

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

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

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<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff-Appellant</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>WISCONSIN STATE CIRCUIT COURT FOR DANE COUNTY;</b>	)	<b>No. 11-1419</b>
<b>THEODORE NICKEL, Commissioner of Insurance of the State of Wisconsin, as Rehabilitator of the Segregated Account of Ambac Assurance Corporation;</b>	)	
<b>AMBAC ASSURANCE CORPORATION,</b>	)	
	)	
<b>Defendants-Appellees</b>	)	

**JOINT STATUS REPORT**

Upon the filing of the United States’ reply brief, the Court calendared the above-captioned, consolidated appeals for oral argument (“these Appeals”). Because of progress in ongoing negotiations directed

towards a settlement that would include these Appeals, the Office of the Wisconsin Commissioner of Insurance and the Commissioner of Insurance, Theodore Nickel, appellees herein, filed a motion with the Court on January 30, 2012, requesting the postponement of oral argument. The other active appellee, Ambac Assurance Corporation (Ambac), and the appellant, the United States, supported the requested postponement. By order dated January 31, 2012, this Court granted the motion for postponement and directed the parties to file a status report by March 5, 2012. This Joint Status Report is submitted pursuant to that order.

1. After Ambac, a Wisconsin-domiciled insurance company, experienced financial difficulty, the Wisconsin Commissioner of Insurance commenced a Wisconsin state court rehabilitation proceeding as to Ambac's Segregated Account, Dane County, Wisconsin Case No. 10-CV-1576 (the "Rehabilitation Proceeding"), and Ambac's corporate parent company, Ambac Financial Group, Inc. ("AFGI"), filed a voluntary petition for Chapter 11 bankruptcy relief in the United States Bankruptcy Court for the Southern District of New York, Case No. 10-15973. A bankruptcy court adversary proceeding was

commenced by AFGI against the United States, Adv. Proc. No. 10-4210 (Bankr. S.D.N.Y., commenced November 9, 2010) in regard to the claims of the United States pertaining to tentative federal tax refunds of approximately \$708 million obtained by the Ambac consolidated tax group. Other litigation involving the United States related to those tax refunds, and procedural and jurisdictional issues related thereto, arose. That additional litigation consists of the two actions in the United States District Court for the Western District of Wisconsin, which are the subject of these Appeals, and an appeal by the United States from the Rehabilitation Proceeding that presently is pending in the Wisconsin Supreme Court, captioned as Appeal No. 2011AP987.

2. On February 24, 2012, counsel for AFGI and Ambac; counsel for the segregated account, its rehabilitator, and the Wisconsin Insurance Commissioner; and counsel for the official creditors committee in the Bankruptcy Court submitted to counsel for the United States a formal written settlement offer (the "Offer"). This formal settlement offer followed months of negotiations between counsel for the parties, including mediation with a retired federal judge pursuant an order issued by the New York bankruptcy court.

3. That Offer, if accepted by the United States and thereafter consummated, would result, among other things, in the dismissal of these Appeals. As stated in the above-noted motion to postpone oral argument, however, “[a]ny agreement about settlement requires the United States to engage in a time-consuming, multi-level evaluation and approval process. Additionally, the Commissioner will need to obtain formal approval from the Wisconsin rehabilitation court, and AFGI to obtain formal approval from the New York bankruptcy court.” The Offer is also conditioned upon these Appeals not being decided while the Offer remains outstanding.

4. Because the settlement Offer has only recently been submitted, the United States is just beginning its formal evaluation process, and the above-noted approvals of the Bankruptcy Court and of the Wisconsin Circuit Court have not yet been obtained by AFGI and the Rehabilitator, but those processes are expected to proceed as contemplated by the parties.

5. The parties respectfully submit that the Court should continue to hold these Appeals in abeyance through not rescheduling oral argument, with the parties filing further status reports at intervals

directed by the Court. The parties suggest that the intervals for future reports be set at approximately 90 days. Separate and apart from any court-specified status report, the parties will promptly advise the Court if there is a material change—positive or negative—in their settlement efforts pursuant to the Offer.

6. Counsel for the other active parties to these Appeals have reviewed this report and have authorized us to file this report on their behalf and to represent that they support the request for further adjournment of oral argument as stated herein.

/s/ Anthony T. Sheehan  
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Counsel for the United States

Dated this 5th day of March, 2012

## CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2012, I electronically filed the foregoing joint status report with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. I further certify that a participant in the case is not a CM/ECF user. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participant:

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/s/ Anthony T. Sheehan

ANTHONY T. SHEEHAN

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