IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CONSUMER FINANCIAL PROTECTION BUREAU Plaintiff, v. THE NATIONAL COLLEGIATE MASTER STUDENT TRUST, et al., Defendant.	)	C.A. No. 17-1323 (MN)

ORDER

At Wilmington, this 18th day of December 2019:

WHEREAS, Intervenor Ambac Assurance Corporation, writing on behalf of itself, the Objecting Noteholders, and Wilmington Trust Company (collectively, "Movants") has requested that the Court either enter a "Rule 502(d) Order" that would protect "disclosure of . . . or testimony regarding" certain privileged materials ("the Materials") from constituting or being deemed "a waiver or a subject matter waiver of the Trust Privilege or any other privilege or protection belonging to the Trusts, either in this matter or in any other Federal or State proceeding, including any and all arbitrations and private dispute resolution proceedings," or, alternatively, preclude the CFPB "from objecting to Movants' use or the admissibility of [the Materials] on the grounds that it has not been given the opportunity to review, or question witnesses regarding, the Materials";

WHEREAS, the justification for Ambac's request is that "the fact that [the] Materials are privileged, and that only some parties to this case are within that privilege, requires that particular care be taken to ensure that the use of [the] Materials in this litigation is accomplished without any risk of waiver of the Trust privilege," which "may unnecessarily complicate and prolong . . . upcoming depositions";

WHEREAS, the basis for Ambac's request is Federal Rule of Evidence 502(d); and

WHEREAS, it is unclear that Federal Rule of Evidence 502(d) protects the "use" Ambac contemplates from constituting or being deemed a waiver of the Trust Privilege or any other privilege or protection belonging to the Trusts;

THEREFORE, IT IS HEREBY ORDERED that Ambac's request is DENIED.

IT IS FURTHER ORDERED that Ambac may use the Materials to the extent necessary in depositions.

IT IS FINALLY ORDERED that to the extent any party argues that any disclosure or use of the Materials constitutes a waiver of the Trust Privilege or any other privilege or protection belonging to the Trusts, such arguments will be addressed by the Court as they arise.

Maryellen Noreika

The Honorable Maryellen Noreika
United States District Judge