

Friday, 28 October 2011

No. 301/2011.

Arrowgrass Distressed Opportunities Fund Limited

Arrowgrass Master Fund Ltd.

CIG & Co Conseq Invest plc

Conseq Investment Management AS

CVI GVF (Lux) Master S. à r. l.

Fondo Latinoamericano de Reservas (F.L.A.R)

GLG European Distressed Fund

GLG Market Neutral Fund

ING Life Insurance and Annuity

ING USA Annuity and Life Insurance Co.

LMN Finance Ltd.

Lyxor/Third Point Fund Limited

Monumental Life Insurance Company

National Bank of Egypt (UK) Limited

Ohio National Life Assurance Corporation

PHL Variable Insurance Company

Phoenix Life Insurance Company

Reliastar Life Insurance Company

Security Life of Denver Insurance

Sun Life Assurance Company of Canada

Third Point Partners LP (US)

Third Point Offshore Master Fund LP

Third Point Partners Qualified LP

Third Point Ultra Master Fund LP (Cayman)

Värde Fund LP

Värde Fund V-B LP

Värde Fund VI-A LP

Värde Fund VII-B LP

The Värde Fund VIII LP

Värde Investment Partners (Offshore) Master LP

The Värde Fund IX LP/The Värde Fund IX-A LP

(Ragnar Aðalsteinsson, Supreme Court attorney)

Bayerische Landesbank
Bremer Landesbank
Commerzbank AG
Commerzbank International SSA
Erste Europäische Pfandbrief- und Kommunalkreditbank AG
Eurohypo AG
DekaBank Deutsche Girozentrale
DekaBank Deutsche Girozentrale Luxembourg SA
Deutsche Postbank International SA
Düsseldorfer Hypothekenbank AG
DZ BANK AG Deutsche Zentral Genossenschaftsbank
Landesbank Baden-Württemberg
LBBW Luxembourg SA
Deutsche Hypothekenbank AG
Raiffeisenbank International AG
Österreichische Volksbanken AG
Sparkasse Oberhessen
Taunus-Sparkasse
Sparkasse Pforzheim Calw
Sparkasse-Jena-Saale-Holzland
Sparkasse Hannover
Nassauische Sparkasse
Anstalt des öffentlichen Rechts
Kreissparkasse Peine
Die Sparkasse Bremen AG Sparkasse
Oder-Spree
(Arnar Þór Jónsson, Supreme Court attorney)
Deutsche Bank Trust Company Americas
(Eyvindur Sólmes, Supreme Court Attorney) **and**
Landsbanki Guernsey Ltd.
(Gunnar Jónsson, Supreme Court attorney)
v
Landsbanki Íslands hf.
(Herdís Hallmarsdóttir, Supreme Court attorney) **and Gemeente Dordrecht**

(Andri Arnason, Supreme Court attorney)

and

Gemeente Dordrecht

(Andri Arnason, Supreme Court attorney)

v

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Deutsche Hypothekenbank AG

Raiffeisenbank International AG

Österreichische Volksbanken AG

Sparkasse Oberhessen

Taunus-Sparkasse

Sparkasse Pforzheim Calw

Sparkasse-Jena-Saale-Holzland

Sparkasse Hannover

Nassauische Sparkasse

Anstalt des öffentlichen Rechts

V.

Kreissparkasse Peine**Die Sparkasse Bremen AG****Sparkasse Oder-Spree**

(Arnar Þór Jónsson, Supreme Court attorney)

WGZ Bank Luxembourg SA**Landesbank Berlin AG****Deutsche Postbank AG****Caixa Geral de Depositos****The Royal Bank of Scotland plc.****ABN AMRO Bank NV, London Branch****Sparkasse zu Lübeck AG****Vereinigte Sparkassen im Landkreis Weilheim****KfW Bankengruppe****Arrowgrass Special Situations S. à r. l.****Skiki ehf.****Blómstri ehf.****Íslenska útflutningsmiðstöðin hf.****Óttar Yngvason****Rakel Óttarsdóttir**

(no one)

Deutsche Bank Trust Company Americas**(Eyvindur Sólmes, Supreme Court Attorney)****and Landsbanki Guernsey Ltd.**

(Gunnar Jónsson, Supreme Court attorney)

Appeal. Financial undertakings. Winding-up. Priority of claim. Priority claim. Deposit. Loan contract. Constitution. Property rights. Retroactivity. Non-discrimination. Proportionality. European Convention on Human Rights. Limits of legal applicability. Contractual interest. Dissenting opinion.

A and others appealed a Ruling by the Reykjavík District Court where a claim of the Dutch local authority GD was deemed to be a deposit and recognised as a priority claim with reference to Art. 112 of Act No. 21/1991, on Bankruptcy etc., in the winding-up of the bank LÍ hf. The claim was recognised with contractual interest from 6 July 2008 to 22 April 2009. GD appealed the District Court's Ruling for its part, since it considered its claim for costs incurred should be recognised as a priority claim. The plaintiffs based their case on

various premises, among them that they had suffered losses resulting from the adoption of Act No. 125/2008, on the Authority for Treasury Disbursements due to Unusual Financial Market Circumstances etc., and that provisions in this Act were in violation of the Constitution of Iceland and specifically cited international conventions to which Iceland had acceded. On this aspect, the Supreme Court's verdict stated that this case and ten additional cases tested the constitutionality of Art. 6 of Act No. 125/2008. In one of these cases, Supreme Court Case no. 340/2011, the plaintiffs based their case on the same premises as was done in this case concerning the flaws in Act No. 125/2008; a verdict had been pronounced in this case earlier that same day. Section II of the above-mentioned Supreme Court verdict gave an account of the substance of Act No. 125/2008, quoting Art. 6 thereof, which was disputed in particular by the parties and which had altered the order of ranking of claims upon the winding-up of financial undertakings, making deposit claims priority claims with reference to Art. 112 of Act No. 21/1991. This same section of the verdict described the takeover by the Financial Supervisory Authority of the country's three largest commercial banks directly following the adoption of the Act, including the defendant LÍ hf., and the establishment of new banks on the basis of the older ones. Finally, this section of the verdict explained the views of the plaintiffs regarding the constitutional flaws of Act No. 125/2008 which should result in its being disregarded in resolving this case, together with the opposing views of the defendants in the case, who were of the opinion that the Act complied both with the Icelandic Constitution and international agreements to which Iceland had acceded. Section III of the above-mentioned verdict gave an account of the interpretative sources for the Bill which had become Act No. 125/2008, to the extent this was relevant for resolution of the parties' dispute. It furthermore explained that at the end of 2008 Act No. 142/2008, on Investigation of the Causes of and Events Leading to the Collapse of the Icelandic Banks in 2008 and Related Events, had been adopted, and those conclusions of the parliamentary Special Investigation Commission which were of significance here. Section IV of the above-mentioned verdict then resolved the dispute on the constitutionality of Act No. 125/2008, rejecting the plaintiffs' contentions that the Act violated the Constitution and international agreements. The discussion in sections II and III of the Supreme Court's verdict in case no. 340/2011 applied equally in the case to be resolved here, as did furthermore the conclusions in section IV of the verdict. General considerations discussed there also applied in this case. Accordingly, the plaintiffs' contentions in this case, that the Act did not comply with the Constitution and international agreements, were rejected.

The Supreme Court next turned to the question of whether the transaction of GD and LÍ hf. could be regarded as a deposit in the sense of Act No. 98/1999, on Deposit Guarantees and an Investor-Compensation Scheme. According to the third paragraph of Article 102 of Act No. 161/2002, on Financial Undertakings, the same rules shall apply to the winding-up of a financial undertaking as apply to the priority of claims against an insolvent estate. However, claims for deposits, as provided for in Act No. 98/1999, enjoy priority with reference to the first and second paragraphs of Article 112 of Act No. 21/1991. A deposit as referred to in the first paragraph of Article 9 of Act No. 98/1999, was according to the third paragraph of the provision [sic] any credit balance resulting from financial deposits or transfers in normal banking transactions, which a commercial bank or savings bank is under obligation to refund under existing legal or contractual terms. The Supreme Court then described the legal relationship between the local authority and LÍ hf. in connection with those funds that the local authority had placed with the bank and the Court concluded that, in accordance with what was presented there and in other respects with reference to the appealed Ruling, the conclusion of the Ruling should be upheld, that

the local authority had a deposit with the bank which should be regarded as a deposit in accordance with the third paragraph of Article 9 of Act No. 98/1999, and that this deposit should enjoy guarantee protection as provided for by that Act. As a result, the claim lodged by the local authority should enjoy priority with reference to Art. 112 of Act No. 21/1991 in the bank's winding-up. Also with reference to the premises of the Supreme Court's verdict in case no. 340/2011, as well as the premises of the appealed Ruling, the conclusion was accepted in this case that the minimum deposit guarantee provided for in the first paragraph of Article 10 of Act No. 98/1999, made no difference to the fact that the insured deposit in its entirety enjoyed priority with reference to Art. 112 of Act No. 21/1991. The Supreme Court then rejected GD's claim that the costs incurred by the local authority be recognised as a priority claim in the winding-up of LÍ hf. The Court rejected this claim with reference to the premises of the appealed Ruling. In accordance with all of the above, the outcome of the case was that GD's claim in the amount of ISK 1,402,348,118 was recognised with priority with reference to Art. 112 of Act No. 21/1991.

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Verdict:

The claim of the defendant, Gemeente Dordrecht, in the amount of ISK 1,402,348,118, against the defendant, Landsbanki Íslands hf., is recognised in the latter's winding-up. The claim is ranked in priority pursuant to Article 112 of Act No. 21/1991, on Bankruptcy etc.

The provisions of the appealed Ruling on court costs are upheld.

Appeal costs are waived.