

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	Case No. 11-cv-99
	)	
v.	)	
	)	
WISCONSIN STATE CIRCUIT COURT	)	
FOR DANE COUNTY;	)	
THEODORE K, NICKEL, COMMISSIONER	)	
OF INSURANCE OF THE STATE OF	)	
WISCONSIN, as Rehabilitator of the	)	
Segregated Account of Ambac Assurance	)	
Corporation; and	)	
AMBAC ASSURANCE CORPORATION	)	
	)	
Defendants.	)	
_____	)	

**MOTION FOR PRELIMINARY INJUNCTION AND FOR  
EXPEDITED RULING BY FEBRUARY 17, 2011**

On November 8, 2010, the Circuit Court of Dane County (the “State Court”) enjoined, *ex parte*, the United States Internal Revenue Service from collecting and possibly even assessing federal income taxes against Ambac Assurance Corporation or its affiliates, allocated Ambac’s federal tax liability to a segregated account that may be insufficient, absolved members of Ambac’s consolidated tax group from their several liability for the taxes of the entire group, and asserted exclusive state jurisdiction over these federal tax issues. On January 21, 2011, the State Court signed an order that purports to make the November 8 Injunction permanent, assert exclusive state jurisdiction over certain federal tax liabilities of Ambac, and otherwise bind the United States as to these federal tax issues. The State Court issued these orders in the action *In the Matter of the Rehabilitation of Segregated Account of Ambac Assurance Corporation*, Case Number 2010CV001576 (Dane County Cir. Ct.).

The United States has filed the above-captioned case invoking this Court's original jurisdiction pursuant to 26 U.S.C. § 7402. The United States moves for entry of a preliminary injunction:

(1) enjoining the Wisconsin State Circuit Court of Dane County (Hon. William D. Johnston, presiding) from enforcing the injunction it issued on November 8, 2010, in *In the Matter of the Rehabilitation of Segregated Account of Ambac Assurance Corporation*, Case Number 2010CV001576 ("the state rehabilitation action"), purporting to restrain and enjoin Internal Revenue Service ("IRS") from, *inter alia*, collecting (and possibly even simply assessing) a \$700 million potential federal tax liability owed by Ambac Assurance Corporation and other members of its consolidated tax group;

(2) enjoining the State Court from enforcing the decision and order of January 21, 2011, confirming the rehabilitation plan for the Segregated Account, insofar as it purports to make the November 8 Injunction permanent, asserts exclusive state jurisdiction over certain federal tax liabilities of Ambac, and otherwise purports to bind the United States;

(3) enjoining the State Court from asserting jurisdiction over and purporting to decide the United States' motion to dissolve the November 8 Injunction; and

(4) otherwise enjoining the State Court from conducting proceedings directed at further violating the Anti-Injunction Act (26 U.S.C. § 7421) and the sovereign immunity of the United States.

Because the United States has discovered that the State Court appears to have scheduled a hearing, presumably regarding the United States' motion to dissolve, for February 23, 2011, at 1:00 p.m. (although neither the State Court nor the Commissioner has provided the United States

with either formal or informal notice of the hearing), the United States further moves that this Court address this motion on an expedited basis and either grant or deny the motion by February 17, 2011. If this Court needs additional time to consider whether to grant the relief requested in numbers 1, 2, and 4 above, the relief that the United States more urgently seeks no later than February 17, 2011, is that specified in number 3 above. The United States respectfully suggests that a ruling by that date would prevent the State Court from conducting a needless hearing (should the United States ultimately prevail in the federal courts ) or allow the United States at least some realistic opportunity to seek emergency relief from the Seventh Circuit in advance of the February 23 State Court hearing (should it not prevail in this Court).

The United States has concurrently filed a memorandum and exhibits in support of this motion. Attached to this motion is an exhibit list. The United States notes that this action is related to the action *In re Rehabilitation of the Segregated Account of Ambac Assurance Corporation*, Case No. 10-cv-778-bbc, previously filed in this Court.

Respectfully submitted,

UNITED STATES DEPARTMENT OF JUSTICE

/s/ Robert J. Kovacev

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/s/ Hilarie Snyder

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AMBAC ASSURANCE CORPORATION	)	
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EXHIBIT LIST

EXHIBIT	DOCKET # FROM CASE No.: 10-cv-778	DESCRIPTION
1	N/A	Commissioner's Notice to State Court
2	Dkt. # 2	State Court Injunction
3.	Dkt. ##, 10 and 13 through 13-4	USA's Motion To Dissolve And Objections, plus Memo in Support and Exhibits
4.	Dkt. ## 12, 14 through 14-26, and 15	Commissioner's Motion to Remand, plus exhibits
5.	Dkt. # 20	Ambac's Opposition Brief
6.	Dkt. ##21 through 21-3	Commissioner's Opposition Brief, plus exhibits
7.	Dkt. ## 23 through 23-6, 24	USA's Opposition plus exhibits
8.	Dkt. # 27	Ambac Reply

9.	Dkt. # 29	Commissioner's Reply Brief
10.	Dkt. ## 31 through 31.4, 32	USA Reply, plus exhibits
11	N/A	Portions of Docket from Rehabilitation Action
12	N/A	January 21, 2011 Order