

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

IN THE MATTER OF THE REHABILITATION
OF THE SEGREGATED ACCOUNT OF
AMBAC ASSURANCE CORPORATION

Case No. 13-cv-325

(Removed From Dane Court Circuit
Court – No. 10 CV 1576)

**DECLARATION OF MICHAEL B. VAN SICKLEN IN SUPPORT OF THE
COMMISSIONER'S MOTION FOR REMAND**

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

1. I am a partner in the law firm of Foley & Lardner LLP, based in the firm's office in Madison, Wisconsin. From the outset of the captioned insurer rehabilitation proceeding in March 2010, I have been one of the attorneys of record for the Wisconsin Commissioner of Insurance, as the court-appointed Rehabilitator of the Segregated Account of Ambac Assurance Corporation. This declaration is based on personal knowledge.

2. Attached as Exhibit 1 is a true and correct copy of the June 7, 2013 letter I sent to Matthew T. Heartney, the lead counsel representing OneWest Bank FSB. I transmitted my attached letter to Attorney Heartney, with a copy to his Wisconsin local counsel, by email on June 7 and received no response to it by phone, email or letter. My letter was emailed to Mr. Heartney four days before he submitted his declaration to this Court which omits mention of it.

I declare under penalty of perjury that the foregoing is true and correct, and was executed in Madison, Wisconsin on June 19, 2013.

/s/ Michael B. Van Sicklen

Michael B. Van Sicklen



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CLIENT/MATTER NUMBER
092281-0101

June 7, 2013

Via Email

Matthew T. Heartney
Arnold & Porter LLP
777 South Figueroa Street, 44th Floor
Los Angeles, California 90017-5844

Re: *In the Matter of the Rehabilitation of the Segregated Account of Ambac Assurance Corporation*, Case No. 13-CV-325 (W.D. Wis.); Case No. 10-CV-1576 (Dane County, Wisconsin Circuit)

Dear Mr. Heartney:

Your June 5 letter is disingenuous. The fact that you profess to believe that OneWest's removal petition removed solely the servicing motion issues from the rehabilitation case is not determinative. While you have asserted that the motion is an "independent controversy" that is separately removable, that assertion is inaccurate for the reasons set forth in our motion to remand. As you noted, my letter correctly indicated that "while OneWest claimed that it intended to remove only a portion of the rehabilitation proceedings, that issue is currently unresolved."

As you know, the Rehabilitator's position is that the servicing motion is related to other aspects of the rehabilitation such as the injunction and other claim-mitigation efforts by the Rehabilitator. The United States made an argument similar to yours about removing only a portion of the rehabilitation proceeding, but that turned out not to be the way Judge Crabb or Judge Johnston appeared to view the matter. *See, e.g., Matter of the Rehabilitation of Segregated Account of Ambac Assurance Corp.*, 782 F. Supp. 2d 743, 751 (W.D. Wis. 2011) ("Removal of this case to federal court has taken the proceedings out of state court and stalled confirmation of the rehabilitation plan.").

Further proceedings on the present motion for remand before Judge Crabb may shed light on whether you are correct about having actually effected only a partial removal of the rehabilitation case. In the meantime, it is not appropriate to move forward in the rehabilitation court on other motions. If we did so, and it ultimately turned out that the position advocated in your letter was not in accordance with Judge Crabb's view, substantial confusion and prejudice would arise about the status of the interim proceedings and rulings. To label our prudence in that regard and

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FOLEY & LARDNER LLP

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respect for the federal motion practice as an ethical violation under the Wisconsin Rules of Professional Conduct is unwarranted. It reflects an absence of the professional civility expected in this jurisdiction.

This is the second time we have been disappointed in our dealings with you. The first was when we accommodated the request by you and your client to reschedule the original state court hearing on the motion to a later date. We were told it was to accommodate further good faith negotiations about a consensual resolution. Instead, with no prior warning, you exploited the extension to file the removal which has caused the delays and other problems noted in the communications referenced in your letter.

Very truly yours,

FOLEY & LARDNER LLP

A handwritten signature in blue ink, appearing to read "Michael B. Van Sicklen".

Michael B. Van Sicklen

cc: Jeffrey A. Simmons
James Friedman (via email)