



October 28, 2016

VIA HAND DELIVERY

The Honorable Carol Fox Foelak
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 26049

Re: *In the Matter of Lynn Tilton, et al.* (File No. 3-16462)

Dear Judge Foelak:

I write on behalf of Respondents in the above-captioned manner. Earlier this week, Respondents discovered that MBIA Insurance Corp. (“MBIA”) failed to produce dozens of documents reflecting Mr. McKiernan’s communications about the Zohar funds and Ms. Tilton. Those documents are responsive to the May 27, 2015 subpoena (“2015 Subpoena”) to MBIA in this matter.

When confronted with the documents, which *were* produced in a different action involving both MBIA and Patriarch, MBIA’s outside counsel at Cadwalader Wickersham & Taft LLP—the same firm that begged Your Honor to extend its time to respond to our October 5 motion to compel until today, yet its counsel (Mr. Hoff) had the time to sit in this courtroom observing the proceedings multiple times this week—could not explain why they had not been produced last year or at any time since. Nor did MBIA’s counsel offer any explanation why—despite the absence of these documents from MBIA’s prior productions—Mr. Hoff nonetheless represented in an August 19 letter that it had completed its production in response to the 2015 subpoena. Instead, having run out of other options, on each of October 24, October 26, and October 27, 2016, MBIA produced the documents now added to our exhibit list for use in this proceeding. *See* Exs. 1-3.

Under a confidentiality agreement between MBIA and Respondents concerning the 2015 Subpoena, Respondents must make “reasonable efforts” to notify MBIA if any documents designated Confidential appear on “any pre-hearing Exhibit List filed with the court.” Accordingly, despite MBIA’s failure to produce these documents *prior* to the hearing, we notified MBIA this morning that we intend to add these documents to our exhibit list. Additionally, we have enclosed Respondents’ Revised Supplemental Exhibit List, which reflects MBIA’s newly-produced documents, and a CD containing these exhibits. *See* Ex. 4.

GIBSON DUNN

October 28, 2016

Page 2

Further, as Your Honor considers whether to compel MBIA to produce additional discovery responsive to Respondents' targeted September 2016 subpoena, Respondents respectfully request that Your Honor consider the events outlined above. With another non-party witness, such a discovery failure might have been for more benign reasons. But here, MBIA's tactical delays and long-time coordination with the Division make these developments concerning. Indeed, MBIA and its counsel are not innocent bystanders; rather, the documentary evidence shows that they built their civil litigation damages claim strategy against Respondents side-by-side in concert with the Division.

As Your Honor determines whether to grant the October 5 motion to compel—and such motion should be granted *well in advance* of any MBIA witness taking the stand—we urge Your Honor to consider this latest example of MBIA's gamesmanship.

Respectfully,

Handwritten signature of Randy M. Mastro in black ink, with the initials 'LAR' written at the end of the signature.

Randy M. Mastro

Attachments and Enclosure

cc: Dugan Bliss, Esq.
Nicholas Heinke, Esq.
Amy Sumner, Esq.
Mark Williams, Esq.