STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
Branch 9

SEAN DILWEG, et al.,

Plaintiffs,

vs. Case No. 10 CV 1576

WELLS FARGO BANK/TRUSTEE OF BONDHOLDERS, et al.,

Defendants.

PROCEEDINGS: Motion Hearing

BEFORE: HONORABLE RICHARD G. NIESS

DATE: December 14, 2017

TIME: 8:33 a.m.

APPEARANCES: JOHN D. FINERTY,
Attorney at Law,
Milwaukee, Wisconsin,
appearing on behalf
of the Wisconsin Insurance
Commission.

BENJAMIN R. PRINSEN and
LEILA SAHAR,
Attorneys at Law,
Milwaukee, Wisconsin,
appearing on behalf
of Military Housing Project
Initiative.

JOHN D. FINNEGAN and
ERIC C. DAUCHER,
Attorneys at Law,
New York, New York,
appearing on behalf
of the general account
stakeholders.

APPEARANCES:
(cont'd)

JAMES A. FRIEDMAN,
Attorney at Law,
Madison, Wisconsin,
appearing on behalf
of ad hoc group of holders of
surplus notes and beneficial
interests and deferred amounts.

BARBARA A. NEIDER,
Attorney at Law,
Madison, Wisconsin,
appearing on behalf
of Ambac Assurance Corporation.

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(Whereupon, the following proceedings were duly had:)

THE CLERK: Sean Dilweg, et al. vs. Wells Fargo Bank Trustee of Bondholders, et al., 10 CV 1576.

Appearances, please.

THE COURT: Here's what I'd like to do on appearance. Those who are intending to speak, you can make your appearances known.

Those who are just listening in and do not intend to speak or do not anticipate that

something may happen that will require them to speak, I'd like to see if we can just make a list subsequently that we can put into the record so we don't spend the first half hour hearing about all the lawyers who are interested in this case.

Does that sound satisfactory?

We're already getting more and more people joining.

Is that satisfactory, folks?

Hearing nothing that says it's not, let's do it that way.

Who is appearing for the rehabilitators?

MR. FINERTY: Morning, Your Honor.

John Finerty of Michael, Best & Friedrich, Milwaukee, Wisconsin. I'd also like to point out in the courtroom is the Special Deputy Commissioner Daniel Schwartzer for the Rehabilitator. Good morning.

THE COURT: Good morning.

MR. PRINSEN: Good morning, Your Honor.

Ben Prinsen of law firm Kravit, Hovel & Krawczyk. With me is Leila Sahar. We're here on behalf of what we've been referring to as the MHPI projects. I can read the list into the record if Your Honor would like.

THE COURT: I think we get the idea. We'll just take it from your brief.

MR. PRINSEN: Thank you.

MR. FINNEGAN: Good morning, Your Honor.

John Finnegan and my colleague Eric Daucher with the firm Norton Rose Fulbright. We represent the general account stakeholders, or as my colleague likes to refer to them as the COFINA Bondholders. Titles aren't important to us. I think you know who we are.

THE COURT: I do now.

MS. NEIDER: Good morning, Your Honor.

Barbara Neider. I'm here on behalf of Ambac Assurance Corporation. I'd also like to introduce Peter Ivanick from the Hogan firm sitting right behind.

MR. IVANICK: Morning.

THE COURT: I thought you had retired, Ms. Neider. I was mourning the news, and then I see all of this --

MS. NEIDER: Here I am.

THE COURT: -- all of this material come in, and now I'm mourning your resurrection.

MS. NEIDER: Thank you, Your Honor.

MR. FRIEDMAN: James Friedman from

Godfrey & Kahn in Madison on behalf of the ad hoc group holders of surplus notes and beneficial interests in deferred amounts who are parties to the RESA agreement. We may be speaking as well.

THE COURT: They won't let you sit at the adult table?

Anyone else wish to have their appearances noted?

All right. I want to begin with advising all of you that there -- just minutes ago, two decisions came down from the Court of Appeals which are of pertinence perhaps, and maybe you all know about them anyway.

The first decision was in Judge Anderson's court. The segregated accounts case versus Countrywide Home Loans, Inc. which affirmed Judge Anderson on other grounds holding that there was jurisdiction in his court against Countrywide Home Loans, Inc. I can't imagine the Rehabilitator and his expert didn't already anticipate that unless you slept through the International Shoe lecture in law school.

Secondly, the Court of Appeals has affirmed this Court's Order in the MHPI litigation regarding the clarifying Order that Mr. Friedman and

I had a little discussion about about a year and a half ago.

The important thing in the case that affirmed this Court is the discussion by the Court of Appeals in paragraph 16 where they make the following statement.

"As to discovery regarding that record, we reiterate that a rehabilitation proceeding is not an adversarial lawsuit," citing to Nickel at paragraph 101. "There are no 'parties' aside from the subject of the rehabilitation, and as such, the statutory rules of discovery for civil cases do not apply. Again, the clarification order at issue was entered at the request of the rehabilitator, to clarify facts about the rehabilitation proceeding that the rehabilitator might need to assert in outside litigation. In short, the MHPI projects -- who have no policies in the segregated account that is the subject of the rehabilitation plan -- have shown no basis to obtain either a hearing or discovery regarding an order clarifying that plan."

I don't know to what extent that has any bearing on what we're doing today other than that it reiterates that it is not an adversary proceeding and discovery rules do not apply.

What I propose to do here is to talk about the motions and rule on the preliminary motions.

I am not, obviously, going to rule on the motion to amend the plan which is the subject of -- would be the subject of an evidentiary hearing in January, but the preliminary motions I intend to rule on.

I want to thank Counsel for boiling down an extraordinarily complex situation for me. You have condensed it as well as possible. Having said that, there is an awful lot of meat that you gave me and some of it as little as a few days ago. So I do not intend today to rule on any of the substantive issues that are before the Court.

I want to rule on the preliminary motions, the one relating to discovery, the one relating to postponement, and decline the invitation of the Rehabilitator to rule on the substantive issue regarding paragraph 6.13 and defer on that.

I also then, provided that the case survives the motion to adjourn -- did I say motion to dismiss? I meant motion to adjourn -- which is in effect a motion to dismiss in its effect. I want to get some structure to the trial so that we can get

this done within the two days that are contemplated.

Now, with respect to the discovery motion, is there anything further that needs to be argued on that that has not been placed in any of the materials filed by the MHPI litigants?

MR. PRINSEN: No, Your Honor. In terms of discovery, we're not seeking discovery at this time. That was resolved with Mr. Finerty and are not attempting to seek any discovery from the Rehabilitator.

MR. FINERTY: Yes, Your Honor. If I could clarify one thing that we may have created some confusion on in our pretrial report.

There were originally three motions: A motion to adjourn, motion for discovery by the COFINA Bondholders, and a motion for contempt against the military --

THE COURT: That's been withdrawn, the contempt motion.

MR. FINERTY: That has been withdrawn and been resolved.

Then in our pretrial report we mentioned that we would like a ruling on the 6.13 of the plan. That was an earlier strategy decision that we changed once there was a change in counsel or anticipated to

be a change in counsel.

So it is the Rehabilitator's request that we take up the objections that are the bulk of the briefing before the Court. We can take that up at the confirmation hearing. But, today, if we could have rulings on the two remaining motions and then give some guidance for the Court on the hearing, the structure of that. We've made a proposal for timing, and there will be an issue about which parties have standing to be able to offer evidence and cross-examine and put on a case and things such as that. Perhaps we can take that up after the rulings from the Court.

THE COURT: You said now there are two motions. Actually, there's only one motion if the discovery motion has been resolved.

MR. FINNEGAN: No, Your Honor. The general account stakeholders have also sought discovery, and we have a motion pending.

THE COURT: All right. And yours is the letter discovery?

MR. FINNEGAN: Yes.

THE COURT: All right. I had that here a minute ago.

I have to admire your creative advocacy,

Mr. Finnegan. You asked one single document request, but basically it's like every document in the world. I mean, I suppose that's true, but -- in any event, I'm just playing with you a little bit.

You've requested discovery, but you just had reiterated by the Court of Appeals today discovery is not available in these proceedings. Tell me why I should give you discovery over and above what you've told me that you would like the information.

MR. FINNEGAN: Well, I believe the Court of Appeals has long said that discovery is not an absolute right in a rehabilitation proceeding. However, the Court of Appeals and this Court have both made clear that discovery can be awarded in the discretion of this Court. And then the question then becomes whether this Court should exercise its discretion, and I would suggest that you should.

And the reason I would suggest that you should is that absent discovery this Court can never have a genuine basis to know whether there's legitimate evidence to conclude that the rehabilitation has been -- that the purposes of the rehabilitation have been met and that there's no longer grounds for rehabilitation.

You've had put before you a model. And that model has a lot of inputs that go into that model. You have no genuine information as respects to model. You have very little information as respects to input. Nobody's had the opportunity to test it.

They have an affirmative burden of proof. They persuade this Court with competent evidence that the model and the inputs are legitimate. And if they're not prepared to let it stand up to any testing, it shouldn't be admitted, no less be the basis on which they found an exit from rehabilitation.

THE COURT: Isn't the standard of review a highly deferential standard to the Rehabilitator, which is that unless there's an abuse of discretion, the Court -- isn't it a deferential standard of abuse of discretion not that I can make an independent fact-finding over and above what the Rehabilitator has accepted within his role in seeking to exit from this rehabilitation?

MR. FINNEGAN: Mr. Finerty and I are sort of on opposite ends of the spectrum on that issue as well.

Your role is not that of simply rubber

stamping their recommendations. Your role is not that of simply deferring to them. In fact, if you review the statute -- if I could take a step back.

They effectively concede in the paper or suggest in the papers that they filed this week that your role is simply that of a rubber stamp.

THE COURT: Well, a rubber stamp is a little pejorative, but okay. Actually, some days it's not a pejorative for me.

MR. FINNEGAN: But that position is neither supported by the governing statute nor is it supported by operative case law.

Surprisingly, in the papers that they filed this week they pointed you to Sections 21 and 33 of the Rehabilitation Act. Neither of those sections is applicable to the intacrins action. The governing action is actually Section 35B. And it states if the Court finds that grounds for rehabilitation no longer exist, the Court shall order.

Unlike Section 21 and unlike other provisions of the rehabilitation statute, Section 35B does not make the Commissioner the decider, to borrow a line from one of our former presidents. By statute this Court and this Court alone is charged with the

responsibility of determining whether the purposes of the rehabilitation have been accomplished and whether or not there are grounds for rehabilitation still exist. It's a fallacy that runs throughout the Rehabilitator's papers is that this Court must defer to his adjudication. They say that word -- that phrase multiple times -- his adjudication. He's not the adjudicator. He's not the decider. This Court is the decider. The Rehabilitator may not usurp this Court's role.

I urge this Court, if you've not already read, to read the Angoff case from Missouri. There, too, the insurance commissioner argued that the circuit court had to defer to its discretion. The circuit court and the appellate court disagreed and said it is not a mandate for the courts being a rubber stamp. That's why I used the phrase earlier, I knew what the case law said. It said that the Court must critically examine and evaluate the evidence and reach its own independent decisions.

Significantly, in the Angoff case the Court substituted its judgment for the Rehabilitators and concluded the company was solvent, not insolvent, as the Rehabilitator had argued. That case is reported at 963 SW.2d 258. It analogized the Court's

and the Rehabilitator's roles that of a prosecutor and the Court. The prosecutor certainly can come forward and say, I've reviewed all the evidence. I believe that there's reason to believe that a crime happened here. He is not the party that decides whether the crime did happen.

It's the same thing here. He may come to you and tell you, I believe that the purposes of the rehabilitation have been met, but it's not his job and it's not your job to rely on his conclusion. It's your job to delve into the evidence and to determine whether or not it's true.

THE COURT: But if it's not an adversarial proceeding, how is it that I have decision-making authority that can trump the discretion reasonably exercised by the Rehabilitator? I'm just presuming reasonable exercise at this point.

MR. FINNEGAN: Well, first, because you do have the authority to allow other parties, you know, the general account stakeholders included, to come before you and to assist you in determining where the issues are, where the possible weakness in their analysis is, where the possible flaws in their modeling is, and then you can make the determination whether or not you generally believe that to be the

case. And that's actually a good reason why we should begin with what the actual -- what the Court's role is, is because it should influence the amount of standing that you provide to us. It should influence whether or not you choose to exercise your discretion to give us discovery.

THE COURT: Is it a de novo review by this Court of the Rehabilitator's decision --

MR. FINNEGAN: Yes.

THE COURT: -- that all bets are off?

MR. FINNEGAN: Yes.

It's this Court's role to dive into the evidence and to make an assessment whether or not the statutory criteria have been met.

THE COURT: And what about the actual petition for rehabilitation initially when the decision was made to put the segregated account into rehabilitation? Is the standard there de novo by the Court?

MR. FINNEGAN: No.

THE COURT: Why would it be any different whether they should go in or come out?

MR. FINNEGAN: Because the decision to place a company into rehabilitation is a regulatory decision, and the determination from that point

forward until today is a management determination. Those management determinations are rightfully within the Rehabilitator's construct. The determination whether or not -- and it's not my decision. The legislature is the one that made this decision. And the legislature has concluded by enacting a statute that puts the onus on this Court to determine whether or not the purposes of the rehabilitation have been met and whether grounds still exist. The legislature has made a clear line in the sand and said it's on this Court to make that determination.

THE COURT: Does that make any sense to you --

MR. FINNEGAN: Yes.

THE COURT: -- that the Rehabilitator would be granted great deference in his conclusion that there needs to be a rehabilitation and the Court is to sustain that unless there's an abuse of discretion or approve the plan, prove the evidence on that in a non-adversarial proceeding. And yet, when the -- when it's over, according to the Rehabilitator, he's got to meet a much higher standard to take it out of rehabilitation. That's what you're telling me.

MR. FINNEGAN: That's what I'm telling

you is what the legislature --

THE COURT: And my question to you is, does that make any sense?

MR. FINNEGAN: What I'm telling you is that's what the legislature has concluded.

THE COURT: I know you said that, but my question is does it make any sense? You would have a higher standard to come out of a rehabilitation after they've been working on it for ten years or so than it is to put it into rehabilitation.

MR. FINNEGAN: It makes perfect sense, because you're now determining that this company should be returned to management control and not remain under the regulatory supervision of the office of --

THE COURT: That's just the flip side of saying it should be taken away from management control and placed under the regulatory supervision of the OCI Rehabilitator.

MR. FINNEGAN: Again, I don't create the statutes. I can only tell you what the statute says and how other courts, including courts in Florida, New Jersey, and Missouri have construed the statute.

THE COURT: So you think it is an adversarial proceeding when we have a rehabilitation

exit issue.

MR. FINNEGAN: The answer is, I think this Court has a higher -- strike that.

I believe that the Rehabilitator has a higher burden and this Court's task is much more onerous than it might otherwise be. You have the discretion now, as you had throughout the entire rehabilitation, to allow parties to appear and create, essentially, an adversarial proceeding. Yes.

THE COURT: Well, and I think what Judge Johnston did is he allowed interested parties, not formal parties, to voice their objections, even cross-examine -- it appears, I'm not sure, I wasn't there, but it appears he allowed some cross-examination. I'm not sure I saw any reference that he allowed any kind of discovery. Did he?

MR. FINNEGAN: I believe at that point in time the rehabilitation office had disclosed its liquidation plan in full. That's set forth in the appellate decision. I think there was voluntary disclosures at that time; whereas, today, there's resistance to providing anything.

THE COURT: Mr. Finerty, it appears we've got a dispute over what my role is.

MR. FINERTY: There is really no

dispute. We have a very helpful road map from the Court of Appeals in the Nickel case. There has also been multiple appeals from interim Orders that have been taken to the Court of Appeals and affirmed. Nowhere in any of those decisions is there even the suggestion of a de novo review. This is an administrative proceeding. It's subject to Court oversight on an abuse of discretion standard.

As for the discovery and the standing issue, this Court's decided discovery issues multiple times dating back to 2010 with the Las Vegas Monorail bondholders who came to court. They were challenging the bank's settlement agreement that commuted about $13 billion in market value claims down to a settlement of $2.6 billion and surplus notes of $2 billion.

There was an emergency motion to the Court of Appeals. There were requests for a stay. The circuit court, the rehabilitation Court ruled those bondholders that were in the segregated account at the time and that had not been paid full in their claims did not have standing to intervene in the case and did not have standing to take discovery. In fact, the end result of that case affirmed by the Court of Appeals was that they did not have standing

to challenge the underlying transaction because they were not part of it.

So when it comes to discovery, the Las Vegas Monorail bondholders had been denied discovery, the RMBS bondholders have been denied discovery, and now the Military Housing Project have been denied discovery. All for very good reasons, that they don't have standing. All for very good reasons that they're seeking information that's privileged within OCI's files. And all of those decisions have been affirmed by the Court of Appeals.

So one, discovery, that's a nonstarter for us. Especially just the practicality of when are we going to do it if we're going to hold a hearing on January 4th? Putting that aside, we've got clear guidance on the discovery issue and there's no reason to deviate from it there.

To the question of the Court's role, there is an abuse of discretion standard when looking at the conduct and not of the Rehabilitator just in introducing the plan but also in amending the plan. That was the same standard applied back in 2013-2014 when the plan was amended, and now we're amending the plan again. But importantly, we're amending the plan to facilitate the largest commutation in this case.

The consensual transaction before the Court is a multi-billion dollar commutation to pay claims that have not yet been paid. To pay deferred amounts that are owed by the segregated account. We've got a road map to how to handle that as well, and that's right in the plan itself.

THE COURT: The second amended plan or the original plan?

MR. FINERTY: The second amended plan.

And if the Court doesn't have that handy, I can --

THE COURT: I do.

MR. FINERTY: It's 3.06 of the plan that refers to alternative resolution of claims.

In this entire case this plan was set up to do exactly what we're proposing be done in the motion to approve the second amended plan. It grants to the Rehabilitator on page 18 and the top of page 19 the absolute discretion to reach alternative resolution of claims with parties that it's owed deferred amounts. It specifically refers to nothing in this plan shall limit the ability of the Rehabilitator to resolve any claim through, among many other things, restructuring, refinancings, and commutations. That discretion is subject only to --

THE COURT: You must be talking about the original plan --

MR. FINERTY: No. I'm talking about the amended plan.

THE COURT: Oh, the amended, not the second amended. Because I don't have a 3.06 in my second amended. Then I do need your help.

MR. FINERTY: 3.06 on the front of page 18.

THE COURT: Thank you.

MR. FINERTY: And the plan grants the Rehabilitator this broad discretion to settle these claims. And it specifically refers to on page 19 sub. (a), the Rehabilitator's discretion is subject only to the following requirements. A, each alternative resolution must not violate the law and must be equitable to the interest of holders of policy claims generally as determined in the sole and absolute discretion of the Rehabilitator.

Well, who is a holder? The capital H in holder suggests it's a defined term. And it is a defined term.

A holder is a party that "holds." On page 6, paragraph 1.29, a holder holds a claim, a deferred amount, or a junior deferred amount.

So the plan, the amended plan grants the Rehabilitator to settle this case within its absolute discretion subject only to Court oversight if it's settling with a holder.

THE COURT: So what is -- am I a rubber stamp?

MR. FINERTY: No, you're not a rubber stamp.

There's an abuse of discretion standard, and that's been applied on at least five times when some issue in this court -- or in this case has been to the Court of Appeals. That's made absolutely clear in the Nickel case.

Now, Counsel cited to this Agoff case, which I confess I have not committed to memory; but I do understand that in that case the judge -- the Court inserted its plan in place of the Rehabilitator's terms. And that was found not to be an abuse of discretion by the rehabilitation Court in that case. That directly contradicts what the Court in Nickel told us in paragraph 17. "In the context of insurance rehabilitations the circuit court erroneously exercises its discretion when an examination of the rehabilitation plan demonstrates that the circuit court exceeded its statutory

authority or the Court unreasonably substituted its beliefs."

They're inviting reversible error by applying a de novo standard. There is no practical way that this Court even -- if it hired experts, could possibly draw on the experience of someone like Mr. McGettigan who's been in this case from the start ten years ago, who knows the company, who knows insurance law, and then all of the other people at OCI that have been working so hard to commute these claims, to derisk the segregated account and put us in the position that we are now, which is to present the Court with the largest commutation in this case to date that will satisfy and provide adequate compensation or consideration to the DPO holders, the owners of deferred amounts. Once that's done, the segregated account will be in a position to exit rehabilitation.

The only question before the Court for the hearing on January 4th then is, one, has the consensual transaction treated policyholders fairly and equitably, that is those for who are owed deferred amounts and those holding general account surplus notes, are they treated fairly and equitably by the transaction? The plan makes that a clear,

deferential standard of the Rehabilitator right in the plan that I just read.

The second issue is whether or not the company's durable. That is, can it pay claims 100 cents on the dollar on a going-forward basis?

No holder of any deferred amount and no party with a policy in the segregated account has objected to the first element. Nobody believes that this is fair and inequitable -- or unfair and inequitable to the segregated policyholders. We can check that one off the list.

THE COURT: Do you agree with that?

MR. FINNEGAN: I have certainly agreed they've not made any assessment beyond evaluating whether they think it's fair to the segregated account policy.

THE COURT: They haven't objected to that portion of it.

MR. FINNEGAN: At this point, we do not, but we reserve the right following -- assuming we get discovery -- following discovery to put in objections on that point.

THE COURT: I guess my question wasn't clear. Nobody else has objected.

MR. FINNEGAN: As far as I know, no.

THE COURT: Go ahead.

MR. FINERTY: And the LVM case -- Las Vegas Monorail case and the RMBS case from 2010 taught us this. Unless you're a party to that transaction or unless your policy is directly affected by that transaction, you don't have standing to raise an objection. And because the COFINA Bondholders, not only do they have no losses, they have filed no policy claims and their claims are in the general account. They're five steps removed from the same parties in the LVM and RMBS decision that were found not to have standing. They're even further removed. They certainly don't have standing to challenge the transaction.

The only parties that had standing to challenge the transaction have signed off in support of the transaction. That is the large creditor group represented by Mr. Friedman. There are other creditors that have also signed off on this for no consideration, merely to come forward to say they support the transaction and they want this done. They're taking a discount on their claims. They're affected by the transaction and they support it. They don't object to it. They're the only ones that would theoretically have standing.

So the first issue resolved, off the table.

The second issue, can the company pay claims on a going-forward basis in full after the segregated account exits rehabilitation and is merged into general account?

On that issue, I would understand if a general account policyholder had not been paid a claim and was owed money under their policy and they came forward and said, we object to this because how could you let $1.2 or $1.3 billion go out the door but you still have unpaid general account claims?

If the Court would define a party like that had standing, I think that would be more reasonable, but --

THE COURT: But there are no such parties.

MR. FINERTY: There are no such parties. They have no claims. Their bonds that are insured by the Ambac policies don't come due until 2047. A second batch of them come due in 2054. And they're going to hold up the payment of insurance claims or the satisfaction of deferred amounts to claimants with actual losses? They are actually waiting for to be paid under this plan because they're concerned

about being paid 30 or 35 years from now. That has to be so far removed as to not have standing. It not only begs the question how can they possibly object, but on what grounds? And why?

Now, their position is we need discovery. We want to take Mr. McGettigan's deposition. We want to present our case.

We've proposed for the hearing that Mr. Schwartzer take the stand in the morning of January 4th. He will explain the transaction. He will demonstrate that the Rehabilitator exercised reasonable diligence in all of the things that have been done to get to the final transaction, to look at the issues in Puerto Rico and various things like that surrounding how OCI and the Rehabilitator have approached this case. I think that's important to be able to make a record for the Court, to demonstrate to the Court that it can have confidence in the Rehabilitator's conduct here.

We then propose in the afternoon that Mr. McGettigan take the stand and go through his expert report and specifically address these objections regarding Puerto Rico and long-term durability of the company.

In my view, in the view of the Court of

Appeals, from the LVM case, the COFINA Bondholders do not have discovery to take standing -- I'm sorry, they do not have standing to take discovery, they do not have standing to intervene in the case, therefore, they don't have standing to cross-examine Mr. McGettigan.

If there is some concern on the Court's part that there needs to be cross-examination of Mr. McGettigan to get to the point where the Court is comfortable that the durability analysis conducted by the Rehabilitator's expert is solid, is well grounded in reasonable assumptions, and we're prepared to answer any questions, I would be willing to suggest that we could modify the schedule to allow for maybe an hour, hour or two of cross-examination of Mr. McGettigan. We're not conceding that they have standing, however.

THE COURT: No, I understand that.

You did mention that they do have a right to present their objections. And I guess my question is how do you envision that they are going to do that if they can't cross-examine? And I understand you're conceding that I have discretion to allow them to cross-examine. Are they allowed to present witnesses? Are they allowed to present

exhibits? Or are they simply allowed to after hearing your evidence, then make their arguments based upon that evidence as to why it's an abuse of discretion to adopt the second amended plan?

MR. FINERTY: I would revert back to the notice and hearing statute that says they're entitled to notice and hearing. What's the extent of the hearing? I would analogize to a summary judgment hearing. If they've got evidence that demonstrates that or if they can point out somewhere in the Rehabilitator's plan where there's a defect, come forward with it.

We've met with them. We've met with their attorney. We've met with their experts. This has been an ongoing process for six or eight months. We've heard what they have to say. They've sent letters to the Commissioner. They've outlined their entire case.

THE COURT: So you're saying that they don't even need the discovery because of all the discussion that's gone on beforehand?

MR. FINERTY: Because of that, and also because of the massive disclosure statement that's been filed, the amended disclosure statement or the supplemental disclosure statement and everything the

Rehabilitator has done to try and provide notice in full disclosure of this transaction to all parties. And, frankly, if anyone has an issue with the plan, come forward. I mean, we invited it. I hesitate to say we'd invited objections because some people, the Military Housing folks have implied that that meant we've conceded things like standing and the right to be heard and the right to cross-examine. We're not doing that. We're inviting any party with -- that raises an objection to how this has been handled and to the terms of the plan to come forward and we'll address standing and things like that.

We go back to the question, what's the extent to which they should participate? I would be willing with a stipulation perhaps with Counsel that if we're not waiving standing, we're simply trying to provide some process. They're not entitled to discovery. I think that's clear. We would offer up an hour and a half of cross-examination of Mr. McGettigan. They have all of his reports. They have citations to everything that he's relied on. And if they want to cross-examine him, perhaps that's the answer and that's the accommodation that could be made.

Can they present experts and exhibits

and things like that? I think the case law in Wisconsin has been clear on the fact that the Court is not obligated to consider alternative plans. And if they're going to put up an expert that says they should not be -- the segregated account claimant should not be paid as much, that's not what's before the Court. And there's no expert who's going to get into this case within a couple of weeks and come up with a rehabilitation plan that has any realistic chance of being considered by the Rehabilitator after they've spent -- our experts and our financial advisers have spent 10 years putting this together. That's just not practical and it's not reasonable under the statute.

THE COURT: So I guess my question is, is two days sufficient? Are you going to be able to present what you need to present for the Court to hear in support of your petition through your experts and through the Rehabilitator if you condense or compress the time for your direct examination to allow for cross-examination? I mean, is two days going to be enough time?

And I understand your point that, you know, we'll give them some time, but we do have just two days set aside and you're under a huge time

crunch to get this done one way or the other.

I've been in cases where cross-examinations have been very short and to the point, and I've been in cases where cross-examinations have been extraordinarily long and of no use. I anticipate that they will be the former that will be done here because we have such distinguished counsel. But is there a thought that maybe we should throw another day on the hearing?

MR. FINERTY: I think that were the argument and the evidence presented would expand to fill the time.

THE COURT: That always happens.

MR. FINERTY: So my inclination would be -- well, if you recall back earlier in the case, Your Honor, we had set this hearing for December 13th, 14th, and 15th. We were going to have three days of trial. I think through the negotiations, I mean, we've resolved the trustee objections, which, thankfully, would have taken just as long to explain much less try those cases. Those were resolved. We resolved this motion for contempt. We've resolved a lot of other issues behind the scenes. I think we've narrowed it down to this one very clear issue of has the Rehabilitator abused its

discretion with this plan for durability of the company post-exit? And if cross-examination is focused on that specific issue and all we are doing is looking at Puerto Rico and cross-examining Mr. McGettigan on his durability analysis with respect to Puerto Rico, that's an hour and a half. And that cuts down as well the amount of time I need for direct examination.

We've gone through our case. I'm confident I can have Mr. Schwartzer testify from about 9:00 until noon in the morning of the 4th. That will cover that. I don't think there's any cross-examination of him. There's no issues on his testimony. That's simply making the record for the Court. And then we start in with Mr. McGettigan at 1:00 or 1:30. That takes us up until 3:30 and turn it over for cross-examination 3:30 to 5:00. And if there's any follow-up or rebuttal, we can handle it on the morning or the afternoon of the 5th and put the Court in a position to be able to make a ruling shortly thereafter. If we can get a ruling or work out the Military Housing folks' objection to 6.13 of the plan, that's it.

THE COURT: Is there any chance of that?

MR. FINERTY: I don't know that there's

a chance of settlement, but I would work with Mr. Prinsen and Mr. Kravit to boil the issue down as narrowly as possible and put it before the Court in writing. I don't think there needs to be any testimony on that. It's really a legal issue as to whether or not it's controlling.

THE COURT: That's kind of what I was thinking. Looks like a legal issue, but I'm not sure I have all of the factual underpinnings to decide the significance of 6.13. I generally got a flavor for it in the case that was just affirmed by the Court of Appeals, but I'm not exactly sure --

I read the language, and I got to tell you, 10:00 last night my head was spinning and my eyeballs were bleeding. I'm not sure I fully appreciate the -- what I'm being asked to do, what its overall ramifications are, and what is the expectation let alone the hope of the Rehabilitator that anything I say in 6.13, if I adopt that, is going to be honored by any other Court. I understand the Full Faith and Credit Clause, but that doesn't necessarily mean every Court in the world honors it.

MR. PRINSEN: Your Honor, could I briefly be heard on that point?

MR. FINNEGAN: May I just I respond

to --

THE COURT: We're going to get some response. Let me get this and then I'll get back to you.

MR. FINNEGAN: Okay.

MR. FINERTY: The general idea of 6.13 is to issue an Order that says if any third party is going to sue on an Ambac policy and the basis of the lawsuit is that the Rehabilitator or OCI took some action in setting up the segregated account and, therefore, there's a default, we're going to declare that that default either retroactively or prospectively is cured, because the basis for the lawsuit is the conduct of or the regulatory decision of OCI as the Rehabilitator. And that cannot form the basis of a claim. There's no cause of action to sue for the conduct of the regulator doing its statutory duty.

THE COURT: So why do I need to deem it cured? Am I reaching back to basically wipe the slate clean?

MR. FINERTY: In many ways, yes.

THE COURT: Why do I need to do that if nobody wrote on the slate to begin with?

You're saying it's a flawed argument

that they're raising in these other courts. In the Military Housing issue that just came down, what I did is clarified that this is the intent of the plan and this is the meaning of the plan and this is what we're about with this rehabilitation.

Now what you're saying is I -- not only is this the -- what the plan is all about but any contrary interpretation that preceded this that is already in litigation in seven other courts is void, it should be given no effect.

That's why I'm not prepared to rule on it today. I'm troubled by the ramifications of that. And I understand it's very central to the second amended plan. I'm not making any conclusions one way or the other, but I need more information on that. And if it can be submitted in a manner that doesn't require a bunch of in-court time, all the better.

MR. FINERTY: And I think that that is something that we can work out with Counsel. And perhaps the Court of Appeals' decision gives us a little more guidance on that.

THE COURT: All right.

MR. FINERTY: If we could put that issue of 6.13 off until January 5th, I think we will work to present the Court with some type of stipulated

facts or some type of stipulation on that issue.

THE COURT: I will get to you, but one more thing. And we are kind of rambling through all of the issues, not just the discovery issue where we started or the standard of review or even the standing issue.

How do you envision putting this to bed at the conclusion of the evidentiary hearing? Is there going to be a briefing schedule or is the briefing going to be done prior to that, there's going to be some limited argument, or you're just going to give me the evidence and turn to me and say, okay, Judge, it's all yours?

MR. FINERTY: No, we won't do that. We won't do the latter.

Mr. Kravit has suggested that they'd like the opportunity to file reply briefs on the objections. I'd like to work out a schedule with both Counsel on their objections to submit additional information.

THE COURT: Preceding the evidentiary hearing?

MR. FINERTY: Preceding the evidentiary hearing.

And what I'm hearing from the Court is

that it needs some additional guidance on what the now more focused, narrow legal issues are for decision, and we will work to tee those up a little bit better.

THE COURT: Mostly 6.13. I'm going to be interested in the evidence from your witnesses on the overall structure of the plan and the commutation, all that other stuff.

MR. FINERTY: Okay. But as far as -- we did not envision post-trial briefs unless some issue comes up that was unanticipated.

We do have the final confirmation Order that goes through the findings of fact and conclusions of law. I expect that the evidence will come in identical to what's already in there. And we'd like to put the Court in a position simply to summarize the issues.

We've set aside some time on January 5th for oral arguments. That, I think, would alleviate the need for post-trial briefing. And then the Order would be before the Court at that point. I suppose if there was something unanticipated, we could delay that, but our goal would be to put the Court in a position to sign the Order at the conclusion of the hearing or shortly

thereafter.

THE COURT: I promised I'd get back to you. He asked first. Do you yield?

MR. FINNEGAN: I go by the Court's preference.

THE COURT: Whoever's got something important to say, I'm happy to hear it.

MR. FINNEGAN: I have many important things to say, but I'll yield.

MR. PRINSEN: The reason I wanted to jump in, Your Honor, and obviously we started talking about 6.13 which is the MHPI project's focus, that's their objection.

But why I wanted to jump in at that moment is because we were talking about cross-examination, the ability to cross-examine. And while we don't necessarily disagree with Mr. Finerty that it's largely a legal issue, there are going to be facts presented -- and I direct you to their brief in support of the plan -- as it relates to 6.13.

One of the reasons they say they need it is because of some harm that's going to befall the general account and then eventually the segregated account after they're all merged together. This harm we think is not supported by the evidence. We think

it's, frankly, imaginary and the 6.13 is overstepping. But --

THE COURT: If it's imaginary, what's the harm then of doing it?

MR. PRINSEN: The harm is in adopting 6.13, Your Honor. The harm is to our clients in these other litigations.

You mentioned that you have some concern about the language in there because of what it appears they're asking you to do. And you're right to be concerned because they are asking you to issue an Order outside of this Court's jurisdiction, outside of the rehabilitation, and dictate to these seven other courts across the country what they're supposed to be doing.

THE COURT: Maybe. I heard this argument before and rejected it in a different case. It seems a little different from what I heard in the --

MR. PRINSEN: Right, Your Honor, and I don't think you have to take my word for it. I can go right to their brief and read from it.

Standard remedial language in the final Order will resolve the issues by deeming all claims paid in full, all alleged defaults cured, to the

extent they ever existed, and all obligations fully satisfied upon closing of the consensual transaction. As a result, the conclusion of these proceedings should alone eliminate the legal dispute over the issue, the legal dispute in these other seven cases.

As Your Honor said, we're not here to argue the merits of the objection, so I'm bringing back to my point which is we would also like cross-examination opportunity.

And I go back to the Rehabilitator's brief. The footnotes in that brief supporting that section, why they need 6.13, are supported by Mr. McGettigan who will take the stand, and we'd like an opportunity to ask him questions, cross-examine him on why that provision is needed.

THE COURT: Well, isn't that -- Mr. Finerty suggests that that's something the two of you can work out in terms of a stipulation, and I'm going to order that you try to do that. Whatever you can reduce the in-court time by is in everybody's interest here, not just mine. We're still getting ahead of ourselves in terms of what your participatory role is going to be.

Have you shot your bullets so I can turn to --

MR. PRINSEN: The last thing I would say on that point, Your Honor, is we'd be happy to talk to Mr. Finerty about it; but if the general stakeholders are going to get an opportunity to cross-examine and if ultimately the Court decides we're going to have an opportunity to cross-examine -- you had mentioned adding an extra day to this hearing. It's starting to sound prudent to me because what we wouldn't want to do is be short-changed in our opportunity to ask these witnesses cross-examination questions as it relates to, for us, 6.13.

THE COURT: Are the trial days a Thursday and Friday? What if instead of an extra trial day we violate the Court's procedure and just go until midnight? You know, do a John Shabaz.

MR. FINNERTY: I would suggest the -- I'm confident the case can come in on the 4th. If we spill over to the 5th with some rebuttal testimony or some testimony on 6.13, I just --

THE COURT: Or cross-examination?

MR. FINERTY: Or cross-examination.

But again, if we leave things open-ended, we could fill weeks of time. So I'm suggesting a rather tight schedule just to get the

attorneys to focus on the issues. And I think we've narrowed things down. Considering where we were --

THE COURT: Yes.

MR. FINERTY: -- in July with this transaction, we were looking at a week trial.

THE COURT: Even since you filed your paperwork a lot has changed.

MR. FINERTY: I think that's true.

Setting aside two days is going to be more than enough. If may take half a day to do oral arguments on the evidence, but I'm confident we'll be efficient putting our direct in for sure.

The testimony on 6.13, really -- I don't want to mislead anybody. All the testimony's going to be from Mr. McGettigan is he's relied on that being in the plan and enforceable. That's an underlying assumption. He has no factual testimony to offer on 6.13. That's really, like I said, a legal issue. And he understands the effect of it, but he's not going to testify about the terminology or why -- how it applies to some outside case. We would have very limited testimony on 6.13.

THE COURT: Is the theory that this Court has exclusive jurisdiction over the rehabilitation and therefore has exclusive authority

to declare what a default is or is not as a result of the rehabilitation? Is that basically it?

MR. FINERTY: I think that's it.

I mean, I'd use as an example if there was a case in another county in which Ambac was sued, we would bring it here to the Court just as we would bring any discovery dispute here to this Court for determination all under the plan, all wrapped up in one piece of exclusive jurisdiction.

THE COURT: Has that been recognized by these other courts or is that what's pending in these other courts, the suggestion -- or the motion that it -- they should not be ruling on this, they're overstepping -- or stepping into the rehabilitation Court's exclusive jurisdiction?

MR. FINERTY: I think it's been recognized in those other courts but it hasn't been ruled on in those other courts. So far the only two rulings have been on a different issue involving statute of limitations. They have not ruled on the exclusive jurisdiction of Wisconsin courts.

THE COURT: Are they holding off until they see what happens here?

MR. FINERTY: No.

I think what they're doing is they're

ruling on a preliminary issue of whether or not there's a claim that has been thrown out by the statute of limitations and that ends the case without getting to the question of exclusive jurisdiction.

THE COURT: I see. All right.

All right. Getting back to discovery, anything further -- let's --

I was going to get back to you, sir.

MR. FINNEGAN: Thank you, Your Honor.

One quick comment on the participatory role before I respond --

THE COURT: Yes, sir.

MR. FINNEGAN: -- to some of Mr. Finerty's comments.

Just so the Court is clear, what we're asking for at the hearing is the opportunity to cross-examine in addition to call one expert witness whose testimony will have nothing to do with alternative plans or the like. It will simply deal with the prudence of the reinvestment rate that Mr. McGettigan relies upon, because it's our position that if you apply a more prudent reinvestment rate, the entire model falls apart. We can get to that -- I think your initial agenda was to deal with participatory roles and how we lay out the hearing at

the end of today.

I believe that the question that you had asked Mr. Finerty was how do you respond to what Mr. Finnegan had to say about the statute, the operative statute.

THE COURT: Right. My role.

MR. FINNEGAN: And I didn't hear Mr. Finerty address the language of the operative statute at all. He talked about Nickel. He talked about a whole bunch of other Court decisions that deal with a different statute.

What he neglected to deal with is the statute when you report a company out of rehabilitation and it's worded differently. He hasn't addressed that. And he hasn't addressed it for one very simple reason.

The handful of courts that have specifically dealt with that, whether they're in Missouri or New Jersey or Florida, have rejected the Rehabilitator's construction.

And just so this Court is aware, these are uniform statutes. The NAIC, the National Association of Insurance Commissioners, sits down, they put out model acts, and then basically everybody adopts it. There may be little tweaks here and there

from state to state, but for the most part its a model act. These other courts are addressing the same or virtually identical statute as is now before you. And all of those put the burden on this Court, not on the liquidator or the Rehabilitator to decide whether to report a company out of rehabilitation.

And in terms of a policy reason, it might be as simple as the insurance commissioners all concluded that it made sense to have somebody act as a doublecheck because it's too easy to throw your hands up at some point --

THE COURT: It's not a doublecheck. It's a -- if that's what is truly the law, then you're placing on a state court trial court level the decision on issues that are so far beyond the expertise of a trial court.

MR. FINNEGAN: Which is --

THE COURT: And have ramifications worldwide. That makes absolutely no sense to me.

MR. FINNEGAN: All I can tell you is that the handful of courts that have dealt with this in the past have reached the conclusion that we've set forth for you.

And in some of them the Court has actually rejected the OCI's determination and it

said, you're wrong. As a matter of fact, you are wrong. The company is not insolvent. The company is -- excuse me. Yeah, the company is not insolvent. The company's solvent.

So, yes, courts have conducted plenary proceedings. And that's the job that this Court has. I didn't give this job to the Court. The legislature did.

THE COURT: Actually, the chief judge did, but he'll get his this Christmas.

I guess my question to you then is do you agree with Mr. Finerty that your interest is speculative, remote, and contingent on -- and not even ripe until 2047?

MR. FINNEGAN: I don't. And I don't for a handful of reasons.

Can I -- before I get to addressing standing, would it be okay if I just took a step back and just address burden? Because I think that will put us in context, too, as to why I think it's important for this Court to hear from us.

As I read the Rehabilitator's papers, they essentially pretend that my clients have the burden of persuading to you that the plan is fair and inequitable. That's not the case. The Rehabilitator

correctly points out, in one of the few places I do agree with him, is that my clients are not parties to this proceeding. If I'm not a party, I can't possibly have a burden.

However, the Rehabilitator is a party, therefore, the Rehabilitator does have a burden. And the Rehabilitator's burden is squarely on the Rehabilitator to establish to this Court that the exchange transaction is fair and reasonable, and he has to do that with competent evidence. The rehabilitation must also establish with competent evidence that the purposes of the rehabilitation have been accomplished. One need only read the Rehabilitator's proposed Order to see that the Rehabilitator, not my clients, is asking this Court to make factual findings.

Now, following the merits hearing, whether it's in January or at some later time, the seminal question that will be before this Court is whether the Rehabilitator has adduced competent evidence to enable this Court to make those findings.

And I'll submit to you that unless you have somebody, whether it's, you know, the general account stakeholders or an independent expert or somebody else, you're right, it is a daunting task.

And that's one of the many reasons why this Court should allow us to be heard and actively participate.

You know, it actually almost seems silly to me that I have to address standing. You know, after all, the Rehabilitator concedes that my clients are entitled to notice and to participate in the hearing, and in their words, offering evidence if they choose.

Well, of course now the Rehabilitator wants to take back everything he's said and clip our wings.

This Court and the Court of Appeals, however, have made absolutely clear that standing is within your discretion. We can be here and we can participate in any way that would assist this Court.

And three principles are evident from the prior decisions. Policy beneficiaries while they're not parties to the rehabilitation and while they may not intervene, they have -- you have a wide discretion to allow us in. And here, you should allow us in.

If this company --

THE COURT: Just a second. Can somebody turn off the music that's coming on the telephone.

MR. FINERTY: If we could remind the

folks on the phone to mute your phones so you don't interfere with the court proceedings.

THE COURT: It's beginning to sound like West Towne Mall in here.

MR. FINNEGAN: I don't think there's any genuine disputes this Court has wide discretion to allow policy beneficiaries to appear before it and to participate actively in the hearing. And my clients will be harmed if this company is reported out of rehabilitation too early.

THE COURT: How? How?

MR. FINNEGAN: The entire -- the entire -- the purpose of the rehabilitation was to ensure that shorter-tailed claims weren't paid out disproportionately to longer-tailed claims.

My clients have the longest-tail claims. If there isn't a company around in 2047 or 2054 to pay us out or if they can't pay us at 100 cents per dollar, we're hurt.

There's no real reason today -- the dynamics that existed seven years ago continue to exist today. The shorter-tailed claims can readily exhaust the corpus long before 2047/2054.

Turning to the case law, FFI is instructive. As I read that case, two factors should

assist this Court in deciding when to exercise its discretion. And one is whether the prospective litigant has a personal stake in the proceeding that might -- might be affected. The FFI didn't require that it had to be affected. And the second is whether or not anybody else before the Court is adequately representing the punitive litigants' position.

There's nobody else here representing the general account stakeholders' position. Everybody else is adverse to us. So that gives this Court some help, because we're the ones that have been trying in our papers, and we'll do it again at the hearing, to sharpen the issues for you.

THE COURT: Let's hold. This music is really annoying and distracting. I'm having trouble --

What are we doing --

MR. FINERTY: Your Honor, may I suggest -- somebody has put the court call on hold so we're listening to their office hold music. If we could have people take five minutes, hang up, we'll hang up the call, and everybody dial back in who wants to be on the call --

THE COURT: Will it cancel the whole

thing or not?

MR. FINERTY: I'd suggest in five minutes we can dial back in, we'll restart the call, and whoever has got the music going will be gone.

THE COURT: All right. Let's take a break.

(Recess taken)

THE COURT: This is Judge Niess. We are back on the record with the appearances as previously noted.

Counsel?

MR. FINNEGAN: As we broke, I was about to talk about the two FFI criteria.

As their first criteria, I don't think anybody can seriously dispute that my clients have a substantial interest in Ambac's solvency and its day-to-day administration. After all, they are the last in line. They are the policyholders or policy beneficiaries who will be paid last.

My clients are not seeking any advantage. They're merely interested in ensuring that there is an estate from which to pay their eventual claims. It's also, I think, fairly undisputed that there will ultimately be claims. The only open issue is the quantum of those claims. I

mention this because the notion of the claims are speculative is a straw dog.

THE COURT: Well, the nature of the claims and amount of the claims is not speculative -- that is speculative. I mean, it's not a for sure thing. Right?

MR. FINNEGAN: I don't think it would be posting the amount of reserves that Ambac is currently posting if they for a moment thought that there was no chance that there would be any reserves.

And also, after all, they're the ones that are arguing all of these bonds are in default right now. So I don't understand how they can on the one hand say that the bonds are in default and then at the same token say that the claims they'll have to pay something at some point in time is speculative. What's speculative is the quantum. Not that there will be claims. And it's just an accident that we can't present them now. You know, it's a timing question.

But as to the second --

THE COURT: The timing question's 30 years, right?

MR. FINNEGAN: It's 30 years. And that's what gives us the interest in this estate,

because if 30 years from now there isn't money to pay us, then what do we do? We can't come back to this Court and say oops, they goofed. We don't have a remedy at that point in time, or at least none that I'm aware of. Our only remedy right now is to ensure, as the rehabilitation sought to do from the get-go, that short-term claims don't exhaust the corpus before there's enough time for our claims to mature.

If I can move along to the second criteria of FFI.

THE COURT: Go ahead.

MR. FINNEGAN: One need only read the Rehabilitator's papers to know that the OCI is no longer focused on the issue of long-term policy beneficiaries. The papers make repeated references, and Mr. Finerty did so this morning, to what's fair and equitable for short-term policyholders. The papers and Mr. Finerty's comments are bereft of any analysis of what's fair and equitable for long-term policyholders.

But as I've already alluded to several times, there's a third reason why this Court should allow my clients to participate actively and meaningfully in a merits hearing. My clients can

help this Court.

I won't respond to any of the derisive comments made by the Rehabilitator in its papers. I will note only that the task now before this Court, as I pointed out before, is a daunting one. You're being asked to evaluate the soundness and reliability of a financial model that has not been shared with you. You've only been told conclusions about it. You're also being asked to evaluate and accept the reasonableness and credibility of model inputs, many of which have not been disclosed to you. The task at hand given this Court's statutory duty to evaluate critically the conclusions reached by the Rehabilitator is monumentally complex. I believe you've already acknowledged that.

We can help by highlighting for you the weaknesses, allowing you to focus your energies on the most salient points, and the alternative, as we've set forth in the papers I've alluded to once already, is to potentially hire an independent expert. That's -- the problem with doing that is it slows the process down inordinately.

THE COURT: It ends the petition, doesn't it?

MR. FINNEGAN: Well, we'll get to

that --

THE COURT: It's self-limiting in terms of the window in which the parties are bound by it, right?

MR. FINNEGAN: It is and it isn't. If it's okay, I'll save my rejoinder to why the April 15th date is something of a fiction until we address the motion to adjourn, if that's okay with the Court.

THE COURT: Sure.

MR. FINNEGAN: Okay. I'm not somebody who's prone to kitschy analogies, but I'm going to make --

THE COURT: But you're going to do a kitschy analogy?

MR. FINNEGAN: Yeah, I'm going to make an exception in this case.

As I was preparing for the hearing, it's -- the Rehabilitator's position reminded me of Professor Marvel in the "Wizard of Oz" where he admonished people, pay no attention to that man behind the curtain.

Here, the Rehabilitator does not want anyone to pull back the curtain on the model and its inputs. Not you. Not us. Why? I mean, that's a

question this Court should grapple with seriously.

THE COURT: I thought that's what the hearing was going to do, it was going to pull back the curtain and we were going to see why the Rehabilitator and its expert, his expert felt that this was the way to go.

MR. FINNEGAN: If they're not prepared to share the model itself with you, as I don't believe they are, and they're certainly not prepared to share the model with us, I don't know how they can pull back the curtain. They're going to continue to ask you to believe what you see and don't -- and ignore the man behind the curtain.

At the end of the day, this Court's going to need to be satisfied that the evidence adduced by the Rehabilitator in support of the proposed transaction is competent, probative, and reliable. By allowing my clients to scrutinize it and provide genuine advocacy, this Court's task is somewhat lightened.

Now, I'll turn for a moment to talking a little bit about discovery and the reasons why we think that should be --

THE COURT: And would you address Mr. Finerty's comments that there has been a

tremendous amount of information shared with your client as well as documents, sitdowns, invitations to request more, discuss more, provide input.

That is a fair representation of your opinion, Mr. Finerty?

MR. FINNEGAN: It is not a fair representation.

THE COURT: No, I'm asking Mr. Finerty.

MR. FINERTY: Yes, it is.

MR. FINNEGAN: First, I don't believe his comment is a fair one. But I'm struggling because we were asked to sign and we did sign a confidentiality agreement. So I was actually surprised to hear Mr. Finerty make any references to the prior discussions between my client and him.

I don't believe --

THE COURT: He just referenced that they occurred, not what the content were. I don't know what you all discussed.

MR. FINNEGAN: By bringing them forward, there's an implicit representation that there was meaningful dialogue. And I don't believe I would be running afoul of it if I were to say to you that the dialogue was one-sided. It was us telling him what we thought. But I don't think that I can say

anything beyond that without violating the substance of the confidentiality agreement.

THE COURT: Do you think there's any lack of clarity on the part of the Rehabilitator as to what your position is?

MR. FINNEGAN: I think they fully understand our position. And as Mr. Finerty pointed out, and I believe if the Court has not already had the opportunity to read them, I would commend you to Exhibits 1 and 2 in the motion to adjourn which are two of our prior letters to the OCI. I think that lays out fairly comprehensively what our position is.

THE COURT: So if that is true, why do you need more discovery?

MR. FINNEGAN: We're not seeking discovery at that point in time. We're laying out for him why we thought that it was premature to move forward. That was the -- again, I'm now back to it whether or not I can discuss the substance of --

THE COURT: I don't want you to breach any kind of confidentiality agreement. It's not that critical to my role here today.

MR. FINNEGAN: There is not -- we have signaled in our court papers what our positions are. And as I've alluded to earlier today, the key -- one

key is the reinvestment rate. If it's wrong, everything else falls by the wayside. And I do think that that's something that is not only appropriate for cross-examination, but as I've already asked, it's something we would want the opportunity to put in our own expert on.

And going back to discovery, candidly, rather than resisting disclosure, I believe that the Rehabilitator should be applauding our efforts to obtain some. As outlined in our December 1st letter, the model on which the Rehabilitator's conclusions are based is a black box. It's untested. It might be reliable. It might not be. Only discovery will tell us if it is reliable.

In footnote one we explained that expert testimony, Mr. McGettigan's testimony, which is untested, is inadmissible.

So the Rehabilitator is actually in somewhat of a predicament right now. If it continues to resist discovery, it hands me, or more accurately my clients if they're so inclined, a good basis for an appeal.

And the same is true with respect to all the model inputs, only some of which have been known. And as to them, the rationale for adopting some of

them is shaky at best, which is why we've been able to attack some aspects of the plan. But I don't want to get into the merits right now --

THE COURT: Let me ask you this. Isn't an alternative to discovery that they get to the hearing, they put on their case, you get some degree of cross-examination -- and I'm not convinced that they have satisfied the standards because of the concerns you raise on cross-examination.

Why do I need for you to have full discovery beforehand? Don't they bear the risk that they're not going to carry their burden in response to the issues you raise on cross-examination?

MR. FINNEGAN: They bear that -- they bear that risk, yes. And that is --

THE COURT: Isn't that enough to satisfy your concerns that you can demonstrate to me through cross-examination of their witnesses that they haven't done their homework?

MR. FINNEGAN: But I will be in a better position to satisfy you that they haven't done their homework if I can see what they have actually done.

THE COURT: Maybe you will. Maybe you won't.

MR. FINNEGAN: You're right. It's

possible. But based on what thus far I've seen, my supposition is, is that the model itself is infirm and other of the inputs may be as lacking as the reinvestment rate, which is the reason I would like the opportunity to examine it. I do believe there has to be visibility.

In their papers they raise privilege and they say, well, you can't get at it because of a section in the insurance code.

Well, I've read that insurance section. I don't believe it applies. I believe that applies when the Commissioner is acting in a regulatory fashion. And as this Court is well aware, the Commissioner wears two hats. One is a regulator and one is a Rehabilitator. I don't believe the statute has any application where the Commissioner is acting as Rehabilitator.

THE COURT: But hasn't the Court said that a rehabilitation is, in essence, a regulatory act?

MR. FINNEGAN: It falls within regulatory scheme --

THE COURT: But it's a reg -- I mean it's regulatory -- I mean, I've got the Nickel case in here. It's somewhere. This is one of the longer

decisions in a number of volumes of lengthy decisions in the last 20 years, but -- somewhere in here I thought I had read that these are not adversarial proceedings. They are regulatory proceedings. The Court involvement in rehabilitation means it is involved in a regulatory scheme.

MR. FINNEGAN: Certainly, the determination to put a company into rehabilitation, I would agree with that. But this is, again, what we're --

THE COURT: Your position boils down to the fact that there is a fundamental distinction between pulling a company out of rehabilitation in terms of the standards applied by the Court as opposed to putting it into rehabilitation.

MR. FINNEGAN: Correct.

THE COURT: If that fails, then your right to anything other than rudimentary participation in the hearing, right to notice, right to be heard in whatever the Court deems just, anything beyond that, discovery, that falls by the wayside.

MR. FINNEGAN: No. Not at all. Because all of the decisions we've been talking about this morning were raised in the context of the regulatory

proceeding and management decisions. And all of those decisions say that this Court has the discretion to allow us to participate in a manner this Court believes will assist it in resolving the issues before it. So I certainly believe that we have a much stronger case based on the statute at play, but it is not dependent on you accepting my interpretation of that statute and the interpretation of the several courts that have already considered that statute.

As a practical matter, the dynamic today is materially different than it has been before. We're not trying -- this Court is not in a position today of trying to second-guess or evaluate a management decision. You're trying to determine whether statutory criteria have been satisfied, namely, has the purposes of the rehabilitation been met and are there no longer any grounds for rehabilitation? That's the statutory criteria this Court must meet.

Returning to their privilege issues and their argument, even if assumed that the statute applied and it was a regulatory decision, they waived any privilege. They put the model before this Court. They said, Mr. McGettigan is going to stand up before

you and he's going to explain to you why the model he created -- and keep in mind, it's Mr. McGettigan's model. It's not the OCI's model -- but why the model he created and why the inputs he put into this demonstrate X.

Well, now that they've put that model before you, fairness, basic fairness says you have to allow -- you need to know whether or not the model is right. And all I'm suggesting is let us help you achieve that.

Also, as you're well aware, you can't both on the one hand use the privilege as a sword and as a shield. On the one hand they're saying, well, you can't get access to the underlying data but we'll tell you what our results are. That's just patently unfair.

THE COURT: Well, certainly in an adversarial proceeding you're correct. All of this would be discoverable in an adversarial proceeding under the Rules of Civil Procedure in Wisconsin. That's not what we're dealing with here as the Court of Appeals has repeatedly told me. I know you think that's not correct, but I'm telling you I'm not seeing any language from the Court of Appeals that tells me to the contrary.

MR. FINNEGAN: Because the Court of Appeals wasn't construing Section 35B. The Court of Appeals was construing --

THE COURT: Right. So I make new law in Wisconsin on distinguishing an exit from rehabilitation to an actual entrance into rehabilitation.

MR. FINNEGAN: Correct. And I believe you should.

THE COURT: Well, I know you do. That's very clear. Well --

MR. FINNEGAN: The one point I will concede is the Rehabilitator's position that may have overreached and saw too much by way of discovery is probably right.

THE COURT: Well, yes.

MR. FINNEGAN: When I was a young attorney, a partner called me into his office and he told me the ideal discovery request has three requests: Give me the documents you want to see. They've already done that. They've given me the disclosure statements. Give me the documents you don't want to see. That's everything they refused to give me. And give me those documents you're not sure if they fit into categories one or two.

I'd be prepared --

THE COURT: I think you did that. There's only one request.

MR. FINNEGAN: So I've done what the partners told me to do.

My point is I'm prepared at a break to talk to him. Obviously we would forego the deposition of Mr. Schwartzer. We would be prepared to take a limited deposition of Mr. McGettigan, maybe four hours, and would limit, you know, the data we're seeking to the model itself and to the inputs used to create the pro formas that are reflected in the motion papers and in the supplemental papers filed by Mr. McGettigan and the Rehabilitator earlier this week.

THE COURT: Mr. Finerty, remind me again the statute under which the hearing proceeds that gives them right to notice in a hearing. It's not §645.33(5), is it?

MR. FINERTY: It's both in our brief, but it's in our reply brief.

THE COURT: The chances of me locating your reply brief in this file are slim to nonexistent.

MR. FINERTY: They may be allowed notice

and hearing if the Court prescribes §645.33(5).

THE COURT: All right. The same one that was addressed in Nickel at paragraph 110, which states, "To the extent that the interested parties have a procedural due process right to be meaningfully heard, we conclude that the circuit court provided the interested parties with far more due process than what is required under Wisconsin's rehabilitation statutory scheme. All that is required under Section 645.33(5), is that notice be provided and a hearing held as prescribed by the circuit court. There is no dispute that the interested parties received notice and that a hearing was held on the rehabilitation petition."

Now, I don't recall exactly what Judge Johnston allowed. Apparently some limited cross-examination. I don't know whether he allowed presentation of witnesses.

Did he?

MR. FINERTY: He did, and there was cross-examination. That was a very different world back then.

THE COURT: Well, you were in Darlington, as I recall.

But that was far more due process than

was required. So what is your thought on them -- you already suggested that they could have some cross-examination. What about presenting their own witness?

MR. FINERTY: Well, I did offer up an hour and a half of cross-examination. Now I'm maybe coming to rethink that.

First of all, the idea of discovery and the expert go kind of hand in hand. They first proposed discovery on December 1st, two weeks before the pretrial. Our plan was out there in July.

Same goes for an expert. Mr. McGettigan's report was proposed -- was submitted on September 25th.

But more importantly, this Rehabilitator has been submitting annual reports for years, putting out financial projections, disclosing commutations, laying out the entire financial state of the segregated account and commenting on the state of the general account. The company's been putting out SEC filings in quarterly and annual reports, and they've now waited until two weeks before the hearing and they want to put out an expert.

I said earlier, there is no credible expert that can take the witness stand and give this

Court any help on whether or not the Rehabilitator has done its job. It's just -- it's impossible. The sheer volume of financial information in the history of this case makes me question who in the world they're going to get to give such an opinion.

On issues such as the reinvestment rate, the reinvestment rate is set by OCI before these proceedings ever started. If ever there was an issue to defer to the Rehabilitator or to defer to OCI, that would be it.

THE COURT: And that was part of the original plan then?

MR. FINERTY: That was part of the original plan. That's their discount rate on reserves that are required by OCI. And that made it into the plan because it was an accurate historical rate that had been used by OCI to regulate the company before the plan went into effect.

So when we're talking about patent unfairness about this model, yes, the model is a black box. The company doesn't know what the model is. It hasn't been shared with them. We're regulating the insurance company. Just like OCI would regulate any other insurance company, it's not going to give them the standards and the calculations

to be able to conform their conduct to get the desired outcome that the company wants. The regulator is the one that gets to determine whether or not the company has met the regulatory standard. So there really isn't a model that can be turned over to the COFINA Bondholders' expert for evaluation. And they're not really trying to help anyone. They're trying to criticize the model and they're trying to call into question the durability of the company. But they're not entitled to the model. They're entitled to know what the result is, what the assumptions are in the model, and what the inputs are. Those have all been disclosed in Mr. McGettigan's report. Frankly, a lot of that information, like I said, has been in annual reports for years.

THE COURT: If they know the results, you've given them that and the assumptions in the model, can't they reverse engineer it and figure out what the model is?

MR. FINERTY: They can probably figure out pretty close what the model is, but there are some assumptions that OCI would not disclose in any other case either just as a regulatory matter.

And I want to close the door on this

issue that they've kind of raised which is, well, OCI is the regulator and the Rehabilitator is wearing a different hat.

That was rejected as an argument back in 2010 when the LVM bondholders and the RMBS bondholders were seeking discovery and they wanted OCI's files.

Judge Johnston, affirmed by the Court of Appeals, pretty clearly said, "Moreover, even if the movants were parties and there was a basis for them to seek discovery in these proceedings, documents relating to OCI's regulatory decision-making are statutorily privileged under Wisconsin law." That was the second basis for denying discovery and denying standing to bondholders in the segregated account.

Again, the COFINA Bondholders are twice removed. They're not bondholders in the general account and they don't have claims.

THE COURT: He also says you've waived your privilege. Have you?

MR. FINERTY: We haven't waived the privilege because we have to waive the privilege in writing and we have not disclosed the model. We've disclosed the inputs and the outputs and the analysis

but we have not disclosed the model.

That is OCI's model. And whether it's -- their financial expert has put it together, but that's what OCI uses to evaluate the insurance company.

As I said, it's not patently unfair that they don't have it. The company that's the subject of the rehabilitation doesn't have the model either. We've discussed it with their experts. We've discussed it with the COFINA experts. But we certainly have not turned it over and made any material disclosure that could be considered a purposeful waiver by the Commissioner.

Now, as for discovery, I think the privilege issue ends the entire discussion. There's nothing that Mr. McGettigan or Mr. Schwartzer could testify to in a deposition that isn't privileged. Same goes with turning over documents. We've made this massive disclosures and disclosure statements and turned over the expert reports. That's what they're entitled to.

Your Honor, you're correct, this is not an adversarial proceeding.

THE COURT: Well, isn't the way the deposition would go is you'd assert these privileges

time and time again and then you'd have to come back on a motion to compel and get some sort of relief from the Court, and then we are essentially converting this into an adversarial Chapter 801 et seq. proceeding that's been repeatedly denied by the courts on these proceedings?

MR. FINNERTY: I asked Military Housing plaintiffs the last time we were in court, do you want to litigate or rehabilitate? One of my great Johnnie Cochran moments that went unrecognized.

THE COURT: Should have worn gloves.

MR. FINERTY: And the answer was rehabilitate. Sorry, you don't get discovery. But they keep coming back and back and back, and it's going to upend this.

Let me turn for a moment because that discovery issue, the expert, the proposed expert, are they going to have a report? Are we going to get to review it? Is there going to be cross-examination of the expert? Now we're into full-blown litigation. We're not into Court oversight of a regulatory administrative matter.

If we rein this in and stay focused on what the issue is that's been raised by these COFINA Bondholders, which is the long-term durability of the

company based on what it says they have not accounted for in Puerto Rico, we'll put Mr. McGettigan on the stand, give him an hour and a half to test that theory, and they can do it on cross-examination without an expert. He'll testify. I don't see short of asking the obviously wrong question that there would be a privilege issue with that because it's in his expert report, and they can test that.

Beyond that, challenging the reinvestment rate. You can challenge it and argue it in your papers. I think the Court should hear that. But does it need to hear from an investment expert about whether or not the rate the company's going to make on its investments 30 years from now is 5.1 percent or 3.7 percent or 8.5 percent?

Like I said, if anything -- if ever there were an issue to defer to the Rehabilitator on, that would be one of them because the rate is set. And the administrative code determines what the company can invest in and can't invest in. It's all a regulatory scheme.

Some expert coming in and saying you're unreasonable, I don't know how they could ever make an assessment that would contradict the Wisconsin Administrative Code and the judgment of OCI that

would even be the same judgment if the rehabilitation proceedings weren't going on.

MR. FINNEGAN: May I respond?

THE COURT: Yes, sir.

MR. FINNEGAN: Two brief points.

First, I reject the notion that discovery and calling an expert go hand in hand. We have asked the expert to assume that we get no discovery. He's happily along doing his work.

THE COURT: So you are prescient as well as an excellent attorney.

MR. FINNEGAN: And what he's evaluating isn't the OCI's historic determination to use 5.1 percent as the discount rate. He's evaluating Mr. McGettigan's assumption that in the post-rehabilitation period from 2018 through 2054 some investment rate, whether it begins at 4.4 percent or 5.1 percent, it doesn't really matter because I think Mr. McGettigan uses 5.1 percent from 2018 forward; whereas, in the disclosure statement they say it's 4.4 percent and it rises to 5.1 percent until 2020. That's getting into the details. The point is, is that it deals with something post-rehabilitation.

He's saying -- he's making an economic

assumption going forward. And we're prepared to put before this Court expert testimony saying that that assumption is flawed. And that's standard for any proceeding. And if you're going to say that this process and the ultimate conclusions are fair and reasonable, certainly if one of the key variables is wrong, I think this Court would want to know about it.

THE COURT: All right. So let's accept your position that I should allow experts. Are we now delving into Daubert territory? Do I have to have some sort of a Daubert hearing for days to figure out who has the appropriate methodology to develop the proper discount rate? Where does this end? The Court of Appeals says it ends before you get there. You don't do this as an adversarial proceeding.

MR. FINNEGAN: Well, they have the burden of proof. So, yes, I would agree with you that there are elements of Daubert involved in this. They can't just give you a model and admit as they just did now that it's a black box. They can't just say to you, take our model and, oh, by the way, we can't share the model with you and we can't share all of the inputs with you. We won't tell you all of the

assumptions, but please believe that what we've given you that the conclusions were based on -- we're basing on his model are fair and reasonable. They're the ones that put the Daubert issue before this Court. How can you accept the testimony if the underlying premises are infirm or potentially infirm?

THE COURT: Mr. Finerty, is Daubert implicated in these proceedings?

MR. FINERTY: I would go so far as to say as a matter of law, the Rehabilitator's model is the model. There are court cases up and down that says the Court does not have to consider alternative models. If they have an issue with the model, that's fine.

We have disclosed the underlying assumptions in the model. We have disclosed the inputs and we've showed the outputs. That's been going on in annual reports for years.

But to say they have a different model or a better model, well, we're going to walk down the street to OCI and take it up with them because that's the model they're using to regulate an insurance company based on their statutory duty to do so. That's the model. It's not going to change.

THE COURT: So it's an up or down on

your model, not the Court trying to figure out a better model or --

MR. FINERTY: An up or down on whether or not the Rehabilitator abused its discretion in applying the model. That's really the issue for January 4th. And if they call into question OCI's conduct and its due diligence and the credibility of its witness and how he's done the arithmetic or something like that --

THE COURT: That goes to abuse of discretion.

MR. FINERTY: That goes to abuse of discretion.

Another witness getting on the witness stand saying, they've got a wrong model. They should have used 3.7 percent or they should have made a different assumption about the highway sales tax coming into Puerto Rico or something like that, no. That's off the mark and that's out of bounds. That's why I'm saying no expert.

We'll put our expert on. I've opened the door to allow them to challenge the expert for an hour and a half on the question of Puerto Rico and the question of durability as it relates to Puerto Rico. Let's play that out. I think that's

the proper way to proceed in this. It keeps things focused. You don't --

THE COURT: The discount rate, too, right?

MR. FINNERTY: What's that?

THE COURT: The discount rate, too?

MR. FINERTY: The discount rate was set by OCI. And the assumption in the model played off of the historical rate that OCI has dictated to the company that they used to discount their reserves.

THE COURT: You say that's not a matter of evidentiary dispute.

MR. FINERTY: That's -- it can't be. I mean -- you can take a regulatory decision and turn it into a decision to be made by experts in court. I don't see it. Then we've got to go back and tell OCI, well, the rehabilitation Court just told me that your model is wrong. The model you use for American Family or Northwestern Mutual, you have to look at that, too. We're getting into a regulatory decision and deep into the technicalities of how OCI carries out its statutory duty that's beyond the scope of Mr. McGettigan's expert report. And it should be beyond the scope of this rehabilitation because it doesn't just concern the segregated

account.

THE COURT: So the 5.1 is something used across the board regulating all insurance companies?

MR. FINNERTY: I can't say that because I don't know that for a fact. It has -- it's been the historical rate that OCI set as the discount rate on reserves for Ambac that dates back to 2009 and I think to the start of the company. But I know for sure when they started looking at the company for rehabilitation purposes, yes, 2008, 2009.

THE COURT: Is that something that's reevaluated on an ongoing basis?

MR. FINERTY: On an annual basis. Their investment returns and their investment decisions are evaluated on an annual basis.

THE COURT: Do you agree with that, Mr. Finnegan?

MR. FINNEGAN: I agree that the 5.1 percent is a prescribed insurance practice which tells me that it does not apply to other insurance companies. I agree that 5.1 percent has been used even prior to the rehabilitation period. Oftentimes Commissioners will allow you to discount in order to make your balance sheet look a little bit stronger. And, certainly, by statute they are required to

reevaluate it annually and have at least an explanation for why it is not --

You know, you look to the -- forgive me if I'm trying to recall the exact standard. You look to the internal rate of return on admitted assets and you compare it to that. You have to discern whether or not the company's reported internal rate of return is legitimate or not.

So the answer is yes. Presumably they looked at it annually and they've left it at 5.1 percent.

That tells me nothing about Mr. McGettigan using it in a financial model projecting outwards --

THE COURT: No, I understand. It doesn't tell you nothing. It doesn't tell you enough, is what you mean.

MR. FINNERTY: It does tell us a lot.

THE COURT: Right.

MR. FINNERTY: And we put it out in our brief that the company has exceeded the statutory 5.1 percent every year. They've gone into the sevens and eight percent on some of these investment returns.

So Mr. McGettigan said we'll start at

4.1 and we'll ramp up for a couple of years to get to 5.1. And that's historically accurate with what the company's experienced in the past.

If we're going to predict what to use going out in the future, that's a reasonable approach.

Frankly, it's the regulator's decision, not the policyholder's decision. They own policies sold by an insurance company. They don't own even policies sold by an insurance company. It cannot be the decision of a policyholder to dictate to the insurance regulator what it will set a reasonable rate of return for an insurance company.

MR. FINNEGAN: Your Honor, may I explain one reason why I definitely need discovery on all of this?

In their brief they say Mr. McGettigan did sensitivity testing on the 5.1 percent. He says that nowhere in his expert report. So that what they're doing is they're putting in, you know, putting in through a brief comments that can't possibly meet any evidentiary standard. And they've got a number of things in their brief that are just flat out wrong.

For example, they tell you that the

5.1 percent is higher than what many other insurance companies, many other financial alliance insurance companies are using. In point of fact the majority of other financial alliance insurance companies use 4.2 percent or lower.

THE COURT: Why do you need discovery to make that argument?

MR. FINNEGAN: I don't need discovery to make that argument.

One of the things Mr. Finerty just said that I found very interesting is, he said, well, if they're going to go through it and they're going to say there's an arithmetic error. I won't know there's an arithmetic error unless I have the opportunity to get to some discovery.

And by the way, in his supplemental expert report Mr. McGettigan corrected some sort of an error he'd made that would have gone wholly undiscovered had somebody not pushed him to go back and look at his model and see if there were any mistakes.

THE COURT: So how is this different from every other situation where you come before the Court and you want discovery? There's always someone clamoring for discovery. It's happened four or five

times in this case, right? And they've been denied and affirmed uniformly, correct?

MR. FINNEGAN: People are clamoring for discovery because they have an interest in trying to get the Court to change something in their -- to their favor.

THE COURT: Right.

MR. FINNEGAN: Here, we're not trying to do that. Here, we're simply trying to say to the Court, you've been asked to make a factual finding that the exit plan is fair and reasonable to everybody. Well, give us the opportunity to see if that's a fair statement. Give us the opportunity to undercut it if it's wrong. You're the one that's being asked to make the final decision. And whether it's deferring to their discretion or in a plenary proceeding, either way, you're the one who has to sign off on saying, yeah, I accept what they had to say. All we're asking for is the opportunity -- is to give you some reasons to think about why it is that it may not be fair and equitable to everybody. If we're right, so be it. If we're wrong, so be it. But give us a fair shot at it.

If he's going to stand here and tell you it's a black box and some of the assumptions nobody's

going to get to know about, I don't know how they defend that on an appellate record.

THE COURT: Has there been any case reported in Wisconsin for a rehabilitation exit that has allowed for discovery to interested parties who are not formal parties in a proceeding?

MR. FINNEGAN: I'm not aware of any other cases in Wisconsin where somebody's sought to exit a rehabilitation.

THE COURT: Is this the first exit of rehabilitation that has come before the Court in Wisconsin?

MR. FINERTY: This would be unique in that sense. There have been other successful rehabilitations, but this is unique in the segregated account approach.

THE COURT: Right. No, I understand that.

But there have been rehabilitations that have succeeded such that they have exited from rehabilitation?

MR. FINERTY: Yes.

THE COURT: And have those gone basically undisputed because everybody agreed that the company was viable and durable and that was the

best interest of all policyholders?

MR. FINERTY: Yes. And because, as I think we pointed out in our opening brief, there's been a long history of paying policy claims and policyholders in full. So there -- we did not have the same type of disputes on a going-forward basis in other rehabilitations. I think there's been nine, if my memory serves me right. No.

MR. FINNEGAN: If my memory serves me right, in their opening papers they put a lot of stock on the Grode decision out of Pennsylvania which was a ten-and-a-half year rehabilitation. And the Court ultimately recorded it out of rehabilitation because the Class 8 creditors were paid in full and there was a security fund that would more than 100 percent pay the few remaining claims that remained potentially unresolved. That's an entirely different circumstance than exists here.

THE COURT: Was there a dispute such that there were requests for discovery?

MR. FINNEGAN: No. At that point in time there was nothing.

The Grode Court in recounting the history of the ten-and-a-half-year rehabilitation made very clear that throughout the

ten-and-a-half-year period it approached it somewhat differently than perhaps was done here. I say that with hesitation because I don't know what the precise disputes were in Grode. But in Grode the Court recounts that there were many adversarial proceedings in that ten-and-a-half-year period where people with legitimate concerns, where they were given the opportunity to conduct limited discovery, and then where there was a full-blown evidentiary hearing and the Court made determinations.

MR. FINERTY: I don't know about the Pennsylvania law, but we've got a half dozen decisions by the Court of Appeals in this case --

THE COURT: Yeah, I know.

MR. FINERTY: -- including that June 2nd, 2010 case that just says it's against the public interest to stand in the way of a commutation for $13 billion in claims. It's against public policy to allow nonparties without claims to intervene in the case and conduct discovery. We add to that privilege issue, Your Honor. No, the discovery issue is abundantly clear, and the Court's already made rulings in other analogous situations.

We'd ask that the discovery be denied for the same reason -- not for the same reason but

many more reasons that we keep the January 4th hearing deadline and deny the motion to adjourn as well and for the reasons we've set forth in our brief.

THE COURT: Have we argued that motion to adjourn yet or should I rule on discovery first?

MR. FINNEGAN: It's your call. I would certainly be happy to address the motion to adjourn at this point.

THE COURT: Do you have anything more on the discovery?

MR. FINNEGAN: Nothing comes to mind that wouldn't just be repeating something I've already said or that's not already in our papers.

THE COURT: I am going to deny the motion for discovery on the grounds that, A, the movant is a nonparty to these proceedings. An interested party, yes, but an interested party with a long-term interest that may not ripen -- will not ripen for 30 years and may not ripen at all depending upon what happens between now and then. No claims have been made. There's nothing pending before either Ambac or the segregated fund that has been filed by the movants.

The Court of Appeals has been abundantly

clear that these are not adversarial proceedings. These are regulatory proceedings. They do not implicate Chapter 804 rules of discovery. At the outset they don't even implicate them for formal parties. But even if we were to presume they allow them for formal parties, they've been very clear that interested parties cannot come in and seek discovery. And that's at 351 Wis.2d at 608, the Nickel case.

I can't, from what I'm hearing here, find that there are reasons to exercise my discretion to grant the very rare opportunity for discovery when the rule is generally no discovery, and I'm hearing a lot of reasons not to do it.

One is we're going to start down the path of motions to compel. The Court's going to have to monitor depositions either live with a special master -- we don't have special masters, referees they call them here -- subsequent rulings on motions to compel, ruling on privilege issues, and none of which is going to be done in any time in the near future. It would take months to allow depositions on the complexity that I think are contemplated here to mature through the process usually allocated to depositions through Chapter 804 which, again, the Court of Appeals have repeatedly said do not apply to

these proceedings anyway.

So I don't think the -- I think we're going down a path that is going to essentially convert these proceedings into adversarial proceedings, into proceedings that are not designed for Chapter 804 but, yet, are being governed by Chapter 804.

I believe that there has been, maybe not from the movant's position, enough information exchanged but apparently there has been a good bit of information exchanged. There have been annual reports, et cetera, for the past ten years on this. And we're getting a request for discovery just a month before the scheduled hearing even though the plan has been proposed, second amended plan has been proposed since, I believe it's back in August.

I think that, also, that there will be an opportunity accorded to the movant to have limited cross-examination. I'm not entirely clear that we're going to be allowing independent experts to come in, but -- or not independent, defense experts -- not even defense experts -- interested party/nonparty experts to take a swing at whatever Mr. McGettigan is opining. But there will be cross-examination and there will be the opportunity for argument based upon

a cross-examination.

I think that cross-examination, as Mr. Crooks pointed out -- it might have been Mr. Finnegan, I don't know, I've heard it from Mr. Crooks before -- is the great engine of truth in the trial court, and I have every confidence that Counsel for the movants can exercise cross-examination in a very focused manner and be able to rapier-like cut up the case if it is there to be cut up. So for those reasons the motion for discovery is denied.

All right. Motion to adjourn. Now that we don't need discovery, that takes some of the time pressure off.

Your position on the motion to adjourn is essentially that it's premature, we don't have enough information, the Court can't possibly make a ruling on the Rehabilitator's motion because of the dearth of information in light of Puerto Rico. Is that basically it?

MR. FINNEGAN: That's it in a nutshell. And if you can give me a moment to make a supplement and respond to their position?

THE COURT: Absolutely.

MR. FINNEGAN: I read their opposition

papers, and the Rehabilitator seeks to unduly complicate what is, as the Court's already put its finger on, a very simple and straightforward motion.

My clients are not seeking an injunction. If they were, we would have styled the papers in that fashion. Nor are my clients seeking to derail the exit transaction.

The purpose of the motion was to state the obvious. The Rehabilitator's papers were stale and would remain so into 2018. The motion expresses no opinion on the wisdom of the exchanged transaction itself. The motion papers raise a single issue, as the Court's already determined. Are the papers submitted by the Rehabilitator reliable given the uncertainty surrounding Puerto Rico's finances and revenue streams following Hurricane Maria?

But before addressing that issue, let me make a proposal. All who oppose the motion to adjourn seem to say that April 15th is a hard-and-fast deadline. I don't agree with that. But let's assume for a moment they're right. None of them suggest that an adjournment to late March or early April would have any dire consequences or otherwise be prejudicial. I suggest that we defer to March 27th and 28th, perhaps March 29th as well if

the Court's inclined to do a three-day hearing, with a pretrial a week or so before that. This modest adjournment might well enable the dust to settle sufficiently in Puerto Rico that proceeding with the proposed transaction might then make sense.

Now, returning now to the motion, because I assume that the Rehabilitator won't accept my suggestion of a modest adjournment.

THE COURT: Did you call them up and try and work that out?

MR. FINNEGAN: We have had discussions, and that's all I can say since --

THE COURT: All right. Go ahead.

MR. FINNEGAN: I have three brief points to make.

First, the notion that April 15th, 2018 is a drop-dead date is misguided. Ambac only has a right to crater the deal on July 19th, 2018. The only thing that happens on April 15th, 2018 is that a super majority of investors can crater the deal. Given the terms, that's unlikely that they would do so. And if you look to the amended discovery statement in pages 51 and 52, it sets all of this off. It also indicates that on July 19th, then each creditor might have the ability to crater the deal,

but only as to itself not in its entirety. So this April 15th date is a fiction. The deal is live through July, and worst case could be moved out still further by agreement.

Second major point. No one seriously disputes that the paradigm changed in Puerto Rico on September 20th when Hurricane Maria devastated the island. Nor does anyone dispute that the way forward for the island is uncertain and will remain so through at least early 2018 with greater degree of certainty helped by the continued passage of time.

With the Court's permission, I'd like to supplement the record, which I recognize is already voluminous, for which I apologize, with one additional article, and in a few moments I'm going to hand up an Ambac pleading as well if the Court will accept it. What I want to give you is a December 7th Reorg Research alert in which the reporters discuss the Stiglitz Fiscal Plan Study finds Puerto Rico debt needs to be cut by up to 90 percent.

May I hand this up to the Court?

THE COURT: Any objection?

MR. FINERTY: Only noting that we haven't been provided this previously, so if there's

going to be argument on it, I'd ask that we table that discussion until Mr. McGettigan's cross-examination.

MR. FINNEGAN: I'm merely providing it to the Court as an indicator that the circumstances in Puerto Rico continue to devolve and the dust has not yet settled.

THE COURT: Does anybody dispute that? I mean, there's still --

MR. FINNEGAN: I don't think that they do, but I do think it's important to hear what an objective party has to say.

And the first paragraph of this report it says, "A study of Puerto Rico's current fiscal plan by Nobel Laureate Joseph Stiglitz and other researchers slated to be published in January finds that economic projections are overly optimistic and states that the commonwealth government will need to shed as much of 90 percent of its existing obligations to achieve debt sustainability."

The estimates were undertaken prior to Hurricane Maria. The study is now being updated to account for the disaster. And one of its authors now says Puerto Rico's entire debt will need to be forgiven.

In filing after filing if the Rehabilitator concedes that the Puerto Rico exposure is one of two uncertainties that could materially affect outcomes, he knows very well that it can move the needle.

The third point I want to make is that there's no prejudice to at least a modest adjournment which, frankly, is all my clients sought in the first place. We proposed deferring consideration until the dust settled and that the Rehabilitator periodically revisit where matters stood and assess whether adequate credible information then existed. In this regard the Rehabilitator's opposition papers are more notable for what they do not say than for what they do. Nowhere does the Rehabilitator state that additional time wouldn't allow for greater certainty, nor could it have reasonably made that statement.

In this respect I do not want the Court to lose sight of there's a second circumstance that affects the Puerto Rico analysis. There's the ongoing COFINA commonwealth dispute. It is entirely possible that that dispute could be decided by Judge Swain in early March. That, too, has the potential for moving the needle appreciably. It's a binary outcome --

THE COURT: I thought that was -- is that not what is in the mediation before the federal judges?

MR. FINNEGAN: It is in mediation and it's teed up for summary judgment briefing and a hearing.

THE COURT: Is the mediation ongoing right now?

MR. FINNEGAN: Yes.

THE COURT: Sorry. Didn't mean to derail you.

MR. FINNEGAN: That's all right.

In terms of what's known and what's not known in Puerto Rico, the second thing I'd like to hand up, a filing that was made by Ambac earlier this week. And it states -- I'm going to hand a copy to Mr. Finerty and --

And what it states at page 3 -- if you'll forgive me, I have to get back to my notes so I can actually tell what you it says. All you need to do is read the caption, but you're certainly welcome to read the three pages that follow it because it supports what they say. It says that the information produced by the commonwealth today is wholly inadequate to understand the financial

condition of the debtor. This is Ambac telling you that.

But, now, my colleagues to the right of me all want you to believe that oh, no, no, no, no, no, there is actually enough information out there for us to make reasonable estimates. You can't have it both ways.

I'll wrap up by observing that earlier this week --

THE COURT: Well, wait a minute. They aren't having it both ways. One is Ambac and one is the Rehabilitator of the segregated account that's not Ambac.

MR. FINNEGAN: At the end of the day the party that proposed the deal, the party that negotiated the deal, the party that wants the deal is Ambac. Their Rehabilitator is merely saying, okay, I'll -- it looks fair and reasonable to me.

THE COURT: All right. So isn't -- you think that there's going to be more clarity in a lot of this within a couple of months?

MR. FINNEGAN: Well, they're in the process of pulling together a new financial plan. There is a timeline for doing that. And the timeline -- you know, whether I believe it's overly

optimistic or not probably is immaterial, but the concept is to have something in place by the end of the year and early next year. So, yes, I do believe that there's good reasons to believe that there will be more certainty.

And in that regard, I'd like to wrap up by pointing out that essentially the Rehabilitator conceded that the motion as it was first filed was well grounded and well substantiated because earlier this week, three days ago, it filed supplemental papers. And it changed its numbers and it changed its numbers materially. And what's important is Mr. McGettigan said, even now I'm just doing things to the extent practical. In other words, three weeks from now, four weeks from now, two months from now, there may be still more information that would enable me to better -- get a better handle on all of this.

THE COURT: Isn't that always true for projections? I mean, we could go out 30 years and we'll know more.

MR. FINNEGAN: Right. But there are very few instances where you have a Category 4 devastate the debtor. I think this is a unique sort of set of circumstances, and certainly, asking for a little bit of time to allow for more clarity is not

inappropriate.

If everybody concedes that the Puerto Rico situation is one of two circumstances that could materially move the needle on everything Ambac-related and everybody concedes, and I think they do, that nobody can tell you today what's going to happen. You know, waiting a few more weeks can't hurt. You know, what's the rush? As I pointed out at the beginning, the April 15th date is not a genuine drop-dead date. And even if it were, waiting a few weeks, waiting until mid- to late March or early April doesn't do anybody any harm.

THE COURT: Does it do anybody any harm to hold the hearing in March?

MR. FINERTY: Yes. First of all, it does.

What I've just heard from Mr. Finnegan contradicts everything that the COFINA Bondholders attorneys have been telling us for six months. And you will see in the Court's -- in the papers before the courts on the motion to adjourn, they ask for an indefinite adjournment. They insisted on an indefinite adjournment until sometime after April on the theory that it's not going to be until April where there's clarity, and it's not going to be until

April until the PROMESA Chapter 3 bankruptcy court gets to rule on the constitutionality of the COFINA structure.

They've contradicted -- by coming here now and proposing a different date they've contradicted their entire position. And, frankly, they've contradicted everything they've told the Rehabilitator to this point.

THE COURT: In terms of the timing.

MR. FINERTY: Absolutely.

THE COURT: Right. Well, let's assume that they're retrenching on their position and figuring out a new strategy. Is there harm in putting this off until March?

MR. FINERTY: Yes. And the harm comes in two basic factors.

Delaying costs money and substantial amounts and puts the RESA at risk. Delaying to the point where the closing could be pushed back beyond April 15th kills the RESA.

Now, I want to back up because the context of that statement is important because the April 15th deadline is a hard-and-fast deadline and it is very important.

The Commissioner of Insurance in our

2016 annual report announced he wants to move the segregated account to exit now. "The risk profile of the segregated account improves significantly. Now is the time to exit."

He also announced a policy decision that he wants a consensual transaction, not one imposed by the regulator and by the Court. Not a cramdown, a consensual transaction.

The ad hoc group, which back in 2016 consisted of four major investment funds and the company, got together and they did it. They got the consensual transaction that the Rehabilitator said it would support. We analyzed it. It was durable. The company post-exit is durable, and it received OCI's separate approval and the Commissioner's approval. So we moved for Court approval of that.

No segregated account holder objected, and now here we are.

April 15th, that deadline allows the ad hoc group to terminate the RESA. They are locked up until that time. Meaning, if the company has a significantly unforeseen positive event, if it settles a case or a claim for more than expected and would have enough money theoretically to pay 100 percent of both principal and accretion, the

ad hoc group still has to take the discount. They are not going to be locked up beyond April 15 because of that.

They're also significantly restricted in trading. They're not going to be locked up in their business beyond that.

In the course of dealing with the bondholders and this issue for adjournment, I went to the ad hoc group and their attorneys. We have a number of problems with what was just represented to the Court.

First of all, if we close this beyond April 15th, the RESA is dead, dead, dead. And it's dead because of the lockup provisions in it that the ad hoc group no longer supports, but it's also dead as a result of the fact that there's been trading in these instruments and the DPOs and the general account so that the ad hoc group no longer represents all of the creditors relevant to this. There are others out there who have not objected, but there are others out there that Mr. Friedman's firm doesn't represent and White & Case doesn't represent, and they have signed off on the RESA and they have come to court saying we support the transaction. So we can't necessarily get their support to change the

deadlines.

Aside from that, the company is paying 5.1 percent on all of these obligations. There's a significant ticking fee that's built into the transaction to do exactly what we're trying to do now which is close by April 15th.

And adjournment to March 30th, an adjournment to February 28th doesn't get us anything on Puerto Rico. And you'll note, up to this point, I've just made this argument against an adjournment without mentioning Puerto Rico. Puerto Rico doesn't matter.

We have built into the model financial projections assuming worst-case scenarios. I've always avoided using --

THE COURT: You're assuming 100 percent writeoff of the debt?

MR. FINERTY: No. That's an unreasonable assumption.

As a matter of fact, we have explained in our papers and we've explained to the COFINA Bondholders. They don't even believe that there's a 100 percent writeoff on the debt, otherwise they wouldn't own insured and uninsured instruments on COFINA or in Puerto Rico. But it's an unreasonable

assumption.

So we've built a model. We've ran the model. And the end result is the company has a significant margin of safety even under the doomsday scenario of over $400 million. That margin of safety has indeed come down and it may change by the hearing. We may get to the hearing and find that there's been more adjustments. There's commutations in the works right now.

The Rehabilitator did not expect that the company would freeze all of its negotiations and all of its operations as of September 25th when we filed the motion. To the contrary, we expect that it's going to continue to solve problems and resolve complaints and disputes and commute issues, which they're doing.

So yes, the numbers will change. That's the nature of the business. That's the nature of how they're derisking the segregated account. And that's all good. That's been a positive development for the segregated account and it's what allows us to get to the point where we can exit.

Putting this on hold really only says we are going to delay the payment of deferred amounts. We're going to further delay the payment of amounts

that are due the general account surplus noteholders, the ones who made the deal back in 2010. Why? Because there will be better information on Puerto Rico? No.

I've heard directly from COFINA Bondholders' lawyers that that constitutional issue on the COFINA structure will not be decided in March. It will not be decided in April.

And then I've also heard from them, and they've argued this multiple times, not in settlement negotiations but in separate meetings and separate phone calls, where they've said, even if it's decided in our favor, there's still going to be an appeal. We still won't know. We need 18 months or 24 months of an adjournment before we can really get total clarity on the constitutionality of the COFINA structure because then after that, if it's not constitutional, then the question becomes where does that revenue stream from the sales and use tax go? It gets spread around to other bond issuances. Ambac insures some of those as well. There's a positive effect to paying other bond issuances. What's the math on that? Who knows. But it's going to take years of litigation to find out what the priority is after that.

That's why they've been asking -- that's why they've taken the position that you have to have an indefinite adjournment. An indefinite adjournment requires an indefinite extension of the RESA which is impossible for all the reasons I've given the Court. Which means if that motion is granted, it's dead. If it takes us out until March 30th and we can't close by April 15th or if there's a development in Puerto Rico that they claim has been adverse to the situation, we can't close by April 15th, this transaction's dead.

So what they're asking for is don't pay policyholders with actual losses, with actual claims that are entitled to be paid for another four months. That's inequitable. And that's the reason why the Commissioner instructed the SBC to take the segregated account to exit, because of the inequities of the situation as they are now. And a policyholder without claims, without losses, and without even the possibility of a claim until 2047 should not as a matter of fact stand in the way of paying policy claims today.

THE COURT: And is anyone seeking an adjournment other than Mr. Finnegan's clients?

MR. FINERTY: No.

THE COURT: Mr. Finnegan.

MR. FINNEGAN: Three brief comments.

First, the notion that we're acting inconsistently with our prior positions is belied by Exhibits 1 and 2 to the motion itself which are letters that we wrote. And as we pointed out in our initial motion papers, we actually spoke with Mr. Finerty in advance of making the motion. We've all along been taking the position that it makes sense to push this back for a period of time. We've not ever before put a date on it because it just didn't make sense before now. They put so much stock on their April 15th date in their opposition papers that I thought it made sense to come before this Court and float a proposal that was consistent with something that's been discussed with Mr. Finerty in the last two weeks and rejected, which is why I didn't expect him to accept it today. I just bristle when somebody tells me I'm acting inconsistently. It's been our consistent position all along.

THE COURT: Isn't your position protected by holding the hearing and your pointing out, if you can point out through cross-examination and whatever other evidence you'll be permitted to present, that this is a fool-hardy proposition

because we don't have the information necessary to make the projections that they are making?

MR. FINNEGAN: Yes. That's certainly one. But now that I've been denied discovery, the need for an adjournment is more acute because I would take the position that it's incumbent upon everybody to want the best reliable information possible. And the only way to do that is to defer until March when more dust may have settled in Puerto Rico.

THE COURT: What about the federal issue?

MR. FINNEGAN: When Judge Swain rules?

THE COURT: Is it going to be resolved by March or not? Mr. Finerty has told me that your clients have conceded that it won't.

MR. FINNEGAN: My clients have not conceded anything of that nature, nor do I know that it's an accurate statement.

As I've read the briefing schedules and the like, the understanding is that the Court is going to try to resolve that matter not later than mid-March.

THE COURT: The Court is not holding off pending these mediation efforts?

MR. FINNEGAN: The mediations are

ongoing. And Judge Swain is a very practical judge and understands that if you hold people's feet to the fire, you get them to move much more quickly. My understanding is she's essentially imposed a deadline on them saying get it done by this date or I'll decide the issue. Now, maybe I'm mistaken. It's possible, but I don't think so.

The third point is he talks about they changed their numbers in intervening -- between September and earlier this week when Mr. McGettigan put in another report. What he neglected to tell you on the single biggest exposure -- COFINA -- they didn't change numbers at all. On that one element because it's the longest duration, my clients can reverse engineer to figure out what the posted reserves are. And I'm told by my clients that the COFINA numbers didn't move, and that tells me a lot.

You've got the single --

THE COURT: You can cross-examine their expert and say, why in the world have you not changed things when there's a huge risk that they're going to take the sales and use tax revenues completely out of the COFINA stream and put them into the general account.

MR. FINNEGAN: And I'll be able to

better cross-examine him in March when I've got still additional information.

THE COURT: Or there may be a settlement at that point and the whole thing will be moot.

MR. FINNEGAN: I don't think it will be moot, but it's possible. You're right.

THE COURT: It would be nice if it were moot.

MR. FINNEGAN: It could conceivably resolve our objection which will streamline the hearing appreciably for Your Honor.

THE COURT: What about a ruling on -- does the mediation, is it affected at all, the mediation position of the parties by this rehabilitation? Does it make any difference?

MR. FINNEGAN: I have no clue.

MR. FINERTY: No.

I can tell you, Your Honor, my clients have been to Puerto Rico and met with the Financial Oversight Board and met with -- we've met with the attorneys that are mediating the case, and they have limited ability to speak, frankly, with us about the mediation. But they have definitely said there's going to be no fiscal plan until April. The mediation has got four days set in March. We think

that will result in a settlement which is one of the underlying assumptions for our estimates on COFINA bonds.

We also hear the same thing everybody else is hearing. If there's a Court determination about the constitutionality of COFINA, one party or the other is going to appeal and then we've still got to decide priorities after that. This is not going to get sorted out for 18 months.

THE COURT: What circuit handles the District of Puerto Rico?

MR. FINNEGAN: First Circuit.

THE COURT: First? I don't know that tells me anything.

Anything further?

Mr. Friedman, I saw you come in front of the bar. Welcome.

MR. FRIEDMAN: Thank you, Judge. If I could make a few comments --

THE COURT: Yes, sir.

MR. FRIEDMAN: -- in support of the position of the Rehabilitator on the motion to adjourn.

THE COURT: You bet.

MR. FRIEDMAN: Thank you.

Judge, as I noted earlier along with Brian Pfeiffer and John Ramirez from White & Case who are on the phone right now, we represent the ad hoc group of holders of surplus notes and beneficial interests and deferred amounts owed by the segregated account.

My clients are the ones who negotiated the Rehabilitation Exit Support Agreement, the RESA. And our clients ask the Court as well to deny the motion to adjourn of the COFINA Bondholders. We join the Rehabilitator's argument and we've also filed our own brief response. Our arguments are similar, but I'll make a few additional points.

Initially, as you know, the COFINA Bondholders sought an open-ended adjournment that's entirely inconsistent with the RESA. Now they say, well, let's just push the hearing back to March.

I will note there are other deadlines in the RESA including a deadline to start the hearing by January 15th, 2018. So it's not just the April 15th --

THE COURT: What is the penalty if that doesn't happen?

MR. FINERTY: I mean, we've talked about that issue. If that deadline had to be moved, that

would come in second in terms of importance.

MR. FRIEDMAN: It may come in second in terms of importance, Your Honor, but it would require an amendment to the RESA.

The RESA has various benchmarks along the way leading up to the April 15th deadline, one of which is to get the hearing started. And it's based on the Commissioner's -- the Rehabilitator's explanation to my clients about the process. Because in order to get my clients to agree to a 270-day lockup of their positions, which is something they never would do under other circumstances, they had to have an explanation of why it's going to take some time to get there. And they insisted on having benchmarks along the way, including we need to start the hearing by a certain point, you need to make your filings by a certain point, et cetera. That deadline is maybe more important to my clients than to the Commissioner. And I don't have the authority to say that my four clients would agree to extend that deadline nor the other approximately 15 RESA signatories would agree to extend that for any other deadline.

I'll note, Your Honor, that the COFINA Bondholders, they have their own interest and that's

what they're looking out for.

My clients' interests are precisely the opposite. They hold the interest in claims that have not been paid in full. They've been paid about 45 percent --

THE COURT: But they are ripe.

MR. FRIEDMAN: They are ripe. These claims are entirely ripe. They've been paid in part. But we're talking about years -- most of these claims are now years and years old, and they have not been paid the majority on those claims.

The Rehabilitator is looking out for the interest of all of the parties involved here, of the policyholders, of the public, of the creditors of Ambac, of the company itself. And the Rehabilitator's sitting here today telling you going forward with the hearing, going forward with the plan is the right thing for all of those participants. And we agree with the Rehabilitator.

So, again, it's highly unlikely that we could get our clients, let alone the other 15 RESA signatories, to agree to extend these deadlines. The April 15th deadline is a real deadline. It's a deadline that if the transaction does not -- is not consummated, the RESA signatories can kill the deal

at that point in time. And it would require amending the RESA to push things back. You're talking about a lot of parties, a lot of moving parts, a lot of money.

The RESA was negotiated over a long period of time. And it's a balance. It's a balance in terms of the discount rate that my clients agreed to, how long they lock things up. And to say that, oh, this is going to be easy to push the hearing back to March is just not realistic.

MR. FINERTY: Your Honor, I was perhaps a little too light-hearted in my response to the Court's comments about the January 15th deadline.

Assuming we get --

THE COURT: A little precipitous, were we?

MR. FINERTY: Assuming we have a hearing in June, June 4th and 5th --

THE COURT: You mean January.

MR. FINERTY: I'm sorry, January 4th and 5th. Allowing for some time for the Court to issue an Order, there's still a great deal of work that has to be done to close this transaction after the confirmation at the hearing. And we built in a 90-day cushion to allow that to happen. Documents

have to be drafted, negotiated, and the payment -- issuing secured notes from essentially a publicly traded company. It's not something that's going to happen overnight.

And that's why we've said in our filings delaying the hearing risks the RESA. Delaying the hearing indefinitely kills the RESA.

And the Rehabilitator's position, the trade-off is much too significant for no additional value to the analysis, no additional value to the model. We're delaying the payment of claims that are ready to be paid.

THE COURT: Mr. Finnegan.

MR. FINNEGAN: I'm not fully prepared to answer the question that the Court asked Mr. Finerty and I'm not quite sure that we have a direct answer to -- which is, what's the penalty if the January 15th date is not met? And the reason I'm not prepared to respond to it is because it was never something that was raised in their papers before. They've always relied on the April 15th date.

The answer, I can tell you -- if I had it at hand, I would look for it -- is in Ambac's 3Q, and it's in footnote 6 on, I believe, page 17 where they talk about what the RESA does and what the RESA

deadlines are.

My recollection of it is the April 15th date is a meaningful date in terms of if 66 and two-thirds percent of the investors decide to bail, they can kill the deal. That supermajority I don't think has any rights effective January 15th.

The other thing, too, is they talk about it being highly unlikely they'd be able to extend any deadlines. Well, the fact of the matter is, and this is pointed out to me by one of my clients this morning, Ambac's creditworthiness has gone down recently. They would be in a position to negotiate a much better deal. So it might be in their best interests if the RESA were killed. If Mr. Finerty can litter the record with ifs, ifs, ifs, ifs, I guess I'm entitled to do so too.

THE COURT: Wouldn't Ms. Neider raise that point? If their credit worthiness had gone downhill, that she would want to adjourn this so that she can negotiate a new deal?

MR. FINNEGAN: I don't know that anybody truly wants to kill the deal, nor are my clients looking to kill the deal. My clients are just looking to have the deal evaluated on as robust a record as possible.

THE COURT: Anything further on the adjournment motion?

MR. FINERTY: I will add, my colleague confirmed that if the January 15th deadline is violated, the ad hoc group would have the ability to terminate the RESA. They would have to extend the deadline.

THE COURT: Do you accept that friendly amendment? Unfriendly to you but friendly to the record, anyway?

MR. FINNEGAN: As I pointed out, there is an answer. It's in the documents.

THE COURT: Okay.

MR. FINNEGAN: And, you know, the Court need not rely on either of our oral statements.

MS. NEIDER: Your Honor, if I may.

THE COURT: Yes, ma'am.

MS. NEIDER: I just want to make it clear that Ambac's position is that we support the position of the Rehabilitator in terms of delay. There's nothing to be gained here.

THE COURT: All right. I presumed that.

I am going to deny the motion to adjourn, because I think any delay that is being requested now that it has been whittled down to the

end of March, it's purely speculative that there's going to be any more useful information than what we have now. I am very skeptical if there is -- if there are four days of mediation in March in Puerto Rico to deal with the COFINA bond dispute with the Commonwealth of Puerto Rico or whoever is involved in those negotiations, that that is going to go in the face of the Court maintaining a very strict summary judgment deadline down there where the Court will enter a summary judgment before that takes place. I find that highly unlikely, and so I don't think we'll hear anything more on that point.

I don't know that we'll get any kind of further information of the massive devastation visited upon Puerto Rico by the Category 4 hurricane. I think the parties have all viewed the devastation and have for the last several months had the ability to evaluate that. I don't know that there's any demonstration here that there's going to be any more significant information. Yes, it was unusually devastating.

Thirdly, there are -- this is a balancing of interests. There is some urgency here for, certainly, the claims that are already ripe and the short-term debtholders, et cetera. Those have to

be balanced against the long-term potential claims that will be made 30 years from now and whether or not we're going to jeopardize those that are ripe now by postponing a hearing so that we may have, in a speculative sense now but it's possibly true, may have better information a couple of months from now that we'll be able to answer some of the concerns of Mr. Finnegan's clients.

I don't think that that's an equitable balance. We've got -- because I think, in number four, that we can actually address Mr. Finnegan's concerns in the hearing. If, in fact, it becomes apparent that the expert, McGettigan, has relied on flawed information and has not taken into consideration the true interests of and the jeopardy to the true interests of Mr. Finnegan's clients, that is going to be the argument that he is going to make at that time, that I should find that the Rehabilitator's abused his discretion and not approved the second amended plan. I think the information that we need is there going forward. And if it's not there by the time of the hearing, it's not likely to be there by the end of March.

And so given the other considerations in favor and the fact that the vast majority of those

involved in these proceedings would like this hearing to go forward, I'm going to deny the motion to adjourn.

Now, do you folks want a break before we put some structure to the hearing?

MR. FINNEGAN: Might make sense if, for no other reason, if the Court would give us 20 minutes or so so that Mr. Finerty and my colleague to my right and I can talk to potentially resolve some of it.

THE COURT: That would be great.

Why don't we do this. We'll go off the record at this point, and when you're ready for the Court, let me know. If it's going to go over the noon hour, your negotiations, we can excuse you for lunch and come back this afternoon. We do have this afternoon, but frankly, I was thinking we'd probably be done by noon.

Other than the structure of the hearing, do we have anything else to take up today? As I say, I'm not going to be dealing with the substantive issues.

And I do want to -- I'm skeptical of the learned argument from Mr. Finnegan about my standard of review here, but I am going to take a look at that

between now and the hearing and --

MR. FINNEGAN: Would it be helpful to the Court if we were to brief that issue?

THE COURT: Depends on how good the briefs are. Yours have been excellent, so I would say probably so.

Yeah, I'm happy to -- I mean, I've always presumed that this was a very deferential standard, that we are pretty much looking for an abuse of discretion, that this is a rehabilitation process, an administrative issue, and that the law recognizes that the Court is not in the best position to be rehabilitating, liquidating, running, and removing from rehabilitation insurance companies. That's the structure I think is there. And I am very surprised to hear the argument that there is a different standard for bringing an insurance company that has been -- or a segregated account here in this case -- that has been involuntarily placed into rehabilitation, brought out of rehabilitation voluntarily, that that's a higher standard. That just seems odd to me.

So yes. The short answer to your question is yes, briefs would be helpful on that point. Especially you mentioned foreign cases. I

think it was Kansas or --

MR. FINNEGAN: One Missouri --

THE COURT: Missouri.

MR. FINNEGAN: -- I recall in New Jersey.

THE COURT: All right. We'll break --

MR. PRINSEN: Your Honor, if I could.

THE COURT: Yes, sir.

MR. PRINSEN: You asked if there was anything outside, I guess, the structure of the hearing.

THE COURT: Yes, sir.

MR. PRINSEN: Mr. Finerty had mentioned, and we had briefly discussed before, the potential to -- or at least have the option to file a reply brief in response to the response to our objection.

THE COURT: Sure.

MR. PRINSEN: That'd be something we'd be interested in. We can certainly talk to Mr. --

THE COURT: Why don't you talk a deadline, something that will be helpful to me but that will not destroy your holiday season.

MR. PRINSEN: Just wanted to make sure that was mentioned. Thank you, Your Honor.

THE COURT: All right. Anything further

before we go into recess?

All right. Thank you, folks. We're in recess.

(Recess taken)

THE COURT: We're back on the record with appearances previously noted, or those who have left have left voluntarily.

Were you folks able to work your magic on coming up with a schedule here today?

MR. FINERTY: We believe we have.

There's one open issue, but if I can maybe get to the things we agree on first --

THE COURT: That's always a good start.

MR. FINERTY: That'll frame things.

As for supplemental briefing on the issues raised today, including the standard of review, the parties have agreed that both the Military Housing Projects and COFINA Bondholders would submit sur-replies by December 22nd. And by sur-replies, of course, we mean it would be limited in scope to the responses that the Rehabilitator had filed on December 11th, which admittedly is fairly broad, but just that there would be no new matters brought up to the Court.

And then a sur-surreply or a reply to

the surreply December 29th for the Rehabilitator. All of those briefs would be limited to 20 pages total and would include --

THE COURT: Total for all briefs or each one.

MR. FINNERTY: Well, that's hopeful, Your Honor. But each party would be limited to 20 pages. As well as Ambac would have the opportunity, because they did file a supporting brief, to file a response on the 29th of December as well with the same limitation.

Then for the hearing, the hearing for January 4th would be substantially along the schedule that we had proposed. The Rehabilitator would put his case in chief in starting with Mr. Schwartzer. The parties have agreed not to cross Mr. Schwartzer. And then we would begin the afternoon of the 4th with Mr. McGettigan. Assuming it would take the afternoon to put the Rehabilitator's case in chief in, that would take up the day for the 4th.

We have agreed to cross-examination on the 5th of January in the morning allotting two hours for the COFINA Bondholders and one hour for the Military Housing Projects to conduct cross-examination and 30 minutes of rebuttal. All of

that cross-examination, however, would be limited in not just in time but in scope to the objections that are already on file. Again, no new materials coming in. If it hasn't come in already, it's not in and it's not the subject of cross-examination.

With that said, we would hope to be able to get to closing arguments or oral arguments on the objections and the confirmation Order the afternoon of the 5th of January and, again, with the supplemental briefing and the testimony put the Court in a position to be able to issue the Order.

The open issue that would need to be somehow shoehorned into that schedule would be whether or not the COFINA Bondholders would be allowed to present an expert witness or expert testimony.

Our position as the Rehabilitator, of course, is they're not a party, they don't have standing, they can't challenge the consensual transaction, they have the limited right to raise the argument in favor of their position on durability only. And putting in an expert is both substantively impractical given where we are in this case after eight years and it's beyond the scope of their standing. I'm sorry, it's beyond the scope of the

process that they should be allowed.

We do not concede by even discussing the possibility of an expert and allowing them cross-examination that they have standing to do anything. We're simply making an accommodation to demonstrate that this process has been fair and open. We do not believe they have standing to challenge or put on a case.

Without waiving that standing issue, that's where we have agreement.

The last issue for the Court is to decide whether or not COFINA will be allowed to present an expert at hearing.

THE COURT: All right. With respect to the proposed stipulation, Mr. Finnegan, is that correct?

MR. FINNEGAN: It is correct.

THE COURT: Your client agrees to that?

MR. FINNEGAN: They do.

THE COURT: And you agree to it, too, Counsel?

MR. PRINSEN: Yes, Your Honor.

THE COURT: All right. And that's the only ones involved at this point, correct?

MR. FINERTY: That's it. There's only

three of us left here.

THE COURT: All right. That will be the Order of the Court.

Now, let's take up your motion, implicit motion for an expert witness.

MR. FINNEGAN: If we look, as I believe we have to some degree today, to the past for guidance, certainly when the proceeding to consider the rehabilitation was heard, the parties or the nonparty parties, however we want to call them, the interested nonparty parties, were given the opportunity to present testimony and to offer proof. I believe that the -- some of the submissions had suggested that entities in the position of my clients would be given an opportunity to submit proof.

What we're suggesting is expert testimony on one discrete issue which is the suitability of the 5.1 percent reinvestment rate on which we believe Mr. McGettigan's entire analysis depends. And I believe that the testimony will prove helpful to the Court in evaluating whether or not that economic assumption is credible and reliable and, therefore -- even if you were to apply a discretionary standard, we're within the zone of discretion and reasonableness.

THE COURT: Let me ask you this. You say one limited issue. Are you talking about testimony that -- on direct and cross would probably take no more than an hour?

MR. FINNEGAN: Certainly, I would be surprised if the direct took more than an hour and the cross --

THE COURT: I'm talking about cross, too. You think it's going to take an hour to get to the point on the 5.1 percent? I mean, if you --

MR. FINNEGAN: My problem with economists and the like, once you talk to them, they say a lot, and to try to rein them in to get the points made and just to give the Court their credentials, maybe if we could come up with a way to streamline it by putting in much of the direct by a witness affidavit and then having a very short direct. There are certainly ways to make the direct short, and I'd certainly be prepared to explore those with Mr. Finerty between now and then. But yeah, all in, I'd be surprised if it was more than two hours.

THE COURT: Mr. Finerty, your position, as I understand it, is it's not going to amount to a hill of beans. It's pretty much irrelevant what this expert has to say. Is that basically it?

MR. FINERTY: That's basically it.

THE COURT: So why do you care, if we can get the whole hearing done in two days, whether he does it or not?

MR. FINERTY: Well, because I think it --

THE COURT: Without waiving any standing --

MR. FINERTY: No, I understand that. But it makes him a party.

Counsel did mention something he has not mentioned before, which is the possibility of putting in an affidavit.

THE COURT: Perhaps with the attached CV?

MR. FINERTY: If there's prior disclosure to us of what his opinion's going to be and it's by affidavit and we have a stipulation that not just this purported expert's affidavit can come in but also the affidavit of Mr. Barranco and the affidavit of Mr. Schwartzer that's already been offered up, then I think that that gives us a more robust record to decide the issue from. So I would be in favor of that type of a stipulation regarding the evidence.

And then if they are willing to cut back on the amount of time that -- and, frankly, they can divide it up however they want, but they've been given three hours. If they want to cut back on their cross-examination time, maybe we can fit it in there.

THE COURT: Here was what I was thinking about is you've got the whole -- looks like the whole afternoon of the second day for oral argument, right? Are we going to need that much time for oral argument? I mean, we're going to have all of this briefing, all of the -- I'll have read all of the planned documents. I've already read the brief in support of the motion, the brief in opposition to the motion. Why are we going to need so much oral argument? And if we do, why can't we just go late just to accommodate if we have this kind of an agreement between the two of you as to the manner and the scope and the corollaries to the testimony of this expert?

MR. FINERTY: A limited expert testimony on that one issue of the 5.1 percent discount rate?

THE COURT: Yes, sir.

MR. FINERTY: I don't know what they have in mind for that. If it doesn't take an hour, we can still finish on that day.

THE COURT: Can we do it in an hour if we have the affidavit? He wants his affidavits. We have the CV and his initial opinions as his purported direct, and then you can augment it as you see fit to address what has come up in the testimony the prior day or on cross-examination that morning, and then Mr. Finnegan would have an opportunity to cross, and we could do all of that in an hour, you think?

MR. FINNEGAN: I would think so. And if I could ask the January 2nd as the date to put in the affidavit, this way we would have the opportunity to review their filing on 12/29.

THE COURT: Is that sufficient?

MR. FINERTY: But the expert report, if it's limited to the question of the 5.1 rate --

THE COURT: Shouldn't have anything to do with what you're filing.

MR. FINNERTY: Shouldn't have anything to do with what we are going to put in on the 29th.

THE COURT: Right.

MR. FINNERTY: So why can't they put it in on the 22nd so we can have a chance -- even if not 22nd, at least get it to me a couple days before the hearing.

MR. FINNEGAN: The surreply and the

surrebuttal are all permitted to comment on things that were filed earlier this week, including Mr. McGettigan's report and comments he made on the 5.1 percent rate.

THE COURT: Is this something we should go off the record and negotiate? I'm trying to find a common ground without derailing the hearing, without waiving any claim that he has any right to do any of this, but --

MR. FINNEGAN: Can I make a suggestion then?

THE COURT: Yes, sir.

MR. FINNEGAN: How about 12/29; and in the event their brief on 12/29 addresses the 5.1 percent, I get to put in something further on January 2nd.

Fair enough?

MR. FINERTY: It's not going to address 5.1, so I guess I agree.

THE COURT: There you go. Let's only fight about what we need to.

So do we have an agreement as to that?

I'll just alert staff --

Staff.

-- that we may go late that day. But

not because we're going to allow you to go over the one hour in any substantial or significant fashion.

MR. PRINSEN: Your Honor, there's one thing that I heard, if I could just have some clarification. This is obviously not my issue, but what I thought I heard Mr. Finerty say is that they get to put in affidavits, there's going to be a bunch of affidavits put in on their side. I think Mr. Barranco is one of those. That was -- and if I'm thinking of the right affidavit -- filed in support of Ambac's response to our objection. So I'm not -- I guess I'm not seeing how that would just be admitted into evidence with no opportunity to cross-examine that individual because --

THE COURT: Mr. Finerty, are you planning on putting any affidavits in that don't deal with the 5.1 issue in response to Mr. Finnegan's 5.1 affidavit?

MR. FINERTY: No, we're not putting in anymore evidence. I'm just saying the evidence that's already been put in, affidavit testimony, I would like that agreed upon by the parties that it's testimony that's admissible and that we can argue off it in our closing arguments and things like that.

And if the Military Housing folks want

to put in a counteraffidavit by the 22nd of December, I think that would be within the scope of our response and appropriate.

THE COURT: What do you think?

MR. PRINSEN: That should be fine. I have to talk to our people.

THE COURT: So ordered.

MR. PRINSEN: December 22nd seems a little quick, but I think that should be okay.

THE COURT: Quick? I got things on this case two days ago.

All right. Do we have an understanding then? Do we need to firm it up more than what has been stated on the record here? We will allow an expert, but his -- we've got a schedule on his affidavit and his CV being provided by the 29th subject to augmentation if necessary only in response to any 5.1 materials filed by Mr. Finerty on the 29th. You will be entitled to some additional direct that is suggested by testimony that is not anticipated by the affidavit. There will be cross allowed by Mr. Finerty. I presume redirect very limited in the scope all within an hour and hopefully still get this concluded by late afternoon on the 5th.

Have I misstated anything?

MR. FINERTY: I think that's it, Your Honor.

THE COURT: All right.

Ms. Neider, I thought I saw your client maybe -- somebody upset in the back row. Is this -- is anybody raising any objections to this?

MS. NEIDER: We have no objections, Your Honor.

THE COURT: Thank you, Ms. Neider.

All right. Anything else -- that'll be the Order of the Court.

Anything else we can deal with here today?

MR. FINERTY: Nothing from the Rehabilitator. Thank you, Your Honor.

MR. FINNEGAN: Nor us. Thank you, Your Honor.

MR. PRINSEN: Thank you, Your Honor.

THE COURT: All right. Thank you, Counsel, for your excellent work on the briefing and your arguments here today. We will see you on the 4th, I guess.

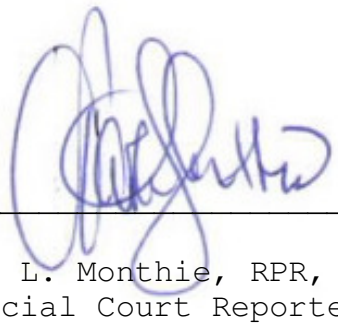
We're adjourned.

(Adjourned at 12:13 p.m.)

STATE OF WISCONSIN)
) SS
COUNTY OF DANE)

I, TARA L. MONTHIE, Official Court Reporter for Dane County Circuit Court, Branch 9, do certify hereby that I took in shorthand the above-entitled proceedings held on the 14th day of December, 2017, I reduced the same to a written transcript, and that it is a true and correct transcript of my notes and the whole thereof.

Dated this 19th day of December, 2017.



Tara L. Monthie, RPR, CRR
Official Court Reporter

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