



U.S. Department of Justice

Tax Division

Facsimile No. (202) 514-8456
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

March 1, 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: Theodore Nickel v. United States
(7th Cir. – No. 11-1158)

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

Dear Mr. Agnello:

Enclosed for filing with your Court are an original and three copies of a reply to the response to the United States' motion to consolidate the above-entitled appeals. Please submit the reply to the Court and advise us of its ruling on the United States' motion. We have served a copy of the reply on counsel for all of the other parties, along with a copy of this letter. I can be reached at (202) 514-4339.

Sincerely yours,

ANTHONY T. SHEEHAN
Attorney
Appellate Section

Enclosures

cc: See page 2

cc: (via FedEx)
David C. Rice, Esquire
Office of the Attorney General
Wisconsin Department of Justice
17 West Main St.
Madison, WI 53703

Matthew R. Lynch, Esquire
Michael B. Van Sicklen, Esquire
Foley & Lardner LLP
Verex Plaza
150 East Gilman St.
Madison, WI 53703

Daniel W. Stolper, Esquire
Stafford Rosenbaum, LLP
222 W Washington Ave, Suite 900
Madison, WI 53703

Peter A. Ivanick, Esquire
Emily L. Saffitz, Esquire
Henry J. Ricardo, Esquire
Richard W. Reinthaler, Esquire
Dewey & LeBoeuf, LLP
1301 Avenue of the Americas
New York, NY 10019

**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' REPLY TO THE WISCONSIN
INSURANCE COMMISSIONER'S OPPOSITION TO THE
UNITED STATES' MOTION TO CONSOLIDATE APPEALS**

The United States has moved to consolidate the above-captioned appeals. The Wisconsin insurance commissioner has filed an opposition in which he argues that the motion to consolidate should be deferred

until after this Court decides whether it has jurisdiction over appeal No. 11-1158. The insurance commissioner's response contains inaccuracies that require clarification. In all other respects, we rely upon our original motion.

1. The insurance commissioner attempts to differentiate the two appeals based on the different procedural paths that they took to this Court. (Resp. at 5–6.) The fact remains, however, that both appeals present the same issues, including: (1) the extent to which the McCarran-Ferguson Act (15 U.S.C. §§ 1011–1015) allows the Wisconsin insurance statutes to reverse preempt federal jurisdictional statutes such as 28 U.S.C. § 1331 (federal questions), § 1340 (internal revenue), § 1345 (United States as plaintiff), § 1442 (removal by federal agencies and officers), and (2) the propriety of the attempt by the Wisconsin state court to enjoin the United States. As the District Court stated in its order leading to the second appeal, “I conclude that subject matter jurisdiction is lacking for the same reason it was absent when the United States removed the rehabilitation proceeding from state court.” (2d appeal Doc. 42 at 5.)


2. The insurance commissioner describes the underlying rehabilitation of Ambac Assurance Corporation as non-adversarial and

lacking in formal parties. (Resp. at 2–3, 5.) The insurance commissioner, however, has maintained a *de facto* adversarial posture towards the United States. Moreover, the Wisconsin state court attempted to exercise jurisdiction over the United States when it granted the insurance commissioner’s motion for an *ex parte* injunction naming the “United States Internal Revenue Service” and purporting to prohibit, *inter alia*, efforts to recover an approximately \$700 million tentative tax refund. (1st appeal Doc. 2 at 30–31; Doc. 36 at 6–7.)

3. The insurance commissioner incorrectly states that the United States requested further briefing on the threshold jurisdictional issue presented in appeal No. 11-1158. (Resp. at 5.) The United States did not request further briefing of that issue. Instead, our motion suggested only “that *any scheduling conflicts* can be resolved by *future motions for appropriate relief*.” (Mot. at 3–4 (emphasis added).) Appropriate relief could include suspending briefing in both appeals pending a ruling in appeal No. 11-1158. It also could include carrying the jurisdictional question on the papers already filed without further briefing thereof. As already explained, there is substantial identity in the issues presented in both appeals. The United States’ goal is not to burden the parties with additional briefing. Instead, we seek the

efficiency of having a single panel review one set of briefs, hear oral argument, and address all of the issues in one opinion.

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


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 1st day of March, 2011

CERTIFICATE OF SERVICE

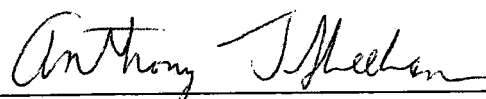
I hereby certify that on March 1, 2011, I served the foregoing document on the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by sending him a copy thereof in a properly addressed envelope via FedEx for overnight delivery. I further certify that I have served the foregoing 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:

Matthew R. Lynch, Esquire
Michael B. Van Sicklen, Esquire
Foley & Lardner LLP
Verex Plaza
150 East Gilman St.
Madison, WI 53703

Daniel Warren Stolper, Esquire
Stafford Rosenbaum, LLP
Suite 900
222 West Washington Ave
Madison, WI 53703

David C. Rice, Esquire
Office of the Attorney General
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Peter A. Ivanick, Esquire
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Henry J. Ricardo, Esquire
Richard W. Reinthaler, Esquire
Dewey & LeBoeuf, LLP
1301 Avenue of the Americas
New York, NY 10019



ANTHONY T. SHEEHAN
Attorney