

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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ABN AMRO BANK N.V.; BARCLAYS BANK PLC; :  
BNP PARIBAS; CALYON; CANADIAN IMPERIAL : Index No. 601846/09  
BANK OF COMMERCE; CITIBANK, N.A.; HSBC :  
BANK USA, N.A.; JPMORGAN CHASE BANK, N.A.; : Hon. James A. Yates  
KBC INVESTMENTS CAYMAN ISLANDS V LTD.; :  
MERRILL LYNCH INTERNATIONAL; BANK OF :  
AMERICA, N.A.; MORGAN STANLEY CAPITAL :  
SERVICES, INC.; NATIXIS; NATIXIS FINANCIAL : **VERIFIED ANSWER**  
PRODUCTS INC.; COÖPERATIEVE CENTRALE :  
RAIFFEISEN-BOERENLEENBANK B.A., NEW YORK :  
BRANCH; ROYAL BANK OF CANADA; THE ROYAL :  
BANK OF SCOTLAND PLC; SMBC CAPITAL :  
MARKETS LIMITED; SOCIÉTÉ GÉNÉRALE; UBS AG, :  
LONDON BRANCH; and WACHOVIA BANK, N.A., :  
:  
Petitioners, :  
:  
- against - :  
:  
ERIC DINALLO, in his capacity as Superintendent of the :  
New York State Insurance Department, the NEW YORK :  
STATE INSURANCE DEPARTMENT, MBIA INC., :  
MBIA INSURANCE CORPORATION, and NATIONAL :  
PUBLIC FINANCE GUARANTEE CORPORATION :  
(f/k/a MBIA INSURANCE CORP. OF ILLINOIS), :  
:  
Respondents. :  
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Respondents the New York State Insurance Department (the “Department”) and Eric R. Dinallo, named in his former, official capacity as Superintendent (“Superintendent”) of the Department (collectively, “State Respondents”), attach the administrative record (“Record”) and answer the Verified Petition (“Petition”) as follows:

**Preliminary Statement**

1. Deny the allegations contained in paragraph 1 of the Petition, except admit that MBIA Insurance Corporation (“MBIA Corp.”), MBIA Inc., MBIA Insurance Corporation of

Illinois (“MuniCo”) and MuniCo Holdings, Inc. (“MuniCo Holdings” and, collectively with MBIA Corp., MBIA Inc. and MuniCo, the “MBIA Entities”) were involved in a restructuring (the “Transformation”) that was approved by the Department by approval letter issued on February 17, 2009 (the “Approval Letter”), a copy of which is annexed hereto as Exhibit A, and that this proceeding is brought under article 78 of the CPLR.<sup>1</sup>

2. Deny the allegations contained in paragraph 2 of the Petition, except to the extent that the truth thereof is reflected in the publicly available documents filed by the MBIA Entities and respectfully refer the Court to such documents as the best statements of their contents.

3. Deny the allegations contained in paragraph 3 of the Petition, except admit the allegations of the first sentence thereof and respectfully refer the Court to the documents relied on by petitioners, as the best statements of their contents, import and meaning. (see ¶ 95, infra.); affirmatively allege that the Superintendent’s approval of the Transformation did not favor one group of policyholders over another and was in accord with the relevant law for the reasons set out in the Approval Letter, the accompanying affidavits of Michael Moriarty, sworn to November \_\_, 2008 (“Moriarty Aff.”) and of Jack R. Buchmiller, sworn to November \_\_, 2009 (“Buchmiller Aff.”), the exhibits thereto and the accompanying memorandum of law

4. Deny the allegations contained in paragraph 4 of the Petition, except admit that, on December 5, 2008, MBIA Corp. on its own behalf and on behalf of the MBIA Entities, submitted an application (the “Application”) and supporting materials, as supplemented and/or amended on December 23, 2008 and February 3, 4, 5, 11, 13 and 16, 2009, to the Department

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<sup>1</sup> The State Respondents object to petitioner’s definition of the restructuring of the MBIA Entities as the “Fraudulent Restructuring” and the use of such defined term throughout the Petition. The State Respondents hereby specifically deny, for all purposes, that the Transformation was fraudulent. This denial applies to any and all allegations and contentions in the Petition that utilize the term “Fraudulent Restructuring.”

seeking approval of a series of transactions involving the MBIA Entities and that by the Approval Letter issued on February 17, 2009, the Department notified the MBIA Entities that it had approved the Transformation, and respectfully refer the Court to the Approval Letter as the best statement of its contents.

5. Deny the allegations contained in paragraph 5 of the Petition and respectfully refer the Court to the documents relied on by petitioners as the best statement of their contents and to the Approval Letter for the basis of the Department's Approval of the Transformation, except admit that the Department did not hold a hearing or seek input from policyholders and affirmatively aver that no provision of the New York Insurance Law ("Insurance Law") requires a hearing or input from policyholders for the Department to approve these transactions.

6. Deny the allegations contained in paragraph 6 of the Petition, except admit the allegations contained in the second sentence of such paragraph and respectfully refer the Court to the documents relied on by petitioners as the best statement of their contents; affirmatively aver that the Application and supporting materials are statutorily exempt from disclosure under Insurance Law §1504 (c); further affirmatively aver (i) that the MBIA Entities made a request under the Freedom of Information Law ("FOIL") that certain records, including the Application, be treated as confidential information or trade secrets under New York Public Officers Law ("POL") § 87(2)(d); (ii) that Daniel A. Rabinowitz, Esq. of the firm Sullivan & Cromwell LLP, counsel to petitioners in this proceeding, made a FOIL request to the Department dated February 24, 2009, see Diblasi Aff. Ex. 4, which did not indicate on whose behalf the request was being made ("S&C FOIL Request"); (iii) that by letter dated June 26, 2009, a copy of which is annexed hereto as Exhibit B, the Department issued a determination that certain records, including the Application, that were the subject of the MBIA Entities' request are exempt from disclosure

under POL § 87(2)(d); and (iv) that by letter dated July 29, 2009, a copy of which is annexed hereto as Exhibit C, the Department issued a determination denying the S&C FOIL Request pursuant to the exemptions from public disclosure set out in Insurance Law §§ 311 and 1504(c) and POL § 87(2)(a), (d) and (g); further affirmatively aver that no appeal was taken from the Department's FOIL determination although Mr. Rabinowitz or the parties he was representing could have pursued both a timely CPLR Article 78 challenge to the Transformation and any appeal from the Department's FOIL determination.

7. Deny the allegations contained in paragraph 7 of the Petition.

8. Deny the allegations contained in paragraph 8 of the Petition, except admit that that the Transformation was made retroactive to January 1, 2009, and deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in subparagraphs "a" through "d" and respectfully refer the Court to the documents relied on by petitioners and the Approval Letter as the best statement of their contents; affirmatively aver that statements made by third-parties following the Department's approval of the Transformation are irrelevant to the issue of whether that approval was rational and in accord with the Insurance Law.

9. Deny the allegations contained in paragraph 9 of the Petition, except deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of such paragraph; affirmatively aver that, as acknowledged by the sources relied on by petitioners, the Superintendent's determination was made on the basis of material, non-public information that was not available to the market. See DiBlasi Aff. Ex. 8, p.1 (acknowledging that there are "significant limitations" to their analysis due to the lack of deal-level information).

10. Deny the allegations contained in paragraph 10 of the Petition, and respectfully refer the Court to the document relied on by petitioners as the best statement of its contents, meaning and import.

11. Deny the allegations contained in paragraph 11 of the Petition and respectfully refer the Court to the Approval Letter, wherein the Department stated the basis of its approval; affirmatively aver that the Application and supporting materials are statutorily exempt from disclosure under, inter alia, Insurance Law § 1504(c).

12. Deny knowledge or information sufficient to form the allegations contained in paragraph 12 of the Petition, except admit that petitioners commenced an action in this Court captioned ABN AMRO Bank N.V. v. MBIA Inc., Index No. 601475/09, to which the State Respondents are not parties (the “Plenary Action”), and respectfully refer the Court to the documents relied on by petitioners as the best statements of the nature of litigation against the MBIA Entities.

13. Deny the allegations contained in paragraph 13 of the Petition, except to the extent that the truth thereof is reflected in the record of the Plenary Action, and respectfully refer the Court to the MBIA Entities’ submissions in support of the motion to dismiss the Plenary Action as the best statements of their contents.

14. Deny the allegations contained in paragraph 14 of the Petition except to the extent that the truth thereof are reflected in the Approval Letter and respectfully refer the Court to the Approval Letter for the best statement of the standards applied by the Department in reviewing the Transformation; affirmatively allege that the Transformation was not fraudulent and that MBIA Corp. was and is solvent, as defined in the Insurance Law, which is the definition of insolvency that applies to insurance companies. See Insurance Law §1309.

15. Neither admit nor deny the allegations contained in paragraph 15 of the Petition as they constitute conclusions of law requiring no response or set forth the legal basis of the Petition.

### **The Parties**

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Petition.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Petition.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Petition.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Petition.

20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Petition.

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Petition.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Petition.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Petition.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Petition.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Petition.

26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the Petition.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Petition.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the Petition.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Petition.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Petition.

31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the Petition.

32. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the Petition.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the Petition.

34. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the Petition.

35. Deny the allegations contained in paragraph 34 of the Petition, except admit that Eric R. Dinallo was the Superintendent at the time that the Petition was filed and admit that he is named in his former official capacity.

36. Admit the allegations contained in paragraph 36 of the Petition.
37. Admit the allegations contained in paragraph 37 of the Petition.
38. Admit the allegations contained in paragraph 38 of the Petition.
39. Deny the allegations contained in paragraph 39 of the Petition, except admit that National Public Finance Guarantee Corporation (“National Public Finance”) is an Illinois-domiciled insurance corporation with its principal place of business in Armonk, New York, that prior to the Transformation it was called MBIA Insurance Corp. of Illinois and was a wholly-owned subsidiary of MBIA Corp., and that following the Transformation it became a wholly-owned subsidiary of a Delaware-domiciled holding company, which is a wholly-owned subsidiary of MBIA Inc. and deny knowledge or information sufficient to form a belief as to the truth of the allegation contained in such paragraph regarding the date on which its name changed to National Public Finance.

#### **Jurisdiction and Venue**

40. Admit the allegations contained in paragraph 40 of the Petition, except deny that the Transformation was fraudulent and neither admit nor deny the allegations contained in the last sentence of such paragraph as they constitute conclusions of law requiring no response.

41. Neither admit nor deny the allegations contained in paragraph 41 of the Petition as they constitute conclusions of law requiring no response, except deny that the Transformation was fraudulent.

42. Neither admit nor deny the allegations contained in paragraph 42 of the Petition as they constitute conclusions of law requiring no response.

43. Neither admit nor deny the allegations contained in paragraph 43 of the Petition as they constitute conclusions of law requiring no response.

## Factual Allegations

### A. Background

44. Deny the allegations contained in the first sentence of paragraph 44 of the Petition and admit the allegations in the second sentence of such paragraph.

45. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the Petition, except admit that prior to February 2009 MBIA Corp. was a “monoline” insurer and exclusively wrote financial guaranty insurance policies and did not offer property, casualty, life, disability or other forms of insurance and admit the allegations contained in the second sentence of such paragraph.

46. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 of the Petition and respectfully refer the Court to the publicly available documents relied on by petitioners as the best statement of their contents and meaning except admit the allegations contained in the third sentence of such paragraph.

47. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 of the Petition, except admit the allegations contained in the first sentence of such paragraph.

48. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the Petition.

49. Deny the allegations contained in the first sentence of paragraph 49 of the Petition, deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of such paragraph, and affirmatively aver that the Insurance Law does not encompass regulation of credit ratings and market value in connection with structured finance insurance policies.

**B. MBIA Insurance Loses Its Ability to Write New Insurance as Its Financial Condition Deteriorates.**

50. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the Petition, except admit that, as of January 1, 2008, MBIA Corp. was rated AAA by Moody's and S&P.

51. Deny the allegations contained in paragraph 51 of the Petition, except to the extent that the truth thereof is reflected in the document relied on by petitioners and respectfully refer the Court to such document as the best statement of its contents, import and meaning.

52. Deny the allegations contained in the first sentence of paragraph 52 of the Petition, except to the extent that the truth thereof is reflected in the document relied on by petitioners and respectfully refer the Court to such document as the best statement of its contents; deny the allegations contained in the remaining sentences of such paragraph.

53. Deny the allegations contained in paragraph 53 of the Petition, except to the extent that the truth thereof is reflected in the document relied on by petitioners, and respectfully refer the Court to such document as the best statement of its contents.

54. Deny the allegations contained in paragraph 54 of the Petition, except to the extent that the truth thereof is reflected in the documents relied on by petitioners and respectfully refer the Court to such documents as the best statements of their contents and meaning.

55. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 55 of the Petition, except admit that financial markets deteriorated in 2008; deny the remaining allegations contained in such paragraph except to the extent that the truth thereof is reflected in the documents relied on by

petitioners and respectfully refer the Court to such documents as the best statement of their contents and meaning.

56. Deny the allegations contained in the first sentence of paragraph 56 of the Petition, except admit that MBIA Corp. lost its triple-A credit rating; deny the allegations in the second sentence of such paragraph, except to the extent that the truth thereof is reflected in the document relied on by petitioners and respectfully refer the Court to such document as the best statement of its contents.

57. Deny the allegations contained in paragraph 57 of the Petition and respectfully refer the Court to the documents relied on by petitioners as the best statement of their contents.

**C. MBIA Secretly Obtains the NYID's Approval of Various Aspects of the Fraudulent Restructuring, Without Public Notice or Hearings.**

58. Deny the allegations contained in paragraph 58 of the Petition; affirmatively allege that the Application was submitted on December 5, 2008 and supplemented in December 2008 and February 2009, as stated in the Approval Letter, and respectfully refer the Court to the Approval Letter as the best statement of its contents.

59. Deny the allegations contained in paragraph 59 of the Petition; affirmatively aver that the Application and supporting materials are confidential under, inter alia, Insurance Law §1504 (c) and that the substance of the Application, as supplemented and amended, and the basis for the Department's approval were disclosed by the Department in the Approval Letter, and respectfully refer the Court to the Department's letters dated June 26, 2009 and July 27, 2009, copies of which are attached hereto as Exhibits B and C, respectively, as the best statements of the Department's determination with respect to the S&C FOIL Request; further affirmatively

aver that no appeal was taken from the Department's determination of the S&C FOIL Request although Mr. Rabinowitz or the parties he was representing could have pursued both a timely CPLR article 78 challenge to the Transformation and any appeal from the Department's FOIL determination.

60. Deny the allegations contained in paragraph 60 of the Petition, except to the extent that the truth thereof is reflected in the Approval Letter, and respectfully refer the Court to the Approval Letter as the best statement of its contents and meaning.

61. Deny the allegations contained in paragraph 61 of the Petition, except to the extent that the truth thereof is reflected in the Approval Letter and respectfully refer the Court to the Approval Letter the best statement of its contents, and admit the allegations contained in the first sentence of footnote 28 to such paragraph.

62. Deny the allegations contained in paragraph 62 of the Petition, except to the extent that the truth thereof is reflected in the Approval Letter, and respectfully refer the Court to the Approval Letter as the best statement of its contents and meaning.

63. Deny the allegations contained in paragraph 63 of the Petition, except admit that the Department used statutory accounting; affirmatively aver that the Insurance Law and regulations promulgated thereunder require the use of statutory accounting to determine solvency of a regulated insurer, see 11 NYCRR § 83.1 et seq. ("Regulation 172"); further affirmatively aver that the Department's application of statutory accounting principles rather than GAAP when determining the solvency of a regulated entity results in a more conservative measure of solvency.

64. Deny the allegations contained in paragraph 64 of the Petition and respectfully refer the Court to the Record, the Approval Letter, the Buchmiller Aff. and the Moriarty Aff.; affirmatively aver that the Department independently tested and examined MBIACorp.'s models, including the assumptions and methodologies utilized by MBIA Corp., and examined its financial statements for accuracy and compliance with statutory accounting principles.

**D. MBIA Inc. Executes the Unlawful Fraudulent Restructuring.**

65. Deny the allegations contained in paragraph 65 of the Petition, and affirmatively aver that the commentator quoted (CreditSights Inc. analyst Rob Haines) called the split a “positive step” but noted that it was the credit markets that feared that “the old MBIA insurance company might wither and die” (emphasis added), and respectfully refer the Court to that document for its contents and meaning.

66. Admit the allegations contained in the first sentence of such paragraph 66 of the Petition; deny the remaining allegations contained in such paragraph, and respectfully refer the Court to the Record, the Approval Letter, the Buchmiller Aff. and the Moriarty Aff. as the best statements of the Department's actions and the effect of the Transformation on the MBIA Entities' corporate structure and to the documents relied on by petitioners as the best statements of their contents and import.

67. Deny the allegations contained in paragraph 67 of the Petition, except to the extent that the truth thereof is reflected in the Approval Letter and respectfully refer the Court to the documents relied on by petitioners as the best statements of their contents and import; affirmatively aver that, to date, MBIA Corp. is solvent and has been paying claims as they become due.

68. Deny the allegations contained in paragraph 68 of the Petition, except to the extent that the truth thereof is reflected in the documents relied on by petitioners, and respectfully refer the Court to such documents as the best statements of their content and import.

69. Deny the allegations contained in paragraph 69 of the Petition; affirmatively aver that the Application and supporting materials are confidential under, *inter alia*, Insurance Law §1504 (c) and that the substance of the Application, as supplemented and amended, was disclosed by the Department in the Approval Letter; further affirmatively aver that disclosure of the Application is excepted from public disclosure for the reasons set forth in the Department's letters dated June 26, 2009 and July 27, 2009, copies of which are attached hereto as Exhibits B and C, respectively, to which the Court is respectfully referred and from which petitioners failed to appeal.

70. Deny the allegations contained in paragraph 70 of the Petition and respectfully refer the Court to the document relied on by petitioners as the best statement of its contents; affirmatively aver, upon information and belief, that the Application, as well as all supporting documentation provided to the Department in connection with the Application, have been produced to petitioners by the MBIA Entities in the Plenary Action subject to the terms of a confidentiality agreement.

**E. The Fraudulent Restructuring Left MBIA Insurance Undercapitalized and Insolvent.**

71. Deny the allegations contained in paragraph 71 of the Petition, except to the extent that the truth thereof is reflected in the Approval Letter and the document relied on by

petitioners, and respectfully refer the Court to that document for the best statement of its contents.

72. Deny the allegations contained in paragraph 72 of the Petition, except admit that, before and after the Transformation, MBIA Corp. was a wholly-owned and controlled subsidiary of MBIA Inc.

73. Deny the allegations contained in paragraph 73 of the Petition.

74. Deny the allegations contained in paragraph 74 of the Petition, except to the extent that the truth thereof is reflected in publicly available documents relied on by petitioners and respectfully refer the Court to such documents as the best statement of their contents and import, and admit that MBIA Inc. did not contribute its own cash to either MBIA Corp. or National Public Finance in connection with the Transformation.

75. Deny the allegations contained in paragraph 75 of the Petition, except to the extent that the truth thereof is reflected in publicly available documents relied on by petitioners, and respectfully refer the Court to such document as the best statement of its contents and import; and affirmatively aver that, because the notes repurchased by MBIA Inc. were guaranteed by MBIA Corp., the repurchasing of such notes reduced MBIA Corp.'s potential future liabilities.

76. Deny the allegations contained in paragraph 76 of the Petition.

77. Deny the allegations contained in paragraph 77 of the Petition, except to the extent that the truth thereof is reflected in the documents relied on by petitioners and respectfully refer the Court such documents as the best statements of their contents; affirmatively aver that the allegations contained in such paragraph are irrelevant to decision of the issue herein

regarding whether the Department's determination approving the Transformation was rational because (a) such action took place after the Department's determination and therefore could not have been considered by the Department, (b) the Department does not regulate FGIs' financial activities in order to maximize the value of investments insured by FGIs, and (c) the Department's determination was made on the basis of its review and analysis of extensive, non-public information that was not available to Moody's.

78. Deny the allegations contained in paragraph 78 of the Petition, except to the extent that the truth thereof is reflected in the document relied on by petitioners and respectfully refer the Court to such document as the best statement of its contents; affirmatively aver that the allegations contained in such paragraph are irrelevant to decision of the issue herein regarding whether the Department's determination approving the Transformation was rational because (a) such action took place after the Department's determination and therefore could not have been considered by the Department, (b) the Department does not regulate FGIs' financial activities in order to maximize the value of investments insured by FGIs, and (c) the Department's determination was made on the basis of its review and analysis of extensive, non-public information that was not available to Moody's.

79. Deny the allegations contained in paragraph 79 of the Petition, except to the extent that the truth thereof is reflected in the documents relied on by petitioners, and respectfully refer the Court to such documents as the best statement of their contents and import; affirmatively aver that the allegations contained in such paragraph are irrelevant to decision of the issue herein regarding whether the Department's determination approving the Transformation was rational because (a) such action took place after the Department's determination and

therefore could not have been considered by the Department, (b) the Department does not regulate FGIs' financial activities in order to maximize the value of investments insured by FGIs, and (c) the Department's determination was made on the basis of extensive, non-public information that was not available to Moody's.

80. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 80, and respectfully refer the Court to the documents relied on by petitioners as the best statement of their contents and import; affirmatively aver that the market's reaction to the Transformation is irrelevant to decision of the issue herein regarding whether the Department's determination approving the Transformation was rational because (a) the alleged reaction took place after the Superintendent's determination and therefore could not have been considered by the Department, (b) the Department does not regulate FGIs' financial activities in order to maximize the value of investments insured by FGIs, and (c) the Superintendent's determination was made on the basis of extensive, non-public information that was not available to the market.

81. Deny the allegations contained in paragraph 81 of the Petition, and respectfully refer the Court to the document relied on by petitioners as the best statement of its contents and import; affirmatively aver that, as part of its independent analysis of MBIA Corp.'s post-Transformation solvency, the Department was aware of the uncertainties and assumptions necessarily involved in the MBIA Entities' ability to model future performance and conducted an examination and testing of their assumptions and models, and considered the results thereof in reaching its decision to approve the Transformation.

82. Deny the allegations contained in paragraph 82 of the Petition, and respectfully refer the Court to the documents relied on by petitioners as the best statement of their contents and import; affirmatively aver that, as part of its independent analysis of MBIA Corp.'s post-Transformation solvency, the Department conducted an independent examination of the MBIA Corp.'s projections, and considered the results of such analysis in reaching its decision to approve the Transformation.

83. Deny the allegations contained in paragraph 83 of the Petition, except to the extent that the truth thereof is reflected in the document relied on by petitioners, and respectfully refer the Court to such document as the best statement of its contents and import; deny the allegation that MBIA Inc.'s offer to buy MBIA Corp. preferred stock at a 90% discount suggests that MBIA Corp. is insolvent; affirmatively aver that MBIA Inc.'s decision, announced months after the Transformation was approved, is irrelevant to the Superintendent's determination to approve the Transformation; further affirmatively aver that MBIA Inc.'s tender offer, in effect paying \$0.10 on the dollar to retire its own debt (and thereby reducing its future liabilities) is a rational business decision.

84. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 84 of the Petition, and respectfully refer the Court to the document relied on by petitioners as the most accurate statement of its contents, except admit that the Department spoke to a representative of CreditSights after the Transformation had been approved, publicly announced, and implemented; affirmatively aver that the Credit Sights report also states, among other things, that (a) "both the NYSID and outside advisors concluded that MBIA [Insurance] Corp. has enough capital to meet its policyholders' obligations," and (b) in

CreditSights' opinion, petitioners' ultimate intent in litigating is to improve their position in regard to negotiating commutations because, should the Transformation be reversed, it "would almost certainly send the combined company into run-off" and, as such, disadvantage petitioners; further affirmatively aver that the CreditSights' report, dated May 21, 2009, is irrelevant to a decision on the issue herein regarding whether the Department's determination approving the Transformation was rational because (a) it was published months after that determination was made, (b) the Department does not regulate FGIs' financial activities in order to maximize the value of investments insured by FGIs, and (c) the Department's determination was made on the basis of extensive, non-public information that was not available to CreditSights at the time it issued its opinion.

85. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 85 of the Petition, and respectfully refer the Court to the document relied on by petitioners as the best statement of its contents; affirmatively aver that the CreditSights' report, dated June 3, 2009, is irrelevant to a decision on the issue herein regarding whether the Department's determination to approve the Transformation was rational because (a) it was published months after that determination was made, (b) the Department does not regulate FGIs' financial activities in order to maximize the value of investments insured by FGIs, and (c) the Department's determination was made on the basis of extensive, non-public information that was not available to CreditSights at the time it issued its opinion.

86. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 86 of the Petition, and respectfully refer the Court to the documents relied on by petitioners as the best statement of their contents; affirmatively aver that

MBIA Inc.'s method of calculating assets and liabilities for purposes of its SEC filings is irrelevant to a decision on the issue herein regarding whether the Department's determination to approve the Transformation was rational, because the Department utilized MBIA Corp.'s filings based on statutory accounting rather than GAAP accounting as required by the Insurance Law and Regulation 172.

87. Deny the allegations contained in paragraph 87 of the Petition; affirmatively aver that the definition of insolvency stated by petitioners in such paragraph is irrelevant in this proceeding because the Department's determination of MBIA Corp.'s post-Transformation solvency was based on the definition of insolvency provided for in Insurance Law § 1309, which the Department was required to utilize in making its determination.

88. Deny the allegations contained in paragraph 88 of the Petition.

89. Deny the allegations contained in paragraph 89 of the Petition.

**F. The Actions of the NYID in Issuing the NYID Letter Exceeded the NYID's Authority and Were Arbitrary, Capricious and an Abuse of Discretion.**

90. Neither admit nor deny the allegations contained in first sentence of paragraph 90 of the Petition as they constitute conclusions of law requiring no response and respectfully refer the Court to the Insurance Law as the best statement of its contents and import, except admit that the Department is charged with enforcing the Insurance Law.

91. Deny the allegations contained in paragraph 91 of the Petition, except to the extent that the truth thereof is reflected in the document relied on by petitioners, and respectfully refer the Court to such document as the best statement of its contents.

92. Deny the allegations contained in paragraph 92 of the Petition, except to the extent that the truth thereof is reflected in the document relied on by petitioners, and respectfully refer the Court to such document as the best statement of its contents.

93. Deny the allegations contained in paragraph 93 of the Petition, except to the extent that the truth thereof is reflected in the publicly filed document relied on by petitioners and respectfully refer the Court to such document as the best statement of its contents and meaning and admit the allegations contained in the first sentence of such paragraph.

94. Deny the allegations contained in paragraph 94 of the Petition.

95. Admit the allegations contained in the first sentence of paragraph 95 of the Petition, deny the remaining allegations in such paragraph and respectfully refer the Court to the documents relied on by petitioner as the best statement of their contents; affirmatively aver that any such public statements were made not in response to any application submitted by the MBIA Entities but, nearly ten months earlier, in response to a proposal by a third-party hedge fund manager and short seller of U.S. bond insurer stocks who proposed that the municipal business be split off and made a subsidiary of the structured finance business (see DiBlasi Aff. Ex. 47), which was different from the Application approved by the Department pursuant to the standards set out in Insurance Law; further affirmatively aver that the Department's approval of the Transformation comports with the Insurance Law for the reasons set out in the Record, the Approval Letter, the Moriarty Aff., the Buchmiller Aff., the exhibits thereto and the accompanying memorandum of law.

96. Deny the allegations contained in paragraph 96 of the Petition and respectfully refer the Court to the document relied on by petitioners as the best statement of their contents;

affirmatively aver that the market value of the insurance policies held by petitioners is irrelevant to the issue of whether there was a rational basis for the Department's approval of the Transformation because the credit ratings of insurers and the "market value" of the structured-finance insurance policies are not regulated by the Department.

97. Deny the allegations contained in paragraph 97 of the Petition, except neither admit nor deny the allegations contained in the second sentence of such paragraph as they constitute conclusions of law requiring no response, and respectfully refer the Court to Insurance Law § 1505 for the best statement of its contents.

98. Deny the allegations contained paragraph 98 of the Petition except to the extent that the truth thereof is reflected in the documents relied on by petitioners and respectfully refer the Court to the Approval Letter as the best statement of its contents and of the transactions approved by the Department and to the documents relied on by petitioners as the best statements of their contents and import; neither admit nor deny the remaining allegations contained in such paragraph as they constitute conclusions of law requiring no response and respectfully refer the Court to Insurance Law § 4105 as the best statement of its contents and meaning.

99. Deny the allegations contained in paragraph 99 of the Petition, except neither admit nor deny the allegations contained in sub-paragraph "a" of such paragraph as they constitute conclusions of law requiring no response and respectfully refer the Court to Insurance Law § 4105(a) as the best statement of its contents and meaning, and admit the allegations contained in sub-paragraph "b" of such paragraph.

100. Deny the allegations contained in paragraph 100 of the Petition, except to the extent that the truth thereof is reflected in the Approval Letter and respectfully refer the Court to

the Approval Letter as the best statement of the components of the Transformation; deny the allegations contained in sub-paragraphs “b,” and “e” of such paragraph, except to the extent that the truth thereof is reflected in the documents relied on by petitioners and respectfully refer the Court to such documents as the best statement of their contents; deny the remaining allegations contained in such paragraph, except neither admit nor deny the allegations contained in the first sentence of sub-paragraph “a” of such paragraph regarding contents and meaning of Insurance Law § 4105(a) as they constitute conclusions of law requiring no response; respectfully refer the Court to Insurance Law §§ 4105(a) and 1411(d), the provision that specifically applies to an insurer’s purchase of its own stock, as the best statement of their contents and meaning.

101. Deny the allegations contained in paragraph 101 of the Petition, except neither admit nor deny the allegations contained in sub-paragraphs “a” and “e” of such paragraph regarding the contents and meaning of Insurance Law §§ 1411(d) and 1505 as they constitute conclusions of law requiring no response and respectfully refer the Court to those provisions of the Insurance Law as the best statement of their contents and meaning and deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in sub-paragraph “c” of such paragraph

102. Deny the allegations contained in the first sentence of paragraph 102 of the Petition, except to the extent that the truth thereof is reflected in the Approval Letter and respectfully refer the Court to the Approval Letter as the best statement of the components of the Transformation; deny the remaining allegations contained in such paragraph, except neither admit nor deny the allegations contained sub-paragraph “a” of such paragraph as they constitute

conclusions of law requiring no response, and respectfully refer the Court to Insurance Law §§ 1505(a), (d) and (e) as the best statement of their contents.

103. Deny the allegations contained in the first sentence of paragraph 103 of the Petition except to the extent that the truth thereof is reflected in the Approval Letter, and respectfully refer the Court to the Approval Letter as the best statement of its contents; deny the remaining allegations contained in such paragraph; affirmatively aver that the Application, as well as all supporting documentation provided by the MBIA Entities to the Department in connection with the Application, are confidential and excepted from public disclosure for the reasons set forth in the Department's FOIL determinations, dated June 26, 2009 and July 27, 2009, attached hereto as Exhibits B and C, respectively; further affirmatively aver, on information and belief, that the Application, as well as all the supporting documentation, have been provided to petitioners by the MBIA Entities in the Plenary Action subject to the terms of a confidentiality agreement.

104. Deny the allegations contained in paragraph 104 of the Petition and respectfully refer the Court to the document relied on by petitioners as the best statement of its contents; neither admit nor deny the allegations contained in the second sentence of such paragraph as they constitute conclusions of law requiring no response, except deny any implication that the Department did not conduct an independent solvency analysis.

105. Deny the allegations contained in paragraph 105 of the Petition.

**FIRST CAUSE OF ACTION**  
**To Declare Void and To Annul the NYID Letter Under CPLR § 7803**

106. Repeat and reallege the responses and averments contained in paragraphs 1 through 105 above, as if fully set forth herein.

107. Deny the allegations contained in paragraph 107 of the Petition.

108. Deny the allegations contained in paragraph 108 of the Petition.

109. Deny the allegations contained in paragraph 109 of the Petition.

110. Deny the allegations contained in paragraph 110 of the Petition.

**SECOND CAUSE OF ACTION**  
**To Recover Unlawful Dividends Under Insurance Law § 4105(b)**

111. Repeat and reallege the responses and averments contained in paragraphs 1 through 110 above, as if fully set forth herein.

112. Deny the allegations contained in paragraph 112 of the Petition, and respectfully refer the Court to the Approval Letter as the best statement of the components of the Transformation.

113. Deny the allegations contained in paragraph 113 of the Petition.

114. Neither admit nor deny the allegations contained in paragraph 114 of the Petition as they constitute conclusions of law requiring no response, and respectfully refer the Court to Insurance Law § 4105(b) as the best statement of its contents.

115. Deny the allegations contained in paragraph 115 of the Petition.

**THIRD CAUSE OF ACTION**  
**For a Declaration that the NYID Letter Does Not Extinguish**  
**Petitioner's Claims Against MBIA in the Fraudulent Conveyance Transaction**

116. Repeat and reallege the responses and averments contained in paragraphs 1 through 115 above, as if fully set forth herein.

117. Admit that petitioners seek the declaratory relief, in this article 78 proceeding, set out in the allegations contained in the first sentence of paragraph 117 of the Petition but deny that petitioners are entitled to such relief; deny the remaining allegations contained in such paragraph and respectfully refer the Court to petitioners' complaint and the MBIA Entities' motion to dismiss in the Plenary Action as the best statements of the referenced controversy; affirmatively aver that the Plenary Action, not this article 78 proceeding, is the appropriate forum for adjudication of this controversy between petitioners and the MBIA Entities.

118. Deny the allegations contained in paragraph 118 of the Petition, except to the extent that the truth thereof is contained in the Approval Letter and respectfully refer the Court to the Approval Letter as the best statement of its contents and meaning.

119. Deny the allegations contained in paragraph 119 of the Petition.

120. Deny the allegations contained in paragraph 120 of the Petition.

121. Deny the allegations contained in paragraph 121 of the Petition, except to the extent that the truth thereof is reflected in the Approval Letter and respectfully refer the Court to the Record, the Approval Letter, the Moriarty Aff., the Buchmiller Aff. and the exhibits thereto, and respectfully refer the Court to such documents as the best statements of the information reviewed by the Department; affirmatively aver that the Department followed all proper procedures in approving the Transformation; further affirmatively aver that the Application, supporting materials and the Department's deliberations are confidential and excepted from public disclosure for the reasons set forth in the Department's FOIL determinations, dated June

26, 2009 and July 27, 2009, copies of which are attached hereto as Exhibits B and C, respectively, and that no appeal was taken from the Department's determination of the S&C FOIL Request..

122. Admit the allegations contained in paragraph 122 of the Petition; affirmatively aver that the Department followed all proper procedures in approving the Transformation; further affirmatively aver that there is no provision of the Insurance Law that required the Department to issue public notice, solicit public comment, hold public hearings, or offer petitioners an opportunity to be heard prior to its approval of the Transformation and therefore the Department's action was not arbitrary or unlawful.

123. Neither admit nor deny the allegations contained in paragraph 123 of the Petition as they constitute conclusions of law requiring no response or state the legal basis of the Petition; affirmatively aver that, when the debtor is an insurer, the more specific provisions of the Insurance Law take precedence over the more general provisions of the Debtor and Creditor Law or the common law, and respectfully refer the Court to the State Respondents' accompanying memorandum of law for a statement of the relevant, applicable law.

124. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 124 of the Petition, except neither admit nor deny the allegations of such paragraph to the extent they state conclusions of law which require no response.

125. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 125 of the Petition, except neither admit nor deny the allegations contained in such paragraph regarding the Insurance Law's requirements as they

constitute conclusions of law requiring no response or set forth the legal basis of the Petition and respectfully refer the Court to the Insurance Law as the best statement of its contents and meaning.

126. Neither admit nor deny the allegations contained in paragraph 126 of the Petition as they constitute conclusions of law requiring no response or state the legal basis of the Petition.

127. Neither admit nor deny the allegations contained in paragraph 127 of the Petition as they constitute conclusions of law requiring no response or state the legal basis of the Petition.

128. Deny the allegations contained in paragraph 128 of the Petition and respectfully refer the Court to the Approval Letter as the best statement of its contents.

129. Deny the allegations contained in paragraph 129 of the Petition, except admit that the Department approved the Transformation as set out in the Approval Letter.

130. Deny the allegations contained in paragraph 130 of the Petition, except admit that the Department approved the Transformation as set out in the Approval Letter; affirmatively aver that the Transformation comported with the requirements of the Insurance Law.

131. Neither admit nor deny the allegations contained in paragraph 131 of the Petition as they constitute conclusions of law requiring no response or state the legal basis of the Petition; affirmatively aver that the Department's approval of the Transformation comported with the requirements of the Insurance Law.

132. Neither admit nor deny the allegations contained in paragraph 132 of the Petition as they constitute conclusions of law requiring no response or state the legal basis of the Petition; however, to the extent that a response is deemed to be required, deny such allegations; affirmatively aver that the Insurance Law does not contemplate the Department's regulation of

the “market value” of petitioners’ individual policies or petitioners’ “investment-backed expectations.”

133. Neither admit nor deny the allegations contained in paragraph 133 of the Petition as they constitute conclusions of law requiring no response or state the legal basis of the Petition.

134. Deny the allegations contained in paragraph 134 of the Petition.

135. Deny the allegations contained in paragraph 135 of the Petition.

136. Neither admit nor deny the allegations contained in paragraph 136 of the Petition as they constitute conclusions of law requiring no response or state the legal basis of the Petition, except deny that petitioners are entitled to the relief requested and that this article 78 proceeding is not the proper forum for determination of this controversy between petitioners and the MBIA Entities.

#### **AS AND FOR A FIRST DEFENSE**

137. Repeat, reallege and incorporate by reference the responses and averments in paragraphs 1 through 136 of this verified answer (the “Answer”) with the same force and effect as if fully set forth herein.

138. As shown in greater detail in the accompanying Buchmiller Aff., Moriarty Aff., the exhibits thereto and the accompanying memorandum of law, the State Respondents’ approval of the Transformation was neither arbitrary nor capricious, nor an abuse of discretion.

139. As shown in greater detail in the accompanying memorandum of law, the State Respondents’ approval of the Transformation was in accord with the Insurance Law and the New York and United States Constitutions.

**AS AND FOR A SECOND DEFENSE**

140. Repeat, reallege and incorporate by reference the responses and averments in paragraphs 1 through 139 of this Answer with the same force and effect as if fully set forth herein.

141. The Petition fails to state a cause of action.

**WHEREFORE**, the Petition should be denied in its entirety with costs, and the Court should grant such other and further relief as it deems just and proper.

Dated: New York, New York  
November 24, 2009

ANDREW M. CUOMO  
Attorney General of the  
State of New York  
Attorney for Respondents Eric R. Dinallo and the  
New York State Insurance Department  
By:

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HILARY R. KASTLEMAN  
Assistant Attorney General  
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**Verification**

Eugene Bengner, an attorney duly admitted to practice in the courts of this State, affirms the following under penalty of perjury pursuant to CPLR 2106:

I am an attorney, duly admitted in the State of New York, and I am employed by the New York State Insurance Department (“Insurance Department”).

I have read the foregoing answer and know the contents thereof; that the same is true to my own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

The grounds of my belief as to all matters not specifically stated upon my personal knowledge are as follows: records of the Insurance Department and correspondence and conversations with the Insurance Department’s employees.

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Eugene Bengner

Dated: New York, New York  
November 24, 2009