COURT OF APPEALS OF WISCONSIN
DISTRICT IV

In the Matter of the Rehabilitation of:

Segregated Account of
Ambac Assurance Corporation,

Appeal No. 2011 AP 561

TED NICKEL and OFFICE OF THE
COMMISSIONER OF INSURANCE,

Petitioners-Respondents,

AMBAC ASSURANCE,

Interested Party-
Respondent,

v.

DEPFA BANK, PLC,

Interested Party-Appellant,

ACCESS TO LOANS FOR
LEARNING STUDENT LOAN
CORPORATION, AURELIUS
CAPITAL MANAGEMENT LP,
BANK OF AMERICA, N.A.,
CUSTOMER ASSET PROTECTION
COMPANY ("CAPCO"), DEUTSCHE
BANK NATIONAL TRUST
COMPANY, DEUTSCHE BANK
TRUST COMPANY AMERICAS,

EATON VANCE, FEDERAL HOME LOAN MORTGAGE CORPORATION ("Freddie Mac"), FEDERAL NATIONAL MORTGAGE ASSOCIATION ("Fannie Mae"), FIR TREE INC., KING STREET CAPITAL MASTER FUND, LTD., KING STREET CAPITAL, L.P., LLOYDS TSB BANK PLC, MONARCH ALTERNATIVE CAPITAL LP, ONE STATE STREET LLC, STONEHILL CAPITAL MANAGEMENT LLC, U. S. BANK NATIONAL ASSOCIATION, WELLS FARGO BANK, N.A., WELLS FARGO BANK, N.A., as Trustee for the LVM Bondholders, WILMINGTON TRUST COMPANY and WILMINGTON TRUST FSB,

Interested Parties-Co-Appellants

APPEAL FROM ORDERS OF THE CIRCUIT COURT
OF DANE COUNTY CASE NO. 10 CV 1576
THE HONORABLE WILLIAM D. JOHNSTON PRESIDING

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join this Appellants' Consolidated Reply Brief
as noted in the signature blocks:**

Access to Loans for Learning Student Loan Corporation and Lloyds TSB Bank plc
Depfa Bank, plc
Federal Home Loan Mortgage Corporation ("Freddie Mac")
Federal National Mortgage Association ("Fannie Mae")

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Contrary to what OCI would like this Court to believe, OCI's discretion in regulating insurers is not absolute, and insurer rehabilitation proceedings and plans under Chapter 645 require Court review and approval.

Appellants' opening brief outlined multiple ways OCI's actions violate Wisconsin law and the Wisconsin and United States Constitutions. In response, OCI tries to cloak itself in unfettered discretion, free from limitations imposed by law. Appellants do not ask this Court to reverse the Circuit Court's orders because Appellants prefer a different approach. Rather, this Court should reverse the Circuit Court's orders because those orders approve OCI's unlawful actions. Under Wisconsin law, OCI may not establish an inadequately-capitalized Segregated Account, enforce inequitable allocations, or implement an illegal plan.

I. THE CIRCUIT COURT'S WHOLESALE ADOPTION OF OCI'S PROPOSED ORDERS WAS ERROR.

The Circuit Court's written rulings reflect its unquestioning adoption of OCI's proposed orders and failure to exercise discretion.

OCI does not deny the Circuit Court simply signed OCI's proposed 61-page order. Instead, OCI argues that Appellants fail to show the Court's findings were clearly erroneous. (OCI Br. 22-26.) OCI misapprehends Appellants' arguments. Appellants challenge the Court's legal conclusions and application of the law to the facts, which the Court took verbatim from OCI when it adopted OCI's proposed order.

OCI claims the Circuit Court fully explained its rationale citing a single statement the Court made mid-hearing on November 19, 2010. That statement cannot explain the Circuit Court's reasons for entering OCI's proposed order on January 24, after the completion of evidence, closing arguments, and post-hearing briefing. Where, as here, the court's written ruling

adopts one party's proposed order in its entirety without explanation, it should be reversed. (Consol. Br. 33-38.)

None of OCI's cases support OCI. In *Karp v. Coolview of Wis., Inc.*, 25 Wis. 2d 299, 301, 130 N.W.2d 790, 791 (1964), the court announced its final ruling and requested the parties to submit proposed findings. Similarly, in *Cashin v. Cashin*, 2004 WI App. 92, ¶13, 273 Wis. 2d 754, 681 N.W.2d 255, although the judgment had been drafted by one of the parties, the court interpreted that judgment by reviewing its prior final, oral ruling on the transcript. *Id.* at ¶3.

OCI asserts *Trieschmann*, on which Appellants rely, is limited to divorce cases. (*See* OCI Br. 27, citing *Kersten v. H.C. Prange Co.*, 186 Wis. 2d 49, 60, 520 N.W.2d 99, 104 (Wis. Ct. App. 1994).) *Kersten*, however, does not support OCI's contention and is inapplicable. In *Kersten*, there was no suggestion the court had adopted findings written by one of the parties. Instead, the decision addressed *Trieschmann*'s other ruling that the failure to set out the factors supporting a ruling was reversible error.

Likewise, the court in *In re Joy P.*, 200 Wis. 2d 227, 241, 546 N.W.2d 494, 500-01 (Wis. Ct. App. 1996), did not apply *Trieschmann* because the record was sufficient to discern the trial court's reasoning. To the contrary, here the record is insufficient to discern why the Circuit Court adopted OCI's orders. For example, in the Confirmation Order, the Circuit Court adopted without explanation OCI's position that a liquidation analysis was unnecessary (R.556:58-59 (¶11), JA.157-58), despite previously stating the opposite (R.397:14, JA.238).

II. THE FORMATION OF THE SEGREGATED ACCOUNT VIOLATED WISCONSIN LAW.

The Segregated Account was and remains inadequately capitalized, and the Circuit Court erred in holding to the contrary.

Wisconsin law requires that "the commissioner shall require the corporation to have and maintain an adequate amount of capital and surplus in the segregated account." Wis. Stat. §611.24(3)(a). The statutory comments provide that a segregated account must contain adequate capital to enable it to

"function and survive like a separate corporation," and to make the segregated account "independently viable." Wis. Stat. Ann. §611.24, Comments – L.1971, c.260, §72. Wisconsin does not grant OCI authority to form a segregated account to be placed into rehabilitation immediately.

OCI never proved the Segregated Account was adequately capitalized. The Segregated Account's sole sources of funding, the contingent Note and Reinsurance Agreement, were conditioned on a rehabilitation plan and subject to OCI's sole discretion – making them totally speculative.[1] (R.1:70-72, 87-88, JA.307-09, 323-24.) Thus, the Segregated Account had no way to pay any of its liabilities independently. Indeed, witnesses testified the Segregated Account has no assets, only liabilities. (*See* Consol. Br. 44-45.) Moreover, OCI immediately placed the Segregated Account into rehabilitation because the "further transaction of business" would be "hazardous, financially or

[1] The General Account also has no obligations under the Note or Reinsurance Agreement if its surplus falls below $100 million (or such higher amount as OCI determines). (R.1:72, 88, JA.309, 324.)

otherwise, to its policyholders, its creditors or the public." (R.1:8, JA.253.)

OCI argues it has "broad discretion" to determine the appropriate level of capital. (OCI Br. 55-56.) Noticeably absent from OCI's brief is any recognition that its authority is subject to Wisconsin law. *See Aetna Life Ins. Co. v. Mitchell,* 101 Wis. 2d 90, 108, 113-14, 303 N.W.2d 639, 648, 650 (Wis. 1981). OCI may set capital at zero only if the Segregated Account "carries no risks not assumed by the corporation's general account." (OCI Br. 56.) That is not the situation here. The Segregated Account carries extensive liabilities the General Account has not assumed. The General Account's obligations were and are conditioned on a rehabilitation plan, OCI approval, and AAC's statutory surplus exceeding $100 million (or such higher amount as OCI determines). (R.1:70-72, 87-88, JA.307-09, 323-24.)[2]

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[2] OCI claims Judge Crabb found the Segregated Account adequately capitalized. (*E.g.*, OCI Br. 6, 10, 55.) Judge Crabb only decided the federal court lacked jurisdiction. She did not evaluate or address the appropriateness of OCI's actions or any issue raised in this appeal.

III. THE REHABILITATION UNLAWFULLY TREATS POLICYHOLDERS INEQUITABLY.

The Segregated Account and Plan treat policyholders inequitably in violation of Wisconsin law by: (1) permitting payments to lower priority creditors before policyholders are paid in full; and (2) creating subclasses among policyholders, unlawfully favoring General Account policyholders over those with claims in the Segregated Account. (Consol. Br. 46-63.) Wisconsin's statutorily-mandated absolute priority rule requires that policyholders be treated equitably and paid in full before lower priority claimants receive payment. Wis. Stat. §645.68.

OCI does not deny (1) Segregated Account policyholders will not be paid in full through the Plan's cash/note split, yet OCI may pay lower-priority claimants of AAC; and (2) General Account policyholders receive preferential treatment to Segregated Account policyholders. (*See* OCI Br. 62-67.)

Rather, OCI first asserts Section 645.68 does not apply to the General Account. (*Id.* at 62-64.) This Court should not permit OCI to avoid the statutory protections afforded

policyholders in Wis. Stat. §645.68 by dividing an insurer into two accounts immediately prior to a rehabilitation. Policyholders in this case hold policies originally issued by the same insurer, AAC, not the General Account or the Segregated Account. Moreover, in arguing that the Segregated Account was adequately capitalized, OCI took the opposite position that the General and Segregated Accounts are components in a unified rehabilitation scheme with access to a "common pool" of assets. (*Id.* at 54-57.)

Second, OCI asserts policyholders and creditors should trust OCI not to abuse its discretion when it permits payments to lower priority claimants. Wisconsin law does not leave it to OCI's discretion to decide whether payments to lower priority claimants are in the interest of Segregated Account policyholders. (*See id.* at 66-67.) No payments may go to lower-priority claimants until Segregated Account claims are paid in full. The Plan unlawfully permits OCI or AAC to use Segregated Account policyholder

assets to satisfy liabilities to AAC claimants with lower-priority claims.

Third, OCI claims it may prefer those with interests in the General Account because only the Segregated Account is in rehabilitation. (*Id.* at 62-64.) Wisconsin law specifically prohibits the creation of subclasses of policyholders when an insurer fails. Wis. Stat. §645.68 ("No subclasses shall be established within any class.") OCI cites no case that alters this unambiguous prohibition. By preferring policyholders in the General Account to those allocated to the Segregated Account, OCI has created a subclass of policyholders in violation of Wisconsin law.

Precedent does not support OCI's "targeted rehabilitation." (OCI Br. 42-46, citing *Carpenter v. Pac. Mut. Life Ins. Co.*, 74 P.2d 761 (Cal. 1938), *aff'd sub nom. Neblett v. Carpenter*, 305 U.S. 297 (1938) (collectively "*Carpenter*").) In *Carpenter*, the conservator conveyed the healthy part of the insurer to a separate, new corporation, *Pac. Mut.*, 74 P.2d at 768, and the old

company with the troubled policies retained the equity interests in the new insurer "as a protection to all old company policyholders." *Id.* at 770-71. Here, OCI moved troubled policies to the Segregated Account, which was "capitalized" with conditional assets and does not hold the equity of the General Account in which the healthy policies remain. The Plan permits AAC's shareholder to retain its equity interest even though policyholders in the Segregated Account will not be paid in full.

IV. THE PLAN DOES NOT PROVIDE OPT-OUT RIGHTS OR LIQUIDATION VALUE.

The Plan is constitutionally deficient because it does not provide policyholders with the right to opt out or receive at least the liquidation value of their claims. (Consol. Br. 63-74.) Liquidation value is a constitutional minimum. Governmental action altering contractual rights that does not provide a private party with liquidation value is unconstitutional. *Neblett*, 305 U.S. at 303-05.

A. The Wisconsin And United States Constitutions Require Policyholders Receive At Least Liquidation Value.

In insurance rehabilitations, policyholders must receive at least the liquidation value of their claims. (Consol. Br. 63-67.) In its October 26, 2010 order, the Circuit Court agreed that this standard must be met, but inexplicably reversed itself in the Order by adopting OCI's contrary conclusions. (R.397:14, JA.238; R.556:58-59 (¶11), JA.157-58.)

In *Carpenter*, the Court permitted the conservator to impair policyholders' rights only because policyholders could opt out of the rehabilitation plan and collect the liquidation value of their claims. *Neblett*, 305 U.S. at 303-05; *Pac. Mut.*, 74 P.2d at 777-78. Though OCI attempts to minimize that holding, even the treatise OCI cites states "the creditor or policyholder [must] receive the liquidated value of his contract rights without any unreasonable delay" under a rehabilitation plan. Lee R. Russ, 1 COUCH ON INS. § 5:29 (3d ed.).

OCI argues this rule does not apply because Chapter 645 permits OCI to select the form of a delinquency proceeding

"depending on the specific facts of the individual case." (OCI Br. 48.) However, whether codified or not, *Carpenter* sets the constitutional minimum for rehabilitation plans. *See, e.g., Foster v. Mut. Fire, Marine & Inland Ins. Co.*, 614 A.2d 1086, 1093-94 (Pa. 1992) ("Under [*Carpenter*], creditors must fare at least as well under a rehabilitation plan as they would under a liquidation[.]").[3]

B. OCI Failed To Establish Policyholders Will Receive Liquidation Value.

In the alternative, OCI argues it provided a liquidation analysis. (OCI Br. 9-16, 52-54.) But its analysis does not prove the Plan satisfies *Carpenter*.

OCI's "liquidation analysis" consists of its assertion that rehabilitation was preferable to liquidation because of adverse consequences of liquidation. (*Id.*) *Carpenter* requires that rehabilitators quantify what policyholders would receive in a

[3] OCI is incorrect that no courts have rejected rehabilitation plans that fail the *Carpenter* standard. *See, e.g., Commercial Nat'l Bank in Shreveport v. Superior Court*, 17 Cal. Rptr. 2d 884, 898-901 (Cal. Ct. App. 1993) (setting aside rehabilitation plan because it denied policyholders full liquidation value due to application of improper liquidation valuation date).

liquidation to ensure they receive at least that much in a rehabilitation. OCI's conclusion that rehabilitation was generally preferable to liquidation is irrelevant to whether policyholders will receive at least the liquidation value of their claims.

OCI provided on the eve of the hearing unsupported financial information that supposedly shows policyholders would have received between 0% and 25% in a liquidation. (R.483:8, JA.585.) Even if that data were admissible (which it is not), it is irrelevant under *Carpenter*. A liquidation analysis must be performed as of the effective date of the Plan, whereas OCI's analysis was as of the commencement of proceedings. (Consol. Br. 71-72.) OCI ignores this legal defect.

V. THE PLAN VIOLATES OTHER WISCONSIN LAW.

A. The Plan Is An Impermissible Liquidation.

OCI's "rehabilitation" is a run-off of part of AAC's business – a procedure that contradicts Wisconsin's insurance statutes. (Consol. Br. 74-78.) OCI responds that the legislature gave it discretion "to choose between rehabilitation and liquidation." (OCI Br. 38.) OCI has not "chosen" between the two options. It is

conducting a liquidation in the guise of a rehabilitation, depriving policyholders of rights and protections they would have in a liquidation. (*See* Consol. Br. 75-78.)

Although rehabilitation "does not have to restore the company to its exact original condition," it may not be used as camouflage for the run-off OCI admits it is conducting. (*See* OCI Br. 38 (citing *Foster*, 614 A.2d at 1094).) *Foster* gives OCI no support – the rehabilitation plan in that case was permissible because its goal was to have the insurer reemerge as a solvent, operating entity, and because it required the insurer to maintain capital and surplus minimums sufficient to "resume operations in the future." *Foster*, 614 A.2d at 1094. OCI is doing the opposite here – its purpose is the eventual dissolution of the Segregated Account after paying policyholders only a fraction of their claims.

B. The Plan Unlawfully Strips Assets From Policies Allocated To The Segregated Account.

The Plan unlawfully strips assets from Segregated Account policies by transferring to the General Account premiums,

remediation recoveries, and other collateral and assets associated with those policies. (Consol. Br. 78-81.)

OCI asserts "Appellants' argument ignores OCI's sound reasons for keeping 'recoveries' in the General Account." (OCI Br. 72.) Regardless of whether it believes it has a "sound reason," OCI may not violate the law. OCI violated Section 611.24(3)(b), which requires income and assets attributable to the Segregated Account to remain identifiable with it. (Consol. Br. 79-80.)

OCI similarly fails to refute that it violated Section 611.24(3)(h) by transferring assets between the Segregated and General Accounts without fair consideration. (*Id.* at 80-81.) OCI argues Section 611.24(3)(h) is inapplicable because remediation recoveries were always in the General Account and therefore were not "transferred" anywhere. (OCI Br. 73-74.) OCI elevates form over substance. OCI allocated policies to the Segregated

Account but gave the associated benefits to the General Account. Fair consideration was required but not given.[4]

C. The Plan Violates Wisconsin's "Made Whole" Doctrine.

Section 4.04(h) of the Plan violates the "made whole" doctrine by requiring policyholders to assign claims to AAC before the policyholders are fully compensated. (Consol. Br. 81-85.)

In response, OCI argues this doctrine has never been applied in the rehabilitation context. (OCI Br. 74.) OCI provides no reason why rehabilitation proceedings are not subject to this general Wisconsin law principle.

Indeed, OCI's cases demonstrate that the "made whole" doctrine is especially important here to protect insureds given there is an inadequate pool of funds. *See Fischer v. Steffen*, 2011 WI 34, ¶51, 333 Wis. 2d 503, 797 N.W.2d 501; *Muller v. Society*

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[4] Similarly, OCI admits the Plan permits seizure of policyholder collateral in excess of what policyholders receive under the Plan, but defends that unconstitutional taking by claiming adversely affected policyholders may negotiate alternative resolutions under Section 3.06. (OCI Br. 76-77.) Section 3.06 does not cure patently unconstitutional deprivations.

Ins., 2008 WI 50, ¶60, 309 Wis. 2d 410, 750 N.W.2d 1; *Paulson v. Allstate Ins. Co.*, 2003 WI 99, ¶27, 263 Wis. 2d 520, 665 N.W.2d 744. OCI's argument that policyholders would benefit from Ambac exercising subrogation rights is not the type of equitable or other consideration the Wisconsin Supreme Court has held renders the doctrine inapplicable.

D. The Plan Contains Overly Broad Release, Immunity, Indemnification, and Injunction Provisions.

The Plan's release, immunity, indemnification, and injunction provisions violate Wisconsin law. (Consol. Br. 85-90.) OCI claims "[t]hese provisions protect entities tasked with carrying out the court-approved Plan and are vital to the Plan's success." (OCI Br. 79.) OCI does not address the limits of such provisions, and it provides no support for its conclusory statement.

For example, OCI never explained why AAC, AAC's parent, and the General Account need protection. Though OCI contends that the Plan only provides protection for "actions taken in

connection with the rehabilitation and Plan" (*id.* at 80), the language sweeps much more broadly. (*See* Consol. Br. 85-90.)

VI. THE CIRCUIT COURT'S PROCEEDINGS WERE FUNDAMENTALLY UNFAIR AND DENIED APPELLANTS DUE PROCESS.

A. The Circuit Court Admitted And Considered Hearsay.

OCI does not refute that the Circuit Court erred in admitting and considering the Disclosure Statement and other hearsay. (Consol. Br. 97-107.)

First, OCI's statement (OCI Br. 34-35) that three entities stipulated to the Disclosure Statement does not mean that it was properly admitted into evidence. Appellants objected to its admission. (R.495; R.516; R.560:68-84; R.564:28-39.)

Second, OCI offers no authority exempting the Circuit Court proceedings from the Rules of Evidence. Wis. Stat. §901.01.

Third, OCI's contention (OCI Br. 35) that the "vast majority" of the Circuit Court's findings cite the hearing testimony of OCI's witnesses ignores that OCI's witnesses relied

on and referenced the Disclosure Statement in their testimony. (*E.g.,* R.561:166-83.)

Fourth, the Disclosure Statement does not fall within any hearsay exception. (Consol. Br. 97-107.) Chapter 645 does not require the preparation of the Disclosure Statement (OCI Br. 37), which was created for litigation. No authority supports admitting a document made for litigation as a public record.

Fifth, Mr. Peterson's limited involvement in developing the Disclosure Statement (*id.*) does not make it admissible. It remains an out-of-court statement submitted for its truth.

B. The Circuit Court Improperly Denied Discovery.

OCI is wrong that discovery was not required.

First, OCI ignores due process in arguing there is no right to discovery in a rehabilitation proceeding. (OCI Br. 29; *see* Consol. Br. 90-93.) OCI cites a decision of Judge Johnston (OCI Br. 30-31), the same judge whose rulings are being challenged here, and a Georgia appellate court decision (OCI Br. 32) applying a Georgia statute not applicable here.

Second, OCI argues Appellants were not entitled to discovery because OCI provided certain information to Appellants. (OCI Br. 31-32.) OCI misstates the record. On October 14, OCI invited objectors to submit written questions in advance of the confirmation hearing to avoid duplicative questioning. (R.471:28-29; *see also* R.387:2, JA.222.) The business day before the hearing, OCI selectively responded to some of the questions that parties submitted. (*See* R.484:2.) No OCI official submitted a signed verification attesting to the truth of the responses. (*Id.* at 2, 41.) Appellants had no opportunity to discover the facts underlying OCI's responses, or to test OCI's assertions.

Similarly, the information OCI produced (OCI Br. 31) was the Disclosure Statement, its amendments, and supplements, which were inadmissible hearsay.

Finally, while Appellants were permitted to cross-examine the witnesses, they lacked information to meaningfully cross-examine those witnesses. In addition, the witnesses were unable

to address crucial issues, such as the liquidation analysis and the breadth of the release and immunity provisions. (*See, e.g.*, R.560:236-37; R.562:72, 74-76.) The witnesses failed to address the assumptions, analysis, or conclusions in the Disclosure Statement and its amendments. (*See, e.g.*, R.561:118-19; R.562:74-76.) A limited cross-examination is not a substitute for pre-hearing discovery.

C. The Circuit Court Erred In Scheduling An Expedited Hearing.

OCI argues the Circuit Court appropriately concluded "sooner is better" in scheduling a hearing. (OCI Br. 33.) OCI cites no reason for this conclusion. Despite the fact that OCI requested an expedited hearing without discovery, OCI admits that it still has not implemented the Plan it rushed to confirm. (*Id.*) There clearly was no "need" for an expedited hearing, which denied Appellants their due process rights. (Consol. Br. 93-97.)

CONCLUSION

Appellants request that this Court reverse the Circuit Court's orders and remand this matter.

Dated this 29th day of August, 2011.

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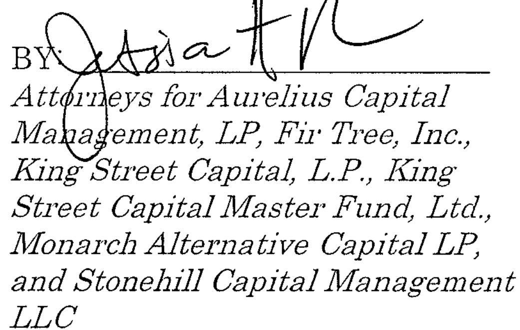

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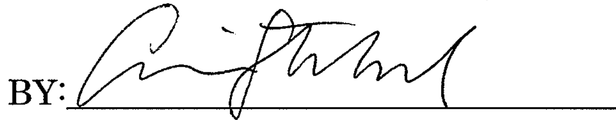
BY: 

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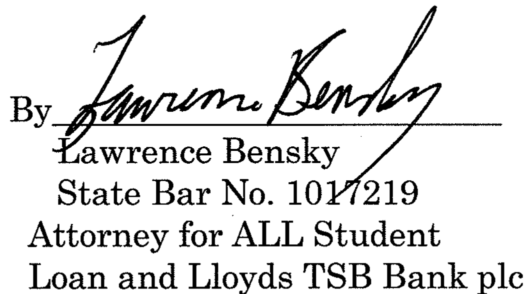
ACCESS TO LOANS FOR LEARNING STUDENT LOAN CORPORATION/LLOYDS TSB BANK PLC



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COURT OF APPEALS OF WISCONSIN
DISTRICT IV

In the Matter of the Rehabilitation of:

Segregated Account of
Ambac Assurance Corporation,

Appeal No. 2011 AP 561

TED NICKEL and OFFICE OF THE
COMMISSIONER OF INSURANCE,

Petitioners-Respondents,

AMBAC ASSURANCE,

Interested Party-
Respondent,

v.

DEPFA BANK, PLC,

Interested Party-Appellant,

ACCESS TO LOANS FOR
LEARNING STUDENT LOAN
CORPORATION, AURELIUS
CAPITAL MANAGEMENT LP,
BANK OF AMERICA, N.A.,
CUSTOMER ASSET PROTECTION
COMPANY ("CAPCO"), DEUTSCHE
BANK NATIONAL TRUST
COMPANY, DEUTSCHE BANK
TRUST COMPANY AMERICAS,

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Interested Parties-Co-Appellants

APPEAL FROM ORDERS OF THE CIRCUIT COURT OF DANE COUNTY CASE NO. 10 CV 1576
THE HONORABLE WILLIAM D. JOHNSTON PRESIDING

FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in §809.19(8)(b) and (c) of the Wisconsin Statutes, as modified by this Court's May 3, 2011 Order, for a brief produced with a proportional serif font. The length of this brief is 3,285 words.

Dated this 29th day of August, 2011.

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In the Matter of the Rehabilitation of:

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v.

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Interested Party-Appellant,

ACCESS TO LOANS FOR
LEARNING STUDENT LOAN
CORPORATION, AURELIUS
CAPITAL MANAGEMENT LP,
BANK OF AMERICA, N.A.,
CUSTOMER ASSET PROTECTION
COMPANY ("CAPCO"), DEUTSCHE
BANK NATIONAL TRUST
COMPANY, DEUTSCHE BANK
TRUST COMPANY AMERICAS,
EATON VANCE, FEDERAL HOME

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Interested Parties-Co-Appellants

APPEAL FROM ORDERS OF THE CIRCUIT COURT
OF DANE COUNTY CASE NO. 10 CV 1576
THE HONORABLE WILLIAM D. JOHNSTON PRESIDING

CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding appendix, if any, which complies with the requirements of s 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date. A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 29th day of August, 2011.

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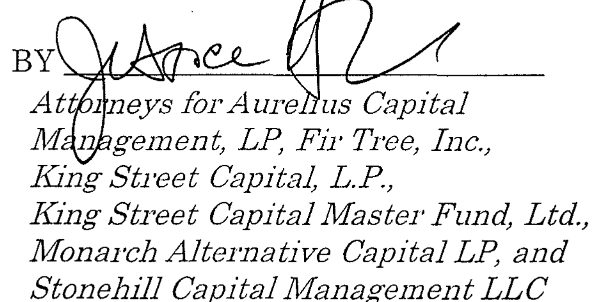

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COURT OF APPEALS OF WISCONSIN
DISTRICT IV

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

TED NICKEL and OFFICE OF THE COMMISSIONER OF INSURANCE,

Appeal No. 2011-AP-561

Petitioners-Respondents,

AMBAC ASSURANCE,

Interested Party-Respondent,

DEPFA BANK, PLC,

Interested Party-Appellant,

ACCESS TO LOANS FOR LEARNING STUDENT LOAN CORPORATION, AURELIS CAPITAL MANAGEMENT LP, BANK OF AMERICA, N.A., CUSTOMER ASSET PROTECTION COMPANY ("CAPCO"), DEUTSCHE BANK NATIONAL TRUST COMPANY, DEUTSCHE BANK TRUST COMPANY AMERICAS, EATON VANCE, FEDERAL HOME LOAN MORTGAGE CORPORATION ("FREDDIE MAC"), FEDERAL NATIONAL MORTGAGE ASSOCIATION ("FANNIE MAE"), FIR TREE INC., KING STREET CAPITAL MASTER FUND, LTD., KING STREET CAPITAL, L.P., LLOYDS TSB BANK PLC, MONARCH ALTERNATIVE CAPITAL LP, ONE STATE

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BANK N.A. as Trustee for the LVM
Bondholders, WILMINGTON
TRUST COMPANY and
WILMINGTON TRUST FSB,

Interested Parties-Co-Appellants.

**APPEAL FROM ORDER OF THE CIRCUIT COURT
OF DANE COUNTY CASE NO. 10 CV 1576
THE HONORABLE WILLIAM D. JOHNSTON PRESIDING**

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of August, 2011, I caused three true and correct copies of the Appellants Consolidated Reply Brief to be served pursuant to Wis. Stat. § 809.19(8) by first class mail and e-mail on the parties listed below.

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I further certify that on this 29th day of July, 2011, I caused true and correct copies of the Appellants Consolidated Reply Brief to be served by e-mail on the parties listed below.

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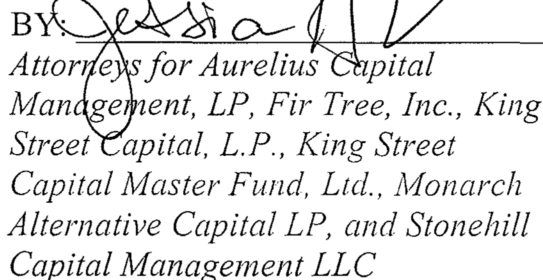

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