filed appeals, many of which have been consolidated and stayed. In addition, One State Street intends to request a stay of this appeal pending possible settlement.

Will a decision in this appeal meet the criteria for publication in Rule 809.23(1)?  
 Yes  No

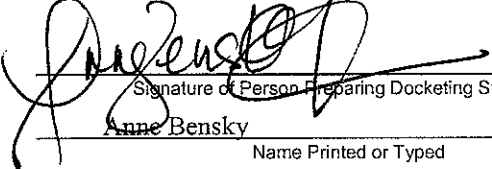
Will you request oral argument?  
 Yes  No

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>
Several parties participated in the trial court action. It is unknown whether any party will join in this appeal, file their own appeals, or file their own appeals and 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 Dilweg v. Wells Fargo Bank; Dilweg v. One State Street; Nickel v. Wells Fargo Bank; Nickel v. Depfa Bank; Nickel v. Access to Loans for Learning & Lloyds TSB Bank; Nickel v. United States; Nickel v. Federal Home Loan Mortgage Corp.; Nickel v. Bank of America N.A.

Appeal Number 10-AP-1291 & 10-AP-2022 (consolidated); 10-AP-2835; 11-AP-300

  
 \_\_\_\_\_  
 Signature of Person Preparing Docketing Statement  
 Anne Bensky  
 \_\_\_\_\_  
 Name Printed or Typed  
 March 10, 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.

Ted Nickel, Commissioner, Office of the  
 Commissioner of Insurance of the State of  
 Wisconsin  
 (party designation) Appellee  
 -vs-  
 One State Street LLC  
 (party designation) Appellant

**Statement on  
 Transcript**

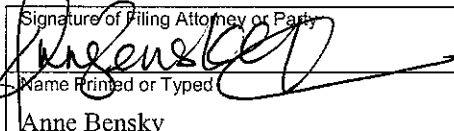
Case No. 10-AP-

To: Clerk of the Court of Appeals (original)  
 Circuit Court Clerk (copy)  
 Parties' Attorneys (copies)

Check one:

- A transcript is not necessary for prosecution of this appeal.
- All transcripts necessary for this appeal are already on file and satisfactory arrangements with the court reporter(s) for service of a copy of the transcript(s) on the other parties have been made.
- Satisfactory arrangements with the court reporter(s) have been made for the filing and service of the following transcript(s), as certified below by the court reporter: **(Specify transcript(s) requested and dates of proceedings, for example; "pre-trial proceedings, 9/24/08," "trial, 10/14/08," etc.)**

Date: March 10, 2011

Signature of Filing Attorney or Party 	Telephone Number 608-256-1003
Name Printed or Typed Anne Bensky	State Bar Number (if applicable) 1069210
Address Garvey McNeil & Associates, S.C., One Odana Court, Madison, WI 53719	

**The COURT REPORTER must complete the following certification only if the transcript(s) is/are not already on file:**

**COURT REPORTER:**

I certify that on (date) \_\_\_\_\_ the above-designated portion(s) of the transcript(s) in (case name) (caption) \_\_\_\_\_, appeal no. \_\_\_\_\_, were requested and arrangements made for the payment of the costs of the transcript(s). The transcript(s) will be filed with the circuit court and served on the parties, pursuant to Wisconsin Statutes, §809.11(7), on or before (date) \_\_\_\_\_.

Signature of Court Reporter	Telephone Number
Name Printed or Typed	Court
Address	