

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

THEODORE NICKEL,)	
)	
Plaintiff-Appellee)	
)	
v.)	No. 11-1158
)	
UNITED STATES OF AMERICA,)	
)	
Defendant-Appellant)	

UNITED STATES OF AMERICA,)	
)	
Plaintiff-Appellant)	
)	
v.)	
)	
WISCONSIN STATE CIRCUIT COURT FOR DANE COUNTY;)	No. 11-1419
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)	

UNITED STATES' MOTION TO CONSOLIDATE APPEALS

The United States, the appellant in both of the above-captioned appeals, respectfully moves this Court to consolidate the appeals for purposes of briefing, argument, and opinion. Because the appeals present largely identical parties, issues, and records, the United States

submits that consolidation will conserve the resources of the Court and of the parties.

1. Both appeals arise out of the rehabilitation of Ambac Assurance Corporation in the Wisconsin State Circuit Court for Dane County (Wisconsin court). The United States is the appellant in both appeals. Wisconsin Insurance Commissioner Theodore Nickel is an appellee in both appeals.

2. In both appeals, the United States is seeking relief related to an injunction issued by the Wisconsin court on November 8, 2010, and purporting 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.

3. Upon learning of the injunction, the United States removed the case to the United States District Court for the Western District of Wisconsin (W.D. Wis. – No. 3:10-cv-00778-bbc) (Judge Barbara B. Crabb). In an order entered on January 14, 2011, the District Court held that the McCarran-Ferguson Act (15 U.S.C. §§ 1011–1015) allowed the Wisconsin insurance statutes to reverse preempt the federal removal statute, 28 U.S.C. § 1442, and it remanded the case to the

Wisconsin court. (Doc. 36 in that case.) The United States appealed to this Court, resulting in appeal No. 11-1158.

4. On February 9, 2011, the United States filed in the District Court a complaint, under the court's original jurisdiction, again seeking relief related to the Wisconsin court's injunction. (W.D. Wis. – No. 3:11-cv-00099-bbc) (Judge Crabb). In an order issued on February 18, 2011, the District Court dismissed the case for lack of subject matter jurisdiction because the McCarran-Ferguson Act allowed Wisconsin insurance statutes to reverse preempt the federal statutes granting original jurisdiction to the District Court. (Doc. 42 in that case.) The District Court emphasized that its reasoning regarding reverse preemption was the same in both cases, and it quoted extensively from its order in the first case. (*Id.* at 5–10.) The United States appealed to this Court, resulting in appeal No. 11-1419.

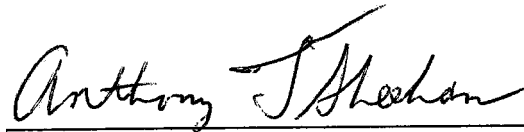
5. There is substantial duplication in the records of both appeals. Indeed, the record in the second appeal consists, in large part, of documents from the first (removal) case refiled as exhibits to the pleadings and motions in the second (original-jurisdiction) case.

6. We recognize the Court is currently considering whether it has jurisdiction over appeal No. 11-1158 (in which briefing has been

suspended), and that the United States' opening brief is due on April 4, 2011, in appeal No. 11-1419. We submit that any scheduling conflicts can be resolved by future motions for appropriate relief.

7. Consolidating the appeals will allow a single panel to review one set of briefs, hear oral argument, and address the issues presented in one opinion.

WHEREFORE, it is respectfully requested that the Court consolidate the above-captioned appeals for purposes of briefing, argument, and opinion.



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Dated this 25th day of February, 2011

CERTIFICATE OF SERVICE

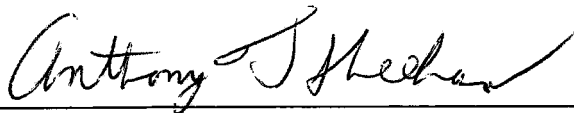
I hereby certify that on February 25, 2011, I served the foregoing document on the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by sending him a copy thereof in a properly addressed envelope via FedEx for overnight delivery. I further certify that I have served the 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:

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