

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

---

**DECLARATION OF MICHAEL B. VAN SICKLEN IN SUPPORT OF THE  
COMMISSIONER’S MOTION FOR REIMBURSEMENT OF LEGAL EXPENSES  
PURSUANT TO COURT’S REMAND ORDER OF JULY 8, 2013**

---

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

1. I am a partner in the law firm of Foley & Lardner LLP (the “firm”), based in the firm’s office in Madison, Wisconsin. From the outset of the above-captioned insurer rehabilitation proceeding in March 2010, I have been the lead attorney of record for the Wisconsin Commissioner of Insurance as the court-appointed Rehabilitator of the Segregated Account of Ambac Assurance Corporation (the “Commissioner”). This declaration is based on personal knowledge and information.

2. In an Opinion and Order filed July 8, 2013, this Court granted the Commissioner’s motion for remand, and ordered that the proceeding be remanded back to the Circuit Court for Dane County, Wisconsin. In its Opinion, the Court determined that OneWest Bank, FSB (“OneWest”) lacked an objectively reasonable basis for removing the case. The Court ordered that the Commissioner had until July 31, 2013 to submit an itemization of those fees and costs the Commissioner is requesting this Court to order OneWest to reimburse consistent with 28 U.S.C. § 1447(c). This Declaration is submitted in compliance with the Court’s order.

3. The firm was retained by the Office of the Wisconsin Commissioner of Insurance (“OCI”) effective March 4, 2008, to begin advising and assisting OCI in connection with carrying out its regulatory responsibilities in regard to Ambac Assurance Corporation (“Ambac”), a large financial guaranty insurer domiciled in Wisconsin. Although Ambac is domiciled in Wisconsin and regulated by OCI, its principal place of business is in New York and, at the time OCI retained the firm, Ambac conducted its business on essentially a global basis.

4. Effective with the commencement of the rehabilitation proceeding on March 24, 2010, OCI’s retention of the firm in regard to Ambac was expanded to include representation of the Commissioner, as the Court-appointed Rehabilitator of Ambac’s Segregated Account. The rehabilitation court approved the firm’s retention to represent the Commissioner, as Rehabilitator, by order entered in March 2010. The firm has remained primary counsel for the Wisconsin OCI with respect to Ambac and for the Commissioner with respect to the rehabilitation proceeding through the present. The retentions of the firm by OCI and later by the Commissioner, as Rehabilitator, are memorialized in written engagement agreements entered into, respectively, in 2008 and 2010.

5. Attached as Exhibit A, and incorporated here by reference, is an itemized description of the fees pertaining to the Commissioner’s successful remand motion for which the Commissioner seeks reimbursement pursuant to this Court’s July 8, 2013 order. OCI has directed payment, or is obligated to direct payment, of all amounts included in that itemization as an administrative expense of the rehabilitation.

6. The following statements in this declaration are offered to assist the Court in understanding and assessing the reasonableness of the costs and fees detailed in the attached

itemization. We have been careful to limit our request to only those attorney fees directly associated with legal proceedings in this Court.

a. Scope of the Services for Which Reimbursement is Requested:

The time period spanned by the entries in the attached itemization commences May 9, 2013, the day OneWest effected its removal, and ends June 19, 2013, the date on which the firm finished, filed and served its reply brief and supporting declaration in support of remand. The description of services on the time entries are as entered on our billing system. The May and June time has been billed by the firm, reviewed and approved by OCI and paid by Ambac as an administrative expense of the Segregated Account. I expect that the July time will be billed in early August in the ordinary course. We are current in receiving payment on our bills. To facilitate tracking time pertaining to the OneWest remand proceedings, we have been using a separate ledger for attorney time and any disbursements pertaining to the remand effort.

The attached itemization does not include any of the time spent by the firm's timekeepers on the following services:

- Time spent reviewing this Court's opinion and order and taking the steps necessary to recommence proceedings generally in the state rehabilitation court subsequent to this Court's order.
- Time spent in connection with preparing this declaration and the accompanying motion in support of the Commissioner's request for reimbursement of fees. Note, however, that if OneWest opposes the motion, the Commissioner reserves the right to supplement this request to include seeking reimbursement for such time as the Court deems appropriate spent by our firm in connection with preparing and defending the fee motion and this supporting declaration.
- The time spent on behalf of the Commissioner in settlement discussions with OneWest about the two subject transactions insured by the

Segregated Account and certain other Segregated Account insured transactions being serviced by OneWest.

- Time spent dealing with the complications from the jurisdictional uncertainty about the rehabilitation that arose from OneWest's removal.
- The time spent on re-calendaring and re-noticing the state court proceedings pertaining to the subject Servicing Motion delayed by OneWest's removal.

The itemization does include, however, entries for the work performed in connection with complying with this Court's standard pretrial proceedings including preparation of a pretrial report (Dkt. 10), participation in the scheduling conference with the Court, and a stipulation with OneWest about deferring the time for its responsive pleading. Those entries total 3.2 hours, totaling \$1,517 in charges. Those services have been included because they were necessary solely because the matter was temporarily in the federal court where the parties were expected to comply with its pretrial practices. This removed proceeding is unlike most cases that are removed from state court and subsequently remanded, where the same type of pretrial activities and scheduling are likely to occur back in the state court. In those cases, there is residual value to the plaintiff from having spent that time on pretrial matters in the federal court prior to remand. However, due to the specialized nature of the rehabilitation court proceedings under Wis. Stat. ch. 645, those federal court proceedings added no post-remand value to the Commissioner. Here, OneWest removed the case on the eve of the state court final hearing where the transfer issue was scheduled to be decided. The removal occurred after the firm, on behalf of the Commissioner, had already prepared and submitted the motion papers and supporting affidavit and the matter was ready for

decision at the final hearing. We promptly rescheduled that motion for hearing in the state rehabilitation court after this Court's remand.

b. The Firm Attorneys: Three firm attorneys were primarily involved in representing the Commissioner in connection with the remand proceedings: myself; Jeffrey Simmons; and Matthew Lynch. Mr. Simmons and I are both partners in the firm's business litigation department, and Mr. Lynch is a senior associate in the same department. All three lawyers are based in the firm's Madison office and have been extensively involved in the rehabilitation proceeding. I have been a practicing lawyer for approximately 34 years and have been actively involved in the representation of OCI and the Rehabilitator since the two Ambac-related engagements began. I have had experience with state insurer delinquency proceedings prior to the Ambac engagement in 2008. Mr. Simmons has been a Wisconsin attorney since 1998, and has been actively involved in different matters pertaining to the rehabilitation since the summer of 2010. Mr. Simmons has been the primary member of the Commissioner's legal team handling the day-to-day issues which have arisen pertaining to the servicing performed by third-parties like OneWest on the various residential mortgage-backed securities ("RMBS") transactions that are the subject of the hundreds of RMBS policies in the Segregated Account. Mr. Lynch has been an attorney since 2006, and has been the primary litigation associate involved with respect to Ambac matters since late 2009. Mr. Simmons, Mr. Lynch and I were also involved in the proceedings in this Court pertaining to the unsuccessful efforts by the United States to effect removal of the rehabilitation proceeding (W.D. Wis.

Case Nos. 10-cv-788 and 11-cv-99). Because of our involvement in the United States removal issues that predated the OneWest dispute, it was efficient for us to staff the handling of the OneWest remand effort because we had a head start on some of the key legal issues and research tasks. Our respective professional biographies are accessible on our firm's public website.

Although certain other firm professionals performed much smaller, discrete tasks with respect to the OneWest remand proceeding, the attached itemization is limited to the three above-described lawyers of record on the remand briefing because they were principally responsible for the work product before the court.

c. Importance of the Remand Issue to the Commissioner: The success of the remand motion was of significant importance to the Commissioner in several respects. First, servicing issues are of critical importance to the success of the rehabilitation. That importance was detailed in some of the materials before the Court on the remand motion, including the Commissioner's June 2013 Annual Report at § II-E (page 8) (Dkt. 9) and the Affidavit of Ambac's Iain Bruce at ¶ 5. (OneWest Notice of Removal, at Ex. C.) Additionally, because of the precedential impact the decision was likely to have with respect to the numerous other counterparties with interests pertaining to the rehabilitation proceeding who, but for a clear decision supporting remand as sought by the Rehabilitator, could attempt in the future to remove some or all of the rehabilitation proceeding to federal court based on the same type of allegations asserted by OneWest. Were that to happen, the Rehabilitator believed that the rehabilitation would have been

substantially fractionalized, delayed and complicated. Such a result would have increased the expense of the proceeding, distracted from its efficient and expeditious handling and hurt policyholders by causing a likely reduction in the ability of the Rehabilitator to maximize claim payments in an efficient timely manner.

d. Hourly Rates: To hopefully eliminate any potential dispute regarding what is the appropriate legal market and hourly billing rate for the highly specialized legal services provided in connection with the rehabilitation in Wisconsin of a New York-based municipal bond insurer, the hourly billing rates used for the three lawyers on the attached itemization are at the lowest standard rates presently charged by the firm for their work on non-complex, general litigation for Madison-area clients in this district (known internally as “floor rates”). I believe the “floor rates” employed for this reimbursement request are at or below market relative to the highly specialized, high-stakes national nature of the Ambac matter and relative to the lead counsel representing other parties in the proceeding. Most of the extensive litigation which has arisen in connection with the rehabilitation proceeding has involved counterparties represented by large national “AmLaw 100” law firms from across the country, and involved stakes ranging from millions to billions of dollars. OneWest’s primary lawyers in the remand proceedings are from the Los Angeles office of the law firm Arnold & Porter, a large national firm. OneWest also utilized a partner from the law firm of Godfrey & Kahn as its local co-counsel.

Although the firm's attorney fees are ultimately paid by the Segregated Account as administrative expenses of the Rehabilitation, rather than by the State of Wisconsin, the bills we submit to OCI each month on the Ambac engagement are carefully reviewed and approved by OCI before OCI directs that payment be effected from the claims-paying resources available to fund the Rehabilitation. At all times relevant to the subject itemization of fees pertaining to the remand motion, our bills have been reviewed by both an inside counsel at OCI and a senior member of OCI's staff. From time-to-time, they have contacted me with questions about particular entries and/or requests that certain entries be clarified, deleted or transferred from one Ambac sub-ledger to another. Based on my experience in working with them in regard to the bills each month, I believe the OCI employees are very diligent in regard to their scrutiny of the bills.

e. No Reimbursement is Sought for Expenses: In a further attempt to be conservative and avoid needless objections, we have made no charges on our bills related to the remand for expenses. Expenses related to electronic research and photocopying briefs related to the remand were not significant and were absorbed by the firm as overhead expenses.

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

# **EXHIBIT A**

WISCONSIN, STATE OF - OFFICE OF COMMISSIONER OF  
INSURANCE  
Our Ref. No.: 092281-0103

Page 1  
Foley & Lardner LLP  
July 30, 2013

---

**Professional Services Detail**

05/09/13	JASI	Review OneWest's notice of removal (.4); numerous phone conversations and email exchanges regarding same (.3).	.7	\$336.00
05/10/13	JASI	Preliminary work on motion to remand OneWest's removal of rehabilitation case to federal court (1.3); review emails and voice messages from OneWest's attorney regarding its removal of case to federal court (.3).	1.6	\$768.00
05/10/13	MRLY	Review notice of removal filed by OneWest (.4); evaluate initial strategic considerations and bases for remand (.4); draft outline of motion to remand (1.8).	2.6	\$1,001.00
05/10/13	MBV	Attention to OneWest removal petition (.4); preliminary work to respond to same and prepare motion for remand (.9).	1.3	\$637.00
05/11/13	MRLY	Review cases cited in OneWest's notice of removal relating to "independent controversy" doctrine (.9); research relating to same (.5); review prior orders of the Court related to disputes involving the Internal Revenue Service (.3).	1.7	\$654.50
05/13/13	JASI	Work on motion to remand OneWest's removal of servicing transfer motion.	1.1	\$528.00
05/13/13	MBV	Follow up on research and drafting motion to remand OneWest removal (.4); organize response; preliminary research on defenses to removal on same (.9).	1.3	\$637.00
05/13/13	MRLY	Research and draft brief in support of motion to remand, including introduction and portion of background section (6.0); assign specific research tasks relating to request for costs and failure of all defendants to join in removal (.2); review case law (1.9).	8.1	\$3,118.50
05/14/13	JASI	Conference call with R. Peterson, I. Bruce and S. Lobel regarding how to address OneWest's removal of rehab proceedings to federal court.	.3	\$144.00
05/14/13	MRLY	Research and draft brief in support of motion to remand, including completion of background section and portions of argument section pertaining to the independent controversy doctrine.	8.6	\$3,311.00

**WISCONSIN, STATE OF - OFFICE OF COMMISSIONER OF  
INSURANCE**

Our Ref. No.: 092281-0103

Page 2  
Foley & Lardner LLP  
July 30, 2013

05/15/13	MBV	Work with OneWest counsel on stipulation regarding adjourning response deadline.	.3	\$147.00
05/15/13	MRLY	Research and draft argument sections of brief pertaining to independent controversy doctrine and the failure to join Deutsche in the notice of removal (9.4); address need for additional research relating to same (.1); review results of research (.4); revise background section of brief to include additional facts relevant to the arguments for remand (1.3).	11.2	\$4,312.00
05/15/13	JASI	Work on drafting motion to remand.	1.2	\$576.00
05/16/13	MRLY	Research and draft brief in support of motion to remand, including arguments for remand on McCarran-Ferguson and Burford abstention grounds (5.8); review and identify grounds for distinction in all cases cited by OneWest relating to McCarran-Ferguson (2.1); draft argument section pertaining to award of costs under removal statutes (1.7).	9.6	\$3,696.00
05/16/13	MBV	Work on OneWest remand brief and supporting documentation; review case law on same.	1.2	\$588.00
05/17/13	MRLY	Review and revise draft of brief in support of motion to remand (1.6); draft motion to remand (.5); work on further revisions to same (.2).	2.3	\$885.50
05/17/13	MBV	Work on remand brief and motion.	2.7	\$1,323.00
5/20/13	MBV	Attention to OneWest Stipulation on response deadline.	.4	\$196.00
05/20/13	MRLY	Revise brief in support of motion to remand per comments of Mr. M. Van Sicklen (.8); additional research regarding Deutsche's characterization as a defendant (1.5); draft declaration in support of motion (3.2); compile exhibits for same (.5); add citations to declaration, exhibits, and notice of removal (1.8); review brief for content and make revisions to same (1.0); participate in telephone conference with Mr. R. Peterson regarding motion to remand (.5); revise tables and prepare to file same (.2).	9.5	\$3,657.50
05/20/13	JASI	Review and edit brief in support of motion to remand (2.0); email exchanges (.2).	2.2	\$1,056.00
05/20/13	MBV	Work on remand brief, supporting affidavit and cover motion.	5.8	\$2,842.00
05/21/13	MRLY	Revise brief in support of motion to remand per comments of Mr. J. Simmons and Mr. M. Van Sicklen (2.1); finalize and coordinate filing of same (.2).	2.3	\$885.50

**WISCONSIN, STATE OF - OFFICE OF COMMISSIONER OF  
INSURANCE**

Our Ref. No.: 092281-0103

Page 3  
Foley & Lardner LLP  
July 30, 2013

06/05/13	JASI	Review OneWest's draft of proposed preliminary pretrial conference report (.2); draft Rehabilitator's sections of pretrial report (.4); review additional edits sent by OneWest (.2); review letter from OneWest's counsel regarding his view of effect of removal on rehabilitation proceedings (.2); email exchanges with Atty. Van Sicklen regarding same (.1); work on remand research (1.8).	2.9	\$1,392.00
06/05/13	MBV	Work on preliminary pretrial statement and inserts to same (.3); attention to responding to Attorney Heartney letter on OneWest (.4).	0.7	\$343.00
06/06/13	MBV	Work on changes to joint pretrial statement with OneWest.	0.9	\$441.00
06/07/13	MBV	Work on correspondence back to Attorney Heartney on remand issues.	0.2	\$98.00
06/11/13	JASI	Review OneWest's response brief (.6); review our opening brief (.4); analyze disputed legal issues (.7).	1.7	\$816.00
06/11/13	MRLY	Review Selfix case regarding need for all parties to join removal in anticipation of arguments by OneWest.	0.2	\$77.00
06/11/13	MRLY	Review OneWest's brief in opposition to remand (.4); outline OneWest's brief to identify its assumptions and points to raise in reply and work on same (2.2).	2.6	\$1,001.00
06/11/13	MBV	Prepare for and participate in pretrial conference with Magistrate Crocker on schedule and remand issue (.5); work on reply brief issues on remand (1.9); call with AAC in-house counsel regarding comments on OneWest response brief (.2).	2.6	\$1,274.00
06/12/13	MRLY	Meet regarding arguments raised in OneWest's opposition to remand and strategy for reply brief (.3); meet regarding research tasks for reply brief (.2); outline reply brief; research and begin drafting same (10.3).	10.8	\$4,158.00
06/12/13	MBV	Work on reverse preemption, independent controversy and abstention issues and research on case law updates on same.	1.6	\$784.00
06/12/13	JASI	Review OneWest's response brief; work on reply brief.	3.0	\$1,440.00
06/13/13	MRLY	Research and draft reply brief in support of motion to remand (9.7); confer regarding research tasks (.1).	9.8	\$3,773.00
06/13/13	MBV	Work on reply brief issues (2.1); research on nominal defendant issue and oversee edits and revisions (1.2).	3.3	\$1,617.00

**WISCONSIN, STATE OF - OFFICE OF COMMISSIONER OF  
INSURANCE**

Our Ref. No.: 092281-0103

Page 4  
Foley & Lardner LLP  
July 30, 2013

06/13/13	MBV	Attention to response pleading by OneWest Bank and attention to alternative affirmative defenses therein.	0.3	\$147.00
06/13/13	JASI	Research case law relevant to Burford abstention issues (.7); analyze various other issues relevant to reply brief (.9).	1.6	\$768.00
06/14/13	MRLY	Research and draft reply brief in support of motion to remand (7.6); review OneWest's "answer" to the Servicing Motion (.3); review correspondence from OneWest announcing delegation of servicing to another party (.2); meet regarding import of OneWest's delegation of servicing upon the Servicing Motion (.2); meet regarding status of reply brief and arguments for remand (.2).	8.5	\$3,272.50
06/14/13	MBV	Work on OneWest reply brief.	2.9	\$1,421.00
06/14/13	JASI	Work on Burford abstention issues.	0.3	\$144.00
06/16/13	MRLY	Research and draft sections of the reply brief in support of remand.	6.2	\$2,387.00
06/16/13	MBV	Work on reply brief (2.8); attention to reviewing case law cited by OneWest and distinguishing same (.9); coordinate inserts and edits with M. Lynch (.2); preliminary work on abstention inser (.5).	4.4	\$2,156.00
06/16/13	JASI	Research regarding Burford abstention; work on drafting section of reply brief addressing same.	3.7	\$1,776.00
06/17/13	MRLY	Research and draft sections of reply brief (4.8); locate and add record citations to same (.6); revise brief per comments of Mr. M. Van Sicklen (.5); review and revise brief for content and clarity (.5); review section on Burford abstention and incorporate Burford section into reply brief (1.5).	7.9	\$3,041.50
06/17/13	MBV	Work on reply brief on remand (2.8); attention to identifying supporting facts on importance of servicing (.6); review annual reports and extensive disclosure statement materials for support (.5); review case law on abstention cited by OneWest and work on distinguishing and comparing same to Seventh Circuit case law (.8); circulate and discuss drafts and edits to same (.4); attention to supporting declaration (.7).	5.8	\$2,842.00
06/17/13	JASI	Work on drafting and editing reply brief.	3.9	\$1,872.00
06/18/13	JASI	Review and edit draft reply brief.	0.6	\$288.00

**WISCONSIN, STATE OF - OFFICE OF COMMISSIONER OF  
INSURANCE**

Our Ref. No.: 092281-0103

Page 5  
Foley & Lardner LLP  
July 30, 2013

06/18/13	MRLY	Revise reply brief per additional comments of Mr. K. Fitzgerald and Mr. M. Van Sicklen (.7); additional research to bolster authority in various sections of the brief (1.1).	1.8	\$693.00
06/18/13	MBV	Work on multiple drafts and revisions to reply brief and supporting declaration (4.1); review suggestions and comments from client, rehabilitator team and AAC (.8); final update on research check and extensive drafting work on brief and case discussion (1.6).	6.5	\$3,185.00
06/19/13	JASI	Review and edit draft reply brief in support of motion to remand (.6); work on finalizing same (.5); email exchanges with M. Freed and Ambac attorneys regarding same (.2).	1.3	\$624.00
06/19/13	MRLY	Review and revise reply brief to reduce length, improve clarity, and confirm accuracy of factual characterizations of documents and prior proceedings (3.1); check table of authorities and perform final review (.9); coordinate filing and service of reply brief (.4).	4.4	\$1,694.00
06/19/13	MBV	Work on final revisions and finalizing the reply brief and supporting declaration (4.5); attention to final rounds of comments and edit suggestions from client, rehabilitator team and AAC counsel (1.6); finalize submissions and oversee filing, service and posting (.5); follow up on distributing to client team (.1).	6.7	\$3,283.00
Services Total:			183.1	\$78,107.50

**Professional Services Summary**

Timekeeper	Initials	Hours	Rate	Dollars
Jeffrey A. Simmons	JASI	26.1	\$480.00	\$12,528.00
Michael B. Van Sicklen	MBV	48.9	\$490.00	\$23,961.00
Matthew R. Lynch	MRLY	108.1	\$385.00	\$41,618.50
Totals		183.1		\$78,107.50