Chapter One 1

The Meeting

In our minds, our franchise is the ultimate money-back guarantee, the "Good Housekeeping Seal of Approval."

—Gary Dunton, president of MBIA, 2001

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As the taxi pulled away from Grand Central Station on a late November afternoon in 2002, Bill Ackman was bracing for a fight. The 36-year-old cofounder of a hedge fund called Gotham Partners had been summoned to a meeting with Jay Brown, the chief executive officer of MBIA Inc. MBIA's general counsel wouldn't say what Brown wanted to discuss, but Ackman had a suspicion. Gotham had placed a bet against the company that could make the fund $2 billion if MBIA filed for bankruptcy. The hedge fund planned to issue a critical research report questioning the bond insurer's triple-A rating.

Ackman had already described the situation in an October 2002 letter to his investors. "Our newest and largest [short] investment is on an extremely highly levered, yet triple-A-rated financial institution, which we believe has inadequate reserves, undisclosed credit-quality problems, aggressive accounting, and substantial unconsolidated indebtedness contained in off-balance-sheet special-purpose vehicles," he wrote. Ackman explained that the position had the potential to generate a return of approximately five times the fund's total assets if it was successful.

Though little known outside of Wall Street circles in 2002, MBIA ranked as one of the top five financial institutions in the country, as measured by outstanding credit exposure, along with Citigroup, Bank of America, and government-sponsored mortgage lenders Fannie Mae and Freddie Mac. Using its triple-A credit rating, MBIA had turned nearly half a trillion dollars of securities into investments that rating companies apparently considered as safe as U.S. Treasuries. Bonds issued by a water and sewer authority in Mississippi, debt backed by loans on used cars to people with a history of not paying their bills, and complex pools of derivatives held by a shell company in the Cayman Islands all became top-rated securities under the Midas touch of an MBIA guarantee.

Moody's Investors Service, Standard & Poor's, and Fitch Ratings—the credit-rating oligopoly—all assigned MBIA's bond-insurance unit a triple-A rating. Using computer models and historical default data, analysts at the rating companies had determined that MBIA could weather another Great Depression and still meet all of its claims.

Ackman was not convinced.

MBIA held just $1 of capital for every $140 of debt it guaranteed. Although the company claimed it underwrote risk to a so-called "zero-loss" standard, its past performance hadn't been free from error. The high leverage meant MBIA had virtually no margin of safety. The company's underwriting, transparency, accounting, and track record all had to be beyond reproach. Ackman, a money manager known for his intensive research, thought he saw problems with every one of these issues.

Earlier that day, Ackman had met for lunch with Michael Ovitz, the founder of Hollywood's Creative Artists Agency and a longtime investor in Ackman's fund. As they worked their way through six different versions of toro, the Japanese fatty tuna delicacy, Ackman asked Ovitz's advice about the upcoming meeting with Brown.

"It sounds like a very Japanese meeting," said Ovitz. In other words, he said, "Just shut up and listen."

Ackman's taxi stopped on Third Avenue outside the building where MBIA's attorneys, Debevoise & Plimpton, have their offices. Together with Gotham's general counsel, David Klafter, and one of the firm's analysts, Greg Lyss, Ackman headed for the security desk in the lobby. The group was sent upstairs, where Ackman told the receptionist they were there for the meeting with Jay Brown. She pointed Ackman toward a closed conference room door just behind the reception desk. Opening it, he found Brown seated at a conference table with a dozen other men. The conversation in the room came to an abrupt halt. “Hi,” he said. “I’m Bill Ackman. I’m here to . . .”

“Wrong meeting,” one of the men said as he jumped up to close the door. Ackman returned to the reception area, convinced he’d just interrupted a tired and frazzled-looking Brown in a meeting with his crisis-management team. The Gotham group was shown to another conference room and told to wait.

Ackman cofounded Gotham Partners in 1993 with David Berkowitz, increasing the hedge fund’s assets from $3 million to more than $350 million by 2001. The firm was small, with just nine employees. Ackman and the fund’s analysts sought out companies with securities that were mispriced or misunderstood by the market. In MBIA’s case, the market believed in the permanence of the company’s triple-A rating. If it didn’t, then the bond insurer’s ability to write new business would have disappeared overnight.

Ackman had placed his bet against MBIA principally in the credit-default-swap market. Credit-default swaps, or CDS contracts, are derivatives that allow parties to buy and sell protection against a default on a security. The contracts are essentially life insurance policies on companies. The protection buyer—in Wall Street parlance—makes regular payments over the life of the contract to the protection seller, who promises to make a lump sum payment to the insurance buyer if a security defaults. The cost of the insurance rises and falls minute by minute based on the market’s perception of the company’s credit quality. Default protection on a company with a triple-A rating, which MBIA had in 2002, could be purchased cheaply because the risk of default was perceived to be de minimus.

Blythe Masters, a 26-year-old Trinity College graduate working at JPMorgan in 1995, is often credited with having invented CDS contracts. The contracts were created as a way for commercial banks to reduce their exposure to corporate borrowers. By purchasing protection against a default, the bank took on a position that would offset losses if a borrower defaulted.

The market for CDS contracts, which didn't exist before the mid-1990s, totaled $2.2 trillion by the end of 2002. Outstanding contracts hit $62 trillion by the end of 2007. Ackman was not seeking protection against MBIA filing for bankruptcy; he was betting that the chance of the company defaulting on its bonds was more likely than the market believed. In addition to shorting tens of millions of dollars of MBIA stock, Ackman bought protection against a default on $2 billion worth of MBIA debt. He had also set up two additional funds, Gotham Credit Partners I and IA, to hold CDS contracts on MBIA. Investors in these funds could earn nearly 40 times their money, or a 4,000 percent return, if MBIA filed for bankruptcy. Of course, investors would lose their entire investment if perceptions about MBIA's triple-A rating remained unchanged and unchallenged.

Ackman's bet was spectacularly contrarian. He was wagering on the collapse of a company that the rating companies had awarded their highest triple-A rating and that everyone else was counting on.

Indeed, MBIA's reason for being was to take the worries out of the debt market. MBIA's president, Gary Dunton, summed it up in the company's 2001 annual report: "In our minds, our franchise is the ultimate money-back guarantee, the 'Good Housekeeping Seal of Approval.'"

The company was started in the early 1970s by a young man named Jack Butler, who had worked on Wall Street for Franklin National Bank, picking municipal bonds for the bank's portfolio. One winter afternoon in 1967, as Butler was driving back from a ski weekend in Vermont with Jim Lopp, an investment banker, the pair hit on an idea: If you took the time to understand how the municipal bond market really worked, you could find plenty of municipal bonds on which the risk of default was practically zero. Butler bought such bonds all the time. Selling insurance on bonds that would never default sounded like a good business.

Butler and Lopp had worked together on a deal in Omaha, Nebraska, several years earlier that became their blueprint. The mayor of Omaha wanted to raise millions of dollars to build a sewage-incineration plant. The process was experimental, however, and taxpayers didn't want to foot the bill if the project didn't work. The sewage-incineration plan was designed to blast the sewage into a solid substance, which could then provide fuel to blast the next batch of sewage into more fuel. To finance the plan, the mayor, Lopp, and Butler came to an agreement. Lopp would underwrite the bonds, Butler would buy them, and the mayor would see to it that the project was bailed out if something went wrong.

In fact, the plant didn't work. As Butler remembers it, the headline in the local Omaha newspaper read "Ten Million Dollar Toilet Doesn't Flush." But the mayor made good on his promise, and the taxpayers bailed out the bondholders.

The municipal bond market was less risky than it appeared, Butler realized. The credit ratings on many municipal bonds didn't take into account the understanding between investors and public officials, such as Omaha's mayor, that bonds used to fund public projects wouldn't default.

Then came the spark of inspiration. If a smart investor could find bonds that were safer than they appeared, an even more astute businessperson could create a business guaranteeing these bonds. The bond-insurance business was simple: In exchange for receiving an upfront insurance premium, the bond insurer agreed to cover all interest and principal payments over the life of the bond if the issuer defaulted. As long as the bond insurer maintained its triple-A rating, the bonds remained triple-A. The beauty of bond insurance, Butler saw, was that the bond insurer didn't need capital to buy the bonds. The bond investor put up the capital. The insurer would collect the insurance premium up front in exchange for guaranteeing the bonds and would invest the premiums over the long term.

That's not to say bond insurance required no capital. To enter the business, Butler had to prove to regulators that the company had the wherewithal to make good on its guarantees. That meant setting aside some fraction of the amount of each bond it guaranteed. But how much? To determine the amount, Butler hired George Hempel, an economist who had studied municipal bond defaults during the Great Depression. With Hempel's help, Butler figured out how much capital a municipal bond–insurance company would have needed to weather the Depression. Although a large number of municipalities missed bond payments at the height of the Depression, most paid bondholders back, with interest, after just a few years. That meant a bond insurer didn't really need to pay claims so much as advance money for brief periods during times of extreme financial distress.

Still, it was a business that required extreme caution. "It has to be underwritten to a no-loss standard, otherwise the leverage is deadly," says Butler.

Butler and Lopp toyed with other business ideas, including manufacturing hollow golf balls. In the end, they went with municipal bond insurance. Bulter founded MBIA. Lopp, who died at age 51 of a heart attack on the tennis court of his vacation home in the south of France, started up Financial Security Assurance, another bond insurer.

FIFTEEN MINUTES AFTER Ackman and the others from Gotham were shown to the conference room, Brown appeared with MBIA's general counsel, Ram Wertheim, whose first question to the Gotham group was whether it planned to record the meeting. Ackman told him no, then asked Wertheim whether he and Brown planned on making a recording. They did not, Wertheim said.

Brown wasted no time getting to the point. He had been in the insurance industry for years, and no one had ever questioned his reputation, Ackman remembers Brown saying, "No one has ever gone to my regulators without my permission."

Ackman asked Brown whether he disputed any of the assertions Ackman had made about MBIA. Brown was aware of the issues in Ackman's report from questions he had received from a Wall Street equity analyst with whom Ackman had shared his findings.

"This isn't about the facts; it's about process," Ackman recalls Brown saying. "You're a young guy, early in your career. You should think long and hard before issuing the report. We are the largest guarantor of New York state and New York City bonds. In fact, we're the largest guarantor of municipal debt in the country. Let's put it this way: We have friends in high places."

In a follow-up letter to Ackman after the meeting, Wertheim reminded Gotham what was at stake: "MBIA is a regulated insurance company that operates in a regulated environment and acts in a fiduciary capacity for the benefit of our many constituencies—principally our policyholders, our customers, including the numerous states and municipalities that rely on bond insurance, and our stockholders but also our employees, our community, and the other people who rely on the vitality of the markets that we support. . . . MBIA's credibility and reputation in the market, and its triple-A ratings, are critical to our continued ability to service these constituencies."

In the meeting, Brown compared Gotham to Enron, which had been accused of manipulating California's electricity market. Was Gotham seeking to manipulate perceptions about a regulated insurance company by taking positions in the unregulated CDS market? Brown also asked Ackman how long Gotham planned to hold its CDS position on MBIA.

Ackman explained that for the hedge fund to make money on its CDS position, it was going to have to be correct in its criticism of MBIA. Ackman told Brown that the CDS market was not liquid enough for Gotham to easily trade in and out of such a huge position.

Wertheim asked to see a copy of Gotham's report before it was published so MBIA could check Gotham's facts. Ackman countered that it was considered inappropriate for analysts to give advance copies of research reports to companies but again offered to discuss any findings at the meeting.

The meeting ended abruptly. As the men filed out of the room, Ackman reached out to shake Brown's hand. "I don't think so," Brown said, refusing to extend his hand.

When Ackman, Klafter, and Lyss stepped back out onto Third Avenue, Ackman's first call was to Aaron Marcu, a lawyer with Covington & Burling, who had been advising Gotham on its research. "We left the meeting thinking we were going to be sued," Ackman told me years later.

Ackman's second call was to Paul Hilal, an investor in one of the Gotham Credit Partners funds and Ackman's friend since the two were undergraduate roommates at Harvard in the late 1980s. Ackman related the high points of the brief meeting: Brown's refusal to discuss Gotham's report, the apparent paranoia about whether Gotham was recording the conversation, the warning, the refusal to shake hands. Years later, Brown told the *Wall Street Journal* that he remembered refusing to shake Ackman's hand, though he recalled saying nothing that should have been interpreted as a threat.

Hilal had been hearing about MBIA for months. He and his girlfriend had spent a week with Ackman and his wife, Karen, at a beach house the Ackmans rented in Watch Hill, Rhode Island, during the summer of 2002. "Bill did what he always does on vacation," Hilal says. He read financial statements. That week his reading consisted of years of MBIA quarterly filings. "Every once in a while, you'd hear Bill exclaim, 'Oh, my God, this is such bullshit,'" Hilal recalls. "What he was reading about was another layer of hidden leverage or messed up accounting at MBIA. The tone was a combination of surprise but also glee: 'I can't believe it's this good.'"