



U.S. Department of Justice

Tax Division

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Telephone No. (202) 514-3361

Please reply to: Appellate Section  
P.O. Box 502  
Washington, D.C. 20044

ATSheehan:jmm  
5-86-2961  
CMN 2011100390

February 25, 2011

**Via FedEx**

Gino J. Agnello, Esquire  
Clerk, U.S. Court of Appeals  
for the Seventh Circuit  
2722 Everett McKinley Dirksen  
United States Courthouse  
219 S. Dearborn Street  
Chicago, IL 60604

Re: United States v. Wisconsin State Court, et al.  
(7th Cir. – No. 11-1419)

Dear Mr. Agnello:

The above-entitled case has been appealed to your Court, and will be briefed, argued, and otherwise handled directly from this office. Accordingly, it will be appreciated if you will advise this office of any information in connection with this case, and advise us directly of the date when the case is set for argument.

Enclosed is an appearance form entering my appearance and that of Robert W. Metzler on behalf of the appellant, a docketing statement, a representation statement, and a transcript order form. We have served copies of those documents on counsel for all other parties. I can be reached at (202) 514-4339.

Sincerely yours,

  
ANTHONY T. SHEEHAN

Attorney  
Appellate Section

Enclosures

cc: See page 2

cc: (via FedEx)  
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UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

APPEARANCE FORM

Appellate Court No.: 11-1419 Docketed on: 02/22/2011
Short Caption: United States v. Wisc. State Circuit Court for
Dane County, et al.
District Court Judge: Judge Barbara B. Crabb
District Court No.: 0758-3 : 3:11-cv-00099-bbc

\*\*\*\*\*
You must either enter your appearance within 10 days of docketing this appeal
pursuant to Circuit Rule 3(d) or indicate your non-involvement by filing a
motion with this court. A "Certificate of Interest" pursuant to Circuit Rule
26.1 must also accompany this form if you intend to participate in this case.
\*\*\*\*\*

THE CLERK WILL ENTER MY APPEARANCE AS COUNSEL OR PRO SE ON BEHALF OF:
UNITED STATES OF AMERICA as the

(Party Name)

[x] appellant(s) [ ] appellee(s) [ ] amicus curiae
[ ] petitioner(s) [ ] respondent(s) [ ] intervenor(s)

Verify that the address and firm/office (if any) information is accurate. If
incorrect, strike through the incorrect information and record it correctly.

Firm, Office or Facility: United States Department of Justice
Unit, Division or Section: Tax Division, Appellate Section
Address: Post Office Box 502
City/State/Zip: Washington, DC 20044
Firm Telephone Number: (202) 514-3361

Name: Anthony T. Sheehan (as lead counsel)
Signature: [Handwritten Signature]
Direct Phone No. (202) 514-4339
Admitted to Appellate Court? Y X N

Name: Robert W. Metzler (as co-counsel)
Signature: [Handwritten Signature]
Direct Phone No. (202) 514-3938
Admitted to Appellate Court? Y X N

Add other counsel from your firm who will be participating in this case and
did not receive an appearance form.

1. Print Name: Signature: Direct Phone No. Admitted to Appellate Court?
2. Print Name: Signature: Direct Phone No. Admitted to Appellate Court: Y N

Lead counsel must be admitted to this Court within 30 days of docketing and any
attorney who orally argues must be admitted to this court, pursuant to Circuit
Rule 46(a).

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
<b>Plaintiff-Appellant</b>	)	
	)	
v.	)	
	)	
<b>WISCONSIN STATE CIRCUIT COURT</b>	)	
<b>FOR DANE COUNTY;</b>	)	<b>No. 11-1419</b>
<b>THEODORE NICKEL, Commissioner of</b>	)	
<b>Insurance of the State of Wisconsin,</b>	)	
<b>as Rehabilitator of the Segregated</b>	)	
<b>Account of Ambac Assurance Corporation;</b>	)	
<b>AMBAC ASSURANCE CORPORATION</b>	)	
	)	
<b>Defendants-Appellees</b>	)	

**DOCKETING STATEMENT FOR THE APPELLANT**

**Statement of Jurisdiction**

This is an appeal from the United States District Court for the Western District of Wisconsin (No. 3:11-cv-00099-bbc) (Judge Barbara B. Crabb).<sup>1</sup>

On February 9, 2011, the United States filed in the District Court a complaint seeking relief related to an injunction issued by the Wisconsin State Circuit Court for Dane County on November 8, 2010,

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<sup>1</sup> References in this Docketing Statement are to the documents filed in the District Court, as numbered by its Clerk.

that purported to prevent the United States from collecting (or possibly even assessing) any potential federal tax liability owed by Ambac Assurance Corporation and other members of its consolidated group. (Doc. 1; Doc. 23 (amended complaint).) The District Court had jurisdiction over the United States' complaint pursuant to 26 U.S.C. § 7402(a) (jurisdiction to issue orders, writs, *etc.*, to enforce the internal revenue laws) and 28 U.S.C. § 1331 (federal questions), § 1340 (internal revenue), and § 1345 (United States as plaintiff). In an order issued on February 18, 2011, however, the District Court stated that it would dismiss this case for lack of subject matter jurisdiction. (Doc. 42.) According to the court, the McCarran-Ferguson Act (15 U.S.C. §§ 1011–1015) allowed the Wisconsin insurance statutes to reverse-preempt the federal jurisdictional statutes. (*Id.* at 4–8.) We will discuss our disagreements with the District Court's analysis in our opening brief.

On February 18, 2011, the District Court entered a final judgment dismissing this case for lack of subject matter jurisdiction. (Doc. 43.) On February 22, 2011, the United States timely filed a notice of appeal within 60 days after the entry of the District Court's judgment. (Doc.

44.) 28 U.S.C. § 2107(b). This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291.

**Statement of Prior or Related Appeals**

This appeal is related to the currently pending appeal *Theodore Nickel v. United States* (7th Cir. – No. 11-1158), also arising out of litigation in the United States District Court for the Western District of Wisconsin (No. 3:10-cv-00778-bbc). The United States intends to file a motion to consolidate the two appeals.

**Statement Regarding Parties Appearing in an Official Capacity**

Theodore K. Nickel, a defendant-appellee, is appearing in his official capacity as the Commissioner of Insurance of the State of Wisconsin.

**Statement Regarding Criminal Matters**

Not applicable; this is a civil case.



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ANTHONY T. SHEEHAN  
Attorney – Tax Division  
U.S. Department of Justice  
Post Office Box 502  
Washington, D.C. 20044  
Telephone: (202) 514-4339  
Counsel for the Appellant

Dated this 25th day of February, 2011

## CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2011, I served the foregoing documents on the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by sending him a copy thereof in a properly addressed envelope via FedEx for overnight delivery. I further certify that I have served the foregoing document on counsel for all other parties by sending to each of them a copy thereof via FedEx for overnight delivery in envelopes addressed as follows:

Matthew R. Lynch, Esquire  
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Richard W. Reinthaler, Esquire  
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New York, NY 10019



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ANTHONY T. SHEEHAN  
*Attorney*



IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA )

Plaintiff-Appellant )

v. )

WISCONSIN STATE CIRCUIT COURT )  
FOR DANE COUNTY; )

THEODORE NICKEL, Commissioner of )  
Insurance of the State of Wisconsin, )  
as Rehabilitator of the Segregated )  
Account of Ambac Assurance Corporation; )  
AMBAC ASSURANCE CORPORATION )

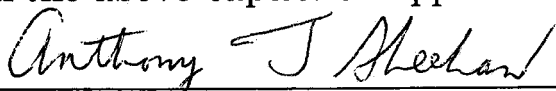
Defendants-Appellees )

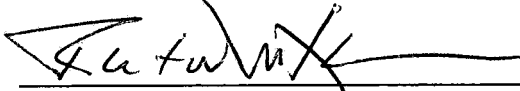
No. 11-1419

REPRESENTATION STATEMENT

Pursuant to Rule 12(b) of the Federal Rules of Appellate

Procedure counsel for the plaintiff-appellant hereby inform the Court  
that the undersigned attorneys represent the United States of America  
in the above-captioned appeal.

  
ANTHONY T. SHEEHAN (lead counsel)  
Telephone: (202) 514-4339  
[Anthony.T.Sheehan@usdoj.gov](mailto:Anthony.T.Sheehan@usdoj.gov)

  
ROBERT W. METZLER (co-counsel)  
Telephone: (202) 514-3938  
[Robert.W.Metzler@usdoj.gov](mailto:Robert.W.Metzler@usdoj.gov)

Attorneys – Tax Division  
U.S. Department of Justice  
Post Office Box 502  
Washington, D.C. 20044

Dated this 25th day of February, 2011

## SEVENTH CIRCUIT TRANSCRIPT INFORMATION SHEET

**PART I** – Must be completed by party or party's attorney pursuant to Rule 10(b) of the Federal Rules of Appellate Procedure and Rule 11(a) of the Circuit Rules. The appellant must file this form with the court reporter within 10 days of filing the notice of appeal, whether transcript is being ordered or not. (FRAP 10(b)(1)) Satisfactory arrangements with the court reporter for payment of the costs of the transcripts must also be made at that time. (FRAP 10(b)(4)) (Note: Appellees as well as appellants are expected to use this form when ordering transcripts.)

Short Title  United States v. Wisc. State Court, et al. (No. 11-1419)	District W.D. Wisconsin	D.C. Docket No. 3:11-cv-00099-bbc
	District Judge Barbara B. Crabb	Court Reporter Lynette Swenson

<input type="checkbox"/> I am ordering transcript. <input checked="" type="checkbox"/> I am not ordering transcript, because: <b>No hearing to transcribe.</b> <input type="checkbox"/> The transcript has been prepared.	Sign below and return original and one copy to court reporter. Distribute remaining copies to the Clerk of the District Court and opposing party, retaining one copy for yourself.
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Indicate proceedings for which transcript is required. Dates must be provided:	Date(s)
<input type="checkbox"/> Pretrial proceedings. <i>Specify:</i> _____	_____
<input type="checkbox"/> Voir Dire	_____
Trial or Hearing. <i>Specify:</i> _____	_____
<input type="checkbox"/> Opening statement	_____
<input type="checkbox"/> Instruction conference	_____
<input type="checkbox"/> Closing statements	_____
<input type="checkbox"/> Court instructions	_____
<input type="checkbox"/> Post-trial proceedings. <i>Specify:</i> _____	_____
<input type="checkbox"/> Sentencing	_____
<input type="checkbox"/> Other proceedings. <i>Specify:</i> _____	_____

Method of Payment: <input type="checkbox"/> Cash	<input type="checkbox"/> Check or Money Order	<input type="checkbox"/> C.J.A. Voucher
Status of Payment: <input type="checkbox"/> Full Payment	<input type="checkbox"/> Partial Payment	<input type="checkbox"/> No Payment Yet

Signature: <u>Anthony T. Sheehan</u> <i>Anthony T. Sheehan</i> Address: <u>Dep't of Justice, Tax Division</u> <u>P.O. Box 502; Washington, DC 20044</u>	Telephone No. <u>(202) 514-4339</u> Date: <u>February 25, 2011</u>
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**PART II** – Must be completed by Court Reporter pursuant to Rule 11(b) of the Federal Rules of Appellate Procedure. By signing this Part II, the Court Reporter certifies that *satisfactory arrangements for payment* have been made.

U.S.C.A. Docket No.	Date Order Received	Estimated Completion Date	Estimated Length
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Signature of Court Reporter: \_\_\_\_\_ Date: \_\_\_\_\_

**NOTICE:** The Judicial Conference of the United States, by its resolution of March 11, 1982, has provided that a penalty of 10 percent must apply, unless a waiver is granted by the Court of Appeals' Clerk, when a "transcript of a case on appeal is not delivered within 30 days of the date ordered and payment received therefor." The penalty is 20 percent for transcript not delivered within 60 days.

*Original* to Court Reporter. Copies to: • U.S.C.A. Clerk • Service Copy • District Court Clerk and to • Party / Counsel  
Ordering Transcript.