

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 *PRO HAC VICE* FEE

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 Wisconsin Supreme Court Rule (SCR) 10.03(4)(b)(2) requiring the payment of \$50 to the Office of Lawyer Regulation in connection with a verified application to appear *pro hac vice*. 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.

2. Mr. Humphrey is an Assistant United States Attorney in the Office of the United States Attorney for the Western District of Wisconsin. He is licensed to practice law in Wisconsin, and his Wisconsin bar number is 1016934.

3. Mr. Sheehan is an attorney in the Appellate Section of the Tax Division of the United States Department of Justice. He is licensed to practice law in Illinois, and his Illinois bar number is 6210019. Mr. Sheehan has been assigned by his supervisors in the Tax Division to represent the United States with respect to this Petition for Review. Mr. Sheehan has also been assigned to represent the United States in two related appeals pending in the United States Court of Appeals for the Seventh Circuit, *viz.*, *Nickel v. United States* (7th Cir. – No. 11-1158) and *United States v. Wisconsin State Circuit Court for Dane County; et al.* (7th Cir. – No. 11-1419). Mr. Humphrey has moved for Mr. Sheehan's admission *pro hac vice*.

4. SCR 10.03(4)(a) states that only active members of the Wisconsin bar may practice law in Wisconsin. SCR 10.03(4)(b)

allows nonresident counsel to appear *pro hac vice* in a particular action or proceeding in association with an active Wisconsin attorney who also appears and participates in the proceeding. SCR 10.03(4)(b)(2) requires the payment of a \$50 fee to the Office of Lawyer Regulation for each application for admission *pro hac vice*.

5. Federal law charges attorneys in the United States Department of Justice with the duty to conduct litigation on behalf of the United States in every forum in which the interests of the United States are at stake. Congress has specifically authorized the Attorney General to send “any officer of the Department of Justice . . . to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State” 28 U.S.C. § 517. Congress has also provided that “the conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested, . . . is reserved to officers of the Department of Justice, under the direction of the

Attorney General.” 28 U.S.C. § 516; *see also* 28 U.S.C. § 515(a) (authorizing Justice Department attorneys to “conduct any kind of legal proceeding, civil or criminal, . . . which United States attorneys are authorized by law to conduct, whether or not he is a resident of the district in which the proceeding is brought”).

6. 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).

7. Under this analysis, the fee requirement of SCR 10.03(4)(b)(2), when imposed upon an attorney representing the United States, 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 SCR 10.03(4)(b)(2) 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

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

Dated: May 31, 2011

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**

DECLARATION

Anthony T. Sheehan, of the Department of Justice,
Washington, D.C., states as follows:

1. I am an attorney employed in the Appellate Section, Tax
Division, United States Department of Justice.

2. The facts recited in the foregoing motion are true and
correct to the best of my knowledge and belief.

I declare under penalty of perjury, pursuant to 28 U.S.C. §
1746, that the foregoing is true and correct. Executed this 31st
day of May, 2011, in Washington, D.C.

/s/ Anthony T. Sheehan

ANTHONY T. SHEEHAN
Attorney

CERTIFICATE OF SERVICE

I hereby certify that, on the 1st 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