

**STATE OF WISCONSIN SUPREME COURT**

---

**In the Matter of the Rehabilitation of:  
SEGREGATED ACCOUNT OF  
AMBAC ASSURANCE CORPORATION**

**Appeal of the United States of America:  
Appeal No. 2011AP987**

---

**MOTION FOR WAIVER OF THE FEE  
FOR FILING A PETITION FOR REVIEW**

The United States, the appellant in the above-captioned appeal, through its counsel Richard Humphrey and Anthony T. Sheehan, moves for the waiver of the provision in Wis. Stat. § 809.25(2)(a)(1), requiring the payment to the Clerk of this Court of a \$195 fee in connection with the filing of a Petition for Review. The reasons for this motion are as follows.

1. This is in connection with a Petition for Review by the United States of America seeking review of the final judgment of the Court of Appeals, District IV, dismissing the United States' appeal for lack of jurisdiction. Wis. Stat. § 809.25(2)(a)(1) requires the payment to the Clerk of this Court of a \$195 fee in connection with the filing of a Petition for Review.

2. Under the Supremacy Clause of the Constitution, U.S. Const. Art. VI, cl. 2, the operations of the federal government are exempt from state regulation. *See Hancock v. Train*, 426 U.S. 167, 178–80 (1976). In this regard, the Supreme Court of the United States has held that where “governmental action is carried on by the United States itself and Congress does not affirmatively declare its instrumentalities or property subject to regulation or taxation,” the United States enjoys its inherent freedom as sovereign to be free from state regulation and taxation. *Mayo v. United States*, 319 U.S. 441, 446–48 (1943); *see also Sperry v. Florida*, 373 U.S. 379, 403–04 (1963) (individual licensed to prepare patent applications could not be required to become member of state bar, because that would interfere with federal power over patent rights).

3. Under this analysis, the fee requirement of Wis. Stat. § 809.25(2)(a)(1), when imposed upon the United States for filing a Petition for Review, effectively constitutes a “money exaction[ ] the payment of which, if [it is] enforceable, would be required

before executing a function of government. Such a requirement is prohibited by the supremacy clause.” *Mayo*, 319 U.S. at 447.

For the foregoing reasons, we respectfully request that the Court waive the fee requirement of Wis. Stat. § 809.25(2)(a)(1) in this case.

Respectfully submitted,

/s/ Richard D. Humphrey

---

RICHARD D. HUMPHREY  
Assistant U.S. Attorney  
Wisconsin Bar No.: 1016934  
Suite 303  
660 West Washington Ave.  
Madison, WI 53703  
Telephone: (608) 264-5158  
Facsimile: (608) 264-5172  
[Richard.Humphrey@usdoj.gov](mailto:Richard.Humphrey@usdoj.gov)

Dated: June 1, 2011

/s/ Anthony T. Sheehan

---

ANTHONY T. SHEEHAN  
Attorney – Tax Division  
*Pro hac vice* admission pnd’g  
U.S. Department of Justice  
Illinois Bar No.: 6210019  
Post Office Box 502  
Washington, D.C. 20044  
Telephone: (202) 514-4339  
Facsimile: (202) 514-8456  
[Anthony.T.Sheehan@usdoj.gov](mailto:Anthony.T.Sheehan@usdoj.gov)

Dated: May 31, 2011

## CERTIFICATE OF SERVICE

I hereby certify that, on the 1<sup>st</sup> day of June, 2011, a true and correct copy of the foregoing document (lacking only the signature of Richard D. Humphrey) will be served upon all opposing counsel listed in the opinion of the Court of Appeals, District IV, via First Class Mail, with postage prepaid, in envelopes addressed as stated on the attached list. A courtesy copy will also be sent to all counsel on the e-mail list compiled by the Circuit Court for Dane County, Wisconsin.

*/s/ Anthony T. Sheehan*

---

ANTHONY T. SHEEHAN  
*Attorney*

Dated May 31, 2011

Hon. William D. Johnston  
Circuit Court Judge  
Lafayette County Courthouse  
P.O. Box 40  
Darlington, WI 53530

Carlo Esqueda  
Clerk of Circuit Court  
Room 1000  
215 South Hamilton  
Madison, WI 53703

Marcia D. Alazraki  
Manatt, Phelps & Phillips, LLP  
7 Times Square  
New York, NY 10036

Joel M. Walker  
Jeffrey W. Spear  
Kenneth M. Argentieri  
Duane Morris LLP  
Suite 5010  
600 Grant Street  
Pittsburgh, PA 15219

Susan E. Lovern  
David I. Cisar  
Owen Thomas Armstrong Jr.  
von Briesen & Roper, S.C.  
411 E. Wisconsin Ave., Ste. 700  
Milwaukee, WI 53202

Bruce G. Arnold  
Whyte & Hirschboeck Dudek  
STE 1900  
555 East Wells Street  
Milwaukee, WI 53202-3819

Kristine E. Bailey  
Morgan, Lewis & Bockius LLP  
One Market St., Spear Street Tower  
San Francisco, CA 94105

Mark I. Bane  
Ropes & Gray LLP  
1211 Avenue of the Americas  
New York, NY 10036-8704

James E. Bartzan  
Boardman, Suhr, Curry & Field LLP  
P.O. Box 927  
Madison, WI 53701-0927

Anne Bensky  
Garvey McNeil & Associates, S.C.  
One Odana Court  
Madison, WI 53719

Lawrence Bensky  
Law Office of Lawrence Bensky, LLC  
10 East Doty St., Ste. 800  
Madison, WI 53703

Paul A. Lucey  
Paul E. Benson  
Michael Best & Friedrich LLP  
Ste. 3300  
100 E. Wisconsin Ave.  
Milwaukee, WI 53202-4108

Susan Jacquemot  
Amy Caton  
Philip Bentley  
Kramer Levin Naftalis & Frankel LLP  
1177 Avenue of the Americas  
New York, NY 10036

Craig S. Bloomgarden  
Manatt, Phelps & Phillips, LLP  
11355 W. Olympic Blvd.  
Los Angeles, CA 90064

Thomas M. Pyper  
Cynthia L. Buchko  
Whyte Hirschboeck Dudek, S.C.  
Ste. 300  
33 East Main Street  
Madison, WI 53703-4655

Laura E. Callan  
Solheim Billing & Grimmer, S.C.  
P.O. Box 1644  
Madison, WI 53701-1644

Rodney W. Carter  
Davis & Kuelthau, S.C.  
300 N. Corporate Dr., Ste. 150  
Brookfield, WI 53045-5804

Thomas Ross Hooper  
Dale C. Christensen Jr.  
Seward & Kissel LLP  
One Battery Park Plaza  
New York, NY 10004

Randall D. Crocker  
von Briesen & Roper SC  
P.O. Box 3262  
Milwaukee, WI 53201-3262

D. Ross Martin  
Andrew G. Devore  
Ropes & Gray LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199-3600

Grant C. Killoran  
Gregory W. Lyons  
Seth E. Dizard  
O'Neil, Cannon, Hollman, DeJong & Laing  
111 E. Wisconsin Ave. Ste. 1400  
Milwaukee, WI 53202-4807

Gregory T. Everts  
Quarles & Brady LLP  
P.O. Box 2113  
Madison, WI 53701-2113

Andrew Alan Oberdeck  
Kevin G. Fitzgerald  
Foley & Lardner LLP  
777 East Wisconsin Ave.  
Milwaukee, WI 53202

Beth E. Hanan  
John A. Franke  
Gass Weber Mullins LLC  
309 N. Water Street, Ste. 700  
Milwaukee, WI 53202

John C. Goodchild III  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103

David M. Greenwald  
Jenner & Block LLP  
353 N. Clark Street  
Chicago, IL 60654

Leah M. Houghton  
Morgan, Lewis & Bockius LLP  
225 Franklin Street, 16th Fl.  
Boston, MA 02110-4104

Emily L. Saffitz  
Peter A. Ivanick  
Dewey & Leboeuf LLP  
1301 Avenue of the Americas  
New York, NY 10019

William B. Macurda  
Michael E. Johnson  
Alston & Bird LLP  
90 Park Avenue  
New York, NY 10016

R. Timothy Muth  
Daniel Kelly  
Reinhart Boerner Van Deuren SC  
P.O. Box 2965  
Milwaukee, WI 53201-2965

Melissa A. Kern  
Frost Brown Todd LLC  
1103 Boundary Rd.  
Middleton, WI 53562

Brittany S. Ogden  
Jennifer M. Krueger  
Murphy & Desmond, S.C.  
P. O. Box 2038  
Madison, WI 53701-2038

Jeffery A. Lipps  
Carpenter Lipps & Leland LLP  
Suite 1300  
280 N. High Street  
Columbus, OH 43215

David G. Walsh  
Michael B. Van Sicklen  
Matthew Lynch  
Foley & Lardner LLP  
P.O. Box 1497  
Madison, WI 53701-1497

Greg E. Mitchell  
Frost Brown Todd LLC  
2800 Lexington Financial Center  
250 West Main St.  
Lexington, KY 40507

Nathan Moenck  
Michael Best & Friedrich LLP  
P. O. Box 1806  
Madison, WI 53701

Earl H. Munson Jr.  
Boardman, Suhr, Curry & Field, LLP  
P.O. Box 927  
Madison, WI 53701-0927

Daniel W. Stolper  
Barbara A. Neider  
Stafford Rosenbaum LLP  
P. O. Box 1784  
Madison, WI 53701-1784

Jessica Hutson Polakowski  
Bryan K. Nowicki  
Reinhart Boerner Van Deuren, S.C.  
P. O. Box 2018  
Madison, WI 53701-2018

Noreen J. Parrett  
Connie L. O'Connell  
Parrett & O'Connell, LLP  
10 E. Doty St., Ste. 621  
Madison, WI 53703

James C. Owen  
McCarthy, Leonard & Kaemmerer, L.C.  
400 S. Woods Mill Rd.  
Chesterfield, MO 63017

Todd L. Padnos  
Dewey & Lebovitz LLP  
1950 University Ave., Ste. 500  
East Palo Alto, CA 94303

William G. Primps  
Dewey & Leboeuf LLP  
1301 Avenue of the Americas  
New York, NY 10019

C.N. Franklin Reddick III  
Akin Gump Strauss Hauer & Feld LLP  
2029 Century Park East, Ste. 2400  
Los Angeles, CA 90067

John M. Rosenthal  
Morgan, Lewis & Bockius LLP  
One Market St., Spear Street Tower  
San Francisco, CA 94105

Jane C. Schlicht  
Cook & Franke, S.C.  
660 E. Mason St.  
Milwaukee, WI 53202-3829

John B. Simon  
Jenner & Block LLP  
353 N. Clark Street  
Chicago, IL 60654

Christopher J. Stroebel  
von Briesen & Roper SC  
Suite 1000  
3 S Pinckney St  
Madison, WI 53703

Patrick J. Trostle  
Jenner & Block LLP  
919 Third Avenue, 37th Floor  
New York, NY 10022

Pieter Van Tol  
Hogan Lovells US LLP  
875 Third Avenue  
New York, NY 10022

Richard K. Welsh  
Akin Gump Strauss Hauer & Feld LLP  
2029 Century Park East, Ste. 2400  
Los Angeles, CA 90067

Thomas J. Welsh  
Orrick, Herrington & Sutcliffe LLP  
400 Capital Mall, Suite 300  
Sacramento, CA 95814-4497

Steven T. Whitmer  
Kevin A. Wisniewski  
Lock, Lord, Bissell & Liddell LLP  
111 South Wacker Drive  
Chicago, IL 60606

James Friedman  
Anthony James Gaughan  
Godfrey & Kahn, S.C.  
P.O. Box 2719  
Madison, WI 53701-2719

Brady C. Williamson Jr.  
Godfrey & Kahn, S.C.  
P.O. Box 2719  
Madison, WI 53701-2719