

EXHIBIT 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MONTEREY

HONORABLE LYDIA M. VILLARREAL, JUDGE

MONTEREY BAY MILITARY HOUSING,) No. 15CV000599
LLC, et al.,)
)
Plaintiff,)
)
vs.)
)
AMBAC ASSURANCE CORPORATION,)
)
Defendant.)
-----)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONTEREY, CALIFORNIA

AUGUST 18, 2016

BEFORE HONORABLE LYDIA M. VILLARREAL, JUDGE

APPEARANCES:

For the Plaintiff: JUSTIN O'CONNELL
DONNA M. WELCH, P.C.
JEFFREY L. WILLIAN
Attorneys at Law

For the Defendant: MERYL MACKLIN
MICHAEL MASUDA
Attorneys at Law

1 THE COURT: The Court calls Monterey Bay
2 Military Housing.

3 MR. O'CONNELL: Good afternoon, your Honor.
4 Justin O'Connell appearing on behalf of
5 plaintiffs.

6 MS. WELCH: Good afternoon.
7 Donna Welch on behalf of plaintiffs.

8 MR. WILLIAN: Good afternoon.
9 Jeffrey Willian on behalf of the plaintiffs.

10 MS. MACKLIN: Good afternoon, your Honor.
11 Meryl Macklin for the defendant, Ambac.

12 MR. MASUDA: Mike Masuda for defendant.

13 THE COURT: All right. Let me start with my
14 understanding of where we are.

15 I'm sure you understand, Ms. Macklin, I started
16 by reading the plaintiffs' points and authorities. After
17 I had finished reading their points and authorities, my
18 tentative decision was going to be to deny their request.

19 But then I read yours. And in reading yours,
20 I'm looking at page 5, points and authorities, second
21 paragraph.

22 And you say, Ambac states that while
23 appropriate for this Court to review and apply the
24 decision of the Wisconsin court included in an order of
25 that court issues on the currently pending motion filed by

1 the rehabilitator is not appropriate for this court, et
2 cetera, et cetera.

3 When I read the paperwork, my thought was that
4 I really didn't understand why the Court should get
5 involved. And it seems to me that whatever response the
6 court does has nothing to do with what this court is going
7 to do, that it's not res judicata. It's not -- frankly, I
8 can't understand what it has to do with this case.

9 But then, as I said, then I read your
10 paperwork, and it sounds like you both agree that it does
11 have an impact on this case.

12 Maybe if we could start with you, Ms. Macklin.

13 MS. MACKLIN: What we meant in saying that,
14 your Honor, is that the court would be applying decisions
15 of the Wisconsin court as law in this case, not as res
16 judicata, not as findings of fact, but simply as to what
17 the Wisconsin court decided it did with respect to Ambac
18 and the rehabilitation proceedings.

19 So, for example, the rehabilitation proceeding,
20 in the course of the proceeding, the officer, the office
21 of the commissioner of insurance and the court set up a
22 plan where the bad policies, for lack of a better word,
23 were put into this segregated account, and that part of
24 the reason for doing that -- and there is a finding.

25 There is a legal finding by the court that was

1 affirmed by the courts of appeal, all the way up to the
2 Wisconsin supreme court, I believe, at least to the court
3 of appeal, that those -- that that process was done in
4 part to avoid tipping Ambac as a whole into rehabilitation
5 with all of the attendant consequences that were going to
6 result from that.

7 The argument in this court has been that there
8 has nonetheless been an Ambac default that precludes Ambac
9 from enforcing the rights that it is claiming here.

10 THE COURT: May I stop you?

11 MS. MACKLIN: Yes.

12 THE COURT: My understanding is that whatever
13 contract that you all have, that this court will make a
14 decision based on that contract.

15 And before I read your pleadings, I didn't
16 think that anything Wisconsin had, did, have anything to
17 do with what this court is going to do in terms of looking
18 at that contract.

19 MS. MACKLIN: To some extent, that's true, and
20 to some extent, that's not true, your Honor.

21 But our position on this motion is that
22 regardless of -- and I'll get to the reasons in a
23 minute -- but the position on this motion is that it still
24 is the case that the Wisconsin proceeding is to take place
25 separately from this one, and that it's improper for the

1 plaintiff to be seeking discovery here for use there when
2 they've been told by that court they can't get that
3 discovery.

4 THE COURT: So that's a procedural issue.

5 MS. MACKLIN: Yes. As to the issue on the
6 merits, we don't need to reach that issue here today, your
7 Honor, or even at all until there's a merit decision
8 presented for this court because there is -- the discovery
9 the plaintiffs are seeking by way of this urgent request,
10 a lot of it is stuff they've already asked for, your
11 Honor, and Ambac has already provided.

12 The dispute here on discovery relates to the
13 procedural aspect that the court just referred to and also
14 the overbreadth of their request and the fact that they're
15 seeking privileged material.

16 The relevance, while there are relevance issues
17 here, your Honor, the primary issue for the court to
18 resolve on a properly noticed motion at the proper time if
19 this discovery is relevant to this court's proceedings,
20 and plaintiffs claim it is, we say it's not, and I'll get
21 in a minute why it's not.

22 That can all be resolved in the ordinary
23 course. We haven't even had a meet and confer on the
24 scope of the request.

25 And the burden of the need for Ambac to go

1 through fifteen thousand policies looking for language
2 that we have to get may be substantially similar to the
3 language in the policy at issue in this case.

4 And here's where we differ with the plaintiffs
5 on whether or not it's relevant. It's our position that
6 it's improper for any court to go behind the decision of
7 another court to determine whether or not proper evidence
8 was presented to support a finding.

9 This court does have to interpret the
10 contractual provisions at issue in this case. The court
11 has to look to the Ambac default provision and determine
12 what it means.

13 Ambac will argue to the court at the
14 appropriate time that all it needs to do to decide that
15 issue is to see that the court in Wisconsin was very
16 concerned about the possibility that provisions like these
17 default provisions here in any contract could destroy the
18 company as a whole, could cause all kinds of ripple damage
19 to others, companies that had Ambac policies, and for that
20 reason, set up the procedure for the segregated account,
21 leaving the bulk of the company assets and policies in the
22 general account.

23 So our argument will be that's all the court
24 needs to know, that that was a reason behind the structure
25 that was set up by the rehabilitator in Wisconsin and was

1 confirmed by the court. And what we then say to this
2 court is this court should follow what the Wisconsin court
3 did.

4 THE COURT: So this court should follow or must
5 follow?

6 MS. MACKLIN: Well, must follow is what we'll
7 say. But it's a principle -- it depends whether we're
8 arguing comity or full faith and credit. Full faith and
9 credit must follow, comity should follow.

10 Honestly, your Honor, we've not fully briefed
11 or researched or considered these questions because this
12 is not a proper inquiry at this time.

13 If this court has to look into these issues,
14 and plaintiffs say that you do, we say you don't, so that
15 means you do, then we should go through this in the
16 ordinary course.

17 We will have a meet and confer. If there's
18 anything left for this court to decide, they'll bring a
19 properly noticed motion, we'll respond, we'll have more
20 than 24 hours, I won't have to get up at 4:30 to finish
21 the brief, and then we'll come here and we'll talk about
22 it.

23 The objection here today is that that's not
24 what's happened. What's happening now is they're trying
25 to get discovery here in connection with this case for use

1 in writing a brief that they intend to file next week in
2 another court.

3 THE COURT: Well, put aside for a moment the
4 procedural questions that you're raising in terms of --
5 and by procedural, I mean trying to get documents here to
6 argue in another case. Set that aside.

7 If the Wisconsin court is going to make a
8 decision that is going to be either binding or highly
9 influential on the decision I make, then I think you are
10 arguing their case. And I think you're arguing that that
11 court should have as much information as possible before
12 it decides this issue.

13 MS. MACKLIN: That court has already decided it
14 doesn't need anymore information. It's issued orders
15 saying nobody gets discovery unless they come get
16 permission from us first. That's why we're here --

17 THE COURT: That's procedural, okay.

18 MS. MACKLIN: Well, it's procedural in a sense,
19 but it's also substantive as to the nature of the
20 proceeding, and it's a clear declaration by that court,
21 which I think confirms general principle that a collateral
22 attack on a proceeding that has been ongoing for seven
23 years is improper.

24 If that court didn't have enough information to
25 reach the decisions that it made, then it has the ability

1 to ask for that information.

2 THE COURT: Well, again, I'm trying to divorce,
3 at least for this particular moment, the issue of whether
4 or not Wisconsin is going to make a decision that is going
5 to be either binding or influential. Question No. 1.

6 Question No. 2, is even if Wisconsin is going
7 to make this final determination, what, if anything should
8 this court do about it, so the first question that I want
9 to resolve, at least in my own mind --

10 MS. MACKLIN: Okay. And the answer is yes, we
11 will be arguing that the decision in Wisconsin about how
12 to structure the rehabilitation of the segregated account
13 is determinative of the issue that plaintiffs wish to
14 present here, that what they are trying to do in effect is
15 reargue decisions made by the Wisconsin court.

16 What plaintiffs want to say is no, this issue
17 wasn't reached by the court in Wisconsin. And that's, I
18 think, where the battle is going to be joined. But,
19 absolutely, we will be arguing that what has happened in
20 Wisconsin is going to affect how this court interpret
21 Ambac default.

22 THE COURT: It's your position, Ms. Macklin,
23 that the Wisconsin court has already made its decision?

24 MS. MACKLIN: The Wisconsin court has already
25 issued a number of decisions that are relevant here. What

1 the Wisconsin court -- yeah, exactly -- and many of them
2 have been appealed and affirmed.

3 What the proceeding in Wisconsin that's
4 happening now is about is that the rehabilitator, the
5 office of the commissioner of insurance, has learned of
6 the existence of this case and of the other related
7 military housing cases and has become concerned about the
8 argument that plaintiffs are making in these cases, that
9 its proceeding in Wisconsin somehow did not reach the
10 question of Ambac default.

11 So what the rehabilitator has done is file a
12 motion in Wisconsin asking the court to affirm and confirm
13 its prior decision so that there can be no doubt as to
14 what it said and leaving no room for the plaintiff to mak
15 the arguments here because it's naturally concerned about
16 the continuing health of Ambac.

17 That's its job, and its concern about the
18 consequences for the continuing health of Ambac if
19 arguments like the ones being made here are allowed to go
20 forward and succeed, because there are a lot of parties
21 that participated -- these parties did not -- participated
22 in that rehabilitation proceeding, arguing they should be
23 able to do exactly what the plaintiffs here are trying to
24 do, and argue the default provisions were triggered in
25 their policies and that the consequences that would flow

1 from that had occurred, and that was stopped by the court
2 in Wisconsin.

3 THE COURT: Okay. Let me argue what I think is
4 your case because I think right now you're arguing
5 plaintiffs' case.

6 Again, it seems to me that whatever the
7 Wisconsin court has decided, they have decided, based on
8 whatever documents, contracts they had, the court had in
9 front of it, and I'm assuming that this court has
10 something else in front of it.

11 MS. MACKLIN: Well, yes and no. That court had
12 in front of it everything that the rehabilitator had done,
13 and the rehabilitator looked at all of the policies of
14 Ambac.

15 And can I say exactly that exhibits used in
16 that trial were all exhibits that will be used in this
17 case, I don't know yet.

18 But I think -- there were other -- on this
19 issue, what the Wisconsin court had in front of it is not
20 relevant because if the court decided something based on
21 the evidence in front of it and concluded it was
22 sufficient to reach its conclusion that there was great
23 danger presented to the health of Ambac, then no court has
24 any business going behind that and saying you're wrong
25 about that or it doesn't matter because we're concerned

1 here with what's -- with arguments made by developers in
2 these military housing projects.

3 THE COURT: I want to hear your what I'm
4 calling the procedural argument that this court should not
5 allow itself to be used in evidence for the Wisconsin
6 court.

7 MS. MACKLIN: This court -- the Wisconsin
8 court -- first of all, there's an appellate decision that
9 says it's improper to seek discovery in connection with
10 those proceedings without leave of court, and that was
11 recently affirmed by the judge currently presiding over
12 this case in Wisconsin, who is not the original judge who
13 handled the trial but a newly-appointed judge for this
14 matter, in April of this year.

15 That court said no discovery for anything in
16 these proceedings without leave of court. These
17 plaintiffs did not even ask, they did not go to Wisconsin
18 and ask for discovery.

19 They did not ask for leave of court to obtain
20 discovery. They simply came, they served a notice on
21 Ambac, and then they came in here ex-parte.

22 The only reason there's an emergency -- an
23 emergency in quotes -- that generated an ex-parte hearing
24 is because they want to file a brief in another court, not
25 because of anything in this proceeding.

1 And, as I said, your Honor, we are perfectly
2 willing to talk to them about the discovery they're
3 seeking, the three requests they've made.

4 Two of them they've made before, by the way, at
5 least twice, maybe three times. And we told them that the
6 information is privileged under the Wisconsin statute.

7 If they want to challenge that privilege
8 assertion, we can respond to that. We will address that
9 with the court. We will brief it. We will show the court
10 in camera what the documents are. We don't object to
11 that.

12 We also don't object to responding to the
13 request that calls for us to look at fifteen thousand
14 policies and try and find default triggers.

15 We think that's incredibly burdensome and we
16 object to doing that burdensome task, but we are prepared
17 to discuss with the plaintiffs whether that can be
18 narrowed.

19 We are prepared to discuss with the court the
20 relevance of those questions and the burden. That is not
21 the question. It's the timing that we are here to talk
22 about today.

23 And that's where we have an objection.

24 And at this point, your Honor, when Thursday
25 afternoon, and they want all of this information by next

1 Thursday.

2 So that means Ambac, if the court orders this
3 discovery, would have to spend 24-7, armies of people
4 going through policies, trying to find a witness who could
5 be prepared.

6 I don't even know how you prepare a witness to
7 testify about provisions in maybe hundreds of policies
8 that have similar default provisions in them and then
9 present this witness for testimony next week.

10 That's not an issue that is an emergency for
11 this court. It's not something this court should be
12 getting involved in. That's something they needed to ask
13 Wisconsin for permission to do.

14 And if they wanted an extension of time and a
15 continuance of that hearing, they could have gone to
16 Wisconsin, asked the court, may we obtain discovery, may
17 we move the hearing, may we have more time to file our
18 briefs.

19 They've done none of those things.

20 Instead, they're trying to use this court as a
21 vehicle to get what they cannot get and cannot do in
22 Wisconsin.

23 And that's the primary objection.

24 THE COURT: Thank you.

25 MR. WILLIAN: I'm not arguing, your Honor.

1 THE COURT: All right. Ms. Macklin has
2 convinced me that I need to be concerned about the
3 Wisconsin court and its findings.

4 So that issue is -- I don't want side issues
5 unless it's something critical here that I need to know.

6 I'd like you to address Ms. Macklin's issue
7 regarding whether or not -- basically, a form kind of
8 question. Why should I be getting involved in this and
9 why don't you just go to Wisconsin court and ask them?

10 MR. WILLIAN: Sure.

11 The central issue of today before this court is
12 whether plaintiffs are entitled to this discovery in this
13 court on the merits of this action.

14 And it's undeniable that we are entitled to
15 this discovery. The discovery relates directly to the
16 issue of an Ambac default. That's going to be the issue
17 that you're squarely going to hear.

18 THE COURT: Again, Ms. Macklin's point is --
19 and as I understand it, her point is fine, let's deal with
20 this discovery issue, let's meet and confer, let's argue,
21 let's do whatever it is we're going to do to figure out
22 how to respond.

23 Our point is we shouldn't have to do it in a
24 week because, in addition to needing the information for
25 this case, you also need it for Wisconsin, and that is

1 what creating the --

2 MR. WILLIAN: We definitely intend to use it in
3 Wisconsin if it would be relevant to that court. And that
4 court is free to look at the discovery if we submit it to
5 the court, reject it, say it's inappropriate, accept it.

6 But clearly what they're trying to do, your
7 Honor, is get an order of findings of fact from the
8 Wisconsin court.

9 And you heard Ms. Macklin argue that they will
10 take these findings of fact. In particular, we're
11 concerned about paragraph 10 and paragraph 17 of the draft
12 order, Exhibit 1 to our brief.

13 And they're going to argue to you that these
14 findings of facts, for which there will have been no
15 discovery, are binding on you.

16 And they're trying this and they're on
17 essentially the discovery process and the
18 cross-examination process in saying that you have to
19 accept these findings of fact without question.

20 And our point is, in the search for truth, both
21 the Wisconsin court, this court, the plaintiffs, all of us
22 would benefit from discovery and no one will be harmed in
23 any respect by discovery.

24 THE COURT: Well, their claim is they're going
25 to be harmed because they can't get it all done in a week.

1 MR. WILLIAN: It's a targeted deposition notice
2 that they've had since July 25th. And Ms. Walker has been
3 trying to meet and confer on numerous occasions with them
4 on that, and they have refused to meet and confer.

5 And instead, they have come to this court and
6 thrown up their hands and said it's too late -- they've
7 created the delay of course -- but it's too late and it's
8 too burdensome.

9 If they haven't offered you an affidavit, it is
10 a false claim that they would have to go through fifteen
11 thousand policies, because the whole premise of their
12 motion before the Wisconsin court is that they carefully
13 looked at all the policies, determined all the different
14 triggers and then structured the rehabilitation to avoid
15 triggering those triggers. So they supposedly know what
16 triggers are out there.

17 And if they want to give us documents
18 sufficient to show any other policies that have
19 substantially identical provisions to ours as far as the
20 trigger, that's fine, but that should be very easy to do,
21 and they've been -- because they supposedly did that
22 analysis with the rehabilitation based on the findings of
23 fact they're looking for.

24 They've created this delay. They've argued
25 burden. They have no support for it, and we don't believe

1 it exists.

2 We're not asking for all the policies, just the
3 ones -- or documents sufficient to show the ones that have
4 identical default provisions to ours. We don't believe
5 any.

6 And the reason we need them is they're coming
7 into this court and saying -- and the Wisconsin court is
8 saying there's going to be huge damage to the country
9 (sic), collateral damage, because if you, this court,
10 finds Ambac is involved, you're going to ruin the whole
11 company. We believe that's false.

12 And now we're asking them to produce documents
13 on --

14 THE COURT: Looking at fifteen thousand
15 contracts?

16 MR. WILLIAN: No, they don't. They can show --
17 presumably, they've done the analysis before. I'm not
18 going to ask them to do that before the deposition next
19 week, all right. But I don't think they have to, your
20 Honor.

21 All we're asking for are, are they aware of
22 policies that have identical language and substance to
23 ours. That's it. That's all.

24 And presumably they've already done that
25 analysis, because, remember, the whole premise of their

1 Wisconsin motion is they've looked at all the triggers and
2 they structured the rehabilitation not to trigger the
3 various different triggers.

4 Okay. We don't think they did. We don't think
5 they looked at our policies or took that into account.

6 But show us the other -- show us documents
7 sufficient to know what the other triggers are. We don't
8 think there are going to be any. We think we have a
9 unique trigger.

10 THE COURT: Anything else?

11 MS. MACKLIN: Your Honor, as to the meet -- the
12 supposed failure to meet and confer and their claim that
13 we've engineered a delay here, they followed California
14 procedure, sent us a deposition notice with a return date
15 in it.

16 Under the California Code of Civil Procedure,
17 we have until three days before the deposition date to
18 serve our objections. We actually served them early.

19 We have no obligation to have meetings and
20 conferring with them prior to the date required by the
21 code. That's an argument that's just been made up by them
22 for purposes of this motion because they realized they
23 didn't come to us to talk to us after we sent them the
24 objection on Friday.

25 And let me get -- we have an absolutely clear

1 example of why the meet and confer process is required.

2 Mr. Willian has just given us a narrowing, a
3 very considerable narrowing of the definition in the
4 deposition notice.

5 This is the first time -- the first time that
6 anyone from the plaintiff has said we will take documents
7 sufficient to show. Give us an example. We've not had
8 any opportunity to have this discussion with them.

9 Also, Counsel just said we don't need the
10 documents before there's a deposition. We have had no
11 discussions on that. It's not proper to have that kind of
12 meet and confer in the courtroom on the ex-parte hearing.

13 If they want the discovery, let's talk about
14 it. Maybe we can reach a conclusion on it, but we cannot
15 do it by sometime next week.

16 We don't -- this is too much of a rush.

17 Now, this is the first time hearing. I have to
18 go back to our client, present this as a resolution or a
19 possible resolution. It's 10 to 6 in New York. We can't
20 get a resolution on this. Tomorrow is Friday.

21 There's no reason for this kind of urgency
22 except that they want to go talk to the court in
23 Wisconsin.

24 But, again, your Honor, they didn't ask the
25 court in Wisconsin for permission to get this information

1 in advance. We can do all of this in the ordinary course
2 in this case. There's no rush.

3 And they are free to argue to this court, as I
4 expect they will, that the Wisconsin court did not
5 consider the issue that's presented to this court.

6 The findings of fact that Counsel was referring
7 to in the proposed order for Wisconsin are not findings of
8 fact. Those are reassertions of things already found by
9 that court. There's no new evidence. All the evidence
10 that was presented in that proceeding is public, is
11 available on the Ambac web site. They have access to it.
12 They know what was considered. They have available to
13 them all of these arguments.

14 What they want to do now is -- I guess from
15 Counsel's argument -- is prove a negative. They want to
16 show this is what -- we see what was presented to that
17 court.

18 None of it involved military housing. None of
19 it involved us.

20 Oh, look, they can't even find a provision
21 similar to ours. They're free to make that argument in
22 this court at the appropriate time. They can come ask for
23 this discovery, and if it's properly narrowed and it's
24 relevant, and this court rules it's relevant, we'll
25 provide the discovery. That's not the issue for today.

1 THE COURT: Why didn't you go to the Wisconsin
2 court to get permission to use this kind of discovery?

3 MR. WILLIAN: Well, the relevant party with the
4 relevant documents is not before the Wisconsin court. So
5 the Wisconsin court cannot order Ambac to produce
6 anything.

7 The relevant party with the relevant documents
8 is Ambac, and they are before you. And we are before you.
9 And this discovery is relevant to a central issue within
10 this case.

11 So we believe we're in absolutely the right and
12 appropriate court.

13 Discovery, cross-examination is the engine of
14 truth. And what we've heard is every excuse you can thin
15 of to avoid transparency.

16 And I would suggest that this discovery will
17 harm no one and will only help the court.

18 THE COURT: Let's find out Ms. Macklin's
19 argument that -- let's assume that you have no -- you
20 don't get discovery and the Wisconsin court makes whatever
21 decision it's going to make, that it really would not be
22 binding on this court because you come back to this court
23 and say but look at all this information Wisconsin courts
24 didn't have and therefore this court should not pay
25 attention to the Wisconsin court.

1 MR. WILLIAN: We'd be trying to put the genie
2 back in the bottle, essentially. And obviously, I'd
3 rather not be in the position of having to do that and say
4 to undermine the Wisconsin court order and why you should
5 ignore it.

6 I would hope that we could all enter into
7 factual findings with our eyes open with all the
8 information that's out there rather than trying to
9 reverse -- and so my suggestion is discovery before you
10 make factual findings is a better policy.

11 THE COURT: Well, here's my inclination. My
12 inclination is to grant the request for discovery. I'm
13 concerned about the burden.

14 It's five minutes to three. I'd like the
15 parties to spend some time out in the hall or even in the
16 courtroom -- I'm going to leave -- and try to figure out
17 what's a reasonable time given the issues that were
18 raised.

19 MS. MACKLIN: Your Honor, I'm happy to talk to
20 them. I cannot make any commitment at all without the
21 permission of our client. And I can tell you, they are
22 intensely involved in every decision we make. We had very
23 long conversations with them. I seriously think it's
24 going to take us days to get our client to even --

25 THE COURT: I can make a decision. I'm

1 perfectly willing to make a decision. I'm just suggesting
2 that you and the parties assist with that decision in a
3 way that would help your clients.

4 MS. MACKLIN: Okay. Thank you.

5 Let me just one -- and I understand the court's
6 order.

7 The Wisconsin court has subpoena power. So
8 it's not true that the Wisconsin court could not give them
9 the relief they're seeking. They could have gotten a
10 subpoena from that court to Ambac if they were allowed to
11 do that.

12 THE COURT: Okay. I think that's pretty clear.
13 I do have -- I don't have much question about that.

14 MS. MACKLIN: Okay. I mean is the court
15 considering ordering a deposition to take place next week?

16 THE COURT: Yes.

17 MS. MACKLIN: Okay.

18 MR. WILLIAN: Your Honor, shall I let the clerk
19 know -- would you like me to let the clerk know? I know
20 that you're in recess. But did you want us to inform the
21 court whether we came to a decision one way or another?
22 You said you're in recess, in recess for the day?

23 THE COURT: No, I didn't mean recess for the
24 day. I meant go out in the hall, find a space, whatever
25 space you want, think about it, talk about it, see if you

1 can reach some kind of agreement.

2 If you can reach some kind of middle ground,
3 tell me about it. If you can't, I'll figure it out.

4 MS. MACKLIN: Your Honor, one challenge we have
5 for next week is that we need to be back in this court on
6 Wednesday. And my east coast partner has other plans all
7 week. I think that would probably be me traveling. That
8 is logistically very, very challenging.

9 Perhaps we could consider moving the
10 preliminary injunction hearing so that we can accommodate
11 this and not turn everybody into knots on everything.

12 THE COURT: That's fine with me.

13 MR. WILLIAN: Meet and confer, I think that's
14 good.

15 THE COURT: Go out into the hall or if you want
16 to stay here because I'm leaving.

17 (Whereupon, other court matter is heard
18 by Judge Matcham.)

19 THE COURT: Success?

20 MS. MACKLIN: Partial success, your Honor.

21 Here's where we are. They have made a proposal
22 and with the exception of the one of the issues that I am
23 hopeful we can work out, that proposal is acceptable to
24 the lawyers.

25 I've been able to reach my colleague, who's

1 working with me on this case, who's in D.C., and in
2 principle, he's okay with this.

3 But we've been unable to reach our client. We
4 did call, but it's past six o'clock in New York, and so we
5 could not get ahold of them.

6 The proposal involves asking the rehabilitator
7 to move the date of the hearing in Wisconsin to give the
8 parties a little bit more time to accomplish the discovery
9 so that this doesn't have to happen over the weekend and
10 on an urgent basis in New York next week.

11 We are currently trying to contact
12 rehabilitative counsel, but he's also in an eastern -- a
13 more easterly time zone. Why aren't they all in
14 California? Easy to reach.

15 What we request that the court do is hold
16 issuing an order until the morning so that we have had an
17 opportunity -- we do have the advantage of the time zone
18 for the morning because I can just get up really early and
19 we can get on the phone with our client very early
20 tomorrow, and then we probably will get an answer from the
21 rehabilitator about moving that hearing.

22 And if we can contact the court in the morning
23 and let the court know that we have this agreement, the
24 client is okay with it, that's what we would request.

25 MS. WELCH: We would request, your Honor, that

1 the court enter an order for expedited discovery that
2 would take place next week based on the agreement reached
3 between counsel, which I can walk the court through on the
4 record.

5 To the extent there is an agreement reached
6 with counsel for the rehabilitator to seek an extension
7 and the Wisconsin court grants the extension, we will
8 agree on the record that we will move the date for the
9 deposition and move the date for production of documents
10 to be closer in proximity to when the objection would be
11 due and when the Wisconsin hearing will be held.

12 But because the Ambac client's agreement is not
13 for certain, and because the Wisconsin court moving the
14 hearing is not for certain, our clients believe we need an
15 order now subject to the caveats that I have placed on the
16 record.

17 The order would be that, on an expedited basis,
18 Ambac would agree to produce documents and to produce a
19 witness by the end of next week in three different
20 categories.

21 The first is testimony regarding whether the
22 company is aware of policies or contracts with
23 substantially similar default trigger language to that in
24 the Monterey document.

25 THE COURT: Trigger similar default --

1 MS. WELCH: Trigger language to the language in
2 the Monterey document.

3 With respect to documents in that category, if
4 the company is aware of such policies and can identify
5 them, we would ask that they be produced.

6 If the company is aware of said policies, but
7 can't, in the time frame, specifically identify all of
8 them, the company should produce documents sufficient to
9 show the existence of such policy or contracts and samples
10 of such policies or contracts.

11 That's the first bucket.

12 The second bucket would be testimony from a
13 witness regarding whether these policies, the Monterey and
14 other military policies or contracts and others identified
15 with substantially similar language were specifically
16 considered in structuring rehabilitation proceedings and
17 whether analysis was done regarding whether default was
18 triggered under those policies or contracts by the
19 proceedings and what that analysis shows.

20 With respect to documents for that second
21 category, we would be asking for an order that they
22 produce documents showing any such discussions or
23 analysis.

24 The final category would be testimony from a
25 witness and document regarding any discussion of those

1 issues identified in category two with the rehabilitator.

2 THE COURT: Regarding any discussion --

3 MS. WELCH: -- of the issues in category two,
4 the issues of whether the policies, including ours, and
5 any substantially similar, were specifically considered in
6 structuring the proceedings and whether there was analysis
7 of whether that language caused a default and what that
8 analysis showed, we would want testimony and documents
9 regarding discussions of those issues with the
10 rehabilitator.

11 Then we would note on the record that we would
12 reserve our right, your Honor, to come back to Ambac and
13 seek additional documents depending on what is provided on
14 an expedited basis and what the testimony shows. I think
15 the lawyers and principal have agreed on both sides to
16 this.

17 Ms. Macklin indicated to us that she and her
18 colleagues would be recommending the proposal to their
19 client.

20 We would ask the court to issue that order for
21 documents and testimony by Thursday of next week with our
22 agreement, on the record again, that if the rehabilitator
23 and plaintiffs are able to reach an agreement to get an
24 extension from the Wisconsin court and it's granted from
25 the Wisconsin court, we will work with them --

1 THE COURT: Ms. Macklin.

2 MS. MACKLIN: Two concerns about this. The
3 first I'm reserving the right.

4 I think that the consequence for plaintiff of
5 having come in here and made us stay up all night writing
6 papers and litigating this entire issue on an ex-parte
7 basis has to be that this is it, that they get this
8 testimony and they don't get anything more.

9 This is the agreement. This was their
10 proposal. And if we have to come back here and repeat
11 this over and over and over again, it's grossly unfair for
12 us. We have not really had the opportunity to brief all
13 these issues to the court, and now we're facing this court
14 order, and I think this has to be it.

15 That's No. 1.

16 No. 2, I'm not sure how quickly we can get an
17 order from the court moving the hearing date. I can
18 envision a situation where we are -- I'm on a plane for
19 New York and we're in the middle of a deposition that
20 we've done on an expedited basis and then the court
21 agrees, because no court I know does that that quickly.

22 So I think if there's an agreement to move the
23 hearing date, let's just assume that it's going to be
24 moved, because I haven't heard anybody saying that that
25 court is unwilling to move the hearing date and that that

1 ought to be the triggering event for taking the pressure
2 off and letting us do this in a more orderly fashion.

3 THE COURT: When would you come back before the
4 court?

5 MS. WELCH: We'll do our best, your Honor, to
6 find out tomorrow, but I can't make a guarantee either
7 that we'll get agreement from the rehabilitator by
8 tomorrow or that we can get an answer from the court's
9 clerk in Wisconsin, but we'll certainly do our best.

10 THE COURT: Well, I am inclined to issue the
11 order and hope that the hearing is postponed so that this
12 doesn't have to be done on an expedited basis.

13 I'm not quite sure, Ms. Macklin, what you meant
14 by no right to come back, this is it. I certainly agree
15 that -- without hearing your side of it -- certainly seems
16 logical that if the hearing -- if a deposition -- if the
17 Wisconsin court does not agree to continue their hearing
18 and if the deposition has to go forward next week,
19 certainly nothing else has to be provided within that time
20 frame. I mean this is it.

21 But I'm not comfortable saying this is it now
22 or never. I don't know what other issues are going to
23 come up.

24 MS. MACKLIN: Understood, your Honor.

25 My final point is they came in here today with

1 a very expansive request for documents and testimony.
2 They've agreed to substantially limit that, but they're
3 reserving the right to blow it up again if they want to.

4 So that's no resolution at all, and I'm just
5 asking that they be held to what they propose -- I mean
6 that's a standard discovery agreement. If you lose on
7 something and you agree to a lesser something, you can't
8 later come back and move again.

9 THE COURT: Well, I think they can come back
10 and move again, but not before the deposition.

11 MS. WELCH: Correct, your Honor.

12 THE COURT: Are you in agreement on that?

13 MS. MACKLIN: I'm not sure why they would be
14 able to. They would be bringing the same motion again
15 before the court and saying we know we agreed before, but
16 we changed our mind and now we actually want everything.
17 I don't think that's ever permissible.

18 THE COURT: My understanding is they came in
19 and asked for a million things, which, from the little
20 that I can tell, it seems burdensome and you all should
21 not have to provide that in the next week.

22 And so the court has to make a decision of what
23 is reasonable for Ambac producing next week. This seems
24 to be reasonable. But a month from now, six months from
25 now, it seems to me that this should not limit the

1 expiration of the issue, should not be the automatic bar
2 that limits the --

3 MS. MACKLIN: I understood what plaintiffs were
4 offering here was the same limitations, regardless of
5 whether the deposition and document production take place
6 next week or three weeks if the hearing in Wisconsin is
7 moved into October from September.

8 And I understood what they're talking about for
9 reserving their right is something they might do in
10 November or December or March.

11 THE COURT: That's my understanding.

12 MS. WELCH: That's correct, your Honor.

13 MS. MACKLIN: Okay. I disagree. I think that
14 if they limit what they're asking for -- and looking at
15 fifteen thousand policies, your Honor, what the court has
16 already ordered is hundreds of hours of work for the
17 lawyers and of our client. It is, it's hundreds of hours
18 of work for next week. That is burdensome.

19 And looking through fifteen thousand policies
20 to do what they've asked for --

21 THE COURT: I think we're not talking about the
22 same thing.

23 MS. MACKLIN: Okay. But I think it's
24 burdensome no matter when it happens. And the discovery
25 we've agreed to is burdensome no matter when it happens.

1 We understand the court's order. But I just
2 don't want there to be any mistake that complying with
3 what we've agreed to will require hundreds of hours of
4 somebody's time.

5 THE COURT: I'm not sure what your point is. I
6 mean -- this is my understanding. Let me state it again,
7 and help me if I'm not making myself clear.

8 The court is prepared to issue this order, and
9 if the hearing is next week or the week after or sometime
10 in October, this is the order.

11 MS. MACKLIN: Okay.

12 THE COURT: Now, if at some point after the
13 hearing, plaintiffs figure out they need additional
14 information for the course of this trial, they can come
15 back and ask for the same thing, the same things they're
16 asking for today. They are not prohibited from re-asking
17 for these things in a different context.

18 THE REPORTER: I can only take one at a time.

19 MS. MACKLIN: I think that's a violation, your
20 Honor.

21 I think the Code of Civil Procedure provides
22 that you ask for things once and you move to compel and
23 you don't get to ask for them again.

24 THE COURT: I think you're wrong. I think that
25 the parties can agree and the court can agree to limit the

1 request based on the assertion of burden, but that that is
2 not an order that closes the door forever.

3 I just don't think that that is the law.

4 MS. MACKLIN: Okay.

5 THE COURT: Let me just throw one other thing
6 out there and see if this would be helpful to anyone.

7 It's Thursday at four. The court will be in
8 session tomorrow morning at nine in Salinas.

9 I don't know, does it make any sense to talk to
10 your folks and come back tomorrow morning at nine?

11 MR. WILLIAN: I don't see the need for it, your
12 Honor.

13 MS. MACKLIN: That's what we're asking, your
14 Honor, is for the opportunity to be able to talk to our
15 client and to be able, before the order gets finalized,
16 and make sure that this is something they can actually
17 comply with.

18 MR. WILLIAN: They'll be rearguing the order,
19 your Honor.

20 MS. MACKLIN: That's not our intent, your
21 Honor. Our client, they have to weigh in on everything.
22 I'm not even sure if we have witnesses who are in town
23 next week who can be educated on these things. We have
24 had some preliminary discussions about whether or not we
25 could do this, but we've not sprung on them this kind of

1 question and we've not had an opportunity -- I mean I
2 believe that my partner is talking now to rehabilitator's
3 counsel, or trying to reach him, to see whether they'd be
4 in agreement on moving these dates.

5 But that's the reason. We're not trying to
6 reargue it, your Honor. I have the kind of client who
7 really wants to be involved in these kinds of decisions.

8 THE COURT: All right. The court is going to
9 enter the order, ask -- and I'm hoping you don't need me
10 to repeat it.

11 MS. WELCH: We don't.

12 MR. WILLIAN: We don't.

13 THE COURT: What I will say -- and please get
14 that to me right away.

15 What I will say is that I will be in session
16 tomorrow morning at nine o'clock in Salinas. If there is
17 something that needs to come to my attention, Mr. Masuda,
18 I'm available, and there can be some communication.

19 MR. MASUDA: Yes, your Honor.

20 MR. WILLIAN: Hopefully, the lawyers can work
21 it out. We will be reasonable if they have some
22 reasonable request and not involve the court any further.

23 THE COURT: That's fine.

24 MR. WILLIAN: I know. The notion of coming
25 back to the court, I just want to raise one possibility.

1 This is a PNK deposition, requires serious preparation,
2 obviously.

3 And I just want to note for the court, that to
4 the extent that preparation is not undertaken, we may be
5 back in front of the court on that issue. That is an
6 issue too that I just want the court to be aware of, I'm
7 sure.

8 THE COURT: I'll bite my tongue on that.

9 MS. MACKLIN: Thank you, your Honor.

10 We resent the suggestion that we're not going
11 to prepare our witness and take it seriously.

12 THE COURT: Thank you.

13 MS. MACKLIN: Oh. The preliminary injunction
14 hearing, if we are right, if we are to go forward with
15 this order, we will need to move that. And Counsel did
16 ask that we hold that for now. But I think in light of
17 the fact that they wouldn't agree for that, I think we
18 could move that now.

19 MS. WELCH: Our only suggestion on holding it,
20 your Honor, was that if we get an agreement with the
21 Wisconsin court tomorrow, the parties could move forward,
22 but we will of course defer to the court.

23 THE COURT: One of the problems that the court
24 has sort of held the 24th to be a really light calendar to
25 give you time that you needed.

1 Let's go off the record for just a moment.

2 (Discussion off the record.)

3 THE COURT: Let's go back on the record.

4 We talked about moving the preliminary
5 injunction, and you wish to provide --

6 MS. MACKLIN: Yes. Ambac wishes to provide a
7 supplemental brief because Paul Cramer, who was the person
8 who submitted the declaration for the plaintiff in
9 connection with the TRO, and therefore, the preliminary
10 injunction was not available to be deposed until August
11 2nd, which was after the date on which Ambac filed this
12 opposition to the preliminary injunction motion.

13 So we plan to file a supplemental brief
14 addressing Mr. Cramer's testimony.

15 MR. WILLIAN: No objection as long as we can
16 have a --

17 THE COURT: Surrebuttal?

18 MR. WILLIAN: -- surrebuttal. It's very short,
19 I promise.

20 THE COURT: Okay. Well, let's do September 9
21 at nine o'clock, department 1, usual meeting ground. And
22 I'm a little bit nervous without checking with my clerk.
23 And so if there's a problem for some reason, she will
24 contact you.

25 MS. MACKLIN: Thank you.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Safe travels.

MS. WELCH: Thank you.

MR. WILLIAN: Thank you.

24

25

