STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

In the Matter of the Rehabilitation of:

SEGREGATED ACCOUNT OF AMBAC ASSURANCE CORPORATION	Case No. 10 CV 1576 Hon. Richard G. Niess

RESPONSE IN OPPOSITION TO REHABILITATOR'S MOTION FOR ENTRY OF A CONTEMPT ORDER

INTRODUCTION

Wisconsin law is clear that an order of contempt is appropriate only where a party willfully and intentionally violates an order that either requires specific conduct or makes expressly clear what specific action a party must refrain from taking. The Bliss Projects actions do not come close to meeting these strict requirements. To the contrary, the record is clear that on January 22, the Court and the Rehabilitator both agreed and represented on the record that there was no injunction prohibiting the MHPI Projects from taking any specific actions, let alone prohibiting them from arguing under the effect of the United States Constitution's Full Faith and Credit Clause in an out-of-state action filed by Ambac. The Bliss Project and its counsel relied on these statements when filing its response brief in the Texas Court that same day. When the Rehabilitator changed course on January 23rd—stating for the first time its newfound belief that the Second Amended Plan contained an injunction purporting to bind the MHPI Projects—the Bliss Project immediately moved for clarification and to abate proceedings in Texas to allow this Court to clarify its Order. At the hearing before the Texas court, even Ambac represented that the Bliss Project was free to argue about the force and effect of the Wisconsin and Meade orders—a further acknowledgement that such actions cannot constitute contempt. For the reasons stated in this brief, the Bliss Project's actions cannot be contempt under Wisconsin law, and the Rehabilitator's request for entry of a contempt order should be denied.

FACTUAL BACKGROUND

A. Proceedings In Front Of The Texas Court.

In early 2016, Ambac initiated litigation against the MHPI Projects, including the Bliss Project, demanding that they cash fund debt service reserve accounts as a result of Ambac's credit downgrades ("DSRF Litigation"). (Ex. A, 1/8/16 Ambac Complaint.) Like the other MHPI Projects, the Bliss Project asserted a number of affirmative defenses, including that Ambac did not have standing to make such a demand given that an Ambac Default[1] had occurred. (Ex. B, 2/11/16 Bliss Answer.)

Ambac's suit against the Bliss Project has been pending for over two years, and the parties have engaged in full discovery. In November and December 2017, Ambac and the Bliss Project filed cross motions for summary judgement, including on the issue of whether an Ambac Default had occurred. The parties' response briefs to these motions were due on January 22, 2018, in advance of a hearing scheduled for February 1, 2018. (Ex. C, 11/16/17 Bliss Mot. for Summ. J.; Ex. D, 12/13/17 Ambac Mot. for Summ. J.) As this Court is aware, on January 18, 2018, in another suit first filed by Ambac against the Meade Project in federal court and, after being dismissed for lack of federal jurisdiction, proceeding in Maryland state court, a Maryland court had entered an order on the identical issue pending before the Texas Court, finding in part that an Ambac Default had occurred (the "Maryland Order"). (Ex. E, 1/18/18 Maryland Order.) The Maryland Order was docketed on January 22nd, and it was a final judgment on the merits of all issues in the Maryland litigation.

[1] As the Court is aware, different MHPI Project documents use the term "Ambac Default" or "Credit Enhancer Default." The definitions of the terms are substantively the same, and this Response uses Ambac Default to refer to both.

B. The Bliss Project's Brief Filed On January 22, 2018.

After receiving the docketed Maryland Order, counsel for the Bliss Project immediately worked to incorporate the Maryland court's ruling into the Bliss Project's response to Ambac's motion for summary judgment on the Ambac Default issue.

While the response brief was being finalized for filing, this Court held its hearing on the Rehabilitator's Motion to Confirm the Second Amended Plan. Donna Welch of Kirkland & Ellis LLP, who is counsel of record for each of the MHPI Projects in their disputes with Ambac pending in other state courts, listened to the hearing by telephone. (Ex. F, D. Welch Aff., ¶¶ 1-2.) During these proceedings, this Court recognized that the MHPI Projects had notified the Court of the Maryland Order. (Ex. H, 1/22/18 Hr'g Tr., 2:22–24) ("I did receive from Mr. Kravit a late filing, understandably late, because it set forth a decision from a Maryland court on Friday, I believe it was."). The Court also recognized, at several junctures, that despite its disagreement with the Maryland Order, it did not have authority to tell, and did not intend to tell, other state courts how to decide the Ambac Default issue. (*Id.* at 52:14-18) (". . . I'm not supposed to essentially stick my nose into other courts' business, and that is not what the orders that are being requested from either party are suggesting here."); (*Id.* at 68:8-11) (". . . I'm not telling them what to do."). The Court recognized that it could not do so because it did ***not*** possess exclusive jurisdiction over the issue of whether an Ambac Default had occurred under the terms of the MHPI Project policies in the General Account. (*Id.* at 61:1-4) ("It is true that this court does not have exclusive jurisdiction over those issues, the issue of the credit-enhancer defaults as a -- whether or not they occurred[.]").

Both the Court and the Rehabilitator also confirmed that there was nothing in the Second Amended Plan or in the Confirmation Order that would enjoin the MHPI Projects from making arguments in the other out-of-state proceedings. (*Id.* at 4:25-5:8) ("The Court: And you seek a

cure but not an injunction against raising the alleged default arising out of the claim that the segregated account and related transactions constitutes a default. ***You don't seek an injunction against parties raising that as an affirmative defense in litigation***? MR. FINERTY: ***I think that would complicate the question of the court's jurisdiction and comity and issues like that***.") (emphasis added). At the conclusion of the January 22 hearing, the MHPI Projects understood that there was no injunction preventing them from arguing that the Maryland Order should be given effect under the Full Faith and Credit Clause of the Constitution and that, to the contrary, the other state courts overseeing these cases would need to make an independent determination of whether and to what extent such a ruling bound them.

The Confirmation Order entered by the Court on the same day reflects these understandings. Although the Confirmation Order states this Court's decision that none of its prior orders or anything that occurred in the Rehabilitation Proceedings caused an Ambac Default under Wisconsin law (Ex. I, 1/22/18 Confirm. Order, ¶ 4(i)), the Confirmation Order did not specifically require the MHPI Projects to take any specific action or refrain from any specific action. While Paragraph 13 of the Confirmation Order generally required all interested parties "to comply with the terms of this Order," it did not require or prevent ***any*** specific conduct by the MHPI Parties in the ongoing DSRF Litigation, let alone did it purport to prevent the Projects from arguing that the Maryland Order was entitled to full faith and credit.[2] The MHPI Projects believed in good faith that there was nothing in the Confirmation Order that could be read as an injunction prohibiting the MHPI Projects from arguing in other states that the Confirmation

[2] Under Wisconsin law, parties are obligated to comply with the terms of a Court's Order. However, only an order "which requires specific conduct (either to do, or to refrain from, specific actions) can be enforced by contempt." *Carney v. CNH Health & Welfare Plan*, 2007 WI App 205, ¶ 17, 305 Wis. 2d 443, 740 N.W.2d 625. To hold that the declaration in Paragraph 13 means that the January 22 Order could be enforced by contempt would mean that any Court Order could be enforced by contempt. That is not the law.

Order should not be entitled to full faith and credit or that the Maryland Order should be entitled to full faith and credit. The Rehabilitator conceded as much when it ***later*** asked this Court to enter an injunction on February 7, 2018, which expressly required the MHPI Projects to, among other things, refrain from "making any further arguments … in contravention of the Confirmation Order." (Ex. J, 2/7/18 Injunction, ¶¶ 1-2.) Of course, there would have been ***no need*** for such an injunction if the January 22, 2018 Confirmation Order had expressly prohibited such conduct.

Consistent with the Court and the Rehabilitator's statements at the hearing, and given the absence of any order directing specific action by the Projects, Kirkland & Ellis LLP and Texas counsel finalized the Bliss Project's summary judgment response due January 22.[3] Consistent with this Court's statement that it would not interfere with how other states decided the issue of Ambac Default and that the MHPI Projects were not enjoined, the Bliss Project argued (1) that the Rehabilitation proceedings caused an Ambac Default under Texas law, and (2) the Meade Order collaterally estopped Ambac from re-litigating that issue before the Texas court. (Dkt. No. 1553, 2/7/18 Spaniol Aff., Ex. A, p. 14-24.)

C. Post-January 22nd Actions Of Ambac And The Rehabilitator.

Despite its clear representation to this Court on January 22 that it did not have an injunction binding the MHPI Projects related to the Ambac Default defense, on January 23rd, the Rehabilitator reversed course and took the position for the first time that the Second Amended Plan ***already contained*** an injunction which was "sufficient as written". (Ex. K, 1/23/18 Rehab. Ltr. to Ct.) Although the MHPI Projects disagreed with that interpretation, particularly in light of the prior contrary statements on the record by the Court and the Rehabilitator, the MHPI Projects

[3] Ms. Welch and Mr. Willian provided final comments on the response brief prior to the end of this Court's hearing on January 22nd. (Ex. F, D. Welch Aff., ¶ 3; Ex. G, J. Willian Aff., ¶ 3.)

—out of respect for this Court—took two immediate and significant actions. ***First***, they sent a letter to this Court seeking clarification of the precise scope of any injunction. (Ex. L, 1/25/18 MHPI Projects Ltr. to Ct.) ***Second***, the Bliss Project filed a motion to abate/stay the argument on the parties' summary judgment motions related to the Ambac Default issue. (2/7/18 Spaniol Aff., Ex. D.) The motion to abate was filed out of an abundance of caution and respect for the Wisconsin proceedings, as the Bliss Project was concerned that it could not argue the substance of the Ambac Default claim before the Texas state court on February 1st without risk that Ambac and the Rehabilitator would seek to hold it in contempt. Ambac did not consent to this request, instead arguing that the hearing on the Ambac Default issue should go forward as scheduled and the issue of Ambac Default should be argued to the Bliss Court. (Ex. M, 1/28/18 Ambac Resp. In Opp. to Fort Bliss Mot. to Abate.)

On January 25, 2018, counsel for Ambac sent a letter to the MHPI Projects, relying on this Court's Confirmation Order, demanding that the MHPI Projects withdraw all Ambac Default affirmative defenses. (2/7/18 Spaniol Aff., Ex. C.) This letter ***did not*** take the position that the MHPI Projects were enjoined from arguing the Ambac Default claim and ***did not*** take a position that the MHPI Projects would be subject to contempt for doing so. (*Id*.; *see also* Ex. G, J. Willian Aff., ¶ 5.)

The parties appeared on February 1, 2018 before the Texas state court to argue the Bliss Project's Motion for Abatement (and, if that motion were denied, potentially the cross motions for summary judgment). During that argument, Bliss counsel explained why it was necessary to stay the proceedings—to allow the Project to seek clarification from this Court regarding whether it was being enjoined from arguing full faith and credit with respect to the Maryland Order, as the Bliss project believes it has every right to do, under the United States Constitution.

But this point was only made to obtain a stay, to which Ambac refused to agree, in order to get clarification from this Court. (2/7/18 Spaniol Aff., Ex. F, 13:10–17) ("So it's our position, as we told the Wisconsin court and as we would tell this court if we were allowed to fully brief it, that this court is not bound by the Wisconsin court, in fact, cannot give that court's order full faith and credit and indeed, we would argue, is bound by the Maryland ruling which was a full evidentiary hearing where Ambac counsel was fully present and argued the issue.").

In response to questions from the Texas court regarding whether the Wisconsin Confirmation Order was a final judgment on the merits of the Ambac Default issue, counsel answered "[i]t's not a final judgment, yet. That's true." (*Id*. at 14:23–24.) Based on relevant case law, Bliss' counsel believed that this Court's Clarification Order was not a "final judgment" for purposes of ***full faith and credit***. (Ex. G, J. Willian Aff., ¶ 7.) *See Dalicandro v Legalgard, Inc.*, No. CIV.A. 99-3778, 2001 WL 1428359, at *4 n.7 (E.D. Pa. Nov. 14, 2001) ("Defendants' argument that the full faith and credit statute, 28 U.S.C. § 1738, requires this court to honor the liquidation order and stay the present action is without basis. The liquidation order is not a final judgment on the merits of plaintiff's tort and securities claims." (emphasis added)); *Hare v. Starr Commonwealth Corp.*, 291 Mich. App. 206, 218–19, 813 N.W.2d 752, 760 (2011) ("[T]he Full Faith and Credit Clause did not require the circuit court to recognize or enforce that portion of the New York order of rehabilitation purporting to bar 'all persons' from 'commencing or prosecuting any actions, lawsuits, or proceedings against Frontier,' and from 'obtaining preferences, judgments, and attachments or other liens against Frontier's assets.' Because this portion of the order effectively operated as an antisuit injunction, it fell 'outside the full faith and credit ambit.'"); *Mahan v. Gunther*, 278 Ill. App. 3d 1108, 663 N.E.2d 1139 (1996) (refusing to afford full faith and credit or comity to Indiana rehabilitation court's anti-suit

injunction); *Fuhrman v. United Am. Insurers*, 269 N.W.2d 842, 847 (Minn. 1978) (Minnesota court was not required to pay full faith and credit to an anti-suit injunction issued by an Iowa court in insurance liquidation proceedings).

Despite Ambac's opposition and attempts to force argument on the issue of Ambac Default, which according to the Rehabilitator would have been viewed as direct contempt, the Texas court granted Fort Bliss's Motion to Abate and set a hearing for April 27, 2018 to allow the Project to seek further clarification from this Court. At the conclusion of the hearing, Ambac counsel represented that it did ***not*** believe that the Project was prohibited from arguing the merits of the issue, including whether the Maryland order was entitled to full faith and credit—an acknowledgement that such argument would ***not*** violate this Court's order let alone constitute contempt. (2/7/18 Spaniol Aff., Ex. F, 29:1–4) ("MR. MADISON [Counsel for Ambac]: Obviously, Your Honor, in terms of our willingness to work with the Court and counsel in terms of convenience, ***we do not agree that they can't argue the matter. I think that's clear***.") (emphasis added).

D. The Rehabilitator's February 7, 2018 Filings.

Despite this, on February 7, the Rehabilitator filed its Motion seeking to hold the Bliss Project in contempt and seeking the entry of an injunction that, unlike any prior order, expressly required the MHPI Projects to take/refrain from taking specific action, including (1) expressly prohibiting the MHPI Projects from arguing that an Ambac Default has occurred as a result of the Rehabilitation Proceedings or that any Ambac Default that was or is ruled to have occurred by any other court or other tribunal was not cured by the Confirmation Order, (2) requiring the MHPI Projects to send copies of the Confirmation Order and the injunction to all state courts in which the Ambac Default issue is pending, and (3) requiring the MHPI Projects to advise these

other state courts of this Court's various rulings on this issue. (Ex. J.) The Court entered the Rehabilitator's requested injunction without permitting the MHPI Projects to respond.

Consistent with the Injunction, the MHPI Projects have filed notices in each of the pending MHPI Project cases where the Ambac Default claim is at issue, attaching this Court's Orders. (Dkt. No. 1563, 2/12/18 Farr Aff., Exs. A-E.) The MHPI Projects also sought immediate appellate review of this Court's injunction. (*See* 2/12/18 Petition for Supervisory Writ, pending in the Wisconsin Court of Appeals, Case No. 18 AP 264W.)

ARGUMENT

Wisconsin Statute § 785.01(1) defines contempt of court as *intentional* (a) misconduct in the presence of the court which interferes with a court proceeding or with the administration of justice, or which impairs the respect due the court; or (b) disobedience, resistance or obstruction of the authority, process or order of a court. Wis. Stat. § 785.01(1)(a)-(b). The Rehabilitator suggests that three actions taken by the Bliss Project subject it to contempt: (1) filing of the Project's Response to Ambac's Motion for Summary Judgment on January 22, 2018; (2) filing of its motion for abatement/stay of the Fort Bliss proceedings; and (3) argument made at the February 1, 2018 hearing on the motion to abate. The Rehabilitator states that it seeks a "remedial sanction," (Dkt. 1549, 2/7/18 Rehab. Br., p. 9), which means a "sanction imposed for the purpose of terminating a *continuing contempt of court*." Wis. Stat. § 785.01(3) (emphasis added). As a matter of law, none of these actions can support a contempt finding against Fort Bliss or the relief requested by the Rehabilitator in the [Proposed] Order Granting The Rehabilitator's Motion for Contempt.

A. Prior To February 7, 2018, There Was No Order Directing the MHPI Projects To Take or Refrain From Taking Any Specific Action in the DSRF Litigation.

There was no order in place preventing the MHPI Projects from arguing that an Ambac Default had occurred. The Court's Confirmation Order does not require specific conduct, but rather, declares that interested parties "must comply" with its terms. Such an order is distinct from an injunction under Wisconsin law. "[J]udicial remedies fall into four major categories: damage remedies, restitutionary remedies, coercive remedies (such as injunctions that are backed by the court's contempt power), and declaratory remedies." *Johnson Controls, Inc. v. Employers Ins. of Wausau*, 2003 WI 108, ¶ 40, 264 Wis. 2d 60, 89, 665 N.W.2d 257, 272. This distinction is dispositive here, because an order that does not require specific, defined conduct is not enforceable through contempt proceedings. *See Carney*, 2007 WI App 205, ¶ 17.

The Court stated on the record its belief that the United States Supreme Court had previously held that a declaratory judgment "to be the equivalent of an injunction." (*See* Ex. H, 1/22/18 Hr'g Tr., 57:16-20) (The Court: ". . . But a declaratory judgment action has been held by the United States Supreme Court, a declaratory judgment to be the equivalent of an injunction, because those who are bound by the declaratory judgment are enjoined from acting contrary to it. . . .") In bringing this motion, apparently the Rehabilitator ascribes to the same position. But, the law is to the contrary. In *Steffel v. Thompson*, 415 U.S. 452, 471 (1974), the Supreme Court stated that while a declaratory judgment is binding on the parties, it is ***not an injunction*** and thus a violation of it--although no such violation occurred here--is not punishable by contempt:

> "What is clear, however, is that even though a declaratory judgment has 'the force and effect of a final judgment,' it is a much milder form of relief than an injunction. Though i*t* may be persuasive, it is not ultimately coercive; noncompliance with it may be inappropriate, but is not contempt.'"

Id. (citations omitted); *see also Badger Catholic, Inc. v. Walsh*, 620 F.3d 775, 782 (7th Cir. 2010) ("A declaratory judgment cannot be enforced by contempt proceedings, but it has the same effect as an injunction in fixing the parties' legal entitlements."); *Madison Teachers, Inc. v. Walker*, 2013 WI 91, ¶ 20, 351 Wis. 2d 237, 245, 839 N.W.2d 388, 392 (vacating circuit court contempt order for violation of declaratory judgment while the case was certified on appeal). Accordingly, in the absence of such an injunction—as was confirmed by the contemporaneous statements of the Rehabilitator and this Court upon which the Bliss Project relied—there cannot be a finding of contempt.

As a matter of law, Article 6.8 and 6.13 likewise cannot serve as the basis of contempt. According to the Rehabilitator, those provisions did not become effective until February 12, 2018, the "Effective Date." (*See* ambacpolicyholders.com, last visited on 2/13/18) ("[T]he Rehabilitator hereby advises that the Effective Date of the Plan shall be February 12, 2018[.]").) *See The Phone Line, Inc. v. Van Handel*, Case No. 2009AP161, 2010 WL 2486824, ¶¶ 4–8 (Wis. Ct. App., June 22, 2010) (unpublished) (holding that remedial contempt sanctions were not available for failure to comply with injunction that was no longer in force). Article 6.13, which the Rehabilitator extensively cites, expressly states that "***As of the Effective Date***," defaults are deemed cured. (Ex. I, ¶ 10.) (Emphasis added.) Thus, the Bliss Project could not have violated Article 6.8 or 6.13 for purposes of contempt by making arguments to the Texas court prior to the Effective Date.

B. The Confirmation Order Does Not Contain Any Injunctive Language Sufficiently Clear To Support A Contempt Finding.

The Rehabilitator fails to specify which provision of what order the Bliss Project supposedly violated. At various times, the Rehabilitator cites to (1) the Confirmation Order generally, (2) the Second Amended Plan generally, which was not even effective, and (3) this

Court's oral statements. (*Compare* Mot. at 6 (claiming that Fort Bliss made "arguments that directly contradict the Confirmation Order and the Second Amended Plan") *with* Mot. at 8 ("Continuing to litigate the issue of default, despite ***this Court's clear statements on the record***, and Article 6.13 that cures any such defaults, is flat-out disobedience and resistance to the Confirmation Order of this Court, and subject to contempt."). These arguments fall far short of a core requirement for a contempt finding: an order must be ***clear*** about the specific conduct required or permitted. *Welytok v. Ziolkowski*, 2008 WI App 67, ¶ 24, 312 Wis. 2d 435, 452, 752 N.W.2d 359, 367 ("Injunctions, of course must be specific as to the prohibited acts and conduct in order for the person being enjoined to know what conduct must be avoided."); *Carney*, 2007 WI App 205, ¶¶ 17-18 (finding order to be injunctive in nature, and thus capable of enforcement through contempt, because it "requires specific, ongoing conduct" even though not labeled as an injunction).[4]

Here, the Rehabilitator and the Court were well aware of the affirmative defenses being asserted by the MHPI Projects in the DSRF Litigation, and that the Maryland Court had issued an Order finding an Ambac Default. Yet until February 7, the Rehabilitator did not seek and the Court did not issue any Order that ***specified any required conduct*** by the Projects to abandon their defenses or refrain from making any arguments in those sister courts. Prior to that February 7 order, the Rehabilitator had said just the opposite. And, after entry of that February 7 Order,

[4] Federal authority is in accord. *Int'l Longshoremen's Ass'n, Local 1291 v. Phila. Marine Trade Ass'n*, 389 U.S. 64, 76 (1967) ("The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood, it can be a deadly one. Congress responded to that danger by requiring that a federal court frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid."); *see also Armstrong v. Exec. Office of the President, Office of Admin.*, 1 F.3d 1274, 1289 (D.C. Cir. 1993) ("Thus, because the appellants were never directly ordered to promulgate new regulations, we must reverse the district court's contempt finding which was based in part on their failure to do so.").

the MHPI Projects ***immediately complied,*** in sending the required notices to state courts around the country.

Ambac's representation to the Texas Court on February 1—that it would not contend that the Bliss Project was prohibited from arguing whether the Maryland Order should be given Full Faith and Credit—cannot be squared with a motion for contempt. (2/7/18 Spaniol Aff., Ex. F, 29:1–4) As noted, Ambac counsel stated to the Bliss Court in opposition to the motion to abate that it was "clear" that the Bliss Project was free to argue the full merits of the competing summary judgment motions. (*Id*.)

C. The Actions Of The Bliss Project Fall Far Short of Contempt Under Wisconsin Law.

In order to impose remedial sanctions, the Rehabilitator must show that the Bliss Project willfully and intentionally refused to comply with this Court's Order. *In re Guardianship & Protective Placement of Lavonne M.E.*, Case No. 2011AP1575, 2012 WL 851229, ¶ 5 (Wis. Ct. App., March 15, 2012) (unpublished) ("The mere failure to comply with a court order is an insufficient basis for a contempt finding. Rather, for a finding of contempt, a party must have been able to comply with the order and the refusal to comply must be willful and intentional."). Here, the record demonstrates the opposite—Fort Bliss immediately sought clarification of this Court's orders and moved to stay proceedings in the Texas Court, out of an abundance of caution, to allow this Court to provide such clarification.

Where, as here, the Bliss Project had a good faith basis for believing its January 22nd brief did not violate this Court's orders—a basis established by the Rehabilitator and Court themselves and acknowledged by Ambac at the Texas hearing—there can be no contempt finding. *State v. Dickson*, 53 Wis. 2d 532, 193 N.W.2d 17, 25–26 (1972) (reversing contempt finding because "[t]he interpretation placed upon the letter by Attorney Korb was at least

arguably meritorious" given "the vague nature of the letter"). As is the undisputed circumstance here, courts recognize that it is reasonable for a party to rely on oral statements of the Court. *State v. O'Dell*, 193 Wis. 2d 333, 343–44, 532 N.W.2d 741 (1995) ("As such, we further conclude that O'Dell had a right to rely on upon Judge Steingass's oral pronouncements in order to understand the scope of the restraints placed upon him.").

There is no concern about the Texas court being misled or confused by counsel's statements. Indeed, any claimed misunderstanding in the context of the stay motion, not a ruling that impacts the merits, was quickly addressed when counsel for Ambac shortly thereafter pointed out that the Confirmation Order stated it was final for purposes of appeal (which again, was not the point Bliss counsel was speaking to, and which Bliss counsel did not contradict). (2/7/18 Spaniol Aff., Ex. F, 20:14–19) ("And your Honor asked if it was a final judgment, and Mr. Willian said it's not. But what's important here is that this is -- as the all caps in the bold language there before his honor's signature indicates, 'This order is final for purposes of appeal.' This is a final order.").

Finally, as this evidence makes clear, there was no harm to either the Rehabilitator or Ambac from the alleged contemptuous actions by Fort Bliss. There can be no claim that the Texas court was in any way misled about the circumstances surrounding the Confirmation Order, the Rehabilitation Proceedings, and the Maryland Order. What's more, the Texas court merely entered a stay of proceedings—there has been no ruling on the merits. Taking all those factors into account, the Texas court determined to stay argument on the Ambac Default issue until April; at that time, Ambac will still have the full opportunity to argue the merits of its Ambac Default claim. As such, there has been zero harm to Ambac from these contested and disputed actions before the Court.

D. Remedial Sanctions Are Not Justified Because There Is No Contempt, Let Alone Ongoing Contempt.

The Rehabilitator is seeking the imposition of a remedial sanction, which may only be "imposed for the purpose of *terminating a continuing contempt of court*." *Christensen v. Sullivan*, 2009 WI 87, ¶ 54, 320 Wis. 2d 76, 768 N.W.2d 798 (citing Wis. Stat. § 785.01(3)) (emphasis in original). Remedial sanction cannot be imposed once any alleged contempt has terminated. *Id*., ¶¶ 54, 74. "Permitting the imposition of a remedial sanction in a situation where there is no continuing contempt would effectively rewrite the statute." *Id.* at ¶ 58. *See, e.g., State v. King*, 82 Wis. 2d 124, 126-34, 262 N.W.2d 80 (1978).

Here, the alleged "contempt" of the confirmation order is based on arguments made to a Texas court in a brief and in oral argument—both of which are complete. As a matter of law, these prior actions are not "continuing" at this point, and cannot be the basis of any remedial sanctions. *Id*. Furthermore, this Court entered the Injunction requested by the Rehabilitator, and, pursuant to the injunction, the MHPI Projects provided copies of the Confirmation Order and Order granting injunctive relief to the other state courts. Any further sanction at this point, would, *by definition*, be punitive and not remedial. *See State ex rel. N.A. v. G.S.*, 156 Wis. 2d 338, 341, 456 N.W.2d 867 (Ct. App. 1990) (holding that "punitive sanctions may not be imposed in remedial sanction proceedings."); *City of Appleton v. Johnson*, 2013 WI App 41, ¶ 20, 346 Wis. 2d 733, 828 N.W.2d 594 (unpublished) (if there is a "punitive intent" to a court's imposition of remedial sanctions, "that would be entirely improper").

CONCLUSION

For all of these reasons, the Court should deny the Rehabilitator's motion for entry of a contempt order against the Bliss Project.

Dated this 14th day of February, 2018.

KRAVIT, HOVEL & KRAWCZYK S.C.

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