

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 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.)
)
)

Case No. 11-CV-99

SECOND DECLARATION OF MICHAEL B. VAN SICKLEN
(Dated February 15, 2011)

I, Michael B. Van Sicklen, declare as follows:

1. I am a partner at Foley & Lardner LLP. I am one of the attorneys in our firm who represent the Wisconsin Office of the Commissioner of Insurance (“OCI”) and the Commissioner, as Rehabilitator (the “Rehabilitator”) of the Segregated Account (the “Segregated Account”) of Ambac Assurance Corporation (“Ambac”) in the above-captioned federal court action and in the Rehabilitation of the Segregated Account, Dane County Circuit Court Case No. 2010-CV-1576 (the “State Proceedings”). I have personal knowledge of the matters stated herein.

2. At paragraph 30 (page 9) of the United States' Amended Complaint in this matter, the United States claims that it did not have advance notice of the state court confirmation proceedings held in open court from November 15-19, 2010 and November 30, 2010 regarding the Rehabilitator's Plan of Rehabilitation. For the reasons noted below, I believe that allegation by the IRS is inaccurate.

3. Attached as **Exhibit 1** is the Affidavit of Mailing evidencing the service effected on November 10, 2010 on multiple representatives of the IRS of the written Notice Regarding the dates of the Confirmation Hearing Set by the Court for the Rehabilitator's Plan of Rehabilitation. None of those mailings were returned as undelivered.

4. In addition to serving the IRS with the advance Notice noted above of the confirmation hearing in the Wisconsin state court, we also served multiple representatives of the IRS on November 9, 2010 as indicated in the attached **Exhibit 2** with copies of various documents pertaining to the rehabilitation proceeding and, therein, directed them to the state court-approved web site about the Rehabilitation, ambacpolicyholders.com, for any additional information they might desire regarding the Rehabilitation. All court filings made in the Rehabilitation proceeding, including all notices and other court-filed documents regarding the confirmation hearings, are promptly posted on the site (generally each business day) and were available on the site to the IRS and its counsel, as well as to the general public.

5. Attached as **Exhibit 3** is a true and correct copy of the relevant excerpts (pages 1-13) of the court transcript from the hearing held on November 9, 2010 in the United States Bankruptcy Court for the Southern District of New York regarding Ambac Financial Group, Inc., the parent of company of Ambac Assurance Corporation. The full transcript is also

attached to the accompanying Declaration of Lawrence M. Hill who was present at the hearing. Counsel for the IRS appeared in person at the hearing and participated on the record. *Id.*

6. In the introductory remarks to the bankruptcy court, counsel for the debtor describes the relationship between the debtor and its operating subsidiary, Ambac Assurance Corporation and the Wisconsin state court rehabilitation proceeding involving its Segregated Account. In describing the rehabilitation proceeding in Wisconsin, counsel advised about the upcoming confirmation hearings in Wisconsin regarding the Rehabilitator's Plan for the Segregated Account. (*Id.* at p. 6; lines 19-21.) One of my partners, as counsel for the Wisconsin Rehabilitator, also was present at the hearing (*see id.* at "Appearances" and p. 6, lines 2-3). At that hearing, counsel for the IRS stipulated that it would take no action contrary to the Wisconsin state court injunction without providing at least five business days of advance notice, and the bankruptcy court approved that stipulation by order on the record. (*Id.* at pp. 10-12.)

7. The IRS makes statements in its complaint and amended complaint and supporting motion papers regarding a February 23, 2011 hearing scheduled in state court in regard to a motion filed by the IRS in the Rehabilitation proceeding. I received the first Court's Notice of that hearing, which was post-marked February 9, 2011, on February 10, 2011, and immediately emailed a scanned copy of the Notice to counsel for the IRS. After receipt of the Notice, I sent a letter to the Dane County Circuit Court and its clerks dated February 11, 2011 requesting the adjournment of that hearing. Attached as **Exhibit 4** is a true and correct copy of that letter. As noted in the letter to the state court, I am not aware of any representative of the IRS having asked to withdraw the IRS motion giving rise to the hearing or of any request to adjourn the hearing to avoid needless time pressures on this Court. The Dane County Circuit

Court docket reflects that the hearing previously scheduled for February 23, 2011 has been taken off the calendar as requested.

8. Attached as **Exhibit 5** is a true and correct copy of the IRS Notice of Removal of the State Rehabilitation Court proceeding dated December 8, 2010.

9. Attached as **Exhibit 6** is a true and correct copy of this Court's Order and Opinion dated January 14, 2011 ("Remand Order").

10. Attached as **Exhibit 7** is a true and correct copy of the hearing transcript of the hearing held in this Court on January 12, 2011 regarding the IRS's motion to dissolve the State Rehabilitation Court's injunction and the Commissioner's cross motion for remand.

11. Attached as **Exhibit 8** is a true and correct copy of the IRS's Notice of Appeal of the Remand Order, filed with this Court on January 18, 2011.

12. Attached as **Exhibit 9** is a true and correct copy of this Court's acknowledgment of the return of the record in the rehabilitation proceeding to the Dane County Circuit Court, dated January 19, 2011.

13. Attached as **Exhibit 10** is a true and correct copy of the IRS's Docketing Statement, filed with the United States Court of Appeals for the Seventh Circuit on January 25, 2011.

14. Attached as **Exhibit 11** is a true and correct copy of the IRS's Jurisdictional Memorandum, filed with the United States Court of Appeals for the Seventh Circuit on February 3, 2011.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 15th day of February, 2011.

/s/ Michael B. Van Sicklen
Michael B. Van Sicklen