

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

THEODORE NICKEL,
Plaintiff-Appellee,

v.

No. 11-1158

UNITED STATES OF AMERICA,
Defendant-Appellant.

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

v.

No. 11-1419

WISCONSIN STATE CIRCUIT COURT FOR
DANE COUNTY; THEODORE NICKEL,
Commissioner of Insurance of the State of Wisconsin,
As Rehabilitator of the Segregated Account of
Ambac Assurance Corporation;
AMBAC ASSURANCE CORPORATION,
Defendants-Appellees.

MOTION FOR POSTPONEMENT OF SCHEDULED ORAL ARGUMENT

This motion is brought by two of the three appellees in the above-captioned consolidated appeals—namely, the Office of the Wisconsin Commissioner of Insurance and Theodore Nickel, the Wisconsin Commissioner of Insurance as the court-appointed Rehabilitator of the Segregated Account of Ambac Assurance Corporation (collectively the “Commissioner”). Counsel for the other appellee, Ambac Assurance Corporation, have indicated that Ambac supports

the motion. Counsel for the appellant United States have also authorized the undersigned to represent that they support the requested postponement of the oral argument described below. The requested postponement is sought consistent with Circuit Rule 34(e).

In support of his motion for postponement, the Commissioner represents and shows the Court as follows:

1. The United States filed its reply brief in these consolidated appeals on January 24, 2012. That same day, this Court provided electronic notice to the parties that it had scheduled the oral argument for Friday, February 24, 2012, at 9:00 a.m. The notice indicated that parties had five days within which to move the Court to change or postpone the scheduled argument. This motion for postponement is timely.

2. As reflected in the briefing before this Court, the United States is involved in related litigation currently pending in the Wisconsin Supreme Court involving the Commissioner and Ambac and in the Bankruptcy Court for the Southern District of New York with Ambac's parent corporation, Ambac Financial Guaranty, Inc. ("AFGI"). As the Commissioner has disclosed to the Wisconsin rehabilitation court and as AFGI and the United States have disclosed to AFGI's bankruptcy court, the parties are engaged in serious discussions about resolving by consensual settlement all of the issues being litigated between them in the various

courts including this one. Substantial progress is being made in that regard. Any 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.

3. The Commissioner submits that it would be counterproductive at this time for this Court and the parties to invest in preparing for the presently scheduled oral argument and for the parties to be diverted from focusing on the settlement process. The bankruptcy court has directed the United States and AFGI to report to it later next month (February) about the status of their progress regarding settlement. The Commissioner, Ambac and the United States will advise this Court promptly thereafter regarding the status of the settlement process. If the prognosis is positive, we will so advise this Court and ask that oral argument be further postponed for the period of time needed to pursue the settlement approval process in the other courts and with the United States, and to otherwise stay further proceedings on these appeals while that settlement process is underway. Conversely, if by late February, the settlement process has broken down, the United States, the Commissioner and Ambac will then so inform this Court and ask

the Court to reschedule the oral argument for the next argument date in March or thereafter convenient to the Court's calendar.

The Commissioner appreciates the Court's attention to this matter. For the reasons noted above, it is respectfully requested that the oral argument presently scheduled for February 24, 2012 be postponed at this time, and that further scheduling decisions be taken up after the parties report back to this Court following the above-referenced February hearing in the New York bankruptcy court.

Dated this 30th day of January, 2012.

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/s/ Michael B. Van Sicklen

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CERTIFICATE OF SERVICE

Certificate of Service When All Case Participants Are CM/ECF Participants

I hereby certify that on January 30, 2012, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Michael B. Van Sicklen



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I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

counsel / party:

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