

IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE

THIRD AVENUE TRUST and
THIRD AVENUE VARIABLE SERIES
TRUST,

Plaintiffs,

v.

MBIA INSURANCE CORP. and MBIA
INSURANCE CORP. OF ILLINOIS,

Defendants.

Civil Action No. _____

COMPLAINT

Plaintiffs Third Avenue Trust and Third Avenue Variable Series Trust, each a Delaware business trust (collectively, “Third Avenue”), on behalf of certain series of investment interests, by their undersigned attorneys, for their Complaint against defendants MBIA Insurance Corp. and MBIA Insurance Corp. of Illinois, respectfully allege as follows:

NATURE OF THE ACTION

1. Third Avenue is the holder of approximately \$400 million of a total issuance of \$1 billion par value notes (the “Notes”) issued in January of 2008 by MBIA Insurance Corp. (“MBIA Corp.”), a wholly-owned subsidiary of nonparty MBIA Inc. (the “Parent Company”).¹ MBIA Corp. sold the Notes as part of a plan to shore up its capital base to address increasing losses in its structured finance insurance portfolio. By early 2008, MBIA Corp.’s structured finance portfolio was under substantial pressure because of the widespread and well-publicized difficulties in various securitization markets. In raising \$1 billion in additional capital, MBIA

¹ As of December 31, 2008, \$972 million in Notes were outstanding, \$28 million having been repurchased by MBIA Corp.

Corp. represented to Third Avenue and other potential investors that it intended to use the funds raised to pursue the primary business of the company: insuring public finance bonds.

2. Since early 2008 when Third Avenue made its initial investment, MBIA Corp.'s structured finance portfolio has gone from bad, to worse than bad. Based on recent market developments, MBIA Corp. has no real prospect of writing additional structured finance business in the foreseeable future. Until the acts complained of in this Complaint, MBIA Corp.'s only prospect for future business was in the public finance business.

3. This action arises from a transaction effected on February 18, 2009 (just over a year after the Notes were initially sold to Third Avenue) by MBIA Corp., the Parent Company, and another wholly owned subsidiary of the Parent Company, MBIA Insurance Corp. of Illinois ("MBIA Illinois"). Prior to the transaction, MBIA Illinois was a shell corporation without any operating business or appreciable assets. In the transaction, MBIA Corp. moved all of the healthy, income generating U.S. public finance insurance business, \$2.1 billion in cash, and another \$2.9 billion in unearned premiums to MBIA Illinois, while purporting to leave behind and "ring fence" in MBIA Corp. all of the "toxic" structured finance bond insurance and credit derivative business (the "Asset Stripping Transaction").² No consideration was paid to MBIA Corp. in connection with the transfer of the \$2.1 billion, and no fair consideration was paid in connection with the transfer of MBIA Corp.'s profitable U.S. public finance business and the unearned premiums. MBIA Corp. now holds all the "toxic" assets in the consolidated MBIA entities. Moody's downgraded MBIA Corp., which had previously been investment grade, to "junk" status on the day the transaction was announced. As a result of the transaction, MBIA

² Also left behind was MBIA Corp.'s small international business, the overwhelming majority of which consists of insurance on higher risk collateralized debt obligations and mortgage securities.

Corp. has been rendered insolvent; MBIA Corp. has no ability to generate new business going forward.

4. Although the Asset Stripping Transaction has been devastating to MBIA Corp., the Parent Company has greatly benefitted, isolating its toxic structured finance assets in an insurance subsidiary in runoff. The Parent Company and MBIA Corp. effected the Asset Stripping Transaction solely to benefit stakeholders of Parent Company and with complete disregard for MBIA Corp. noteholders, who now hold notes in an insolvent, junk-rated company. Indeed, the Asset Stripping Transaction creates substantial moral hazard because the Parent Company can simply walk away from any responsibility for MBIA Corp. without any meaningful penalty.

5. The Parent Company's public disclosures have, for over a year now, consistently understated loss projections for MBIA Corp.'s toxic structured finance portfolio—rendering any current claim by Parent Company and the defendants as to MBIA Corp.'s solvency completely unreliable. Over and over and over again, MBIA has publicly disclosed loss projections that have quickly proven to have been too low.

6. For example, at March 31, 2008, MBIA estimated losses on RMBS (Residential Mortgage Backed Securities) at \$1.1 billion. By September 30, 2008, that loss estimate had grown nearly twofold, to over \$2.1 billion.

7. Third Avenue has been greatly harmed by this transaction. The market has been quick to recognize the full import of the purported segregation of MBIA Corp.'s remaining toxic assets: the market value of the Notes fell 36% on the day MBIA Corp. announced the Asset Stripping Transaction, and they are presently trading at only 32 cents on the dollar.

8. The Asset Stripping Transaction violates the terms of the Notes, which expressly prohibit MBIA Corp. from transferring or disposing of all or substantially all of its assets, as it has done here, unless MBIA Corp. redeems the Notes or the entity to which the assets are transferred assumes all of MBIA Corp.'s obligations under the Notes. The Asset Stripping Transaction also constitutes a fraudulent transfer under applicable law. MBIA Corp. literally gave away \$2.1 billion in cash for no consideration, and another \$2.9 billion and its U.S. public finance business without any adequate consideration in return, rendering MBIA Corp. insolvent.

9. This lawsuit seeks rescission of the Asset Stripping Transaction so that the assets wrongfully distributed to MBIA Corp.'s affiliates are returned; in the alternative, Plaintiffs seek rescissory damages.

PARTIES

10. Third Avenue Trust is a Delaware business trust with its principal executive offices at 622 Third Avenue, New York, New York 10017. Third Avenue Trust issues four series of mutual funds (the "Third Avenue Funds") owned by public shareholders, including shareholders that are residents of the State of Delaware. Third Avenue Value Fund owns approximately \$362.2 million in face amount of the Notes. Third Avenue Small Cap Value Fund owns \$38.5 million in face amount of the Notes. The Third Avenue Funds adhere to a strategy of long-term value investing.

11. Third Avenue Variable Series Trust is also a Delaware business trust with its principal executive offices at 622 Third Avenue, New York, New York 10017. Third Avenue Variable Series Trust issues one series of mutual fund shares that are owned by public shareholders, including residents of the State of Delaware, and has a portfolio similar to the

Third Avenue Value Fund. The Variable Series Trust owns \$12 million in face amount of the Notes.

12. Defendant MBIA Corp. is a stock insurance corporation organized under the laws of the State of New York, with its principal place of business at 113 King Street, Armonk, New York 10504. Prior to the Asset Stripping Transaction, MBIA Corp. was in the business of providing financial guarantee insurance and other forms of credit protection to public finance issuers. MBIA Corp. is licensed to transact insurance business in the State of Delaware.

13. Defendant MBIA Illinois is a corporation organized under the laws of the State of Illinois, with its principal place of business at 113 King Street, Armonk, New York 10504. MBIA Illinois is a wholly owned subsidiary of Parent Company and a former subsidiary of MBIA Corp. MBIA Illinois is also licensed to transact insurance business in the State of Delaware.

JURISDICTION

14. This Court has personal jurisdiction over the defendants pursuant to 18 Del. C. §§ 524 and 525. Jurisdiction is proper under these sections because MBIA Corp. and MBIA Illinois are each licensed to transact insurance business in Delaware.

FACTUAL BACKGROUND

A. Overview of the Business of MBIA Corp.

15. Prior to the Asset Stripping Transaction, MBIA Corp. was a “monoline” insurance company in the business of insuring both public finance and structured finance obligations. Monoline insurers guarantee the timely repayment of principal and interest on bonds and other debt obligations in the event of a default by the issuer. MBIA Corp. has offered

this type of financial guarantee insurance to a wide array of governmental and corporate clients since 1973.

16. MBIA Corp.'s insurance of U.S. public finance obligations was and is the crown jewel of MBIA Corp.'s business. Prior to the Asset Stripping Transaction, MBIA Corp. offered financial guarantees for a broadly diversified range of government and municipal bonds issued for various purposes, including general obligation, municipal utility, special revenue, and transportation. This stable, low risk, and relatively high margin business accounted for \$553.7 billion of MBIA's \$785.5 billion portfolio, almost two-thirds of the portfolio, as of December 31, 2008.

17. The overwhelming majority of the remainder of MBIA Corp.'s portfolio is made up of financial guarantees for structured finance products, a large portion of which are highly toxic. These products have been at the forefront of the global financial crisis and have caused substantial losses for MBIA Corp. and Parent Company, and include collateralized debt obligations, credit default swaps, residential second-lien mortgage backed securities, home equity lines of credit, and commercial mortgage backed securities. This portion of the business is known as the structured finance portfolio.

B. Third Avenue's Purchase of \$400 Million in Notes

18. On January 16, 2008, MBIA Corp. issued \$1.0 billion of Notes due January 15, 2033. The Notes were issued pursuant to the Fiscal Agency Agreement, dated January 16, 2008 (the "Fiscal Agency Agreement"), entered into between MBIA Corp. and The Bank of New York, as fiscal agent, in an offering exempt from the registration requirements of the Securities Act of 1933.

19. Buyers of the Notes, including Third Avenue, were solicited through an Offering Circular setting forth the terms of the Notes and information about MBIA Corp. The Offering Circular reflects, and Third Avenue understood at the time it determined to invest, that the Notes were offered as part of a plan to shore up MBIA Corp.'s capital base in light of increasing losses in its structured finance portfolio. By early 2008, the structured finance portfolio was under substantial pressure because of the widespread and well-publicized difficulties in the various collateralized debt obligation markets.

20. The Notes were offered roughly around the same time that the Parent Company raised another \$1.6 billion through offerings of equity. Those funds were also intended for contribution to MBIA Corp. in order to stabilize the company's capital base so that it could continue in its highly profitable, AAA-rated U.S. public finance insurance business.

21. In seeking to raise these funds to stabilize its capital base, the Parent Company touted MBIA Corp.'s diversified business, featuring the stable and highly profitable U.S. public finance insurance business that made up the majority of MBIA Corp.'s portfolio.

22. Third Avenue would not have invested in a company that was only in the business of providing financial guarantees to issuers of structured finance products. No rational investor would have done so in 2008. By that time, it was clear that the structured finance business was in trouble, as rates of default on the underlying debt increased, the secondary market for CDOs and other structured products became illiquid, and new structured finance issues all but ceased.

23. MBIA Corp. committed in the Offering Circular to use the proceeds realized from the sale of the Notes for the general corporate purposes of MBIA Corp. MBIA Corp. did not disclose, nor did Third Avenue anticipate, that the proceeds of the Notes would be used to effect a corporate restructuring of MBIA Corp. aimed at ring fencing the troubled structured finance

portfolio from the stable, profitable U.S. public finance assets that made up the lion's share of MBIA Corp.'s business.

24. Third Avenue acquired a total of approximately \$400 million of the Notes in the initial offering and the aftermarket. In doing so Third Avenue relied on MBIA Corp.'s representation that it intended to use the funds received from the bondholders for its own corporate purposes—not to effect a corporate reorganization that effectively gave away billions in assets and all of its operating capacity to affiliates of the Parent Company without any material consideration in return.

25. To that end, Section 6(a) of the Fiscal Agency Agreement, which is incorporated by reference in Section 4 of the Notes, explicitly required that: “MBIA shall not . . . sell, convey, transfer *or otherwise dispose* of all or *substantially all of its assets to any person* unless” either MBIA redeemed the Notes (pursuant to the terms of the Fiscal Agency Agreement) or the entity to which “all or substantially all” of the assets were transferred “assumes by supplemental fiscal agency agreement all the obligations of [MBIA Corp.] under the Notes and [the Fiscal Agency] Agreement (emphasis added).”

26. Section 6(a) of the Fiscal Agency Agreement provides the holder of the Note a straightforward and sensible protection. To the extent the issuer seeks to move its assets to another corporate entity (by asset sale, merger, or otherwise), the issuer must either make its lenders whole or insure that the obligation to repay the lenders travels with the same assets upon which the lenders were relying in making their decision to extend credit. Section 6(a) protected Third Avenue against the prospect that the Parent Company would seek to transform MBIA Corp. into a different business by, among other things, divesting it of its operating business.

27. The conduct of MBIA Corp. and MBIA Illinois threatens to destroy that protection here. The defendants and their superiors knew that their actions violated Third Avenue's rights. In January 2008, the CFO of the Parent Company, C. Edward Chaplin, stated in an analyst call that there would be many hurdles to creating an effective "good bank/bad bank" structure in an insurance company setting. "We don't want to turn that valuable idea away, but it has a lot of hair on it," Chaplin said during the call. It would be "possible, but very difficult." Apparently, defendants determined to go forward with the "good bank/bad bank" structure notwithstanding the "difficulties." Third Avenue and this lawsuit are, in Chaplin's words, some of the "hair" on the Asset Stripping Transaction.

C. The Asset Stripping Transaction

28. On February 17, 2009, notwithstanding management's reservations, MBIA Corp. and the Parent Company announced the Asset Stripping Transaction: a restructuring of MBIA Corp. designed to divest MBIA Corp. of its entire U.S. public finance portfolio and \$5 billion in cash and investments. Cash in the amount of \$2.1 billion was removed from MBIA Corp. for no consideration; an additional \$2.9 billion in cash was removed purportedly in consideration of unearned premiums. This transaction was designed to siphon the profitable assets of MBIA Corp. to a shell company wholly-owned by the Parent Company, not MBIA Corp., and purportedly to "ringfence" the so-called "toxic" structured finance assets in MBIA Corp. The employees dedicated to the U.S. public finance business have been moved to MBIA Illinois.

29. This transaction, called the "Transformation" in public filings, was effected by causing the stock of MBIA Illinois, a shell company that was a direct subsidiary of MBIA Corp., to be transferred by MBIA Corp. to the Parent Company, and then contributed by the Parent Company to a newly established intermediate holding company that is itself a subsidiary of the

Parent Company. MBIA Illinois will be renamed National Public Finance Guarantee Corporation. MBIA Illinois will continue in the business of U.S. public finance insurance; MBIA Corp. has no prospects of writing any new domestic public finance business. Independent rating agency action confirms this.

30. As part of the Asset Stripping Transaction, MBIA Corp. and MBIA Illinois entered into a Quota Share Reinsurance Agreement, effective January 1, 2009 (the “MBIA Corp. Reinsurance Agreement”) pursuant to which MBIA Corp. ceded *all* of its U.S. public finance business to MBIA Illinois, including by assigning to MBIA Illinois pursuant to a separate assignment agreement its rights and obligations with respect to the U.S. public finance business of Financial Guaranty Insurance Company (“FGIC”) that was reinsured by MBIA pursuant to a reinsurance agreement with FGIC (the “FGIC Reinsurance Agreement”).

31. The portfolio transferred to MBIA Illinois by reinsurance or through the assignment of the FGIC Reinsurance Agreement is the entire U.S. public finance business. By December 31, 2008, that business had grown to \$553.7 billion.

32. MBIA Corp. distributed to the Parent Company, which in turn contributed to MBIA Illinois, approximately \$2.9 billion (an amount the Parent Company claims is equal to the net unearned premium, loss and loss adjustment expense reserves, net of a 22% ceding commission) as a purported “premium” to reinsure the policies covered by the reinsurance and assignment agreements.

33. In addition to the \$2.9 billion cash payment, MBIA Corp. dividended approximately \$2.1 billion to the Parent Company, which was, in turn, contributed to MBIA Illinois. No consideration was provided to MBIA Corp. in return for this dividend and ultimate transfer to MBIA Illinois of billions of dollars in cash.

34. Engaging in transparent word play, the Parent Company's public filing accompanying the announcement of the Asset Stripping Transaction characterizes the transaction as a "Transformation" and falsely claims that the transaction is not a "good bank / bad bank" structure. That filing provides no detail or explanation, however, as to how the transaction differs from the "good bank / bad bank" structure that the Parent Company's CFO described as having a lot of "hair on it."

35. The rating agencies reacted swiftly and negatively to this "transformation," treating it as a "good bank / bad bank" structure. On February 18, 2009, immediately following the Company's announcement of the Asset Stripping Transaction, Moody's downgraded the ratings of MBIA Corp.'s financial strength to B3 and the Notes to Caa2, both deep junk territory.

36. Moody's stated that the Asset Stripping Transaction had resulted in a "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."

37. The reaction of the financial press was scathing. Reuters reported that the rating agencies had cut the rating on MBIA Corp. "deep into junk territory." Bloomberg reported that industry analysts felt that the attempt to "to break up bond insurers into 'good' businesses covering municipal debt and 'bad' businesses liable to subprime-related losses may trigger 'years of litigation.'" One commentator noted that the Asset Stripping Transaction "is the equivalent of going to a casino and trying to keep only the winning bets This would be a straightforward case of fraudulent conveyance and everyone involved would be liable for damages from deprived creditors."

38. Bank of America analysts wrote to their investors that “all policy holders, whether municipal or structured finance, entered into contracts backed by the entire entity,” and the breakup is “likely to lead to significant legal challenges holding up the resolution of the monoline issues for years.” Bank of America concluded that the separation of the two companies was likely to leave the structured finance company (*i.e.*, MBIA Corp.) “deeply distressed.”

39. The President and CFO of Parent Company publicly stated on March 18, 2009 that he expected that MBIA Corp. would have no positive cash flow for 2009, while MBIA Illinois would have positive cash flow “from day one” of \$300 million. Thus, while MBIA Illinois and the highly profitable U.S. public finance business transferred from MBIA Corp. will have positive cash flows “from day one,” the defendants’ wrongful conduct has left Third Avenue and other MBIA Corp. noteholders holding notes in a subsidiary in runoff, with no future business prospects.

40. Parent Company has itself admitted that the structured finance business is in perilous condition, that Parent Company is unable to quantify the total expected losses, and that those losses may far exceed Parent Company’s present estimates. For example, Parent Company's Form 10K dated March 2, 2009 includes the following statements:

- “[W]e have since the third quarter of 2007 recorded case basis losses incurred of **\$2.1 billion** due to projected inadequacies of ... credit enhancements in securities [MBIA Corp.] has guaranteed ... ***No assurance can be given that such credit enhancements will prove to be adequate to protect MBIA Corp. from incurring additional material losses*** in view of the current significantly higher rates of delinquency, foreclosure and losses being observed among residential mortgages and home equity lines of credit.”
- “[T]he deterioration of certain sectors of the credit markets has caused a ***significant decline*** in the number of structured finance securities that have been issued since the fourth quarter of 2007. ***There can be no assurance that the market for financial guarantee insurance will recover....***”

- “There can be *no assurance that actual paid claims in our insured portfolio will not exceed its loss reserves. Small changes in the assumptions* underlying these estimates *could significantly impact loss expectations.*”
- “There can be *no assurance that the future loss projections ... are accurate.* Recent *unprecedented volatility in the credit markets* has caused *adjustments to these projections in a greater magnitude than we have previously experienced.*”
- “We recorded case basis losses incurred of *\$2.1 billion since the third quarter of 2007* related to [structured finance] exposures. There can be *no assurance that the estimates of probable and estimable losses are accurate.* Actual paid claims could *exceed our estimate and could significantly exceed our loss reserves.* If our loss reserves are not adequate to cover actual paid claims, MBIA Corp.’s results of operations and financial condition could be *materially adversely affected.*”

41. Parent Company’s assertions in connection with the Transformation that MBIA Corp. will remain solvent notwithstanding the Asset Stripping Transaction are not only contrary to undeniable economic reality, they are totally unreliable given Parent Company’s prior pronouncements: prior loss estimates by MBIA Corp. in 2007 and 2008 have been consistently off the mark to the tune of billions of dollars, forcing massive continuing writedowns. Given actual probable future losses, it is likely that MBIA Corp. has been left with no net assets subsequent to the Asset Stripping Transaction.

42. Parent Company and Defendants had alternatives to the Asset Stripping Transaction. Among other things, Parent Company and defendants could have created a voting trust that would have given voting control over MBIA Illinois to either an intermediate holding company or MBIA Inc. Through such a structure, MBIA Corp. (and indirectly its Surplus Note holders) would be left with the economic benefit of owning presently outstanding MBIA Illinois Common Stock while still allowing MBIA Illinois to raise capital as an entity independent from MBIA Corp. In sum, Parent Company and Defendants could have accomplished their stated

goal of facilitating capital raising and viability of MBIA Illinois without stripping value away from Plaintiffs and other Surplus Note holders.

43. The Asset Stripping Transaction and the associated fallout within the industry have permanently crippled MBIA Corp. As an insurance company with a “junk” rating from Moody’s, it will be impossible for MBIA Corp. to write any new business going forward. As a result, MBIA Corp. has no prospects as an operating business. Rather, the company is in “runoff”; MBIA Corp. is so financially crippled that it cannot write new policies and has no prospect of doing so in the foreseeable future.

44. While the effect of the Asset Stripping Transaction has been catastrophic as to MBIA Corp., the Parent Company and MBIA Illinois have greatly benefited. All of the toxic assets are now “ring-fenced” in a subsidiary in runoff.

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Contract Against MBIA Corp. and MBIA Illinois)

45. Plaintiffs repeat and reallege each allegation in paragraphs 1 through 44 above as if fully set forth herein.

46. Section 6(a) of the Fiscal Agency Agreement provides that “[MBIA Corp.] shall not . . . sell, convey, transfer or otherwise dispose of all or substantially all of its assets to any person unless” MBIA Corp. redeems the Notes (pursuant to the terms of the Fiscal Agency Agreement) or the entity to which “all or substantially all” of the assets are transferred assumes MBIA Corp.’s obligations under the Notes and the Fiscal Agency Agreement.

47. Section 4 of the Notes, to which Third Avenue and MBIA Corp. are parties, incorporates Section 6(a) of the Fiscal Agency Agreement by reference.

48. On February 18, 2009, MBIA Corp. transferred all or substantially all of its assets to MBIA Illinois. MBIA Corp. failed to honor its obligations under Section 6(a). MBIA Corp.

neither redeemed the Notes held by Third Avenue nor required that the entity to which the assets were transferred, *i.e.*, MBIA Illinois, assume all of MBIA Corp.'s obligations under the Notes and the Fiscal Agency Agreement. The failure constituted a breach of the Notes.

49. Third Avenue has been damaged by this conduct and is entitled to rescission of the asset transfers or, in the alternative, rescissory damages in an amount to be proven at trial.

50. MBIA Illinois is included as a party to this cause of action to facilitate the equitable relief sought herein.

AS AND FOR A SECOND CAUSE OF ACTION
(Fraudulent Transfer (Unreasonably Small Capital)
Against MBIA Corp. and MBIA Illinois)

51. Plaintiffs repeat and reallege each allegation in paragraphs 1 through 50 above as if fully set forth herein.

52. The Asset Stripping Transaction was consummated without fair consideration to MBIA Corp. The Asset Stripping Transaction resulted in the wholesale looting of all of the assets capable of producing business on a going forward basis, all goodwill of the company, *and* \$5 billion in cash. The crown jewel U.S. public finance business and attendant goodwill was transferred with no fair or adequate consideration in return. MBIA Corp. transferred \$2.1 billion in cash with *no* consideration in return. Another \$2.9 billion in cash, purportedly related to unrecognized premiums on the business transferred to MBIA Illinois, was transferred without adequate consideration.

53. The transaction was not made in good faith. It was organized by the Parent Company, which stood to and did benefit from preferring the interests of its shareholders to the interests of Third Avenue and other noteholders of its wholly-owned subsidiary, MBIA Corp.

54. MBIA Corp. was left with “unreasonably small capital.” MBIA Corp. is now a company having provided financial guarantees with respect to a non-diversified selection of toxic assets. The company was downgraded to “junk” by Moody’s immediately after the Asset Stripping Transaction. There is no prospect of successfully stemming the steadily advancing tide of losses on policy claims for the defaults of toxic assets. The obligations under MBIA Corp.’s structured finance policies and the Notes far exceed the value of MBIA Corp.’s assets. MBIA Corp.’s portfolio is in runoff with no capacity to produce any new business as any time in the future.

55. As a direct and proximate result of the conduct, acts and omissions set forth above, Plaintiffs have been injured and suffered damage in an amount to be proven at trial. Plaintiffs are entitled to have the Asset Stripping Transaction set aside and to such other relief as the Court may deem just, equitable, and proper.

AS AND FOR A THIRD CAUSE OF ACTION
(Fraudulent Transfer (Insolvency)
Against MBIA Corp. and MBIA Illinois)

56. Plaintiffs repeat and reallege each allegation in paragraphs 1 through 55 above as if fully set forth herein.

57. As noted above, the Asset Stripping Transaction was made without fair consideration. And MBIA Corp. was rendered insolvent by the transaction. The Asset Stripping Transaction is an attempt to ring fence “toxic” assets, *i.e.*, create a “good bank” of public finance assets and a “bad bank” of structured finance assets. Whatever term is used to describe the transaction, all of the U.S. public finance business, and \$5 billion in cash was transferred to MBIA Illinois without fair consideration. Moody’s immediately downgraded MBIA Corp. to “junk” status after the transaction was announced. This transaction has rendered MBIA Corp.

unable to operate going forward. The business is in runoff without any chance to write any new business. This transfer rendered MBIA Corp. insolvent by sticking it with only toxic assets and their corresponding losses and rendering it unable to generate any new business going forward.

58. As a direct and proximate result of the conduct, acts and omissions set forth above, Plaintiffs have been injured and suffered damage in an amount to be proven at trial. Plaintiffs are entitled to have the Asset Stripping Transaction set aside and to such other relief as the Court may deem just, equitable, and proper.

AS AND FOR A FOURTH CAUSE OF ACTION
(Fraudulent Transfer (Actual Intent to Defraud)
Against MBIA Corp. and MBIA Illinois)

59. Plaintiffs repeat and reallege each allegation in paragraphs 1 through 58 above as if fully set forth herein.

60. The Asset Stripping Transaction was consummated with actual intent to defraud Third Avenue. MBIA Corp. transferred \$2.1 billion in cash to MBIA Illinois for no consideration, and another \$2.9 billion in cash and its “crown jewel” U.S. public finance business to insider MBIA Illinois without any adequate consideration. The Asset Stripping Transaction rendered MBIA Corp. insolvent. The Parent Company and MBIA Illinois, on the other hand, benefited greatly by “ring fencing” from the Parent Company and MBIA Illinois all of MBIA Corp.’s “losing bets.”

61. As a direct and proximate result of the conduct, acts and omissions set forth above, Plaintiffs have been injured. Plaintiffs have suffered damages in an amount to be proven at trial and are entitled to have the Asset Stripping Transaction rescinded and to such other relief as the Court may deem just, equitable, and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs requests judgment against Defendants as follows:

- a. Ordering Defendants to unwind and rescind the Asset Stripping Transaction and reconvey to MBIA Corp. all of the assets transferred pursuant to the transaction;
- b. Declaring that the Asset Stripping Transaction constitutes a fraudulent transfer;
- c. Ordering Defendants to pay to Plaintiffs damages in an amount to be determined at trial, with pre- and post-judgment interest thereon; and
- d. Granting such other and further relief as the Court may deem just, equitable, and proper.

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