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

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

Värde Investment Partners (Offshore) Master 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 and

(Eyvindur Sólnes, Supreme Court Attorney)

Landsbanki Guernsey Ltd.

(Gunnar Jónsson, Supreme Court attorney)

v

Landsbanki Íslands hf. and

(Herdís Hallmarsdóttir, Supreme Court attorney)

Gemeente Dordrecht

(Andri Arnason, Supreme Court attorney)

and

Gemeente Dordrecht

(Andri Arnason, Supreme Court attorney)

v

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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)

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 and

(Eyvindur Sólnes, Supreme Court Attorney)

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.

Supreme Court Verdict

This case is judged by Supreme Court Judges Ingibjörg Benediktsdóttir, Garðar Gíslason, Gunnlaugur Claessen, Jón Steinar Gunnlaugsson and Þorgeir Örlygsson, and Eggert Óskarsson, District Court Judge, and Hjördís Hákonardóttir, former Supreme Court Judge.

The plaintiffs referred the case to the Supreme Court in an appeal of 15 April 2011, received by the Court together with appeal documents on 17 May that same year. Appealed is a Ruling of the Reykjavík District Court of 1 April 2011, recognising a claim of the defendant, the Dutch local authority Gemeente Dordrecht, hereafter referred to as GD, in the amount of EUR 8,286,640.18, including contractual interest of 4.79% from 6 July 2008 up until and including 22 April 2009 as a priority claim in the winding-up of the defendant Landsbanki Íslands hf. with reference to Art. 112 of Act No. 21/1991, on Bankruptcy etc. Grounds for appeal are found in the first paragraph of Art. 179 of the same Act.

The plaintiff Arrowgrass Distressed Opportunities Fund Limited, together with 32 others in the same group, demands that the claim of the defendant GD, lodged in the amount of ISK 1,412,376,469 be rejected as a priority claim with reference to the first paragraph of Art. 112 of Act No. 21/1991 in the winding-up of the defendant Landsbanki Íslands hf. Alternately, it is demanded that, if it is accepted that some portion of the claim should enjoy priority, then this

amount should be a maximum of EUR 20,887. Failing this, it is demanded that the local authority's claim, that accrued interest on the claim enjoy priority with reference to Art. 112 of Act No. 21/1991, be rejected. Finally, it is demanded that all the counterclaims of the local authority, to have claims for specific amounts recognised, together with the priority of these claims, exceeding what was recognised by the Winding-up Board of Landsbanki Íslands hf., be rejected. In all instances court costs before the District Court and appeal costs are demanded.

The plaintiff Bayerische Landesbank and 24 others in the same group make the same demands as the plaintiff Arrowgrass Distressed Opportunities Fund Limited et al. with the exception that instead of rejecting completely that the interest claim of the defendant GD be recognised as a priority claim they demand that the priority of interest accruing on the claim after 6 October 2008 be rejected. Finally, it is demanded that the local authority's counterclaims for recognition of claims amounts exceeding those amounts recognised by the Winding-up Board of Landsbanki Íslands hf. be rejected, including claims for the priority of such amounts. In all instances court costs before the District Court and appeal costs are demanded.

The plaintiff Deutsche Bank Trust Company Americas demands that the District Court's conclusion, that the previously mentioned claim of the local authority should be recognised as a priority claim with reference to Art. 112 of Act No. 21/1991, be overturned. It also demands payment of court costs before the District Court and appeal costs.

The plaintiff Landsbanki Guernsey Ltd. demands that the appealed Ruling be altered so that the local authority's claim is recognised as a general claim with reference to Art. 113 of Act No. 21/1991. Alternately, it demands that it be only recognised as a priority claim with reference to Art. 112 of Act No. 21/1991 up to a maximum of EUR 20,887. Finally it demands payment of court costs before the District Court and appeal costs.

The defendant Landsbanki Íslands hf. demands that the appealed Ruling be upheld. It also demands that appeal costs be cancelled.

The defendant GD appealed the District Court's Ruling for its part on 24 May 2011. It demands that its claim against the defendant Landsbanki Íslands hf. in the amount of EUR 8,310,863.06 be recognised and that it enjoy priority ranking in the winding-up of the defendant Landsbanki Íslands hf. as provided for in Art. 112 of Act No. 21/1991. Alternately, the defendant demands that the appealed Ruling be upheld in other respects than concerning court costs. It also demands payment of court costs before the District Court and appeal costs.

The defendants 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., Blomstri ehf., Íslenska útflutningsmiðstöðin hf., Óttar Yngvason and Rakel Óttarsdóttir did not make representations to the Supreme Court.

Before the District Court the plaintiffs Arrowgrass Distressed Opportunities Fund Limited et al. and Bayerische Landesbank et al. demanded that the claims of the defendant GD be dismissed by the court in other respects than concerning amounts in excess of what the Winding-up Board of Landsbanki Íslands hf. has recognised as priority claims. The District Court's premises for the appealed Ruling rejected this claim, but in the appeals of these plaintiffs to the Supreme Court this claim was still made. In letters from these plaintiffs of 25 August 2011 to the Supreme Court this claim was withdrawn and the conclusion of the District Court on this point will not therefore be treated by this Court.

I.

According to an authorisation in Article 100 a of Act No. 161/2002, on Financial Undertakings, cf. Art. 5 of Act No. 125/2008, on the Authority for Treasury Disbursements due to Unusual Financial Market Circumstances etc., on 7 October 2008 the Financial Supervisory Authority took over the power of the shareholders' meeting of the defendant Landsbanki Íslands hf., dismissed its Board of Directors and appointed it a Resolution Committee. Thereafter the bank was granted a moratorium with a ruling of the Reykjavík District Court on 5 December that same year. Adoption of Act No. 44/2009, which amended several provisions of the above-mentioned Acts, placed the bank in winding-up, with its commencement dated to 22 April 2009, when the Act came into force. On the 29th of that same month the Reykjavík District Court appointed a Winding-up Board for the bank which handles, among other things, processing of claims against the bank. The Winding-up Board issued an invitation to the company's creditors to lodge claims on 30 April 2009; the deadline for lodging claims was 30 October that same year. A large number of parties lodged their claims as a result, among them the plaintiffs in this case or in some instances creditors from whom the plaintiffs subsequently acquired their rights. The claims of almost all of these parties, furthermore, shared the status of general claims, as referred to in Art. 113 of Act No. 21/1991. In by far the greatest number of instances, the plaintiffs are international financial undertakings, which hold bonds and other securities issued by the defendant Landsbanki Íslands hf. There have been some changes to the original group of plaintiffs in this case: several of them withdrew from the action when the case was being heard by the District Court, another fifteen of them accepted

the outcome of the District Court and have not for their part appealed it to the Supreme Court. Due to the defendants' appeal of the District Court's Ruling, these fifteen creditors are party to the case before the Supreme Court.

The defendant GD, which is a local authority in the Netherlands, demanded from the Winding-up Board that its claim in the amount of EUR 8,310,863.06 be recognised as a priority claim with reference to Art. 112 of Act No. 21/1991. The claim arises from a wholesale deposit of the local authority with the Amsterdam branch of Landsbanki Íslands hf. on 6 July 2007 in the amount of EUR 8,000,000. It was comprised of the deposit principal plus 4.79% contractual interest up until and including 22 April 2009, after regard had been had for an interest payment on 7 July 2008 and a deduction of payment of deposit insurance from the Dutch Central Bank on 18 March 2009 in the amount of EUR 20,887. Finally, the local authority's claim included the payment as a priority claim of collection cost amounting to EUR 24,222.84 which had been incurred up until 22 April 2009.

Following the expiration of the time limit for lodging claims, the Winding-up Board of Landsbanki Íslands hf. announced its decisions on individual claims. As explained in the appealed Ruling, it recognised the principal of the local authority's claim as a priority claim with reference to Art. 112 of Act No. 21/1991, as well as contractual interest up until and including 22 April 2009, but rejected those aspects of the claim concerning collection costs and court costs. The local authority objected to this decision by the Winding-up Board and demanded that the claim be recognised in full as lodged as per the above. The plaintiffs and others who had lodged claims objected to the Winding-up Board's decision on recognising the priority ranking of the claim with reference to the statutory provision cited above. In processing the claim, the Winding-up Board attempted to resolve the dispute without success. It thereupon referred the case to the Reykjavík District Court in a letter of 2 March 2010, with reference to the second paragraph of Art. 120, cf. Art. 171 of Act No. 21/1991.

The parties' dispute is multifaceted, but traces its roots to the above-mentioned Act No. 125/2008, which was adopted on 6 October 2008 and entered into force on the following day. It amended previous legislation in a manner which the plaintiffs consider invalid and significantly damaging to their interests in the anticipated distributions to creditors from the assets of the defendant Landsbanki Íslands hf. upon its winding-up. It has also been suggested by the plaintiffs that their rights were further infringed with the adoption of the above-mentioned Act No. 44/2009. The dispute in the case is for the most part between the plaintiffs and the defendants, but the defendants also disagree between themselves on the resolution of certain

limited aspects of the claim of the defendant GD. Further details of the parties' premises will be referred to hereafter as necessary for the resolution of the case.

II.

This case, and ten others in addition which were heard by the Supreme Court in September 2011, either with oral or written arguments, tests 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 is done in this case concerning the flaws in Act No. 125/2008; a verdict has been pronounced in this case earlier today. Section II of the above-mentioned Supreme Court verdict gives an account of the substance of Act No. 125/2008, quoting Art. 6 thereof, which is disputed in particular by the parties and which 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 Landsbanki Íslands hf., and the establishment of new banks on the basis of the older ones. Finally, this section of the verdict explains 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 are of the opinion that the Act complies both with the Icelandic Constitution and international agreements to which Iceland has acceded. Section III of the above-mentioned verdict gives an account of the interpretative sources for the Bill which became Act No. 125/2008, to the extent this is relevant for resolution of the parties' dispute. It furthermore explains 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, was adopted, and describes those conclusions of the parliamentary Special Investigation Commission which are of significance here. Section IV of the above-mentioned verdict then resolves the dispute on the constitutionality of Act No. 125/2008, rejecting the plaintiffs' contentions that the Act violates the Constitution and international agreements. The discussion in sections II and III of the Supreme Court's verdict in case no. 340/2011 applies equally in the case to be resolved here as do furthermore the conclusions in section IV of the verdict. General considerations discussed there also apply in this case. Accordingly, the plaintiffs' contentions in this case, that the Act does not comply with the Constitution and international agreements, are rejected.

III.

As explained previously, the parties' dispute concerns, among other things, where the above-mentioned claim of the defendant GD should be ranked in priority in the winding-up of the defendant Landsbanki Íslands hf. The plaintiffs, all of whom are general creditors as referred to in Art. 113 of Act No. 21/1991, do not object to the decision by the Winding-up Board of Landsbanki Íslands hf. to recognise the principal of the claim of the local authority plus contractual interest up until 22 April 2009, but they regard this as a general claim as referred to in Art. 113 of Act No. 21/1991, and not a priority claim, with reference to Art. No. 112 of the Act. The parties' dispute in this respect concerns whether the local authority's claim as lodged in the winding-up proceedings of Landsbanki Íslands hf. should be considered a deposit in the sense of Art. 9 of Act No. 98/1999, on Deposit Guarantees and an Investor-Compensation Scheme, and as such enjoy priority in the bank's winding-up as provided for in the third paragraph of Art. 102 of Act No. 161/2002, as this paragraph was amended by Art. 6 of Act No. 125/2008 and subsequently by Art. 6 of Act No. 44/2009, as this is the understanding of both defendants. On the other hand, the plaintiffs regard the dealings between the local authority and the bank to have been in the form of investment or a loan facility, and therefore the local authority's claim cannot be considered a deposit in the above-mentioned sense and should not therefore enjoy priority. There is no disagreement concerning the amount of the interest in the case.

IV.

As explained in the appealed Ruling, Landsbanki Íslands hf. notified the Financial Supervisory Authority in a letter of 6 March 2006 that the bank intended to establish and operate a branch in Amsterdam in the Netherlands. The letter stated that, to begin with, this would consist exclusively of lending activities, with Landsbanki participating in syndicated facilities and offering general corporate lending as well as corporate and investors' real estate financing. The activities would likely be expanded subsequently to include accepting deposits on the wholesale deposit market together with corporate finance operations. The bank's notification to the Financial Supervisory Authority on 6 September 2007 states that accepting deposits and other funds for repayment will shortly be included in the activities of the bank's Amsterdam branch.

The appealed Ruling provides an account of an agreement concluded between the local authority Gemeente Dordrecht and the Amsterdam branch of Landsbanki Íslands hf. on 3 July 2007, which was arranged through the intermediation of the broker Wallich and Matthes. Pursuant to this agreement, on 6 July 2007 the defendant GD deposited EUR 8,000,000 in an

account of the Amsterdam branch of Landsbanki Íslands hf. with Fortis Bank NV in the form of a transfer; the entire amount, plus 4.79% contractual interest was to be available for withdrawal on 6 July 2009. Among the documents in the case is a confirmation dated 3 July 2007 of a deposit transaction *(depositotransactie)* sent by the broker to the defendant GD. It confirms a telephone conversation earlier that day, in which the broker had executed on behalf of the local authority a deposit transaction under certain conditions. It states the reference number 023010, the recipient of the funds *(geldneemster)* was Landsbanki Íslands hf. in Amsterdam, the contributor of the funds *(geldgeefster)* was Gemeente Dordrecht, the amount *(bedrag)* was EUR 8,000,000, the interest (*rente*) was 4.79% annual interest, calculation of interest *(renteberekening)* was based on act/360, term of the loan *(looptijd)* was 6 July 2007 until 6 July 2009, or 731 days, the amount of interest *(rente bedrag)* was EUR 778,108.89, payment *(betaling)* would come from Fortis Bank NV in Rotterdam, repayment *(terugbetaling)* was to be made to a specified bank in The Hague, commission *(provisie)* was EUR 3,248.88 and will be set on a monthly invoice. The above broker's confirmation is the only document issued concerning the said transaction of the defendant GD with Landsbanki Íslands hf. According to the third paragraph of Art. 102 of Act No. 161/2002, the same rules 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, on Deposit Guarantees and an Investor Compensation Scheme, are in addition to be considered claims enjoying priority as referred to in the first and second paragraphs of Art. 112 of Act No. 21/1991. A deposit in the sense of the first paragraph of Art. 9 of Act No. 98/1999, is 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.

Section IV above describes the dealings between the local authority GD and the Amsterdam branch of Landsbanki Íslands hf. in connection with the funds which the local authority had in the bank. According to this discussion, cf. also the Supreme Court's verdict in case no. 311/2011, which was pronounced earlier today, and in other respects with reference to the premises of the appealed Ruling, the conclusion of the Ruling is upheld, that the local authority held a deposit with Landsbanki Íslands hf. which should be regarded as a deposit in the sense of the third paragraph of Art. 9 of Act No. 98/1999, and that this deposit enjoys guarantee protection as provided for by that Act. As a result, the claim lodged by the local authority enjoys 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 is accepted in this case that the minimum deposit guarantee provided for in the first paragraph of Art. 10 of Act No. 98/1999 makes no difference to the fact that the insured deposit in its entirety enjoys priority with reference to Art. 112 of Act No. 21/1991.

VI.

The defendant GD furthermore demands that its costs incurred up until 22 April 2009 in the amount of EUR 24,222.84 be recognised as a priority claim in the winding-up of the defendant Landsbanki Íslands hf. This aspect of its claim was rejected in the appealed Ruling and this outcome is upheld with reference to the premises of the District Court.

It is undisputed by the defendants that on 18 March 2009 the Dutch Central Bank paid the defendant GD EUR 20,887 towards its claim as deposit insurance. Nor do the defendants dispute that the amount of contractual interest, at 4.79%, from 6 July 2008 up until and including 22 April 2009 is EUR 307,527.18. In accordance with this and with reference to other aspects of the above discussion, the conclusion of the appealed Ruling is upheld, to recognise as a priority claim with reference to Art 112 of Act No. 21/1991 in the winding-up of the defendant Landsbanki Íslands hf. the claim of the defendant GD in the amount of EUR 8,286,640.18 (8,000,000 + 307,527.18 - 20,887 = 8,286,640.18), which converts to ISK 1,402,348,118 based on the exchange rate of 22 April 2009, cf. the third paragraph of Art. 99 of Act No. 21/1991. The recognised amount is awarded in a lump sum and specified in ISK.

Each of the parties was ordered by the District Court to bear its own cost of litigation with explanations as detailed in the premises of the District Court. This conclusion is upheld with reference to those premises. The same perspectives also apply in the main concerning court costs before the Supreme Court. With regard thereto, each party shall bear its own court costs before the Supreme Court.

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.

Dissenting opinion of Jón Steinar Gunnlaugsson

As explained in section II of the majority verdict, this is one of eleven cases which were heard in September 2011 and concern a dispute as to whether Art. 6 of Act No. 125/2008, on the Authority for Treasury Disbursements due to Unusual Financial Market Circumstances etc. provided valid authorisation to recognise on its basis the priority of claims which are considered deposits, as understood by this provision, in the winding-up proceedings of Landsbanki Íslands hf. and Glitnir banki hf.

In the Supreme Court verdicts today in all of the above-mentioned cases, it is concluded that the priority of deposits should be recognised on the basis of the said statutory provision. I disagree with this conclusion and explain the premises for this disagreement in a Dissenting opinion in case no. 340/2011. In this case I also disagree with the majority of the Court and I am of the opinion that the claims of the plaintiffs should be upheld, that the priority of the claim of the defendant Gemeente Dordrecht in the winding-up of the defendant Landsbanki Íslands hf. should be rejected. I refer to my dissenting opinion in case no. 340/2011, regarding the grounds for this conclusion.

Reference is also made to the said dissenting opinion for grounds for my position that the defendant Gemeente Dordrecht can be a party to this case.

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28/10/2011 Fee: ISK
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