

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 BANK OF :
COMMERCE; CITIBANK, N.A.; HSBC :
BANK USA, N.A.; JPMORGAN CHASE :
BANK, N.A.; KBC INVESTMENTS :
CAYMAN ISLANDS V LTD.; MERRILL :
LYNCH INTERNATIONAL; BANK OF :
AMERICA, N.A.; MORGAN STANLEY :
CAPITAL SERVICES INC.; NATIXIS; :
NATIXIS FINANCIAL 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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Index No.:

601846/09

VERIFIED PETITION

Filed in New York County
June 15, 2009

Petitioners ABN AMRO Bank N.V.; Barclays Bank PLC; BNP Paribas; Calyon;
Canadian Imperial Bank of Commerce; Citibank, N.A.; HSBC Bank USA, N.A.; JPMorgan
Chase Bank, N.A.; KBC Investments Cayman Islands V Ltd.; Merrill Lynch International; Bank

of America, N.A.; Morgan Stanley Capital Services Inc.; Natixis; Natixis Financial 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. (collectively, “Petitioners”), for their petition against Respondents Eric Dinallo, in his capacity as Superintendent of the New York State Insurance Department (the “Superintendent”), the New York State Insurance Department (the “NYID”), MBIA Inc., MBIA Insurance Corporation (“MBIA Insurance”), and National Public Finance Guarantee Corporation (formerly known as MBIA Insurance Corp. of Illinois) (“MBIA Illinois”) (collectively, “MBIA”), allege as follows:

PRELIMINARY STATEMENT

1. This is an action pursuant to Article 78 of the CPLR arising out of an unlawful restructuring of MBIA, which was consummated on February 17, 2009 (the “Fraudulent Restructuring”). Pursuant to this Fraudulent Restructuring, MBIA stripped approximately \$5 billion in cash and securities out of MBIA Insurance and transferred those assets into MBIA Illinois so that they would not be available to pay claims made by Petitioners and other holders of financial guarantee insurance policies insuring “structured-finance” obligations written by MBIA Insurance. This was done amidst, and as a result of, an ongoing financial crisis that has made it increasingly likely that MBIA Insurance will have to pay out billions in claims. In short, MBIA Inc. and its management unlawfully have financed a new business by purporting to extinguish the rights of MBIA Insurance’s policyholders to the transferred assets.

2. The table below illustrates some of the pernicious effects of the Fraudulent Restructuring on MBIA Insurance and its structured-finance policyholders:

MBIA INSURANCE¹

	Before Fraudulent Restructuring	After Fraudulent Restructuring
Cash and Investments	\$9.6 Billion	\$4.4 Billion
Claims-Paying Resources	\$15 Billion	\$8.8 Billion
Face Amount of Structured-Finance Policies	\$233 Billion	\$233 Billion
Face Amount of Municipal-Bond Policies	\$554 Billion	\$554 Billion (reinsured by MBIA Illinois)

3. The Superintendent has acknowledged that insurance regulators like the NYID are required to protect the interests of all policyholders and cannot show favoritism. In apparent recognition of this duty, the NYID publicly acknowledged in February 2008 that a proposed restructuring that would “split” the assets of MBIA Insurance into separate municipal-bond and structured-finance companies was impermissible, because it “would in all likelihood result in a substantial downgrade” of MBIA Insurance, and that “a substantial downgrade to the structured side [would be] not good for one group of policyholders, the banks.” (*See* ¶ 95, *infra*.) But one year later, the Superintendent and NYID reversed course by approving transactions that allowed MBIA to engage in just that type of restructuring—and MBIA’s Fraudulent Restructuring has seriously harmed structured-finance policyholders such as Petitioners.

4. In a letter dated February 17, 2009, the NYID approved various components of the Fraudulent Restructuring under certain specified provisions of the New York Insurance Law (the “NYID Letter”).² In December 2008, MBIA submitted an application and

¹ MBIA made the Fraudulent Restructuring retroactive to January 1, 2009. This table uses approximate figures taken from MBIA Inc.’s year-end 2008 financial statements. However, MBIA Insurance’s financial condition deteriorated during the first quarter of 2009 and, on information and belief, continues to weaken. (*See* ¶ 67, *infra*.)

² A copy of the NYID Letter is annexed as Exhibit 1 to the Affirmation of Gandolfo V. DiBlasi in Support of Verified Petition (“DiBlasi Aff.” or “DiBlasi Affirmation”), which is being filed and served along with this Petition.

supporting materials to the NYID seeking these approvals (the “Application”). Even though the Fraudulent Restructuring discriminates against MBIA Insurance’s structured-finance policyholders, neither MBIA nor the NYID disclosed to policyholders or the public that MBIA had submitted the Application.

5. Although a critical component of the NYID’s mission is to “[p]rotect policyholders from financially impaired or insolvent insurers,”³ the NYID issued the NYID Letter without holding a hearing or seeking input from affected policyholders. In issuing the NYID Letter, the NYID assumed and relied on the truth of MBIA’s self-serving assertions concerning MBIA Insurance’s financial condition in the *ex parte* Application. A recent analyst report indicated that the NYID relied on a solvency analysis conducted by MBIA—*whose actions the NYID is supposed to police*—rather than a third-party analysis.⁴

6. The NYID has never publicly released the Application or any documentation concerning the NYID’s review of MBIA’s Application—even in response to a Freedom of Information Law (“FOIL”) request filed by Petitioners’ counsel shortly after the Fraudulent Restructuring.⁵ According to a letter from the NYID to MBIA dated May 28, 2009, MBIA submitted to the NYID “statements of necessity explaining why the documents should not be disclosed.”⁶ In that same letter, the NYID indicated that it would respond to Petitioners’

³ DiBlasi Aff. Ex. 2 (printout from NYID website).

⁴ See DiBlasi Aff. Ex. 3 (Credit Sights report, dated May 21, 2009), at 2-3 (“The capital contribution was subject to a solvency type approval test to determine whether both entities are actually solvent following the capital transfer. The NYSID said that it relied on solvency analysis done by the company itself and not third parties.”).

⁵ DiBlasi Aff. Ex. 4 (FOIL request, dated February 24, 2009).

⁶ DiBlasi Aff. Ex. 5 (letter from the NYID to MBIA, dated May 28, 2009).

FOIL request by June 26, 2009—by which time Respondents could argue that an Article 78 challenge to the NYID Letter was time-barred.

7. By issuing the NYID Letter, the NYID committed several serious errors, all of which require that the NYID Letter be annulled:

- a. The NYID acted arbitrarily and capriciously, and abused its discretion, by issuing the NYID Letter when the Fraudulent Restructuring, viewed as a whole, was not “fair and equitable” to MBIA Insurance or its policyholders, as required by Insurance Law § 1505(a);
- b. The NYID exceeded its authority by approving, under Insurance Law § 4105(a), the payment of a \$1.147 billion dividend by MBIA Insurance, an amount far in excess of MBIA Insurance’s “earned surplus” (a statutory cap on the payment of dividends that the Superintendent does *not* have authority to waive) when the dividend was paid;
- c. Regardless of whether the \$1.147 billion dividend exceeded MBIA Insurance’s earned surplus, the NYID acted arbitrarily and capriciously, and abused its discretion, by approving this dividend under Insurance Law § 4105(a) after finding that MBIA Insurance would retain “sufficient surplus to support its obligations and writings,” even though MBIA Insurance on information and belief lacked such surplus;
- d. The NYID exceeded its authority by approving, under Insurance Law § 1411(d), additional transfers from MBIA Insurance to MBIA Inc. (\$938 million in cash and securities and all the common stock of MBIA Illinois) that were structured as a “redemption” by MBIA Insurance of a portion of its own common stock but that in reality were disguised unlawful dividends by MBIA Insurance in excess of its “earned surplus”;
- e. Regardless of whether these transfers are viewed as a stock redemption, the NYID acted arbitrarily and capriciously, and abused its discretion, by approving them as “reasonable and equitable” under Insurance Law § 1411(d) when they provided no value to MBIA Insurance, and when the price paid by MBIA Insurance for shares of its own *common* stock far exceeded the price paid by MBIA Insurance to repurchase shares of its own *preferred* stock (which is senior to common stock) during 2008; and
- f. The NYID acted arbitrarily and capriciously, and abused its discretion, by approving as “fair and equitable,” as containing “reasonable” fees under Insurance Law § 1505, and as not adversely affecting the interests of policyholders, an agreement whereby MBIA Insurance paid \$2.89 billion

to purchase “reinsurance” from MBIA Illinois, when all of MBIA Illinois’ assets had just been stripped from MBIA Insurance.

There is no basis under the Insurance Law to approve any transaction that, like those done as part of the Fraudulent Restructuring, subordinates the contractual interests of the policyholders of a financially distressed insurer to the interests of its holding company.

8. On February 18, 2009, the day after the NYID Letter was issued, MBIA and the NYID announced that the Fraudulent Restructuring had already occurred and had been given retroactive effect to January 1, 2009, thus preventing policyholders from seeking an injunction.⁷ Shortly thereafter:

- a. MBIA Insurance’s credit rating was downgraded to “junk” by Moody’s;
- b. The market price for credit protection on debts of MBIA Insurance (a measure of the market’s view of the likelihood that MBIA Insurance would default on its debts) spiked upward;
- c. Commentators expressed concern that MBIA Insurance would “wither and die”; and
- d. More recently, an independent analysis firm has published reports stating that its “own analysis of MBIA’s structured product book of business . . . conflicts with MBIA’s conclusion that [MBIA Insurance] has sufficient capital to meet its policyholders’ obligations,” and opining that its projections show that MBIA Insurance may run out of capital in 2012 under its “base case” (which means that less conservative assumptions would yield an even earlier date).⁸

9. These market reactions corroborate Petitioners’ belief that, based on the limited publicly available information, MBIA Insurance is now insolvent. As a result, the value of Petitioners’ insurance policies has plunged.

⁷ See DiBlasi Aff. Ex. 6 (MBIA Inc. February 18, 2009 press release); Ex. 7 (NYID February 18, 2009 press release).

⁸ See DiBlasi Aff. Ex. 3 (CreditSights May 21, 2009 report), at 1; Ex. 8 (CreditSights June 3, 2009 report), at 1.

10. Indeed, MBIA Inc.—despite its own repeated claims that MBIA Insurance is still solvent—recently offered to buy MBIA Insurance’s preferred stock (which will be worthless if MBIA Insurance’s creditors, including its policyholders, are not paid in full) for only ten cents on the dollar.⁹ MBIA Inc.’s tender offer confirms that even under the most optimistic of scenarios, MBIA Insurance’s solvency rests on a razor’s edge. This tender offer is the latest in a series of transactions in which MBIA Inc. has spent hundreds of millions of dollars to pay securityholders who rank junior to MBIA Insurance policyholders—while stripping away from MBIA Insurance billions in assets that would have been available to pay policyholders’ claims.

11. MBIA has attempted to use the NYID Letter as a shield to deflect criticism of the Fraudulent Restructuring. Yet MBIA and the NYID have refused to disclose MBIA’s Application—the accuracy of which was assumed and relied upon by the NYID in issuing the NYID Letter. As a result, there is virtually no public record as to why the NYID approved certain aspects of a plainly unfair, inequitable and unreasonable transaction that, on information and belief, has left MBIA Insurance insolvent and undercapitalized.

12. On May 13, 2009, Petitioners commenced an action against MBIA in New York Supreme Court, New York County, captioned *ABN AMRO Bank N.V. v. MBIA Inc.*, Index No. 601475/09 (N.Y. Sup. Ct.) (the “Fraudulent Conveyance Action”).¹⁰ The Fraudulent Conveyance Action alleges (among other things) that the Fraudulent Restructuring involved a series of fraudulent conveyances designed to escape MBIA Insurance’s coverage obligations to its policyholders, in violation of the New York Debtor and Creditor Law and in breach of MBIA Insurance’s contracts with Petitioners. The Fraudulent Conveyance Action seeks (among other

⁹ See DiBlasi Aff. Ex. 9 (MBIA Inc. May 13, 2009 press release).

¹⁰ See DiBlasi Aff. Ex. 10 (Complaint in the Fraudulent Conveyance Action).

remedies) to invalidate the unlawful transfers out of MBIA Insurance. Two other lawsuits have also been filed against MBIA, making similar allegations and seeking similar remedies.¹¹

13. On June 9, 2009, MBIA filed a motion to dismiss the Fraudulent Conveyance Action, arguing that Plaintiffs' claims in the Fraudulent Conveyance Action against MBIA constitute a "collateral attack" on the NYID's actions in issuing the NYID Letter that can only be brought in an Article 78 proceeding.¹² In essence, MBIA is arguing either that the Insurance Law pre-empts the Debtor and Creditor Law and the common law, or that the NYID has the power to unilaterally extinguish policyholders' legal rights against an insurer. Both arguments are incorrect.

14. The NYID Letter does not in any way preclude Petitioners' claims against MBIA in the Fraudulent Conveyance Action. The Insurance Law does not pre-empt the Debtor and Creditor Law or the common law. The NYID did not review the transfers challenged in the Fraudulent Conveyance Action under applicable principles of common law or the Debtor and Creditor Law, nor did the NYID approve the Fraudulent Restructuring as a whole. Instead, as set forth in the NYID Letter, the NYID only approved or declined to disapprove certain components of a proposal by MBIA under discrete provisions of the Insurance Law. Moreover, the NYID Letter did not purport to—and could not properly—authorize fraudulent conveyances of assets out of MBIA Insurance, or immunize them from challenge under the Debtor and Creditor Law or the common law.

¹¹ See DiBlasi Aff. Ex. 11 (Complaint in *Aurelius Capital Master, Ltd. v. MBIA Inc.*, No. 09-CV-2242 (RJS) (S.D.N.Y.)); Ex. 12 (Complaint in *Third Avenue Trust v. MBIA Insurance Corp.*, C.A. No. 4486-VCS (Del. Ch.)).

¹² See DiBlasi Aff. Ex. 13 (Defendants' Memorandum of Law in Support of Motion to Dismiss, filed in the Fraudulent Conveyance Action on June 9, 2009), at 3 (arguing that "the exclusive means for plaintiffs to challenge the Transactions approved by the Superintendent is through an Article 78 proceeding").

15. As a result of MBIA's erroneous arguments that the NYID Letter effectively trumps all other laws, and that the Fraudulent Conveyance Action is a "collateral attack" on the actions by the NYID and the Superintendent in issuing the NYID Letter that can only be brought in an Article 78 proceeding, Petitioners hereby institute this proceeding to preserve their potential claims under Article 78 with respect to the Fraudulent Restructuring.

THE PARTIES

16. Petitioner ABN AMRO Bank N.V. is a financial institution organized under the laws of The Netherlands. ABN AMRO Bank N.V. holds insurance policies with MBIA Insurance, whereby MBIA Insurance guaranteed (directly or indirectly) the repayment of structured-finance products.

17. Petitioner Barclays Bank PLC is a public limited company organized under the laws of England and Wales. Barclays Bank PLC holds insurance policies with MBIA Insurance, whereby MBIA Insurance guaranteed (directly or indirectly) the repayment of structured-finance products.

18. Petitioner BNP Paribas is a banking corporation organized as a "société anonyme" under the laws of the Republic of France. BNP Paribas holds insurance policies with MBIA Insurance, whereby MBIA Insurance guaranteed (directly or indirectly) the repayment of structured-finance products.

19. Petitioner Calyon is a banking corporation organized under the laws of the Republic of France. Calyon holds insurance policies with MBIA Insurance, whereby MBIA Insurance guaranteed (directly or indirectly) the repayment of structured-finance products.

20. Petitioner Canadian Imperial Bank of Commerce is a bank organized under the Bank Act of Canada. Canadian Imperial Bank of Commerce holds insurance policies with MBIA Insurance, whereby MBIA Insurance guaranteed (directly or indirectly) the repayment of structured-finance products.

21. Petitioner Citibank, N.A. is a bank organized under the laws of the United States. Citibank, N.A. holds insurance policies with MBIA Insurance, whereby MBIA Insurance guaranteed (directly or indirectly) the repayment of structured-finance products.

22. Petitioner HSBC Bank USA, N.A. is a bank organized under the laws of the United States. HSBC Bank USA, N.A. holds insurance policies with MBIA Insurance, whereby MBIA Insurance guaranteed (directly or indirectly) the repayment of structured-finance products.

23. Petitioner JPMorgan Chase Bank, N.A. is a bank organized under the laws of the United States. JPMorgan Chase Bank, N.A. holds insurance policies with MBIA Insurance, whereby MBIA Insurance guaranteed (directly or indirectly) the repayment of structured-finance products.

24. Petitioner KBC Investments Cayman Islands V Ltd. is a limited liability company organized under the laws of the Cayman Islands. KBC Investments Cayman Islands V Ltd. holds insurance policies with MBIA Insurance, whereby MBIA Insurance guaranteed (directly or indirectly) the repayment of structured-finance products.

25. Petitioner Merrill Lynch International is a company organized under the laws of England and Wales. Petitioner Bank of America, N.A. is a bank organized under the laws of the United States. Merrill Lynch International and Bank of America, N.A. hold insurance policies with MBIA Insurance, whereby MBIA Insurance guaranteed (directly or indirectly) the repayment of structured-finance products.

26. Petitioner Morgan Stanley Capital Services Inc. is a corporation organized under the laws of the state of Delaware with its principal office in New York City. Morgan Stanley Capital Services Inc. holds insurance policies with MBIA Insurance, whereby MBIA Insurance guaranteed (directly or indirectly) the repayment of structured-finance products.

27. Petitioner Natixis is a French public limited corporation (société anonyme) with a board of directors. Petitioner Natixis Financial Products Inc. is a Delaware corporation. Natixis and Natixis Financial Products Inc. hold insurance policies with MBIA Insurance, whereby MBIA Insurance guaranteed (directly or indirectly) the repayment of structured-finance products.

28. Petitioner Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A., New York Branch (“Rabobank”) is a cooperative banking association organized under the laws of The Netherlands and licensed to conduct banking business in the State of New York. Rabobank holds insurance policies with MBIA Insurance, whereby MBIA Insurance guaranteed (directly or indirectly) the repayment of structured-finance products.

29. Petitioner Royal Bank of Canada is a chartered bank organized under the Bank Act (Canada). Royal Bank of Canada, through its London branch, holds insurance policies with MBIA Insurance, whereby MBIA Insurance guaranteed (directly or indirectly) the repayment of structured-finance products.

30. Petitioner The Royal Bank of Scotland plc is a bank organized under the laws of Scotland. The Royal Bank of Scotland plc holds insurance policies with MBIA Insurance, whereby MBIA Insurance guaranteed (directly or indirectly) the repayment of structured-finance products.

31. Petitioner SMBC Capital Markets Limited is a limited liability company organized under the laws of England and Wales. SMBC Capital Markets Limited holds insurance policies with MBIA Insurance, whereby MBIA Insurance guaranteed (directly or indirectly) the repayment of structured-finance products.

32. Petitioner Société Générale is a banking corporation organized under the laws of the Republic of France, acting through its New York Branch. Société Générale holds

insurance policies with MBIA Insurance, whereby MBIA Insurance guaranteed (directly or indirectly) the repayment of structured-finance products.

33. Petitioner UBS AG, London Branch is a branch of the Swiss bank UBS AG. UBS AG, London Branch holds insurance policies with MBIA Insurance, whereby MBIA Insurance guaranteed (directly or indirectly) the repayment of structured-finance products.

34. Petitioner Wachovia Bank, National Association is a bank organized under the laws of the United States. Wachovia Bank, National Association holds insurance policies with MBIA Insurance, whereby MBIA Insurance guaranteed (directly or indirectly) the repayment of structured-finance products.

35. Respondent Eric R. Dinallo is the Superintendent of the NYID, and is named as a Respondent in his official capacity.

36. Respondent the New York State Insurance Department is an agency of the State of New York. The NYID's principal offices are located at 25 Beaver Street in Manhattan, New York.

37. Respondent MBIA Inc. is a Connecticut corporation, with its principal place of business in Armonk, New York. MBIA Inc.'s common stock trades on the New York Stock Exchange under the symbol "MBI."

38. Respondent MBIA Insurance Corporation is a New York-domiciled insurance corporation with its principal place of business in Armonk, New York. MBIA Insurance is a wholly owned and controlled subsidiary of MBIA Inc. MBIA Insurance is regulated by the NYID.

39. Respondent National Public Finance Guarantee Corporation is an Illinois-domiciled insurance corporation with its principal place of business in Armonk, New York. Until June 5, 2009 (when it officially changed its name in New York), National Public Finance Guarantee Corporation was known as MBIA Insurance Corp. of Illinois. Prior to the Fraudulent

Restructuring, MBIA Illinois was a wholly owned and controlled subsidiary of MBIA Insurance. In the Fraudulent Restructuring, MBIA Illinois became a wholly owned and controlled subsidiary of another entity that, in turn, is a wholly owned and controlled subsidiary of MBIA Inc.

JURISDICTION AND VENUE

40. This action is brought against the NYID and the Superintendent in his official capacity pursuant to Article 78 of the CPLR to challenge certain approvals issued by the NYID in connection with the Fraudulent Restructuring, as set forth in the NYID Letter. This action is brought against MBIA Inc., MBIA Insurance and MBIA Illinois pursuant to the general original jurisdiction of this Court under Article VI, Section 7 of the New York Constitution.

41. This action is timely under CPLR § 217 because it was brought within four months of February 17, 2009, the date on which the NYID issued final approvals in connection with the Fraudulent Restructuring.

42. This Court has personal jurisdiction over all Respondents pursuant to CPLR § 301 because Respondents work in and/or conduct substantial business within New York.

43. Venue is proper in this Court under CPLR §§ 506(b) and 7804(b) because the NYID's principal offices are located in New York County.

FACTUAL ALLEGATIONS

A. Background

44. MBIA Inc.'s business principally has been offering financial guarantee insurance and other forms of credit protection to customers worldwide. Prior to February 2009, MBIA Inc. conducted substantially all its financial guarantee insurance business through its wholly owned subsidiary MBIA Insurance.

45. Prior to February 2009, MBIA Insurance was the world's largest "monoline" insurer, meaning that it exclusively wrote financial guarantee insurance policies and

did not offer property, casualty, life, disability or other forms of insurance. In return for premiums, MBIA Insurance wrote financial guarantee policies covering a variety of underlying instruments. Under each policy, MBIA Insurance unconditionally and irrevocably promised to pay the policyholder if the obligor on the underlying instrument failed to pay amounts owing when due.

46. Historically, MBIA Insurance chiefly focused on writing financial guarantee insurance for a wide array of government and municipal bonds. In recent years, however, MBIA Insurance sought to capitalize on the boom in structured-finance products (*i.e.*, obligations payable from or tied to the performance of pools of assets like mortgages). By year-end 2008, MBIA Insurance's insurance portfolio included structured-finance policies with approximately \$233 billion in face amount and municipal bond policies with approximately \$553.7 billion in face amount. However, on information and belief, including MBIA Inc.'s SEC filings, MBIA Insurance's expected liabilities to its structured-finance policyholders substantially exceeded its expected liabilities to its municipal-bond policyholders.

47. Credit-rating agencies like Moody's Investors Service, Inc. ("Moody's") and Standard & Poor's Ratings Services ("S&P") analyze and publish credit ratings for securities and financial products. At all relevant times, the rating agencies prepared financial models that estimated the future losses that MBIA Insurance was expected to suffer on its portfolio of insurance policies. The rating agencies used these models to analyze MBIA Insurance's creditworthiness as an entity and to assign MBIA Insurance a credit rating.

48. Policyholders generally purchased insurance from (or purchased products insured by) MBIA Insurance for two fundamental reasons. The first is payment certainty: the MBIA Insurance policies gave policyholders assurance that MBIA Insurance would pay principal and interest (or other amounts owing) on insured obligations if the underlying obligor failed to make such payments when due. The second is "credit enhancement": because MBIA

Insurance itself had a strong credit rating, the MBIA Insurance policies enhanced or provided additional support for the credit ratings of the insured financial products.

49. Given these fundamental purposes of financial guarantee insurance, the value of MBIA Insurance's structured-finance policies critically depends on MBIA Insurance's financial strength and credit rating. Indeed, because investors in insured financial products are entitled to repayment from both the underlying obligor on the instrument *and* the instrument's insurer, the credit rating of an insured financial product generally is no lower than the insurer's credit rating.

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

50. In 2007, there were growing concerns about the health of the real estate markets, the risks of certain financial products (including those linked to real estate) and MBIA Insurance's potential liabilities to its structured-finance policyholders. Nevertheless, as of January 1, 2008, MBIA Insurance enjoyed AAA credit ratings from both Moody's and S&P.

51. On February 25, 2008, MBIA Inc. published a set of ten "Principles and Decisions Guiding MBIA Inc.'s Transformation," announcing that it would establish "separate legal operating entities for MBIA's public, structured, and asset management businesses" within five years.¹³ MBIA Inc. also stated that it was "committed to protect[ing] all of MBIA's policyholders," that MBIA Inc. would "retain the highest ratings that we can for both our public and structured finance businesses," and that MBIA Inc. would only "restructure its business after careful consideration of the impact to all constituents, including policyholders, financial institutions, shareholders and others."

¹³ DiBlasi Aff. Ex. 14 (Principles and Decisions Guiding MBIA Inc.'s Transformation).

52. At the same time, MBIA Inc. also announced that MBIA Insurance was suspending the writing of new structured-finance policies for approximately six months.¹⁴ On information and belief, MBIA Insurance has never resumed writing new structured-finance policies. Thus, the transfer of MBIA Insurance’s municipal-bond business to MBIA Illinois in the Fraudulent Restructuring stripped MBIA Insurance of its principal (if not its sole) means of generating new business.

53. On May 12, 2008, MBIA Inc. announced that it would contribute \$900 million of its own cash to its insurance subsidiaries within 30 days, in order to “support MBIA Insurance Corporation’s triple-A ratings and existing and future policyholders.”¹⁵

54. Less than a month later, however, MBIA Inc. reneged on that commitment—apparently recognizing that even a \$900 million infusion would not revive MBIA Insurance’s failing business in a manner consistent with the interests of MBIA Inc. and its management. On June 4, 2008, the Superintendent stated that he was in “active discussions with MBIA regarding the company’s fulfilling its existing publicly announced commitment [to infuse \$900 million in MBIA Insurance] by the stated June 11 deadline.”¹⁶ But on June 11, 2008, MBIA Inc. CEO Jay Brown stated in a “Letter to Owners” that MBIA Inc. “will not be making capital contributions to MBIA Insurance . . . given the changes in ratings status last week, especially since that additional capital would not preserve its [AAA] ratings.”¹⁷ Mr. Brown also stated that MBIA Inc. would “no longer dilute shareholder capital ad infinitum” to maintain

¹⁴ See DiBlasi Aff. Ex. 15 (MBIA Inc. February 25, 2008 Letter to Owners), at 1.

¹⁵ DiBlasi Aff. Ex. 16 (MBIA Inc. May 12, 2008 press release), at 6.

¹⁶ DiBlasi Aff. Ex. 17 (Liz Moyer, *Facing Downgrade, MBIA Comes Out Fighting*, Forbes.com (June 4, 2008)) (quoting statement by the Superintendent).

¹⁷ DiBlasi Aff. Ex. 18 (MBIA Inc. June 11, 2008 Letter to Owners).

MBIA Insurance's credit rating. (*Id.*) That same day, MBIA Inc. stated falsely in a press release that it would now "balanc[e] our obligations to policyholders with optimizing returns to our shareholders."¹⁸

55. The financial markets continued to deteriorate during the remainder of 2008, at least in part because of concerns about financial institutions' and insurers' exposure to structured-finance obligations. Moody's and S&P downgraded MBIA Insurance's credit rating in a series of reports, noting their opinions that MBIA Insurance would "face diminished public finance and structured finance new business flow and declining financial flexibility," that continuing deterioration in the structured-finance markets would place pressure on MBIA Insurance's capital adequacy, and that there was an "expectation of greater losses on [MBIA Insurance's] mortgage related exposure."¹⁹

56. MBIA Insurance became distressed, and the value of Petitioners' structured-finance insurance policies declined, when MBIA Insurance lost its AAA credit rating. As the Superintendent has told the New York State Assembly:

The business model for the financial guaranty insurance companies . . . requires that they hold levels of capital that will allow them to maintain the triple-A credit rating necessary to write new business. It has become clear that the loss of the triple-A rating essentially cripples the company's ability to do business as a going concern and puts the insurer in a 'run-off' mode. This can lead to a downward ratings spiral that can destroy the market value of the insurance policies that issuers have purchased.²⁰

¹⁸ DiBlasi Aff. Ex. 19 (MBIA Inc. press release dated June 11, 2008).

¹⁹ See DiBlasi Aff. Ex. 20 (S&P report dated June 5, 2008); Ex. 21 (Moody's report dated November 7, 2008).

²⁰ DiBlasi Aff. Ex. 22 (Superintendent's remarks to the New York State Assembly, dated March 14, 2008), at 6.

57. Instead of investing cash in *MBIA Insurance* to shore up its capitalization and credit rating, MBIA Inc. spent hundreds of millions of dollars at the holding-company level in a desperate attempt to maintain *MBIA Inc.*'s stock price. MBIA Inc. repurchased approximately \$221 million worth of its own stock between August and December of 2008, and repurchased \$127 million in par value of its own debt throughout 2008.²¹ MBIA Inc.'s stock price fluctuated wildly as the credit crisis accelerated—more than doubling during August 2008 before falling by nearly 75% between September 2, 2008 and December 31, 2008.²²

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

58. In early December 2008, MBIA privately submitted the Application to the NYID which, on information and belief, sought approval under the Insurance Law to carry out certain aspects of the Fraudulent Restructuring.²³

59. MBIA's Application has never been disclosed to the public or policyholders such as Petitioners. In fact, the NYID to date has refused to disclose any portion of that Application, or any analysis conducted by MBIA or the NYID in connection with the Application—even in response to a FOIL request filed by counsel for Petitioners' counsel on February 24, 2009.²⁴ In particular, MBIA has invoked the "trade secrets" exception to the FOIL,

²¹ See DiBlasi Aff. Exs. 23 (excerpts from MBIA Inc.'s Form 10-Q for the quarter ended Sept. 30, 2008), at 104 (listing number of shares repurchased during August and September 2008); Ex. 24 (excerpts from MBIA Inc.'s Form 10-K for the year ended December 31, 2008), at 3 (MBIA retired \$127 in par value of its own debt during 2008), 46 (listing number of shares repurchased between October and December 2008).

²² See DiBlasi Aff. Ex. 25 (*Bloomberg* quotes of MBIA Inc. stock price data).

²³ See DiBlasi Aff. Ex. 1 (NYID Letter), at 1 (stating that MBIA submitted the Application on December 5, 2008).

²⁴ See DiBlasi Aff. Ex. 4 (FOIL request, dated February 24, 2009).

asking the NYID not to produce the Application to Petitioners.²⁵ The NYID has indicated that it would respond to Petitioners' FOIL request by June 26, 2009²⁶—by which time Respondents could argue that an Article 78 challenge to the NYID Letter was time-barred. *See* CPLR § 217(1). As a result, MBIA and the NYID have prevented Petitioners from assessing, before bringing this proceeding, whether MBIA's Application contained accurate, complete and up-to-date information.

60. On February 17, 2009, the NYID issued the NYID Letter to MBIA, apparently granting each of the approvals requested by MBIA in the Application.²⁷ According to the NYID Letter, MBIA's secret Application requested certain approvals, "confirmations" and "non-objections" under specific provisions of the Insurance Law in connection with certain aspects of the Fraudulent Restructuring. In addition, MBIA requested a "determination" that the Fraudulent Restructuring (in its entirety) did not constitute a "sale of all assets" of MBIA Insurance, which would require the approval of the Superintendent under the Insurance Law.

61. The NYID Letter approved a series of transfers among companies within the same insurance holding company system whereby (among other things): (a) MBIA Insurance paid a \$1.147 billion dividend to MBIA Inc.; (b) MBIA Insurance transferred \$938 million of cash and securities, as well as 100% of the common stock of MBIA Illinois (which had a \$185 million capital base), to MBIA Inc.; and (c) MBIA Insurance and MBIA Illinois executed a reinsurance agreement whereby MBIA Insurance agreed to pay MBIA Illinois \$2.89 billion (net) in cash as well as 78% (net) of all premiums received from municipal-bond policyholders, in exchange for MBIA Illinois' agreement to reinsure those policies on a

²⁵ *See* DiBlasi Aff. Ex. 26 (NYID April 20, 2009 letter).

²⁶ *See* DiBlasi Aff. Ex. 5 (NYID May 28, 2009 letter).

²⁷ *See generally* DiBlasi Aff. Ex. 1 (NYID Letter).

“cut-through” basis.²⁸ The NYID Letter approved these transfers pursuant to Insurance Law §§ 1308, 1411(d), 1505(a) and (d), 4105(a), and 6906. In addition, MBIA Inc. transferred the cash and securities received from MBIA Insurance to MBIA Illinois as part of the Fraudulent Restructuring.

62. As the NYID Letter reiterated eight times, the NYID’s approvals were based on “(1) the representations made in the Application and its supporting submissions, and in reliance on the truth of those representations and submissions, (2) the [NYID’s] examination of the MBIA Entities’ financial condition prior to the [Fraudulent Restructuring], and (3) the [NYID’s] analysis of the MBIA Entities’ financial condition after the effectuation of the [Fraudulent Restructuring].”²⁹

63. On information and belief, the NYID analyzed the information in MBIA’s Application by applying statutory accounting principles (*i.e.*, principles accepted by the NYID, based on those adopted by the National Association of Insurance Commissioners), rather than Generally Accepted Accounting Principles (“GAAP”). *See* Insurance Law §§ 307, 308; 11 N.Y. Comp. Codes R. and Regs. § 83.1 *et seq.*

64. On information and belief, the NYID relied on a solvency analysis conducted by MBIA in its review of the Application.³⁰

²⁸ Under conventional reinsurance, a reinsurer (here, MBIA Illinois) agrees to pay the original insurer (here, MBIA Insurance) if a policyholder submits a claim against the original insurer. “Cut-through” reinsurance gives policyholders direct claims against both the original insurer (MBIA Insurance) and the reinsurer (MBIA Illinois). As a result, MBIA Insurance’s municipal-bond policyholders may seek payment of their claims directly from MBIA Illinois as well as from MBIA Insurance.

²⁹ *See* DiBlasi Aff. Ex. 1 (NYID Letter), at §§ III.A, III.B., III.C.1., III.C.2, III.C.3, III.D., III.E., III.F.

³⁰ *See* DiBlasi Aff. Ex. 3 (CreditSights May 21, 2009 report), at 3 (“The NYSID said that it relied on solvency analysis done by the company itself and not third parties.”).

D. MBIA Inc. Executes the Unlawful Fraudulent Restructuring.

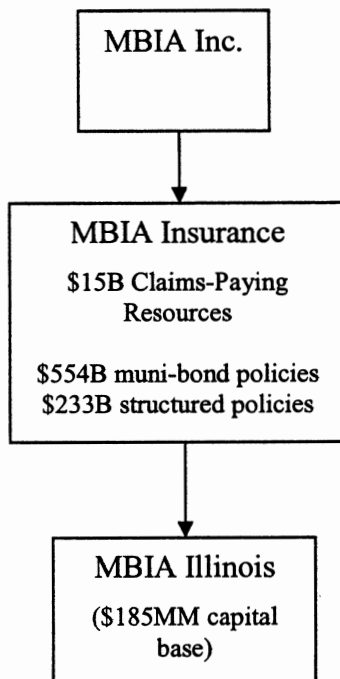
65. On February 17, 2009, the very same day that the NYID issued its letter, MBIA consummated the Fraudulent Restructuring. By fraudulently transferring billions of dollars in assets from MBIA Insurance to MBIA Illinois, while leaving behind most of MBIA Insurance's liabilities, MBIA Inc. favored its own interests over the interests of MBIA Insurance policyholders. As one commentator noted, the Fraudulent Restructuring left MBIA Insurance—already a financially distressed insurer—to simply “wither and die.”³¹

66. MBIA Inc. publicly announced the Fraudulent Restructuring on February 18, 2009. Although the transactions were given retroactive effect to January 1, 2009, the announcement of the Fraudulent Restructuring was misleading because it used September 30, 2008 numbers to describe the financial impact of the transactions and because—as MBIA Inc. knew (but did not disclose until its March 3, 2009 earnings release)—MBIA Insurance's financial condition had substantially deteriorated between September 30 and December 31, 2008. The effect of the Fraudulent Restructuring is summarized in the following diagram (all numbers are approximate, using reported financial results as of December 31, 2008)³²:

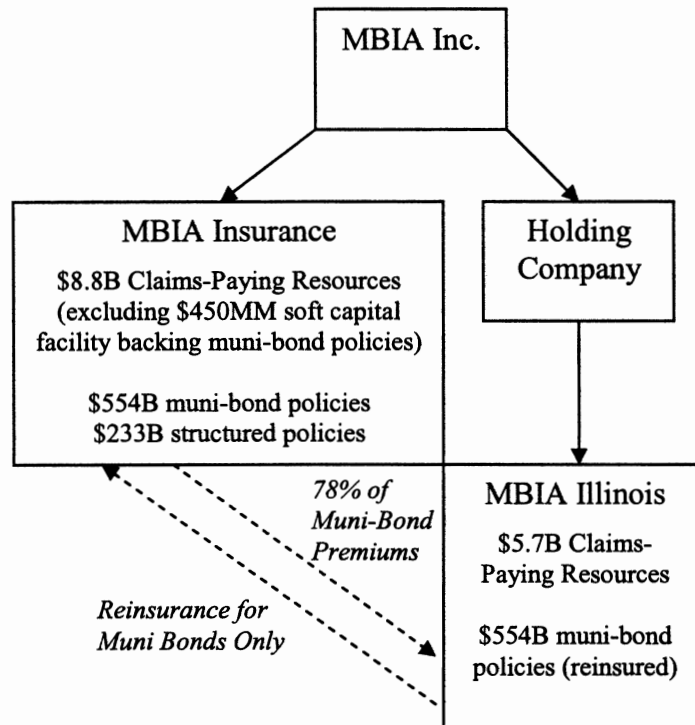
³¹ DiBlasi Aff. Ex. 27 (*MBIA CEO: New Structure Treats Customers Equally Well*, Dow Jones News Service (February 18, 2009)).

³² See DiBlasi Aff. Ex. 6 (MBIA Inc. February 18, 2009 press release); Ex. 28 (MBIA March 3, 2009 investor presentation); Ex. 29 (MBIA March 18, 2009 investor presentation).

BEFORE RESTRUCTURING



AFTER RESTRUCTURING



67. Moreover, the Fraudulent Restructuring left MBIA Insurance even weaker than this diagram depicts because, on information and belief, MBIA Insurance had even less cash and investments, total assets, and claims-paying resources on February 17, 2009 than it had on December 31, 2008—and MBIA Insurance has continued to deteriorate. For example, as of March 31, 2009, MBIA Insurance had approximately \$3.8 billion in cash and investments (down from \$4.3 billion as of December 31, 2008), \$6.1 billion in total assets (down from \$6.7 billion as of December 31, 2008), and \$8 billion in claims-paying resources (down from \$8.8 billion as of December 31, 2008).³³

³³ Compare DiBlasi Aff. Ex. 30 (MBIA May 12, 2009 investor presentation), at 29, 32 (numbers as of March 31, 2009) with Ex. 28 (MBIA March 3, 2009 investor presentation), at 37, 38 (numbers as of December 31, 2008).

68. In addition, as of December 31, 2008, MBIA Insurance carried (and still carries) on its balance sheet a \$2 billion repurchase agreement between MBIA Insurance and MBIA Inc.'s asset-management business at its \$2 billion face value—notwithstanding that MBIA Inc. has publicly acknowledged that MBIA Insurance has suffered “unrealized losses” in connection with this transaction.³⁴

69. MBIA's misleading disclosures to the public regarding the Fraudulent Restructuring (and the effects thereof) strongly suggest that MBIA's representations to the NYID in connection with the Application were also based on outdated and/or inaccurate financial information. To date, however, MBIA and the NYID have kept the Application hidden from Petitioners, other policyholders and the public generally.

70. Despite MBIA's public insistence that its internal analyses show that MBIA Insurance is solvent, MBIA has refused to substantiate that assertion by providing the Application to Petitioners. MBIA has also sought to prevent Petitioners from obtaining the Application from the NYID.³⁵ And MBIA has refused to respond to document requests in the Fraudulent Conveyance Action, instead seeking a stay of all discovery in that action.³⁶

³⁴ On information and belief, MBIA Insurance gave MBIA Inc. \$2 billion in cash, and MBIA Inc. gave MBIA Insurance assets with a book value of greater than \$2 billion but a current market value of less than \$2 billion. *Compare* DiBlasi Aff. Ex. 28 (MBIA March 3, 2009 investor presentation) at 37 (listing transaction as an asset worth \$2 billion) *and* Ex. 30 (MBIA May 12, 2009 investor presentation) at 29 (same) *with* Ex. 31 (transcript of March 3, 2009 conference call), at 23 (“The book value of the collateral pool at this point is well in excess of the amount advanced. The market value is a little short. It's about 10% short of the amount advanced. So there is, if you will, an unrealized loss on those assets.”).

³⁵ *See* DiBlasi Aff. Ex. 26 (NYID April 20, 2009 letter) (noting MBIA's objection to Petitioners' FOIL request).

³⁶ *See* DiBlasi Aff. Ex. 32 (MBIA Order to Show Cause, filed in the Fraudulent Conveyance Action on June 4, 2009).

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

71. MBIA Insurance received no value whatsoever in exchange for its \$1.147 billion dividend of cash and securities paid to MBIA Inc. MBIA Insurance also received no value whatsoever in exchange for transferring away the additional \$938 million and the 100% of MBIA Illinois' common stock (including MBIA Illinois' \$185 million capital base) that it had owned. All of these transfers were part of a scheme to strip capital out of MBIA Insurance; MBIA Inc.'s Chief Financial Officer has publicly admitted that these transfers were part of "an extraordinary dividend and return of capital of \$2.1 billion" to MBIA Inc.³⁷

72. Although MBIA Inc. gave MBIA Insurance shares of MBIA Insurance's own common stock, those shares were worthless pieces of paper to MBIA Insurance because, both before and after this transaction, MBIA Insurance was a wholly owned and controlled subsidiary of MBIA Inc. There was no legitimate business purpose for MBIA Insurance to supposedly "repurchase" a portion of its own stock from its sole shareholder when its own financial condition was impaired. In addition, the price paid by MBIA Insurance for shares of its own *common* stock far exceeded the price paid by MBIA Insurance to repurchase shares of its own *preferred* stock (which is senior to common stock) during 2008. These transfers are nothing more than an unlawful dividend from an insurer to its holding company.

73. MBIA Insurance also received inadequate value in exchange for its payment of \$2.89 billion and its additional agreement to pay 78% (net) of future municipal-bond premiums to MBIA Illinois, because all the assets backing the "reinsurance" provided by MBIA Illinois to MBIA Insurance had just been siphoned from MBIA Insurance.

³⁷ DiBlasi Aff. Ex. 33 (transcript of March 18, 2009 MBIA presentation), at 6.

74. MBIA Inc. did not contribute any of its own cash to either MBIA Insurance or MBIA Illinois in the Fraudulent Restructuring. Instead, during the fourth quarter of 2008, MBIA Inc. spent approximately \$132 million buying back its own stock “for settling awards under the Company’s long-term incentive plans.”³⁸ MBIA Inc. spent more than \$78 million during December 2008—on information and belief, mostly *after* MBIA had submitted its Application to the NYID—to buy back more than 12 million shares of its own stock.³⁹ Yet on the very day the Fraudulent Restructuring was announced, MBIA Inc. gave its CEO, Jay Brown, nearly 1.3 million shares of restricted stock.⁴⁰

75. During the first quarter of 2009, MBIA Inc. spent an additional \$4.2 million buying back its own stock, and bought back \$2 million in par value of its own general corporate debt, \$160 million in par value of medium-term notes, and \$8 million in par value of MBIA Insurance surplus notes.⁴¹ Thus, MBIA Inc. has drained assets from MBIA Insurance while rewarding its own management and distributing cash to securityholders.

76. If the NYID was aware, while it was considering the Application, that MBIA Inc. was repurchasing (or planning to repurchase) its own stock and debt securities, then the NYID’s issuance of the NYID Letter was arbitrary, capricious and an abuse of discretion. If the NYID was not aware, while it was considering the Application, that MBIA Inc. was repurchasing (or planning to repurchase) its own stock and debt securities, then the NYID was

³⁸ DiBlasi Aff. Ex. 26 (excerpt from MBIA Inc.’s Form 10-K for the year ended December 31, 2008), at 46.

³⁹ *See id.* (MBIA Inc. repurchased 12.51 million shares of its own stock at an average price of \$6.26 per share during December 2008).

⁴⁰ DiBlasi Aff. Ex. 34 (MBIA Inc. Form 4, filed with the SEC on February 18, 2009).

⁴¹ *See* DiBlasi Aff. Ex. 35 (excerpt from MBIA Inc.’s Form 10-Q for the quarter ended March 31, 2009), at 100.

not presented with all relevant facts concerning the fairness of the transactions proposed by MBIA and the NYID Letter should be annulled for that reason.

77. When the Fraudulent Restructuring was publicly announced on February 18, 2009, Moody's immediately downgraded MBIA Insurance's credit rating by eight notches to B3, *six steps below investment grade*.⁴² Moody's defines B3-rated insurers as "offer[ing] poor financial security. Assurance of punctual payment of policyholder obligations over any long period of time is small."⁴³ This was the first time in MBIA Insurance's history that its credit rating was below investment grade. As a Reuters article observed, the Fraudulent Restructuring drove MBIA Insurance from being an investment-grade credit "deep into junk territory."⁴⁴

78. Moody's stated that its downgrade was primarily driven by two factors, the first of which was expressly tied to the Fraudulent Restructuring:

First is the guarantor's substantial reduction in claims-paying resources relative to the remaining higher-risk exposures in its insured portfolio, given the removal of capital, and the transfer of unearned premium reserves associated with the ceding of its municipal portfolio to MBIA Illinois.⁴⁵

79. The second factor cited by Moody's was "the continued deterioration of the firm's insured portfolio of largely structured credits, with stress reaching sectors beyond residential mortgage-backed securities."⁴⁶ Moody's noted that MBIA Insurance's risk-adjusted capital adequacy was being negatively affected by "the deteriorating credit profile of Alt-A

⁴² See DiBlasi Aff. Ex. 36 (Moody's February 18, 2009 report).

⁴³ DiBlasi Aff. Ex. 37 (excerpt from Moody's "Ratings Definitions"), at 9.

⁴⁴ DiBlasi Aff. Ex. 38 (*Moody's Slashes MBIA Insurance Ratings Into Junk*, Reuters (February 18, 2009)).

⁴⁵ DiBlasi Aff. Ex. 36 (Moody's February 18, 2009 report), at 1.

⁴⁶ *Id.*

mortgage-backed securities, corporate [collateralized debt obligations], and [commercial mortgage-backed securities],” and opined that “the claims-paying resources of MBIA [Insurance] post restructuring are roughly equivalent to Moody’s expected loss estimates for the entity.”⁴⁷ In other words, MBIA Insurance was woefully undercapitalized under Moody’s risk models, and economic weakness not anticipated by Moody’s would cause MBIA Insurance’s liabilities to exceed its assets.

80. The financial markets also recognized that the Fraudulent Restructuring transferred significant value away from MBIA Insurance and its policyholders, and into the hands of MBIA Inc. The price of credit-default swaps on MBIA Insurance (*i.e.*, derivative contracts that pay a lump sum if MBIA Insurance defaults on its obligations to creditors) roughly doubled shortly after the Fraudulent Restructuring was announced.⁴⁸ By contrast, the price of MBIA Inc.’s common stock increased by approximately 30% on February 18, 2009, the day the Fraudulent Restructuring was publicly announced.⁴⁹

81. Although MBIA Inc. has claimed publicly that its internal projections show that MBIA Insurance is still solvent, MBIA Inc.’s most recent Form 10-K filing with the SEC admits that the preparation of such financial models is “an inherently uncertain process involving numerous estimates and subjective judgments by management” and that “[s]mall changes in the assumptions underlying these estimates could significantly impact loss expectations.”⁵⁰ MBIA Inc. also has conceded that, with respect to MBIA Insurance, “[t]here

⁴⁷ *Id.*

⁴⁸ See DiBlasi Aff. Ex. 39 (*Bloomberg* quotes of MBIA Insurance credit default swap prices).

⁴⁹ See DiBlasi Aff. Ex. 25 (*Bloomberg* quotes of MBIA Inc. stock prices).

⁵⁰ DiBlasi Aff. Ex. 24 (excerpts from MBIA Inc.’s Form 10-K for the year ended December 31, 2008), at 32.

can be no assurance that [its] estimates of probable and estimable losses are accurate” and that “[a]ctual paid claims could exceed our estimate and could significantly exceed our loss reserves.”⁵¹

82. Indeed, MBIA Inc.’s projections have been demonstrably unreliable in the past. For example, as of March 31, 2008, MBIA Inc. estimated MBIA Insurance’s losses on residential mortgage-backed securities to be \$1.1 billion; by September 30, 2008 that estimate nearly doubled to more than \$2.1 billion and as of March 31, 2009 had increased by another 25% to \$2.8 billion.⁵² MBIA Insurance’s loss estimates on multi-sector collateralized debt obligations increased from \$1.7 billion on December 31, 2008 to \$1.9 billion as of March 31, 2009.⁵³ And on March 3, 2009, MBIA Inc. projected that MBIA Insurance would experience roughly equal cash “inflows” and “outflows” of \$1.17 billion during 2009; by May 12, 2009, projected 2009 “inflows” fell to \$1.15 billion while projected “outflows” increased 84% to \$2.16 billion—meaning that MBIA Insurance went from being cash-flow neutral to burning cash at an alarming rate.⁵⁴

83. Moreover, MBIA’s own actions have confirmed that there is little chance that MBIA Insurance is solvent—even using MBIA’s internal projections which are, on information and belief, unrealistically optimistic. On May 13, 2009, MBIA Inc. announced a tender offer for the outstanding preferred stock of MBIA Insurance, offering to pay only \$10,000

⁵¹ *Id.*

⁵² See DiBlasi Aff. Ex. 40 (excerpts from MBIA May 12, 2008 investor presentation), at 12; Ex. 41 (excerpts from MBIA November 5, 2008 investor presentation), at 22; Ex. 30 (MBIA May 12, 2009 investor presentation), at 39.

⁵³ See DiBlasi Aff. Ex. 30 (MBIA May 12, 2009 investor presentation), at 43.

⁵⁴ Compare DiBlasi Aff. Ex. 28 (MBIA March 3, 2009 investor presentation), at 42 with Ex. 30 (MBIA May 12, 2009 investor presentation), at 34.

per share to purchase shares that would be worth up to \$100,000 per share in a liquidation if MBIA Insurance were solvent—but would be worthless if MBIA Insurance’s creditors are not first repaid in full.⁵⁵ MBIA Inc.’s offer to buy MBIA Insurance preferred stock at a 90% discount strongly suggests that MBIA Insurance is insolvent.

84. On May 21, 2009, the research firm CreditSights published a report examining “the background issues surrounding the recent litigation” challenging the Fraudulent Restructuring, including the suit brought by Petitioners in the Fraudulent Conveyance Action.⁵⁶ CreditSights indicated that it had “extensive conversations” with the NYID regarding the transaction, during which conversations CreditSights was told that the NYID’s review of the Fraudulent Restructuring “relied on solvency analysis done by the company itself and not third parties.”⁵⁷ CreditSights’ report indicated that its “own analysis of MBIA’s structured product book of business conflicts with MBIA’s conclusion that [MBIA Insurance] has sufficient capital to meet policyholders’ obligations,” even though the NYID had “concluded that [MBIA Insurance] has enough capital to meet its policyholders’ obligations.”⁵⁸

85. CreditSights released its projections in a June 3, 2009 report, and explained that it had “stressed the structured finance portfolio of MBIA Insurance Corp. to come up with an independent analysis of the entity’s solvency post-transformation.”⁵⁹ CreditSights stated that its “conclusion from our stress test is that *MBIA Insurance Corp. may run out of*

⁵⁵ See DiBlasi Aff. Ex. 9 (MBIA Inc. May 13, 2009 press release).

⁵⁶ DiBlasi Aff. Ex. 3 (CreditSights May 21, 2009 report), at 1.

⁵⁷ *Id.* at 1, 3.

⁵⁸ *Id.*

⁵⁹ DiBlasi Aff. Ex. 8 (CreditSights June 3, 2009 report), at 1.

*capital sometime in 2012, according to our base case.”*⁶⁰ It follows that an analysis using assumptions less conservative than CreditSights’ “base case” would show that MBIA Insurance will run out of capital even before 2012.

86. MBIA Insurance will be required to pay billions of dollars in claims to its structured-finance policyholders in the future. On a “fair value” basis, the expected amount of these payments greatly exceeds MBIA Insurance’s assets, yet MBIA Insurance strains to maintain the fiction that it remains solvent. The exhibits to MBIA Inc.’s November 5, 2008 Form 10-Q filing indicate that, in computing the fair value of MBIA Insurance’s “derivative liabilities,” MBIA Insurance used a discount rate based on MBIA Insurance’s risk of non-performance (rather than a risk-free interest rate). The use of this discount rate resulted in reducing the reported fair value of these liabilities by \$7.1 billion (to approximately \$4.6 billion) as of September 30, 2008.⁶¹ The exhibits to MBIA Inc.’s Form 10-K filed on March 2, 2009 indicate that this assumption reduced the reported fair value of these liabilities by \$13.2 billion as of December 31, 2008.⁶² And the exhibits to MBIA Inc.’s Form 10-Q filed on May 11, 2009 indicated that this assumption reduced the reported fair value of these liabilities by \$17.1 billion as of March 31, 2009.⁶³ The reported fair value of MBIA Insurance’s liabilities would have significantly exceeded the reported fair value of its assets had this assumption not been used.

⁶⁰ *Id.* (emphasis added).

⁶¹ See DiBlasi Aff. Ex. 42 (excerpt from Exhibit 99.1 to MBIA Inc.’s Form 10-Q filing for the quarter ended September 30, 2008), at 12, 21-22 (reporting MBIA Insurance’s \$4.6 billion in “derivative liabilities” and a \$7.1 billion “Nonperformance Risk Adjustment”).

⁶² See DiBlasi Aff. Ex. 43 (excerpt from Exhibit 99.3 to MBIA Inc.’s Form 10-K filing for the year ended December 31, 2008), at 19, 26-27 (reporting MBIA Insurance’s \$6.2 billion in “derivative liabilities” and a \$13.2 billion “Nonperformance Risk Adjustment”).

⁶³ See DiBlasi Aff. Ex. 44 (excerpt from Exhibit 99.2 to MBIA Inc.’s Form 10-Q filing for the quarter ended March 31, 2009), at 15 (reporting MBIA Insurance’s \$6.2 billion in “derivative liabilities” and a \$17.1 billion “Nonperformance Risk Adjustment”).

87. On information and belief, MBIA Insurance's liabilities to its policyholders substantially exceed its claims-paying resources. In addition, the Fraudulent Restructuring has, on information and belief, left MBIA Insurance insolvent, in that the present fair salable value of its assets is less than the amount that will be required to pay its probable liabilities on its existing debts as those debts become absolute and matured. Even if MBIA Insurance is not currently insolvent, the Fraudulent Restructuring has left it so undercapitalized that it faces an unreasonably high risk of insolvency.

88. As a result of the Fraudulent Restructuring, MBIA Insurance now has unreasonably small capital to continue in business.

89. And as alleged above, following the issuance of the NYID Letter, MBIA has repeatedly revised downward its projections of MBIA Insurance's viability as a business—after having consistently overestimated that company's financial strength—calling into question the accuracy of any financial data submitted by MBIA to the NYID.

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. The Insurance Law provides insurance policyholders with an incremental set of protections against misconduct by insurers (like MBIA Insurance) and insurance holding companies (like MBIA Inc.), in addition to the protections afforded to contracting parties by generally applicable laws. The NYID is charged with enforcing the Insurance Law.

91. In 1968, a special committee appointed by the NYID issued a report recognizing that “without close and effective regulation, the control of insurance companies by [holding companies] would be prejudicial to the interests of policyholders and the public.”⁶⁴ The

⁶⁴ DiBlasi Aff. Ex. 45 (State of New York Insurance Department, *Report of the Special Committee on Insurance Holding Companies* (February 15, 1968)), at 31.

NYID report recognized that insurance subsidiaries contain “tempting reservoirs of liquid assets,” and that “the interests of policyholders thus become vulnerable” if holding companies could freely access the assets of their insurance subsidiaries.⁶⁵

92. In its report, the NYID special committee noted its particular concerns with “preferential or less than arm’s-length transactions that benefit the parent or its affiliates at the expense of its subsidiary,” and “dividends [or] other distributions [that] weaken the financial soundness of the controlled insurer.”⁶⁶ The NYID report observed that “the risk that a controlling parent of insurance subsidiaries may draw too much from the assets of the subsidiaries [was] not a fancied danger”; for example, “inadequately capitalized holding companies top-heavy with debt and over-extended in their operations [had] pressed their [savings and loan] subsidiaries for unreasonably large cash dividends, forcing the subsidiaries to dangerous expedients in order to make the payments.”⁶⁷

93. As of September 30, 2008, MBIA Insurance held more than \$12 billion in cash and investments. During the fourth quarter of 2008, MBIA Inc. extracted \$2 billion in cash from MBIA Insurance (in exchange for assets held by MBIA Inc.) pursuant to an “intercompany repurchase agreement” in order to “support the projected liquidity needs” of MBIA Inc.’s asset-management business.⁶⁸ On information and belief, the NYID approved this transaction. Thus, even *before* the Fraudulent Restructuring, MBIA Inc. had begun draining the “tempting reservoir[] of liquid assets” held by MBIA Insurance backing Petitioners’ insurance policies.

⁶⁵ *Id.* at 32.

⁶⁶ *Id.* at 32, 34.

⁶⁷ *Id.* at 35.

⁶⁸ DiBlasi Aff. Ex. 24 (excerpts from MBIA Inc.’s Form 10-K for the year ended December 31, 2008), at 133.

94. On information and belief, the NYID knew, or should have known, that the Fraudulent Restructuring would leave MBIA Insurance undercapitalized and insolvent, that Petitioners would be exposed to potentially billions of dollars in losses exceeding MBIA Insurance's ability to pay claims, that the markets would react adversely to the announcement of the Fraudulent Restructuring, and that MBIA Inc. would use assets improperly stripped from MBIA Insurance to finance a new insurance business to benefit itself and its management. As a result, the NYID knew, or should have known, that the Fraudulent Restructuring blatantly and inequitably discriminates against Petitioners and the other policyholders who hold \$233 billion in face amount of structured-finance policies, in favor of MBIA Inc.

95. As an insurance regulator, the NYID is responsible for the protection of all policyholders. In recognition of that responsibility, in February 2008, the NYID publicly acknowledged that the separation of MBIA Insurance into separate municipal-bond and structured-finance companies funded using MBIA Insurance assets would be impermissible because it "would in all likelihood result in a substantial downgrade" and that "a substantial downgrade to the structured side [would be] not good for one group of policyholders, the banks."⁶⁹ The Superintendent made similar public statements.⁷⁰ Thus, the NYID knew that a transaction using MBIA Insurance assets to fund a new municipal-bond insurance business was inherently discriminatory and unfair to structured-finance policyholders.

96. Just as the NYID had predicted, the Fraudulent Restructuring harmed structured-finance policyholders such as Petitioners. The Fraudulent Restructuring's split of

⁶⁹ DiBlasi Aff. Ex. 46 (Joseph A. Giannone & Neil Shah, *Ackman Plan Helps Banks, Tough on Bond Insurers*, Reuters (February 20, 2008) (quoting NYID spokesman).

⁷⁰ See DiBlasi Aff. Ex. 47 (Alistair Barr, *Ambac, MBIA short seller proposes way of splitting bond insurers*, Marketwatch (February 20, 2008)) (quoting the Superintendent as stating that splitting MBIA Insurance would "mean a substantial downgrade on the structured side, which is bad for the banks").

MBIA Insurance's assets triggered a "substantial downgrade" of MBIA Insurance's credit rating.⁷¹ This decline in MBIA Insurance's credit rating, along with the depletion of the assets backing MBIA Insurance's structured-finance policies, also "destroy[ed] the market value of the insurance policies" held by structured-finance policyholders such as Petitioners.⁷² These harms were not just foreseeable—they were foreseen.

97. Accordingly, the NYID not only exceeded its authority in issuing the NYID Letter, but also violated its obligations under the Insurance Law to protect policyholders such as Petitioners. For example, Insurance Law § 1505(a) requires that *all* transactions between an insurer and companies within its holding company system be "fair and equitable." Yet the Fraudulent Restructuring discriminated against Petitioners and other structured-finance policyholders, allowed MBIA Inc. to enrich itself and its own management, and left MBIA Insurance undercapitalized and, on information and belief, insolvent. Because the Fraudulent Restructuring, viewed as a whole, was not "fair and equitable" to MBIA Insurance or structured-finance policyholders, it was arbitrary, capricious and an abuse of discretion for the NYID to issue the NYID Letter.

98. One component of the Fraudulent Restructuring was the declaration of and payment by MBIA Insurance to MBIA Inc. of a dividend in the amount of \$1.147 billion. In the NYID Letter, the NYID approved this dividend pursuant to Insurance Law § 4105(a). However, this dividend was unlawful, and the NYID Letter's approval of this dividend exceeded the NYID's jurisdiction, because:

- a. Insurance Law § 4105(a) provides, in relevant part, that "no domestic stock property/casualty insurance company shall declare or distribute any

⁷¹ See DiBlasi Aff. Ex. 36 (Moody's February 18, 2009 report).

⁷² DiBlasi Aff. Ex. 22 (Superintendent's remarks to the New York State Assembly, dated March 14, 2008), at 6.

dividend to shareholders except out of earned surplus.” Insurance Law § 4105(a) defines “earned surplus” as “the portion of the surplus that represents the net earnings, gains or profits, after deduction of all losses, that have not been distributed to the shareholders as dividends, or transferred to stated capital or capital surplus or applied to other purposes permitted by law but does not include unrealized appreciation of assets.”

- b. As set forth in an Opinion of the NYID General Counsel, Insurance Law § 4105(a) seeks to prevent “the ‘milking’ of insurance companies” (like MBIA Insurance) “by their holding companies” (like MBIA Inc.).⁷³ The Insurance Law does not empower the Superintendent to waive or override this statutory prohibition of the payment of dividends “except out of earned surplus.”
- c. The NYID Letter did not state that MBIA Insurance had sufficient “earned surplus” to pay a \$1.147 billion dividend as of December 31, 2008 or February 17, 2009.
- d. MBIA Insurance’s “unassigned funds (surplus)” as of December 31, 2008 was \$359,007,856.⁷⁴ As the NYID Office of the General Counsel has explained, “earned surplus [is] exhibited as part of the unassigned funds (surplus) entry in the annual statement,” and “pursuant to [Insurance Law] Section 4105(a), the source of dividends is limited to that earned surplus.”⁷⁵ Thus, on information and belief, MBIA Insurance’s earned surplus as of December 31, 2008 and as of February 17, 2009 was less than its “unassigned funds (surplus)” of \$359,007,856.
- e. MBIA Insurance’s payment of a \$1.147 billion dividend of cash and securities to MBIA Inc. in the Fraudulent Restructuring exceeded MBIA Insurance’s earned surplus and therefore was unlawful under Insurance Law § 4105(a).

⁷³ DiBlasi Aff. Ex. 48 (New York Dep’t of Ins. Gen. Counsel Opinions, Opinion No. 03-10-06, 2003 NY Insurance GC Opinions LEXIS 277 at *4 (October 15, 2003)); *see also* Ex. 49 (OGC Opinion No. 75-1 (January 1, 1975)), at 2 (same); Ex. 45 (*Report of the Special Committee on Insurance Holding Companies*), at 32 (noting concern with “all of the devices for ‘milking’ a subsidiary by a parent “that have been ingeniously exploited in other contexts”).

⁷⁴ DiBlasi Aff. Ex. 50 (excerpts from MBIA Insurance Statutory Annual Statement for the year ended December 31, 2008), at 3.

⁷⁵ DiBlasi Aff. Ex. 51 (OGC Opin. No. 85-13 (February 8, 1985)), at 2.

99. Further, regardless of whether the \$1.147 billion dividend unlawfully exceeded MBIA Insurance's earned surplus under Insurance Law § 4105(a), the NYID Letter's approval of this dividend pursuant to Insurance Law § 4105(a) nonetheless was arbitrary, capricious and an abuse of discretion, because:

- a. Insurance Law § 4105(a) prohibits domestic stock property/casualty insurance companies from paying dividends to shareholders which, taken together with all dividends during the preceding twelve months, exceed the lesser of ten percent of the insurer's surplus to policyholders, as shown by the last statement on file with the Superintendent, or one hundred percent of adjusted net investment income during the preceding twelve months, unless the Superintendent "approves a greater dividend distribution based upon his finding that the insurer will retain sufficient surplus to support its obligations and writings."
- b. This dividend exceeded ten percent of MBIA Insurance's surplus to policyholders, as measured by the Statutory Annual Statement for the year ended December 31, 2008 filed by MBIA Insurance with the NYID.
- c. Although the NYID Letter stated that MBIA Insurance retained "sufficient surplus to support its obligations and writings,"⁷⁶ the NYID, on information and belief, did not conduct its own solvency analysis or rely on a solvency analysis conducted by an independent expert. Instead, the NYID only relied, on information and belief, on a solvency analysis prepared by MBIA itself that used inaccurate, outdated, and incomplete information, and overly optimistic assumptions regarding MBIA Insurance's financial health.
- d. Following this dividend (and following the Fraudulent Restructuring), on information and belief, MBIA Insurance lacked "sufficient surplus to support its obligations and writings."
- e. Moreover, this dividend—paid by an insurer to its parent company within the same holding company system—was not "fair and equitable" as required by Insurance Law § 1505(a).

100. Another component of the Fraudulent Restructuring involved MBIA Insurance's transfers to MBIA Inc. of \$938 million in cash and securities and all the shares of

⁷⁶ DiBlasi Aff. Ex. 1 (NYID Letter), at § III.A.

MBIA Illinois owned by MBIA Insurance (including MBIA Illinois' \$185 million existing capital base). These transfers were unlawful, and the NYID's approval of these transfers in the NYID Letter exceeded the NYID's jurisdiction, because:

- a. As alleged above, Insurance Law § 4105(a) prevents insurers such as MBIA Insurance from paying dividends except out of "earned surplus," the NYID lacks authority to waive this statutory restriction on the payment of dividends, and (on information and belief) MBIA Insurance's "earned surplus" as of December 31, 2008 and February 17, 2009 was less than \$359,007,856.
- b. A special committee of the NYID has stated that "neither dividends *nor other distributions* should be permitted to weaken the financial soundness of the controlled insurer."⁷⁷
- c. Although MBIA Inc. delivered to MBIA Insurance 32,064 shares of MBIA Insurance common stock in exchange for these transfers in an attempt to characterize these transfers as a "stock repurchase," a company's repurchase of a portion of the stock held by its sole stockholder is indistinguishable from a dividend.
- d. On information and belief, MBIA Inc. and MBIA Insurance structured and characterized these transfers as a purported repurchase of stock in an attempt to circumvent Insurance Law § 4105(a)'s statutory limit upon the payment of dividends.
- e. At a March 18, 2009 conference, MBIA Inc.'s Chief Financial Officer, C. Edward Chaplin, publicly described MBIA Insurance as having paid to MBIA Inc. "a dividend of its subsidiary, MBIA Illinois." Mr. Chaplin also characterized MBIA Inc. as having received from MBIA Insurance "an extraordinary dividend and return of capital of \$2.1 billion."⁷⁸
- f. MBIA Insurance's transfers to MBIA Inc. of \$938 million in cash and securities and of all the shares of MBIA Illinois owned by MBIA Insurance (including MBIA Illinois' \$185 million capital base) constituted dividends to MBIA Inc. under Insurance Law § 4105(a).

⁷⁷ DiBlasi Aff. Ex. 47 (*Report of the Special Committee on Insurance Holding Companies*), at 34 (emphasis added).

⁷⁸ DiBlasi Aff. Ex. 35 (transcript of March 18, 2009 MBIA presentation), at 6.

- g. MBIA Insurance's transfers of \$938 million in cash and securities, and of all the common stock of MBIA Illinois (including MBIA Illinois' \$185 million capital base), to MBIA Inc. in the Fraudulent Restructuring exceeded MBIA Insurance's earned surplus and therefore were unlawful under Insurance Law § 4105(a).

101. Further, regardless of whether MBIA Insurance's transfers to MBIA Inc. of \$938 million in cash and securities and of all the shares of MBIA Illinois owned by MBIA Insurance (including MBIA Illinois' \$185 million capital base) were unlawful dividends under Insurance Law § 4105, the NYID's approval of these transfers in the NYID Letter nonetheless was arbitrary, capricious and an abuse of discretion, because:

- a. Insurance Law § 1411(d) prohibits domestic stock insurers such as MBIA Insurance from purchasing their own capital shares except as part of a conversion from a stock life insurer into a mutual company, or "pursuant to a plan of stock redemption and retirement approved by the superintendent as reasonable and equitable."
- b. The shares of MBIA Insurance common stock received by MBIA Insurance from MBIA Inc. have no value to MBIA Insurance, because MBIA Inc. continues to own 100% of MBIA Insurance's outstanding common stock.
- c. The price paid by MBIA Insurance to repurchase shares of its own *common* stock far exceeded the price paid by MBIA Insurance to repurchase shares of its own *preferred* stock (which is senior to common stock) during 2008.
- d. MBIA Insurance's purported redemption of a portion of its own stock, which had no value to MBIA Insurance, in exchange for transferring away valuable assets was not reasonable or equitable to, and adversely affected the interests of, Petitioners and other MBIA Insurance structured-finance policyholders.
- e. Moreover, these transfers from an insurer to its parent company within the same holding company system were not "fair and equitable" as required by Insurance Law § 1505(a).

102. Another component of the Fraudulent Restructuring involved MBIA Insurance's transfer of assets worth \$2.89 billion to MBIA Illinois (net of ceding commissions), and MBIA Insurance's agreement to pay the future premiums received by MBIA Insurance

under its municipal-bond insurance policies (net of a ceding commission), in exchange for MBIA Illinois' agreement to reinsure MBIA Insurance's municipal-bond insurance policies. The NYID's decision in the NYID Letter not to disapprove this transaction was arbitrary, capricious and an abuse of discretion, because:

- a. Insurance Law §§ 1505(a), (d) and (e) require that the Superintendent consider whether the terms of a proposed reinsurance transaction between companies within the same holding company system are "fair and equitable," whether any "charges or fees for services performed [are] reasonable," and whether the proposed transaction "may adversely affect the interests of policyholders."
- b. MBIA Insurance's agreement to spend billions of dollars in assets backing both municipal-bond and structured-finance policies to reinsure *only* its municipal-bond policies on a cut-through basis was not fair or equitable to, adversely affected the interests of, and discriminated against, MBIA Insurance's structured-finance policyholders.
- c. The \$2.89 billion paid by MBIA Insurance to MBIA Illinois, and MBIA Insurance's agreement to pay the future premiums received by MBIA Insurance under its municipal-bond insurance policies (net of a ceding commission), was unfair and inequitable to MBIA Insurance and its structured-finance policyholders (including Petitioners), and was an unreasonably large fee for the service provided to MBIA Insurance by MBIA Illinois, because all of the assets backing the reinsurance provided to MBIA Insurance had just been stripped from MBIA Insurance.

103. As the NYID Letter repeatedly stated, the NYID assumed and relied upon the truth of "the representations made in the Application and its supporting submissions" provided by MBIA. As noted above, MBIA has refused to provide the Application to the Petitioners for review, in an apparent attempt to impede any scrutiny of the accuracy and validity of the information provided to and relied upon by the NYID. On information and belief, MBIA's Application contains outdated, incomplete and/or inaccurate financial information concerning MBIA Insurance's financial condition.

104. According to a May 21, 2009 report by a CreditSights analyst, the NYID “relied on solvency analysis done by [MBIA] itself and not third parties.”⁷⁹ It would be arbitrary, capricious, and an abuse of discretion for the NYID to have issued the NYID Letter in reliance on a solvency analysis prepared by MBIA, rather than a solvency analysis conducted by the NYID or an independent expert. It was also arbitrary, capricious and an abuse of discretion for the NYID to rely in any way on projections provided by MBIA because MBIA’s projections *have consistently overestimated the health of MBIA Insurance*.

105. In addition, to the extent the NYID Letter was based on material misrepresentations or omissions by MBIA, including but not limited to misrepresentations concerning MBIA Insurance’s true financial condition or inaccurate projections of MBIA Insurance’s future financial performance, the NYID Letter should be set aside, voided by the Court and given no deference under the Insurance Law or any other law.

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

106. Petitioners repeat and reallege paragraphs 1-105, above.

107. The NYID’s decision to issue the NYID Letter approving the \$1.147 billion dividend, and the \$938 million transfer of cash and securities, and the transfer of MBIA Illinois common stock, from MBIA Insurance to MBIA Inc. in connection with the Fraudulent Restructuring exceeded the NYID’s jurisdiction and violated the Insurance Law.

108. The NYID’s decision to issue the NYID Letter approving the \$1.147 billion dividend, and the \$938 million transfer of cash and securities, and the transfer of MBIA Illinois common stock, from MBIA Insurance to MBIA Inc., and the NYID Letter’s decision not

⁷⁹ DiBlasi Aff. Ex. 3 (CreditSights May 21, 2009 report), at 3.

to disapprove of the reinsurance agreement between MBIA Insurance and MBIA Illinois, were arbitrary, capricious and abuses of discretion.

109. The NYID's decision to issue the NYID Letter was arbitrary, capricious and an abuse of discretion because the various approvals in the NYID Letter were necessary for the Fraudulent Restructuring, and the Fraudulent Restructuring is not "fair and equitable" to MBIA Insurance or its structured-finance policyholders (including Petitioners).

110. Therefore, the Court should annul and declare void the NYID Letter, and should direct the Superintendent to disapprove the transactions at issue, under CPLR §§ 7803(2), 7803(3) and 7806.

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

111. Petitioners repeat and reallege paragraphs 1-110, above.

112. In the Fraudulent Restructuring, MBIA Insurance paid a \$1.147 billion dividend to MBIA Inc., and also transferred to MBIA Inc. \$938 million in cash and securities and delivered to MBIA Inc. all the shares of MBIA Illinois owned by MBIA Insurance (thereby transferring ownership of MBIA Illinois' \$185 million existing capital base to MBIA Inc.).

113. All of these transfers constituted unlawful dividends under Insurance Law § 4105(a).

114. Insurance Law § 4105(b) provides that:

If the superintendent finds, after notice and a hearing, that any [domestic stock property/casualty insurance] company has distributed any dividend in violation of this section, he may order the company to cease doing any new business until the amount of the dividend has been restored to the company. The directors of any such company who vote in favor of the declaration and distribution of any dividend in violation of this section shall, in addition to all other liabilities and penalties prescribed by law, be jointly and severally liable to the creditors, including policyholder creditors, of the company to the extent of the dividend so declared and distributed, and every shareholder receiving any such dividend shall be liable to the creditors of the company to the extent of the dividend received by such shareholder.

115. The Court should order that MBIA Inc. immediately pay all unlawfully paid dividends (approximately \$2.085 billion in cash and securities, and all the common stock of MBIA Illinois) into a constructive trust for the benefit of all MBIA Insurance creditors, including Petitioners. Alternatively, the Court should order the Superintendent to direct MBIA Inc. and/or the MBIA Insurance directors who voted in favor of such unlawful dividends to restore the dividends to MBIA Insurance and, if necessary, to sue MBIA Inc. and/or such directors to recover such dividends on behalf of the creditors of MBIA Insurance.

THIRD CAUSE OF ACTION

For a Declaration that the NYID Letter Does Not Extinguish Petitioners' Claims Against MBIA in the Fraudulent Conveyance Action

116. Petitioners repeat and reallege paragraphs 1-115, above.

117. Petitioners seek a declaratory judgment that the NYID Letter does not extinguish Petitioners' causes of action against MBIA in the Fraudulent Conveyance Action. There is a justiciable controversy among Petitioners and Respondents because MBIA has taken the position in the Fraudulent Conveyance Action that Petitioners' suit against MBIA must be dismissed because of the NYID Letter, and that Petitioners' exclusive remedy with respect to the Fraudulent Restructuring is to overturn the NYID Letter in an Article 78 proceeding.

118. The NYID Letter does not state that it extinguished or pre-empted any policyholder's right to sue MBIA in connection with the Fraudulent Restructuring.

119. Neither the Insurance Law generally, nor any of the specific Insurance Law provisions cited in the NYID Letter, pre-empts the Debtor and Creditor Law or the common law.

120. Neither the Insurance Law generally, nor any of the specific Insurance Law provisions cited in the NYID Letter, extinguishes the right of policyholders to bring (a) fraudulent-conveyance claims, (b) claims for breach of contract, (c) claims based on an abuse of

the corporate form, or (d) claims based on unjust enrichment, against an insurer or other entities within an insurance holding company system.

121. The NYID issued the NYID Letter to MBIA based on and in reliance on the accuracy of information provided by MBIA that has not been made public, and after engaging in an unspecified analysis that has not been made public.

122. The NYID issued no public notice, solicited no public comment, held no public hearings, and otherwise offered Petitioners no opportunity to be heard before issuing the NYID Letter.

123. The Debtor and Creditor Law and the common law provide creditors (like Petitioners) with certain legal rights against debtors that transfer assets and the recipients of such transfers, without regard to whether such creditors' claims against the debtor have or have not matured.

124. Petitioners' insurance policies contained implied covenants that MBIA Insurance would not intentionally deplete its capital or take actions that would impair its credit rating, discriminate against Petitioners in favor of any other MBIA Insurance policyholder, or frustrate the purposes of the policies. These covenants were essential provisions of Petitioners' insurance policies.

125. The Insurance Law's requirements that all transactions between companies within MBIA Insurance's holding company system must be "fair and equitable"; that any fees or charges on transactions involving companies within MBIA Insurance's holding company system must be "reasonable"; that MBIA Insurance could not pay dividends unless sufficient surplus remained to support its obligations and writings; and that MBIA Insurance could not redeem its stock unless such redemption would be "reasonable and equitable"; were incorporated into and formed essential provisions of Petitioners' insurance policies.

126. A governmental deprivation of or interference with an essential contractual attribute is a deprivation of property. *See, e.g., Patterson v. Carey*, 41 N.Y.2d 714, 720 (1977); *People ex rel. Manhattan Sav. Inst. v. Otis*, 90 N.Y. 48, 52 (1882).

127. A governmental withdrawal of all remedies for the breach of an insurance contract, or a substantial impairment of the means of enforcing a contract, impairs the contractual obligation. *See, e.g., Sliosberg v. N.Y. Life Ins. Co.*, 244 N.Y. 482, 495-96 (1927).

128. To the extent that the NYID Letter purports to extinguish any of Petitioners' private causes of action against MBIA Inc., MBIA Insurance or MBIA Illinois, or Petitioners' legal right to look to the assets transferred in the Fraudulent Restructuring for payment under their insurance policies, the NYID Letter was not reasonable, legitimate or narrowly tailored to further any legitimate state policy goal. On information and belief, the NYID Letter was motivated by an impermissible desire to discriminatorily favor the financial interests of MBIA Inc., government issuers of municipal bonds, and municipal bondholders over those of MBIA Insurance's structured-finance policyholders (including Petitioners). The NYID could have promoted any legitimate state policy goal using means other than the NYID Letter that would not have intruded upon Petitioners' contractual rights. At most, the NYID Letter provided only incidental public benefits.

129. The Fraudulent Restructuring could not have occurred without the issuance of the NYID Letter.

130. The Fraudulent Restructuring involved direct transfers of wealth between private parties, with the approval of the NYID.

131. The Fraudulent Restructuring did not put Petitioners' property to any public use.

132. The Fraudulent Restructuring had an adverse impact upon the value of Petitioners' insurance policies, interfered with essential attributes of Petitioners' contracts,

interfered with Petitioners' legitimate and distinct investment-backed expectations, and caused Petitioners other injuries, with the approval of the NYID.

133. Neither the NYID nor the State of New York has compensated Petitioners for the injuries they suffered in connection with the Fraudulent Restructuring.

134. To the extent that the NYID Letter purports to extinguish any of Petitioners' private causes of action against MBIA Inc., MBIA Insurance or MBIA Illinois, or Petitioners' legal right to look to the assets transferred in the Fraudulent Restructuring for payment under their insurance policies, the NYID deprived Petitioners of property and other rights by issuing the NYID Letter.

135. To the extent that the NYID Letter purports to extinguish any of Petitioners' private causes of action against MBIA Inc., MBIA Insurance or MBIA Illinois, or Petitioners' legal right to look to the assets transferred in the Fraudulent Restructuring for payment under their insurance policies, the NYID Letter is invalid under: (a) the Due Process Clause of the New York Constitution, Art. I § 6; (b) the Due Process Clause of the United States Constitution, Am. XIV § 1; (c) the Contracts Clause of the United States Constitution, Art. I § 10 cl. 1; (d) the Takings Clause of the New York Constitution, Art. I § 7(a); and (e) the Takings Clause of the United States Constitution, Am. V (as made applicable to the states by the Fourteenth Amendment of the United States Constitution).

136. For these reasons, the Court should declare that the NYID Letter does not extinguish Petitioners' causes of action against MBIA in the Fraudulent Conveyance Action.

PRAYER FOR RELIEF

WHEREFORE, Petitioners demand judgment as follows:

(1) This Court should declare null and void and annul the NYID Letter's approvals of (a) the \$1.147 billion dividend paid by MBIA Insurance to MBIA Inc., (b) the \$938 million transfer of cash and securities from MBIA Insurance to MBIA Inc., (c) the transfer of all MBIA Illinois common stock from MBIA Insurance to MBIA Inc., and (d) the reinsurance agreement between MBIA Insurance and MBIA Illinois;

(2) The Court should order that MBIA Inc. immediately pay all unlawfully paid dividends (approximately \$2.085 billion in cash and securities, and all the common stock of MBIA Illinois) into a constructive trust for the benefit of all MBIA Insurance creditors, including Petitioners. Alternatively, the Court should order the Superintendent to direct MBIA Inc. and/or the MBIA Insurance directors who voted in favor of such unlawful dividends to restore the dividends to MBIA Insurance and, if necessary, to sue MBIA Inc. and/or such directors to recover such dividends on behalf of the creditors of MBIA Insurance;

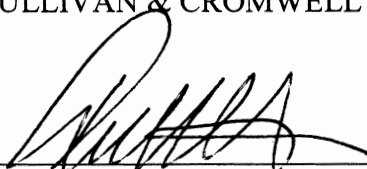
(3) This Court should declare that the NYID Letter does not extinguish Petitioners' causes of action against MBIA in the Fraudulent Conveyance Action;

(4) This Court should award Petitioners their attorneys' fees and costs in connection with this action; and

(5) This Court should award to Petitioners any additional relief that the Court deems just and proper.

DATED: June 15, 2009
New York, New York

SULLIVAN & CROMWELL LLP

By: 

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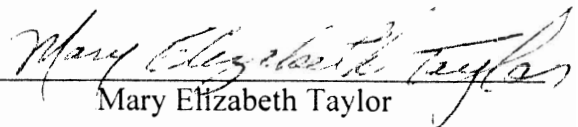
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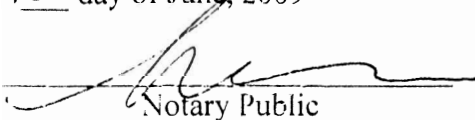
VERIFICATION OF ABN AMRO BANK N.V.

Mary Elizabeth Taylor, being duly sworn, deposes and says:

I am employed as Interim General Counsel of ABN AMRO North America and am responsible for oversight of litigation in the United States involving ABN AMRO Bank N.V., one of the petitioners in the above-entitled action. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true (the grounds for my belief include (a) public statements by respondents or their representatives, such as MBIA Inc.'s press releases, filings with the Securities and Exchange Commission, and other public statements, (b) public statements by third parties (including research analysts), and (c) other materials referenced in the Petition). I further say that the reason why this Verification is made by me and not by "the party" itself is that "the party" is a "foreign corporation" (see CPLR 3020(d)(3)).


Mary Elizabeth Taylor

Sworn to before me this
10 day of June, 2009


Notary Public

Nancy E. Kalley
My Commission Expires 1/31/2013

VERIFICATION OF BARCLAYS BANK PLC

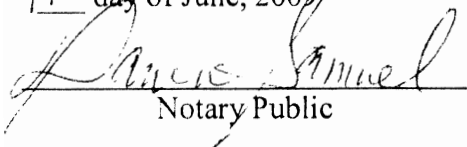
Carolina de Onis, being duly sworn, deposes and says:

I am Director at Barclays Bank PLC, one of the petitioners in the above-entitled action. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true (the grounds for my belief include (a) public statements by respondents or their representatives, such as MBIA Inc.'s press releases, filings with the Securities and Exchange Commission, and other public statements, (b) public statements by third parties (including research analysts), and (c) other materials referenced in the Petition). I further say that the reason why this Verification is made by me and not by "the party" itself is that "the party" is a "foreign corporation" (see CPLR 3020(d)(3)).



Carolina de Onis

Sworn to before me this
11th day of June, 2009

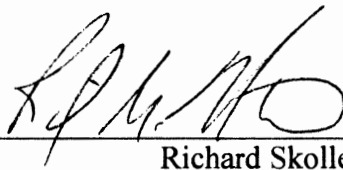

Notary Public

DAWN SAMUEL
Notary Public, State of New York
No. 02SA6033072
Qualified in Nassau County
Commission Expires Nov. 22, 2009

VERIFICATION OF BNP PARIBAS

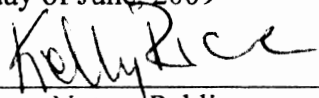
Richard Skoller, being duly sworn, deposes and says:

I am employed as a Managing Director at the New York branch of BNP Paribas, one of the petitioners in the above-entitled action. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true (the grounds for my belief include (a) public statements by respondents or their representatives, such as MBIA Inc.'s press releases, filings with the Securities and Exchange Commission, and other public statements, (b) public statements by third parties (including research analysts), and (c) other materials referenced in the Petition). I further say that the reason why this Verification is made by me and not by "the party" itself is that "the party" is a "foreign corporation" (see CPLR 3020(d)(3)).



Richard Skoller

Sworn to before me this
12th day of June, 2009



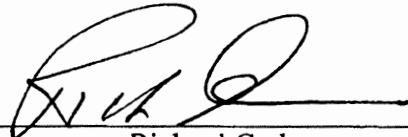
Notary Public

KELLY RICE
Notary Public, State of New York
No. 01RI5077019
Qualified in New York County
Commission Expires May 19, 2011

VERIFICATION OF CALYON

Richard Carlson, being duly sworn, deposes and says:

I am General Counsel and Managing Director at Calyon, one of the petitioners in the above-entitled action. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true (the grounds for my belief include (a) public statements by respondents or their representatives, such as MBIA Inc.'s press releases, filings with the Securities and Exchange Commission, and other public statements, (b) public statements by third parties (including research analysts), and (c) other materials referenced in the Petition). I further say that the reason why this Verification is made by me and not by "the party" itself is that "the party" is a "foreign corporation" (see CPLR 3020(d)(3)).



Richard Carlson

Sworn to before me this
15 day of June, 2009



Notary Public

DONNA MEINERS
NOTARY PUBLIC-STATE OF NEW YORK
No. 01ME6089091
Qualified in New York County
My Commission Expires March 17, 2011

VERIFICATION OF CALYON

Kathleen Sweeney, being duly sworn, deposes and says:

I am Managing Director at Calyon, one of the petitioners in the above-entitled action. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true (the grounds for my belief include (a) public statements by respondents or their representatives, such as MBIA Inc.'s press releases, filings with the Securities and Exchange Commission, and other public statements, (b) public statements by third parties (including research analysts), and (c) other materials referenced in the Petition). I further say that the reason why this Verification is made by me and not by "the party" itself is that "the party" is a "foreign corporation" (see CPLR 3020(d)(3)).


Kathleen Sweeney

Sworn to before me this
15th day of June, 2009



Notary Public

WENDY M. YIP
Notary Public, State of New York
No. 01Y18187405
Qualified in Kings County
Term Expires May 29, 2011

VERIFICATION OF CANADIAN IMPERIAL BANK OF COMMERCE

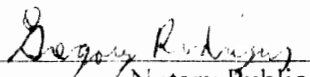
Ian D. Katz, being duly sworn, deposes and says:

I am employed as an Executive Director and Senior Counsel at CIBC World Markets Corp., an indirect wholly owned subsidiary of Canadian Imperial Bank of Commerce, one of the petitioners in the above-entitled action. I am an authorized signatory for Canadian Imperial Bank of Commerce. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true (the grounds for my belief include (a) public statements by respondents or their representatives, such as MBIA Inc.'s press releases, filings with the Securities and Exchange Commission, and other public statements, (b) public statements by third parties (including research analysts), and (c) other materials referenced in the Petition). I further say that the reason why this Verification is made by me and not by "the party" itself is that "the party" is a "foreign corporation" (see CPLR 3020(d)(3)).



Ian D. Katz

Sworn to before me this
11 day of June, 2009



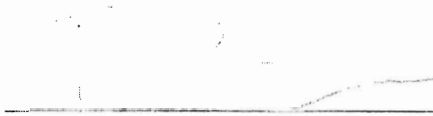
Notary Public

GREGORY RODRIGUEZ
Notary Public, State of New York
No. 01RO6040176
Qualified in Bronx County
Certificate filed in New York County
Commission Expires April 17, 2012

VERIFICATION OF CITIBANK, N.A.

David Mode, being duly sworn, deposes and says:

I am Managing Director at Citibank, N.A., one of the petitioners in the above-entitled action. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.



David Mode

Sworn to before me this
____ day of June, 2009



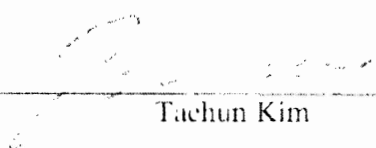
Notary Public

KAMILA D. HANIFF
Notary Public, State of New York
No. 01HA6023523
Qualified in Nassau County
Commission Expires April 28, 2011

VERIFICATION OF HSBC BANK USA, N.A.

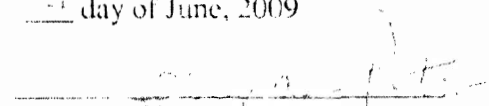
Tachun Kim, being duly sworn, deposes and says:

I am a Senior Vice President at HSBC Bank USA, N.A., one of the petitioners in the above-entitled action. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.



Tachun Kim

Sworn to before me this
____ day of June, 2009



Notary Public

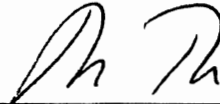
BRIGIDA PETRO
Notary Public, State of New York
No. 41-4903863

Qualified in Queens County
Commission Expires 06/24/2011

VERIFICATION OF JPMORGAN CHASE BANK, N.A.

Don Thompson, being duly sworn, deposes and says:

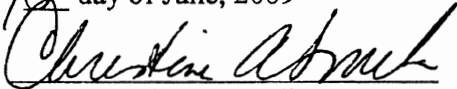
I am Managing Director and Associate General Counsel at JPMorgan Chase Bank, N.A., one of the petitioners in the above-entitled action. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.



Don Thompson

Sworn to before me this

15th day of June, 2009

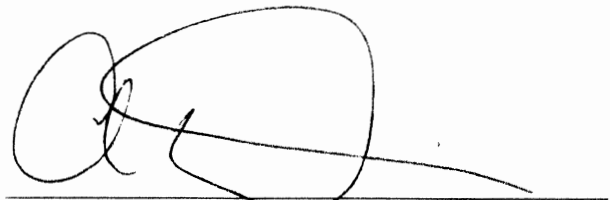


Notary Public
CHRISTINE A. SMITH
Notary Public, State of New York
No. 01SM4506348
Qualified in New York County
Commission Expires December 31, 2009

VERIFICATION OF KBC INVESTMENTS CAYMAN ISLANDS V LTD.

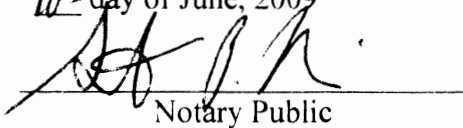
Andrew Dominus, being duly sworn, deposes and says:

I am employed as Secretary of KBC Investments Cayman Islands V Ltd., one of the petitioners in the above-entitled action. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true (the grounds for my belief include (a) public statements by respondents or their representatives, such as MBIA Inc.'s press releases, filings with the Securities and Exchange Commission, and other public statements, (b) public statements by third parties (including research analysts), and (c) other materials referenced in the Petition). I further say that the reason why this Verification is made by me and not by "the party" itself is that "the party" is a "foreign corporation" (see CPLR 3020(d)(3)).



Andrew Dominus

Sworn to before me this
10th day of June, 2009

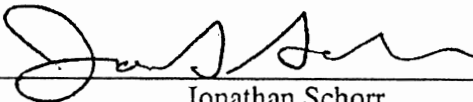

Notary Public

STEPHEN P. KING
Notary Public, State of New York
No. 02K16076951
Qualified in New York County
Commission Expires 11, 2010

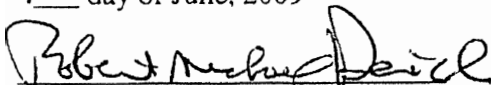
VERIFICATION OF MERRILL LYNCH INTERNATIONAL

Jonathan Schorr, being duly sworn, deposes and says:

I am an authorized signatory of Merrill Lynch International, one of the petitioners in the above-entitled action. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true (the grounds for my belief include (a) public statements by respondents or their representatives, such as MBIA Inc.'s press releases, filings with the Securities and Exchange Commission, and other public statements, (b) public statements by third parties (including research analysts), and (c) other materials referenced in the Petition). I further say that the reason why this Verification is made by me and not by "the party" itself is that "the party" is a "foreign corporation" (see CPLR 3020(d)(3)).


Jonathan Schorr

Sworn to before me this
15th day of June, 2009

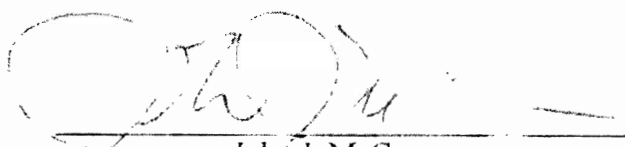

Notary Public

ROBERT MICHAEL DENICOLA
Notary Public, State of New York
No. 02DE6058357
Qualified in New York County
Commission Expires 5/9/2011

VERIFICATION OF BANK OF AMERICA, N.A.

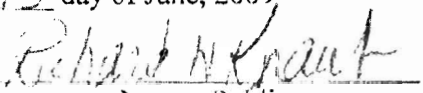
John J. McGreevy, being duly sworn, deposes and says:

I am an authorized signatory of Bank of America, N.A., one of the petitioners in the above-entitled action. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.



John J. McGreevy

Sworn to before me this
12 day of June, 2009



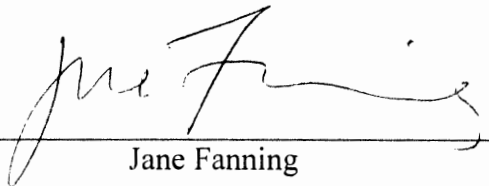
Notary Public

Richard W. KNAUB
Notary Public, State of New York
No. 02KN6086840
Qualified in New York County
Commission Expires Feb 03, 2011

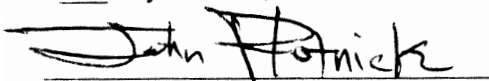
VERIFICATION OF MORGAN STANLEY CAPITAL SERVICES INC.

Jane Fanning, being duly sworn, deposes and says:

I am the president of Morgan Stanley Capital Services Inc., one of the petitioners in the above-entitled action. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true (the grounds for my belief include (a) public statements by respondents or their representatives, such as MBIA Inc.'s press releases, filings with the Securities and Exchange Commission, and other public statements, (b) public statements by third parties (including research analysts), and (c) other materials referenced in the Petition). I further say that the reason why this Verification is made by me and not by "the party" itself is that "the party" is a "foreign corporation" (see CPLR 3020(d)(3)).


Jane Fanning

Sworn to before me this
12 day of June, 2009


Notary Public

JOHN PLOTNICK
Notary Public, State of New York
No. 31-01PL4730133
Qualified in New York County
Commission Expires 1/31/2011

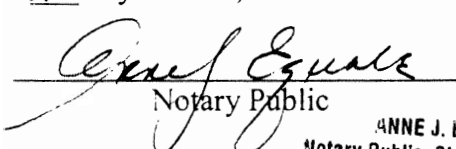
VERIFICATION OF NATIXIS

Martin Avidan, being duly sworn, deposes and says:

I am Managing Director at Natixis, one of the petitioners in the above-entitled action. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true (the grounds for my belief include (a) public statements by respondents or their representatives, such as MBIA Inc.'s press releases, filings with the Securities and Exchange Commission, and other public statements, (b) public statements by third parties (including research analysts), and (c) other materials referenced in the Petition). I further say that the reason why this Verification is made by me and not by "the party" itself is that "the party" is a "foreign corporation" (see CPLR 3020(d)(3)).


Martin S. Avidan, CFA
Senior Managing Director
Natixis

Sworn to before me this
11th day of June, 2009


Notary Public

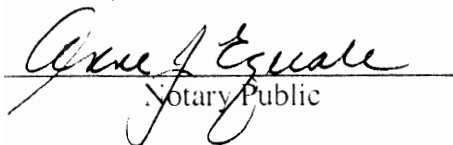
ANNE J. EQUALE
Notary Public, State of New York
No. 41-4706916
Qualified in Queens County
Commission Expires 2/28/2010

VERIFICATION OF NATIXIS FINANCIAL PRODUCTS INC.

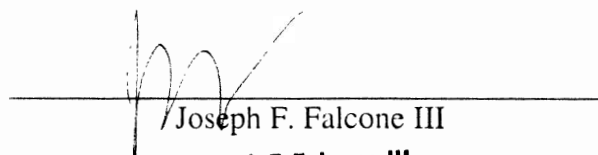
Joseph F. Falcone III, being duly sworn, deposes and says:

I am Director and Senior Counsel at Natixis Financial Products Inc., one of the petitioners in the above-entitled action. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true (the grounds for my belief include (a) public statements by respondents or their representatives, such as MBIA Inc.'s press releases, filings with the Securities and Exchange Commission, and other public statements, (b) public statements by third parties (including research analysts), and (c) other materials referenced in the Petition). I further say that the reason why this Verification is made by me and not by "the party" itself is that "the party" is a "foreign corporation" (see CPLR 3020(d)(3)).

Sworn to before me this
11th day of June, 2009


Notary Public

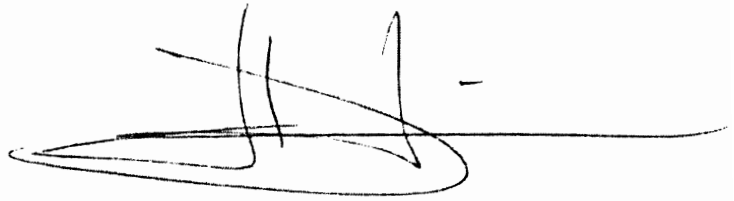
ANNE J. EQUALE
Notary Public, State of New York
No. 41-4706916
Qualified in Queens County
Commission Expires 2/28/2010


Joseph F. Falcone III
Joseph F. Falcone III
Director, Senior Counsel

**VERIFICATION OF COÖPERATIEVE CENTRALE RAIFFEISEN-
BOERENLEENBANK B.A., NEW YORK BRANCH**

Harjan Kuiper, being duly sworn, deposes and says:

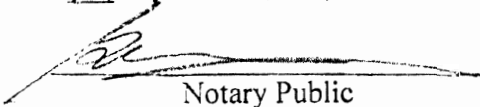
I am Executive Director at Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A., New York Branch, one of the petitioners in the above-entitled action. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true (the grounds for my belief include (a) public statements by respondents or their representatives, such as MBIA Inc.'s press releases, filings with the Securities and Exchange Commission, and other public statements, (b) public statements by third parties (including research analysts), and (c) other materials referenced in the Petition). I further say that the reason why this Verification is made by me and not by "the party" itself is that "the party" is a "foreign corporation" (see CPLR 3020(d)(3)).



Harjan Kuiper

Harjan Kuiper
Executive Director

Sworn to before me this
12 day of June, 2009



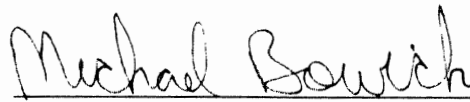
Notary Public

BRETT DELFINO
Notary Public, State of New York
No. 02DE6086961
Certificate Filed in New York County
My Commission Expires February 03, 2011

VERIFICATION OF ROYAL BANK OF CANADA

Michael Bowick, being duly sworn, deposes and says:

I am employed as Head of Financial Products at Royal Bank of Canada, one of the petitioners in the above-entitled action. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true (the grounds for my belief include (a) public statements by respondents or their representatives, such as MBIA Inc.'s press releases, filings with the Securities and Exchange Commission, and other public statements, (b) public statements by third parties (including research analysts), and (c) other materials referenced in the Petition). I further say that the reason why this Verification is made by me and not by "the party" itself is that "the party" is a "foreign corporation" (see CPLR 3020(d)(3)).



Michael Bowick

Sworn to before me this
12th day of June, 2009

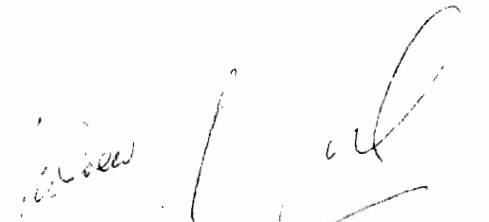


Notary Public

VERIFICATION OF THE ROYAL BANK OF SCOTLAND PLC

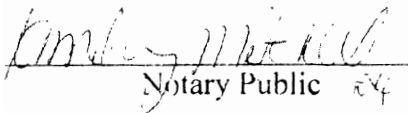
Andrew S. Kwok, being duly sworn, deposes and says:

I am Managing Director and Senior Counsel at RBS Securities Inc., as well as an authorized signatory of The Royal Bank of Scotland plc, one of the petitioners in the above-entitled action. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true (the grounds for my belief include (a) public statements by respondents or their representatives, such as MBIA Inc.'s press releases, filings with the Securities and Exchange Commission, and other public statements, (b) public statements by third parties (including research analysts), and (c) other materials referenced in the Petition). I further say that the reason why this Verification is made by me and not by "the party" itself is that "the party" is a "foreign corporation" (see CPLR 3020(d)(3)).



Andrew S. Kwok

Sworn to before me this
12 day of June, 2009

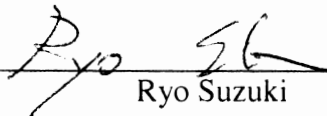


Notary Public 6/12/2009

VERIFICATION OF SMBC CAPITAL MARKETS LIMITED

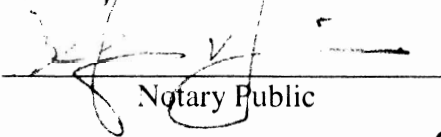
Mr. Ryo Suzuki, being duly sworn, deposes and says:

I am a Director and authorized signatory of SMBC Capital Markets Limited, one of the petitioners in the above-entitled action. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true (the grounds for my belief include (a) public statements by respondents or their representatives, such as MBIA Inc.'s press releases, filings with the Securities and Exchange Commission, and other public statements, (b) public statements by third parties (including research analysts), and (c) other materials referenced in the Petition). I further say that the reason why this Verification is made by me and not by "the party" itself is that "the party" is a "foreign corporation" (see CPLR 3020(d)(3)).



Ryo Suzuki

Sworn to before me this
12 day of June, 2009



Notary Public

HIRO OSHIMA
Notary Public, State Of New York
No. 02OS6042508
Qualified In New York County
Commission Expires 11/05/10

VERIFICATION OF SOCIETE GENERALE

Robert P. Tinari, being duly sworn, deposes and says:

I am a Managing Director at Societe Generale, one of the petitioners in the above-entitled action. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true (the grounds for my belief include (a) public statements by respondents or their representatives, such as MBLA Inc.'s press releases, filings with the Securities and Exchange Commission, and other public statements, (b) public statements by third parties (including research analysts), and (c) other materials referenced in the Petition). I further say that the reason why this Verification is made by me and not by "the party" itself is that "the party" is a "foreign corporation" (see CPLR 3020(d)(3)).



Robert P. Tinari

Sworn to before me this

11th day of June, 2009

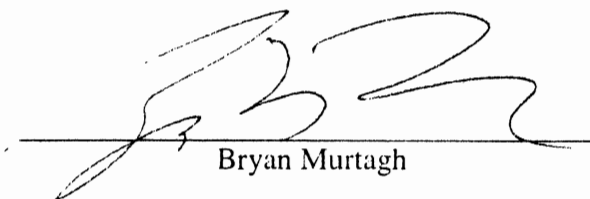

Notary Public

JOHN B. MACLAY III
Notary Public - State of New York
No. 02MA6120503
Qualified in New York County
My Commission Expires Dec. 20, 2012

VERIFICATION OF UBS AG

Bryan Murtagh, being duly sworn, deposes and says:

I am a Managing Director at UBS AG, one of the petitioners in the above-entitled action. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true (the grounds for my belief include (a) public statements by respondents or their representatives, such as MBIA Inc.'s press releases, filings with the Securities and Exchange Commission, and other public statements, (b) public statements by third parties (including research analysts), and (c) other materials referenced in the Petition). I further say that the reason why this Verification is made by me and not by "the party" itself is that "the party" is a "foreign corporation" (see CPLR 3020(d)(3)).



Bryan Murtagh

Sworn to before me this
12 day of June, 2009



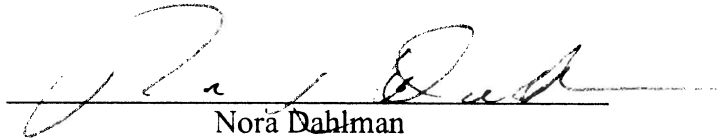
Notary Public

Donovan J. Locke
Notary Public, State of Connecticut
No. 135569
My Commission Expires July 31, 2013

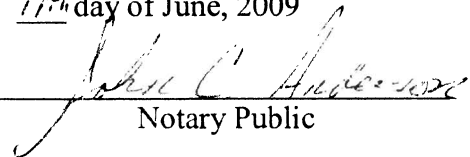
VERIFICATION OF WACHOVIA BANK, N.A.

Nora Dahlman, being duly sworn, deposes and says:

I am Senior Vice President and Managing Counsel at Wachovia Bank, N.A., one of the petitioners in the above-entitled action. I have read the foregoing Petition pursuant to Article 78 of the CPLR and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.


Nora Dahlman

Sworn to before me this
11th day of June, 2009


Notary Public

JOHN C. ANDERSON
Notary Public, State of New York
No. 01446166273
Qualified in Queens County
Commission Expires Dec. 19, 2011

INDEX No. 601846/09

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

ABN AMRO BANK N.V.; BARCLAYS BANK PLC; BNP PARIBAS; CALYON; CANADIAN IMPERIAL BANK OF COMMERCE; CITIBANK, N.A.; HSBC BANK USA, N.A.; JPMORGAN CHASE BANK, N.A.; KBC INVESTMENTS CAYMAN ISLANDS V LTD.; MERRILL LYNCH INTERNATIONAL; BANK OF AMERICA, N.A.; MORGAN STANLEY CAPITAL SERVICES INC.; NATIXIS; NATIXIS FINANCIAL 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.

NOTICE OF PETITION

**SULLIVAN & CROMWELL LLP
125 BROAD STREET, NEW YORK, N.Y. 10004
(212) 558-4000**

**ATTORNEYS FOR
PETITIONERS**