
In the Matter of the Rehabilitation of:

Case No. 10-CV-1576

Segregated Account of Ambac Assurance Corporation

**MONTEREY BAY MILITARY HOUSING, LLC AND MONTEREY BAY LAND, LLC'S
MOTION TO RECONSIDER**

On November 21st, 2016, the Wisconsin Commissioner of Insurance (“Commissioner”) moved in the Rehabilitation Proceeding to quash a California subpoena submitted to and issued by the Dane County Circuit Court in *Monterey Bay Military Housing, LLC, et al. v. Ambac Assurance Corp.*, Case No. 15CV000599, pending in the Superior Court of Monterey County, California (“the *Monterey* action”). The motion expressly anticipated that the Court would schedule a hearing. (Notice of Motion, p. 2 (“This motion will be heard by the Honorable Richard G. Niess at the Dane County Courthouse, 215 South Hamilton Street, Madison, on a date and time to be set by the Court”).) To avoid any delay, the *Monterey* plaintiffs immediately began preparing their opposition to the motion. They filed their opposition two days later, on November 23rd. Unfortunately, by that time, this Court already had granted the motion, quashing the Monterey court’s subpoena without a hearing and before the *Monterey* plaintiffs had an opportunity to file their opposition. As more fully set forth in the *Monterey* plaintiffs’ original opposition, the Commissioner’s motion to quash is improper as a matter of law and misconstrues the narrow scope of this Court’s April 5th, 2016 Order. The *Monterey* plaintiffs respectfully submit that this Court should reconsider its Order quashing the foreign subpoena for the reasons summarized below.

First, the Commissioner incorrectly argued that this Court, by virtue of its jurisdiction over the Rehabilitation Proceeding, may quash a subpoena in the *Monterey* action. However, the *Monterey* action falls outside the jurisdiction of this Court; the disputed subpoena was issued by the *Monterey* court and domesticated by the Dane County Circuit Court for enforcement in Wisconsin. It is not a subpoena issued in the Rehabilitation Proceeding or for use in the Rehabilitation Proceeding and does not affect the administration of the Rehabilitation Proceeding. Under the terms of the Uniform Interstate Depositions and Discovery Act, adopted by both California and Wisconsin, discovery served in Wisconsin for use in a foreign court may only be quashed upon a showing that it is “unreasonable and oppressive.” Wis. Stat. § 805.07(3); Wis. Stat. § 887.24(6)(a). The Commissioner has not carried his burden on this required showing, making no reference to the relevant standard and failing to argue how the discovery is “unreasonable and oppressive,” nor has the Commissioner raised any objections that the subpoena is “unreasonable and oppressive.” Likewise, the Court’s Order quashing the subpoena made no finding that the subpoena was “unreasonable and oppressive.” Absent any showing that this statutory standard has been met, it was legal error to quash the foreign subpoena. *Id.*

Second, the Commissioner’s motion relied on this Court’s April 5th, 2016 Order, which expressly does not apply to the discovery at issue here. The facts that gave rise to the Order—interested parties seeking discovery in the Rehabilitation Proceeding and in support of a motion intended to force the Commissioner to take action affecting the Segregated Account—are wholly distinct from the discovery at issue here. The *Monterey* plaintiffs are parties to a foreign action related to the General Account and do not seek to force the Commissioner to take any action related to the Segregated Account. Moreover, the Court’s order states plainly, “[I]nterested

parties may not seek to take discovery of any type *in this proceeding* without leave of this Court.” (April 5, 2016 Order ¶ 3 (emphasis added).) Because the *Monterey* plaintiffs do not seek to take discovery “in this proceeding” or for use “in this proceeding” there is nothing in the April 5th, 2016 Order that supports quashing the subpoena.

For the foregoing reasons, and as set forth more fully in the Opposition to Motion to Quash, the *Monterey* plaintiffs respectfully request this Court to reconsider its order.

Dated: November 28, 2016.

Respectfully submitted,
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