

In the Matter of the Rehabilitation of:

FILED

Segregated Account of Ambac Assurance Corporation

Case No. 10 CV 1576

NOV 21 2016

DANE COUNTY CIRCUIT COURT

AFFIDAVIT OF RICHARD B. WICKA

STATE OF WISCONSIN)
) SS
DANE COUNTY)

Richard B. Wicka, first sworn under oath and under penalty of perjury, states as follows:

1. I am an adult. I have personal knowledge of the facts set forth in this affidavit except as noted otherwise. I currently serve as the Deputy Chief Legal Counsel to the Office of the Wisconsin Insurance Commissioner.

2. On November 7, 2016, the Commissioner’s Office was served with a subpoena in a foreign case; a true and correct copy of the subpoena is attached and labeled Exhibit A.

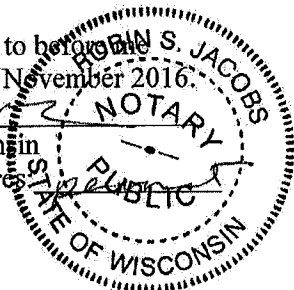
3. Attached and labeled Exhibit B is a true and correct letter that I caused to be sent to counsel listed as attorneys for the plaintiffs in the foreign case that served the foreign subpoena.

Dated at Madison, Wisconsin this 21 day of November, 2016.

Richard B. Wicka

Subscribed and sworn to before me
This 21st day of November 2016.

Notary Public, Wisconsin
My Commission expires
209666-0001\19995969.1



STATE OF WISCONSIN, CIRCUIT COURT, DANE

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COUNTY

For Official Use

FILED

NOV 7 2016

Foreign Jurisdiction Case Caption:
Monterey Bay Military Housing, LLC, and
Monterey Bay Land, LLC
v.
Ambac Assurance Corporation

Foreign Subpoena

Foreign Jurisdiction Case/Docket No.
15CV000599

DANE COUNTY CIRCUIT COURT

The State of Wisconsin to (Witness Name and Address,
including County of residence):
Wisconsin Commissioner of Insurance
125 South Webster Street, Madison, WI 53703
County of Dane

Service Information		
Date Served	Time Served	Fee Charged
		\$
Manner of Service		Witness Fee Enclosed
<input type="checkbox"/> Personal <input type="checkbox"/> Substitute:		\$
Serving Agency		
Served By (Signature)		

You are required to appear and give evidence:

APPEARANCE INFORMATION		
Date 12/2/2016	Time 10:00 a.m.	Location (Include Room Number) One East Main Street, Suite 500, Madison, WI 53703
Presiding Official		
On Behalf Of Self	Type of Proceeding Oral Deposition	

You are further required to bring with you the following:
See Attachment 3 of CA Deposition Subpoena

This is a third-party subpoena. Unless all parties agree otherwise, do not provide any requested items before the date and time of the above proceeding.

Failure to appear may result in punishment for contempt, which may include monetary penalties, imprisonment and other sanctions. You have a right to petition the Wisconsin circuit court for a protective order to quash or modify the subpoena or provide other relief under Wis. Stat. §805.07(3).

This subpoena is based on a foreign subpoena issued in a civil action by a court of record in a state other than Wisconsin. A copy of the foreign subpoena is attached. The name, address, and telephone number of all counsel of record and any party not represented by counsel in the foreign proceeding is attached as follows:

Name	Address	Telephone Number

If you have any questions about this subpoena, please contact:		Issuing Official	
Name (Type or Print)	By:	Signature	
Title	Telephone Number	Name Printed or Typed	
Address		Date	

If you require reasonable accommodations due to a disability, please call _____ at least 10 working days prior to the scheduled court date. Please note that the court does not provide transportation.

EXHIBIT
A

Counsel for Plaintiffs:

Justin M. O'Connell, Esq.
Cavassa O'Connell
30 Ragsdale Drive, Suite 200
Monterey, CA 93940
Phone: (831) 655-6868

Donna M. Welch, Esq.
Jeffrey Willian, Esq.
Kirkland & Ellis, LLP
300 North LaSalle, Chicago, IL 60654
Phone Donna: (312) 862-2425
Phone Jeffrey: (312) 862-2257

Counsel for Defendants:

Meryl Macklin, Esq.
Bryan Cave LLP
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111
Phone: (415) 268-1981

Alec W. Farr, Esq.
Bryan Cave LLP
1155 F Street, NW
Washington DC, 20004-1357
Phone: (202) 508-6053

Michael Masuda, Esq.
Noland, Hamerly, Etienne, Hoss
333 Salinas Street, Salinas, CA 93901
Phone: (831) 424-1414

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Justin M. O'Connell, Esq. (State Bar # 232188) Cavassa O'Connell, Esq. 30 Ragsdale Drive, Suite 200 Monterey, CA 93940 TELEPHONE NO.: (831) 655-6868 FAX NO. (Optional): (831) 920-1031 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	FOR COURT USE ONLY FILED NOV 7 2016 DANE COUNTY CIRCUIT COURT
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY STREET ADDRESS: 1200 Aguajito Road MAILING ADDRESS: CITY AND ZIP CODE: Monterey 93940 BRANCH NAME: Monterey	
PLAINTIFF/PETITIONER: Monterey Bay Military Housing LLC, et al. DEFENDANT/RESPONDENT: Ambac Assurance Company	
DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS	CASE NUMBER: 15CV000599

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
 Wisconsin Commissioner of Insurance 125 South Webster Street, Madison, WI 53703

1. YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following date, time, and place:

Date: December 2, 2016 Time: 10:00 a.m. Address: One East Main Street, Suite 500 Madison, Wisconsin 53703

- a. As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 4. (Code Civ. Proc., § 2025.230.)
- b. You are ordered to produce the documents and things described in item 3.
- c. This deposition will be recorded stenographically through the instant visual display of testimony and by audiotape videotape.
- d. This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025.620(d).

2. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.

3. The documents and things to be produced and any testing or sampling being sought are described as follows:

Continued on Attachment 3.

4. If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are described as follows:
 The contents of the documents requested in Attachment 3.

Continued on Attachment 4.

5. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

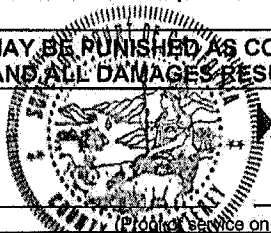
6. At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition. Unless the court orders or you agree otherwise, if you are being deposed as an individual, the deposition must take place within 75 miles of your residence or within 150 miles of your residence if the deposition will be taken within the county of the court where the action is pending. The location of the deposition for all deponents is governed by Code of Civil Procedure section 2025.250.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF \$500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: **NOV - 2 2016**

LSCUMMINGS

(TYPE OR PRINT NAME)



L. Cummings
 (SIGNATURE OF PERSON ISSUING SUBPOENA)

Deputy Court Clerk II

(TITLE)

PLAINTIFF/PETITIONER: Monterey Bay Military Housing LLC, et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: Ambac Assurance Company	15CV000599

PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS

1. I served this *Deposition Subpoena for Personal Appearance and Production of Documents and Things* by personally delivering a copy to the person served as follows:

a. Person served (*name*):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. Witness fees and mileage both ways (*check one*):

(1) were paid. Amount: \$ _____

(2) were not paid.

(3) were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was (*specify*): \$ _____

f. Fee for service: \$ _____

2. I received this subpoena for service on (*date*):

3. Person serving:

- a. Not a registered California process server
- b. California sheriff or marshal
- c. Registered California process server
- d. Employee or independent contractor of a registered California process server
- e. Exempt from registration under Business and Professions Code section 22350(b)
- f. Registered professional photocopier
- g. Exempt from registration under Business and Professions Code section 22451
- h. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(For California sheriff or marshal use only)
I certify that the foregoing is true and correct.

Date:

Date:

(SIGNATURE)

(SIGNATURE)

ATTACHMENT 3

DEFINITIONS

1. "DOCUMENT" includes every writing or record of every type and description, including letters, correspondence, communications, diaries, memoranda, tapes, electronic data or storage, stenographic or handwritten notes, studies, publications, books, pamphlets, pictures, films, voice recordings, reports, records, financial statements, applications, e-mails, texts and includes all copies of every writing or record when the copy is not identical to the original.
2. "COMMUNICATION" means all documents reflecting, constituting, or concerning communications between or among two or more persons or entities, including but not limited to any oral or written utterance, notation, memorandum, notes of meetings or conferences, calendar entries, correspondence, documents, conversations, dialogues, e-mails, interviews, consultations, telegrams, teletypes, telexes, telecopies, texts, chats, instant messages, agreements, and other understandings, or statements of any nature whatsoever.
3. "YOU" or "YOUR" means the Wisconsin Office of the Commissioner of Insurance, including any and all of its current and former affiliates, subsidiaries, directors, officers, managing members, members, employees, agents, and other persons acting on its behalf.
4. "AMBAC" or "GENERAL ACCOUNT" means Ambac Assurance Corporation, including any and all of its current and former affiliates, subsidiaries, directors, officers, managing members, members, employees, agents, and other persons acting on their behalf.
5. "MONTEREY GRANTOR TRUST AGREEMENT" means the Grantor Trust Agreement between GMAC Commercial Holding Capital Corp. and U.S. Bank National Association dated October 1, 2003.
6. "SEGREGATED ACCOUNT" means the Segregated Account established during the WISCONSIN REHABILITATION PROCEEDINGS.
7. "AMBAC" means AMBAC Assurance Corporation, a Wisconsin stock insurance corporation.
8. "WISCONSIN REHABILITATION PROCEEDINGS" means the court-supervised rehabilitation proceedings involving AMBAC, which included the issuance of the March 24, 2010 Order, the establishment of the SEGREGATED ACCOUNT and all subsequent related proceedings in the Dane County Circuit Court located in Madison, Wisconsin.

INSTRUCTIONS

1. This request covers the time period from January 1, 2000 to the present.

2. You are required to produce not only the original or an exact copy of the original of all Documents and Communications responsive to any of the requests listed below, but also all copies of such Documents and Communications which bear any notes or markings not found on the original and all preliminary, intermediate, final, and revised drafts or embodiments of such Documents and Communications. You are required to produce all versions of such Documents and Communications, as well as identical copies found in different files.
3. Electronically stored information shall be produced in native file format.
4. To the extent that any request below requests Documents that have been destroyed, identify when the Document was destroyed, identify the reason for the destruction of the Document, and describe the contents of each such Document.
5. With respect to any Documents or information withheld on a claim of attorney-client privilege, the attorney work product doctrine, or any other privilege, provide an express statement of the privilege that describes the nature of the Documents, Communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable Plaintiffs to assess the applicability of the privilege or protection. This description should include:
 - (a) its date;
 - (b) the identity of all persons who authored, prepared, signed, sent, received, and/or were involved with the Document or Communication;
 - (c) the general nature of the Document or Communication (*e.g.*, letter, photograph, etc.);
 - (d) a summary of its contents or its general subject matter;
 - (e) the number of pages in the document;
 - (f) where the Document was located;
 - (g) the identities of all persons to whom the Document or Communication or copies thereof were circulated or its contents communicated; and
 - (h) the specific grounds for not responding in full, including the nature of the privilege (*e.g.*, attorney-client privilege, work product) or other rule of law relied upon to withhold the Document or Communication, and the facts supporting those grounds.

DOCUMENTS REQUESTED

1. All DOCUMENTS relating to any consideration or analysis of the default language found in the definition of "Ambac Default" in the MONTEREY GRANTOR TRUST AGREEMENT stating that a default occurs if "a court of competent jurisdiction or another competent regulatory authority enters a final and nonappealable order, judgment or decree . . . (ii) authorizing the taking of possession by a custodian, trustee, agent, or receiver of Ambac (or taking of possession of all or any material portion of Ambac's property)", or substantially similar trigger language, in connection with structuring the WISCONSIN REHABILITATION PROCEEDINGS, including but not limited to the decision to include only the SEGREGATED ACCOUNT in the WISCONSIN REHABILITATION PROCEEDINGS and the decision of how to capitalize the SEGREGATED ACCOUNT.
2. All COMMUNICATIONS between YOU and any third party relating to any consideration or analysis of the default language found in the definition of "Ambac Default" of the MONTEREY GRANTOR TRUST AGREEMENT stating that a default occurs if "a court of competent jurisdiction or another competent regulatory authority enters a final and nonappealable order, judgment or decree . . . (ii) authorizing the taking of possession by a custodian, trustee, agent, or receiver of Ambac (or taking of possession of all or any material portion of Ambac's property)", or substantially similar trigger language, in connection with structuring the WISCONSIN REHABILITATION PROCEEDINGS, including but not limited to the decision to include only the SEGREGATED ACCOUNT in the WISCONSIN REHABILITATION PROCEEDINGS and the decision of how to capitalize the SEGREGATED ACCOUNT.
3. Any analysis performed relating to the default language found in the definition of "Ambac Default" of the MONTEREY GRANTOR TRUST AGREEMENT stating that a default occurs if "a court of competent jurisdiction or another competent regulatory authority enters a final and nonappealable order, judgment or decree . . . (ii) authorizing the taking of possession by a custodian, trustee, agent, or receiver of Ambac (or taking of possession of all or any material portion of Ambac's property)", or substantially similar trigger language, in connection with structuring the WISCONSIN REHABILITATION PROCEEDINGS, including but not limited to the decision to include only the SEGREGATED ACCOUNT in the WISCONSIN REHABILITATION PROCEEDINGS and the decision of how to capitalize the SEGREGATED ACCOUNT.
4. DOCUMENTS sufficient to show the number of AMBAC policies or contracts that existed at the time of the WISCONSIN REHABILITATION PROCEEDINGS and that contained default language found in the definition of "Ambac Default" of the MONTEREY GRANTOR TRUST AGREEMENT stating that a default occurs if "a court of competent jurisdiction or another competent regulatory authority enters a final and nonappealable order, judgment or decree . . . (ii) authorizing the taking of possession by a custodian, trustee, agent, or receiver of Ambac (or taking of possession of all or any material portion of Ambac's property)", or substantially similar trigger language.

5. DOCUMENTS sufficient to show whether the policies or contracts identified in Inspection Demand No. 4 were placed in the SEGREGATED ACCOUNT or in the GENERAL ACCOUNT.
6. DOCUMENTS sufficient to show the number of AMBAC policies or contracts that exist and are in force today and that contained default language found in the definition of "Ambac Default" of the MONTEREY GRANTOR TRUST AGREEMENT stating that a default occurs if "a court of competent jurisdiction or another competent regulatory authority enters a final and nonappealable order, judgment or decree . . . (ii) authorizing the taking of possession by a custodian, trustee, agent, or receiver of Ambac (or taking of possession of all or any material portion of Ambac's property)", or substantially similar trigger language.
7. DOCUMENTS sufficient to show whether the policies or contracts identified in Inspection Demand No. 6 are in the SEGREGATED ACCOUNT or in the GENERAL ACCOUNT.
8. All DOCUMENTS relating to actions taken by AMBAC to prevent a counterparty to a policy or contract in the GENERAL ACCOUNT from claiming or declaring that AMBAC was in default, including but not limited to all forbearance or other agreements entered into by Ambac that prevented a counterparty to a policy or contract in the GENERAL ACCOUNT from claiming or declaring that AMBAC was in default.
9. All COMMUNICATIONS between YOU and a third party relating to whether Ambac was in default as a result of the WISCONSIN REHABILITATION PROCEEDINGS.
10. All DOCUMENTS and COMMUNICATIONS relating to the testimony of the Wisconsin Commissioners of Insurance on November 16, 2010 that "it became clear to me that it would be difficult to craft [an injunction] that would affect and adjoin all of those covenants and triggers."
11. All DOCUMENTS and COMMUNICATIONS relating to the Wisconsin Court's factual finding in its January 24, 2011 Decision and Final Order Confirming the Rehabilitator's Plan of Rehabilitation, With Findings of Fact and Conclusions of Law that "it may not have been possible to effectively enjoin the exercise of all such triggers."



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott Walker, Governor
Theodore K. Nickel, Commissioner

Wisconsin.gov

November 16, 2016

Legal Unit
125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 267-9586 • Fax: (608) 264-6228
Web Address: oci.wi.gov

VIA ELECTRONIC & FIRST CLASS MAIL

Justin M. O'Connell, Esq.
Cavassa O'Connell
30 Ragsdale Drive, Suite 200
Monterey, CA 93940

Donna M. Welch, Esq.
Kirkland & Ellis, LLP
300 North LaSalle
Chicago, IL 60654

Re: *In the Matter of the Rehabilitation of: Segregated Account of Ambac Assurance Corp.*
Dane County Circuit Court Case No. 10-CV-1576

Dear Mr. O'Connell and Ms. Welch:

This letter is sent on behalf of the Wisconsin Commissioner of Insurance. Monterey Bay Military Housing, LLC and Monterey Bay Land, LLC served a foreign subpoena on this Office on November 7, 2016. The foreign subpoena does not comply with the Order dated April 5, 2016 of the Rehabilitation Court, a copy of which is enclosed for your reference. The Order also states the "Rehabilitator ... shall not respond to a request for leave to take discovery unless so ordered by the [Rehabilitation] Court." Further, the subpoena seeks testimony and records subject to the regulatory privilege set forth in Wis. STAT. § 601.465(1m)(a) and (2m)(a). The Commissioner hereby requests that you withdraw the foreign subpoena, in writing, on or before the close of business on Friday, November 18, 2016.

Very truly yours,

Richard B. Wicka
Deputy Chief Legal Counsel
Wisconsin Office of the Commissioner of Insurance

cc: **VIA ELECTRONIC MAIL**
Merrill Macklin, Esq.
Alex W. Farr, Esq.
Michael Masuda, Esq.
John D. Finerty, Jr., Esq.
Ann Usted Smith, Esq.

**EXHIBIT
B**