
In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

Appeal No. _____

NOTICE OF APPEAL

TO: Mr. Carlo Esqueda
Dane County Circuit Court
215 S. Hamilton St., Rm. 1000
Madison, WI 53703

Mr. A. John Voelker
Wisconsin Court of Appeals
110 East Main St., Ste. 215
Madison, WI 53703

Office of the Commissioner of
Insurance
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and

and

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PLEASE TAKE NOTICE that pursuant to Wis. Stat. § 809.10(1)(a), Wells Fargo Bank, National Association, as Trustee for the LVM Bondholders (“Wells Fargo”), appeals to the Wisconsin Court of Appeals, District IV, from the whole and final order entered on January 24, 2011 in the Circuit Court of Dane County, the Honorable William D. Johnston

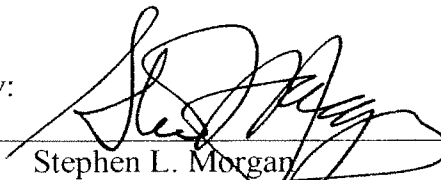
presiding, titled "Decision And Final Order Confirming The Rehabilitator's Plan Of Rehabilitation, With Findings Of Fact And Conclusions Of Law," denying Wells Fargo's objections to the Rehabilitator's Plan of Rehabilitation for the Segregated Account of Ambac Assurance Corporation.

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

This is not an appeal entitled to preference by statute.

Dated this 7th day of March, 2011.

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By: 

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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

Appellant(s) (Cross-Appellant)

Wells Fargo Bank, N.A., as Trustee for the
LVM Bondholders

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Respondent(s) (Cross-Respondent)

The Office of the Commissioner of Insurance
of the State of Wisconsin, Theodore K. Nickel,
Commissioner of Insurance of the State of
Wisconsin ("OCI")

and

Ambac Assurance Corporation
("Ambac")

Attorney's Name and Address

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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 rehabilitation of the Segregated Account of Ambac Assurance Corporation ("Segregated Account"), instituted by the Office of the Commissioner of Insurance of the State of Wisconsin ("Commissioner") on March 24, 2010 in the Dane County Circuit Court (the "circuit court").

On October 8, 2010, the Commissioner, as the court-appointed Rehabilitator (the "Rehabilitator") for the Segregated Account, filed a Motion to Confirm the Rehabilitator's proposed Plan of Rehabilitation (the "Plan") for the Segregated Account pursuant to Wis. Stat. § 645.33(5).

Wells Fargo, as Trustee for the LVM Bondholders ("Wells Fargo"), whose bonds are supported by an insurance policy and surety bond (the "Insurance Policies") issued by Ambac Assurance Corporation and allocated to the Segregated Account, along with various other interested parties, raised numerous objections in the circuit court including, but not limited to (1) the allocation of certain policies to the Segregated Account, (2) the Commissioner's exercise of discretion pursuant to the Wisconsin Insurance Statutes, (3) the Rehabilitator's Plan, (4) the lack of discovery and transparency in the rehabilitation proceeding, and (5) various other issues affecting the rights and property interests of Wells Fargo and the other interested parties.

On January 24, 2011, the circuit court entered an order and opinion granting the Rehabilitator's Motion to Confirm the Plan and denying all objections raised by Wells Fargo and the other interested parties. This appeal seeks review of certain rulings made by the circuit court regarding the opinion and order confirming the Plan, and various other determinations and rulings made by the circuit court in connection with the opinion and order 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) Did the circuit court err in denying Wells Fargo's motion (1) to intervene pursuant to Wis. Stat. § 803.09, (2) to modify the Order for Temporary Injunctive Relief, and (3) for further relief relating to the lawfulness of certain actions taken by the Rehabilitator and Commissioner relating to creation of the Segregated Account and certain property rights of Wells Fargo?
- 2) Did the circuit court err by depriving Wells Fargo of its due process rights, including denying Wells Fargo the right to conduct any discovery in order to ascertain the basis and jurisdiction for the creation of the Segregated Account and relevant information regarding the Rehabilitator's Plan?
- 3) Did the circuit court err by failing to properly exercise its discretion in scheduling a final hearing on the confirmation of the Rehabilitator's proposed Plan approximately one month after it was filed by Respondents, thereby providing Wells Fargo only a month to evaluate and object to the proposed Plan?
- 4) Did the circuit court err in granting the Rehabilitator's Motion to Confirm the Plan pursuant to Wis. Stat. § 645.33?
- 5) Did the allocation of the Insurance Policies to the Segregated Account violate Wisconsin's Segregated Account Statute, Wis. Stat. § 611.24?
- 6) Do the provisions of the Plan (a) violate the Wisconsin "made whole doctrine," *Ruckel v. Gassner*, 2002 WI 67, ¶ 17, 253 Wis.2d 280, 287-88, 646 N.W.2d 11, 15, (b) exceed the Rehabilitator's authority under Wisconsin's Rehabilitation Statute, Chapter 645 of the Wisconsin Statutes, (c) constitute an unconstitutional taking of LVM Bondholders' property in violation of the Fifth and Fourteenth Amendments to the United States Constitution, as well as Article I, § 13, of the Wisconsin Constitution, or (d) violate any other Wisconsin or federal statute and/or the Constitutions of Wisconsin or United States?
- 7) Wells Fargo reserves the right to raise, brief, and seek review of any and all other errors that occurred in the circuit court or by the circuit court in connection with this rehabilitation proceeding.

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

- * Whether to allow or deny intervention as of right is a question of law. *Helgeland v. Wis. Municipalities*, 2008 WI 9, ¶41, 307 Wis.2d 1, 23, 745 N.W.2d 1, 11. This Court's review of questions of law underlying the circuit court's decision is *de novo*. *Kocken v. Wis. Counsel 40, AFSCME, AFL-CIO*, 2007 WI 72, ¶26, 301 Wis.2d 266, 278-79, 732 N.W.2d 828, 835.
- * Whether the circuit court erred in establishing and handling the schedule for final hearing on confirmation of the proposed Plan, which is reviewed for an erroneous exercise of discretion. *Alexander v. Riegert*, 141 Wis.2d 294, 298, 414 N.W.2d 636, 638 (1987).
- * Questions of statutory interpretation and constitutional issues are reviewed *de novo*. *State v. McClaren*, 2009 WI 69, ¶14, 318 Wis. 2d 739, 748, 767 N.W.2d 550, 554.
- * 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.
- * The application of a constitutional standard to a given set of facts is a question of law, which is reviewed *de novo*. *Kamps v. Wisconsin Dept. of Revenue*, 2003 WI App. 106, ¶23, 264 Wis. 2d 794, 812, 663 N.W.2d 306, 314.
- * Whether the circuit court erred by denying Wells Fargo its due process rights by, among other things, denying Wells Fargo any discovery, is a question of law, which is reviewed *de novo*. *Xerox Corp. v. Wisconsin Dept. of Revenue*, 2009 WI App. 113, ¶12, 321 Wis.2d 181, 192, 772 N.W.2d 677, 683.

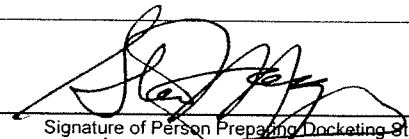
Do you wish to have this appeal placed on the expedited appeals calendar? (See *Criteria For Expedited Appeals.*)
 Yes No If "no", explain :

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

<u>Party</u>	<u>Attorney's Name and Telephone Number</u>	<u>Reason for not Participating</u>
There are many parties that have been involved in the rehabilitation proceedings in the circuit court. It is not expected that any 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 Sean Dilweg and Office of the Commissioner of Ins. v. Wells Fargo Bank, et. al.,
Appeal Number Cons. App. 2010 AP 1291 / 2010 AP 2022 / 2010 AP 2835 / 2011 AP 0300
2010 AP 2164 / 2010 2721


Signature of Person Preparing Docketing Statement
Stephen L. Horan
Name Printed or Typed
3/7/2011
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.