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P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
Facsimile (608) 267-0640  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

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December 28, 2011

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New York, NY 10036

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Kenneth M. Argentieri  
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600 Grant Street, Suite 5010  
Pittsburgh, PA 15219-2802

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von Briesen & Roper, S.C.  
411 E. Wisconsin Ave., Ste. 700  
Milwaukee, WI 53202

Bruce G. Arnold  
Whyte & Hirschboeck Dudek  
STE 1900  
555 East Wells Street  
Milwaukee, WI 53202-3819

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One Market St., Spear Street Tower  
San Francisco, CA 94105

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P.O. Box 927  
Madison, WI 53701-0927

Kathleen Garvey McNeil  
Anne Bensky  
Garvey McNeil & Associates, S.C.  
One Odana Court  
Madison, WI 53719

Lawrence Bensky  
Law Office of Lawrence Bensky, LLC  
10 East Doty St., Ste. 800  
Madison, WI 53703

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Paul E. Benson  
Michael Best & Friedrich LLP  
Ste. 3300  
100 E. Wisconsin Ave.  
Milwaukee, WI 53202-4108

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Kramer Levin Naftalis & Frankel LLP  
1177 Avenue of the Americas  
New York, NY 10036

Robert A. Zeavin  
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Manatt, Phelps & Phillips, LLP  
11355 W. Olympic Blvd.  
Los Angeles, CA 90064

Michael T. Brody  
Jenner & Block  
One IBM Plaza  
Chicago, IL 60611

Thomas M. Pyper  
Cynthia L. Buchko  
Whyte Hirschboeck Dudek, S.C.  
P. O. Box 1379  
Madison, WI 53701-1379

Laura E. Callan  
Solheim Billing & Grimmer, S.C.  
P.O. Box 1644  
Madison, WI 53701-1644

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One Battery Park Plaza  
New York, NY 10004

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P.O. Box 3262  
Milwaukee, WI 53201-3262

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1 S Pinckney St # 700  
Madison, WI 53701

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400 Capital Mall, Suite 300  
Sacramento, CA 95814-4497

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Prudential Tower  
800 Boylston Street  
Boston, MA 02199-3600

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O'Neil, Cannon, Hollman, DeJong & Laing  
111 E. Wisconsin Ave. Ste. 1400  
Milwaukee, WI 53202-4807

Gregory T. Everts  
Quarles & Brady LLP  
P.O. Box 2113  
Madison, WI 53701-2113

Andrew Alan Oberdeck  
Kevin G. Fitzgerald  
Foley & Lardner LLP  
777 East Wisconsin Ave.  
Milwaukee, WI 53202

Beth E. Hanan John A. Franke  
Gass Weber Mullins LLC  
309 N. Water Street, Ste. 700  
Milwaukee, WI 53202

Brady C. Williamson Jr.  
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Godfrey & Kahn, S.C.  
P.O. Box 2719  
Madison, WI 53701-2719

John C. Goodchild III  
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1701 Market Street  
Philadelphia, PA 19103

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Jenner & Block LLP  
353 N. Clark Street  
Chicago, IL 60654

Leah M. Houghton  
Morgan, Lewis & Bockius LLP  
225 Franklin Street, 16th Fl.  
Boston, MA 02110-4104

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1301 Avenue of the Americas  
New York, NY 10019

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90 Park Avenue  
New York, NY 10016

R. Timothy Muth Daniel Kelly  
Reinhart Boerner Van Deuren SC  
P.O. Box 2965  
Milwaukee, WI 53201-2965

Melissa A. Kern  
Frost Brown Todd LLC  
1103 Boundary Rd.  
Middleton, WI 53562

Steven Klugman  
Debevoise & Plimpton LLP  
919 Third Avenue  
New York, NY 10022

Brittany S. Ogden  
Stephen L. Morgan  
Jennifer M. Krueger  
Murphy & Desmond, S.C.  
P. O. Box 2038  
Madison, WI 53701-2038

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Suite 1300  
280 N. High Street  
Columbus, OH 43215

David G. Walsh  
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Foley & Lardner LLP  
150 E. Gilman St.  
P.O. Box 1497  
Madison, WI 53701-1497

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Frost Brown Todd LLC  
2800 Lexington Financial Center  
250 West Main St.  
Lexington, KY 40507

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Barbara A. Neider  
Stafford Rosenbaum LLP  
P. O. Box 1784  
Madison, WI 53701-1784

Noreen J. Parrett  
Connie L. O'Connell  
Parrett & O'Connell, LLP  
10 E. Doty St., Ste. 621  
Madison, WI 53703

James C. Owen  
McCarthy, Leonard & Kaemmerer, L.C.  
400 S. Woods Mill Rd.  
Chesterfield, MO 63017

Todd L. Padnos  
Dewey & Leboeuf LLP  
1950 University Ave., Ste. 500  
East Palo Alto, CA 94303

Bryan K. Nowicki  
Jessica Hutson Polakowski  
Reinhart Boerner Van Dueren, S.C.  
22 E. Mifflin St., Ste. 600  
Madison, WI 53703

Richard K. Welsh C.N. Franklin Reddick III  
Akin Gump Strauss Hauer & Feld LLP  
2029 Century Park East, Ste. 2400  
Los Angeles, CA 90067

Jane C. Schlicht  
Hinshaw & Culbertson LLP  
100 E. Wisconsin Ave., Ste. 2600  
Milwaukee, WI 53202

Pieter Van Tol  
Hogan Lovells US LLP  
875 Third Avenue  
New York, NY 10022

Christopher J. Stroebel  
von Briesen & Roper SC  
Suite 1000  
3 S Pinckney St  
Madison, WI 53703

Kevin A. Wisniewski  
Steven T. Whitmer  
Lock, Lord, Bissell & Liddell LLP  
111 South Wacker Drive  
Chicago, IL 60606

Patrick J. Trostle  
Jenner & Block LLP  
919 Third Avenue, 37th Floor  
New York, NY 10022

You are hereby notified that the Court has entered the following order:

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2011AP2708

Ted Nickel v. Aurelius Capital Management LP

Before Higginbotham, J.

The co-appellants appeal from a November 10, 2011 order authorizing the Rehabilitator and the Segregated Account to proceed with certain agreements with Ambac Assurance Corporation, Ambac Financial Group, Inc., and the Official Committee of Unsecured Creditors. Leave to appeal the November 10, 2011 order as a nonfinal order was also sought and denied by an order dated December 16, 2011. The circuit court's November 10, 2011 order states that "the Rehabilitator's Motion is **GRANTED**," and authorizes all transactions necessary to effectuate certain agreements. This court questions whether appellate jurisdiction exists.

An appeal as of right can be taken only from a final order or judgment; an order or judgment is final if it disposes of the entire matter in litigation as to one or more of the parties. WIS. STAT. § 808.03(1). It is not clear how the November 10, 2011 order serves to dispose of the litigation as to one or more of the parties. Under *Wambolt v. West Bend Mutual Ins. Co.*, 2007 WI 35, ¶35, ¶35 n.14, 299 Wis. 2d 723, 728 N.W.2d 670, "language that merely grants a motion

for summary judgment does not suffice to dispose of an entire matter in litigation,” and some language is necessary to complete the important task of actually disposing of claims by dismissing or adjudging them.

The November 10, 2011 order in this case does not contain any language “dismissing” or “adjudging” the underlying litigation. The order merely addresses a motion and does not reflect how, if in any way, it affects the rights and interests of the co-appellants in the litigation. Because the same co-appellants have appealed an order approving the Rehabilitation Plan and consequently determining their rights and interests, this court questions how the November 10, 2011 order terminates the litigation between the parties to this appeal. This court concludes that the parties shall file memoranda addressing whether the order appealed from is final. Therefore,

IT IS ORDERED that the co-appellants shall file memoranda within fourteen days of the date of this order. The respondents shall file a response within fourteen days of receipt of the last filed co-appellants’ memoranda.

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*A. John Voelker*  
*Acting Clerk of Court of Appeals*