

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
1599 SCOMM 60 HOUSING FINANCE TASK FORCE, 1989 1167

fund have customarily been considered a state asset which may be transferred and deposited into the general fund.

The question then becomes: if the AHFC revolving fund is not in the state treasury, but is an asset of a state agency, is the fund subject to appropriation? We believe that unrestricted money in the fund is probably available for appropriation. No specific authority was located to support this conclusion. We base our opinion on a belief that the legislative power of appropriation will be liberally construed by the courts. The appropriation power is often described as plenary. That is, the power to appropriate is limited only by express provisions set out in the Alaska Constitution. Judicial decisions reciting this principle are legion. See, e.g., San Francisco Labor Council v. Regents of University of California, 608 P.2d 277 (Cal. 1980); City of Sand Springs v. Department of Public Welfare, 608 P.2d 1139, 1148 (Okla. 1980). Absent a specific prohibition in the Alaska Constitution against appropriating assets of an executive branch agency held outside the state treasury, we believe that the legislature may do so. This opinion does not hold that the legislature must appropriate revenue of a public corporation before it can be spent, only that the legislature may exercise control over unrestricted assets of a public corporation. To deny this power would establish an entity capable of segregating unrestricted state revenue forever. At some point, this would do violence to the dedicated fund prohibition set out in article IX, section 7 of the Alaska Constitution.

We believe it is also our responsibility to inform you that there is a contrary view on this subject. The argument could be made on behalf of bondholders that AHFC has undertaken certain obligations to bondholders which are binding on AHFC and the legislature. AHFC bonds are issued as general obligations of the corporation. Typically, AHFC covenants in its indenture that it will "defend, preserve and protect the pledge of the program obligations, pledged revenues, and other assets." Bondholders could attack any direct appropriation of the AHFC revolving fund as a violation of the covenant to preserve assets. We believe this covenant will not restrict legislative appropriations of unrestricted assets of AHFC which are unnecessary to secure the repayment of debt service on bonds. See Opinion of the Justices, 313 N.E.2d 882 (Mass 1977); Opinion of the Justices, 136 N.E.2d 223 (Mass 1956). This means that the directors of AHFC must be certain that an appropriation of corporation assets will not jeopardize its ability to pay debt service on outstanding bonds.

To prepare for and meet any challenge to the appropriation of AHFC assets, we recommend that the legislature not only

appropriate the asset but also amend the enabling Act of AHFC to assure bondholders that an impairment of their security will not occur. Under this approach, a valid transfer of assets requires not only an appropriation from the AHFC revolving fund but also an amendment to AS 18.56.020 which provides authority for AHFC to transfer unrestricted surplus to the general fund. */ Authorization by general law for the transfer of assets of public corporations has been used in the past. In 1980, the legislature transferred the assets of the Alaska State Development Corporation (AS 44.59.010), the Small Business Development Corporation (AS 44.60.020), and the Alaska Toll Bridge Authority (AS 44.57.010) to the Alaska Industrial Development Authority. Sec. 42, ch. 106, SLA 1980. The transfer was made not in an appropriations bill, but in a bill proposing the enactment of general law. It is curious to note that no corresponding appropriation was made. This approach is consistent with another familiar adage of public finance law that appropriation bills may not be used to amend substantive law. Legislative Budget & Audit Committee v. Hammond, No. 1JU-80-1163 CIV. It could be argued that AS 18.56.020 implies that the assets of AHFC will be transferred to the state treasury only upon termination. Because an appropriation cannot amend existing law, a transfer from the fund before dissolution of AHFC would be subject to question.

While we believe that a direct appropriation of surplus AHFC assets is legally defensible, to avoid any question as to the validity of a transfer appropriation, we recommend that the legislature

(1) enact an amendment to AS 18.56.020 authorizing interim transfers of unrestricted surplus assets of AHFC to the general fund;

(2) provide that the board of directors shall annually determine the amount of surplus available for transfer; and

*/ AS 18.56.020 provides:

ALASKA HOUSING FINANCE CORPORATION. The Alaska Housing Finance Corporation is a public corporation and government instrumentality within the Department of Revenue, but havein a legal existence independent of and separate from the state. The corporation may not be terminated as long as it has bonds, notes or other obligations outstanding. Upon termination of the corporation, its rights and property pass to the state.

Hon. Al Adams, Chairman
House Finance Committee
366-463-85

April 24, 1985
Page #5

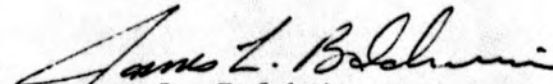
(3) appropriate the assets from the fund to the general fund in accordance with the transfer authorization.

We hope this memorandum has answered your questions.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


James L. Baldwin

Assistant Attorney General

JLB/pjg

File N.R.

Mortgage Guaranty Insurance Corporation

Thomas D. Ster
Vice President-Alaska Operations

August 3, 1989
The Honorable C. E. Swackhammer
State of Alaska
312 Tyee Street
Soldotna, Alaska 99669

Dear Mr. Swackhammer:

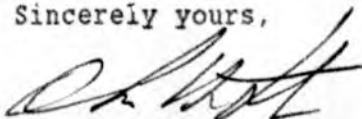
In a long article in the Anchorage Daily News last Sunday, you may have read about disagreements between Alaska Housing Finance Corporation and Mortgage Guaranty Insurance Corporation. Briefly, AHFC disputes MGIC's claims payment practices, while we feel we pay what we are responsible for but will not pay for unreasonable and nonreimbursable costs. We do not wish to debate the issues on the pages of the Daily News and did not invite their interest. Since this has spilled over into the media, however, we wish to be responsive to any questions you might have.

MGIC has been a conscientious corporate citizen in Alaska. We have paid out more than \$140 million dollars in Alaska and expect to pay out more. That is our responsibility as an insurance company. We have worked hard to help Alaskans save their homes through our borrower counseling program and the joint HOAP program, with Fannie Mae and AHFC. We have successfully sponsored marketing programs which have helped revitalize neighborhoods and condominium communities. We wish to continue to work on joint programs with AHFC, such as the "Yes You Can" Retail Financing program, the Exchange program and the next HOAP program. We stand ready to give these programs the attention they need for immediate implementation. It is critical that we work together to stem the flow of defaults. It is essential that we sell properties to Alaskan buyers at attractive prices and in good condition. To do so will be beneficial to all.

The record will show that MGIC has worked vigorously and in good faith to resolve the claim issues referred to in Sunday's article. Most of these issues were first raised with us in March of this year. We have met, discussed, offered reasonable compromises and will continue to sit at the bargaining table until no hope of success remains. The stakes are too high for MGIC, AHFC, and citizens of Alaska to do anything less.

Thank you for your consideration. If you have any questions concerning the issues, I will be more than happy to discuss them with you. You can contact me at work (274-6442) or at home (349-2743).

Sincerely yours,



Thomas D. Ster
Vice President - Alaska Operations

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUCH WF-STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3795

MEMORANDUM

DATE: October 14, 1987

TO: Mike Greany, Director
Legislative Finance Division

FROM: Cameron Kashani, Fiscal Analyst ^{CK}
Legislative Finance Division

SUBJECT: Alaska Housing Finance Corporation

This memorandum is concerning my September 26, 1987 discussion with Mark Cameron and Margaret Nelson of Alaska Housing Finance Corporation. In this memo, I will discuss and elaborate on various functions of this institution for a general understanding of the system.

AHFC has been in operation since 1971. However, in 1980, legislation passed by both state and federal government significantly altering AHFC's program. The intent of the law was to make houses more affordable to Alaskans. Currently, AHFC is administering a number of programs. These are:

- Home Ownership Assistance Program
- Mobile Home Loan Program
- Taxable Mortgage Program
- Triplex/Four-plex Mortgage Program
- Tax-exempt Mortgage Program
- Pledged Account Mortgage Program
- Second Mortgage Program
- Veterans Mortgage Program
- Refinance Program
- Non-conforming Property Program
- Condominium Project
- Mobile Home Parks

AHFC provides a secondary lending market by issuing tax-exempt bonds for low income Alaskans and taxable bonds for all others. To secure bonds issued, two types of insurance policies are purchased: a) Primary Mortgage Insurance (PMI) and b) Pool Insurance (PI). PMI provides roughly 20% coverage on the money

loaned and the remaining amount is covered under Pool Insurance policy. This includes all miscellaneous costs such as maintenance and fire insurance. In the case of foreclosure, AHFC would file for advanced payments from insurance companies to prepay upcoming costs.

However, prior to 1981, there did not exist a contract for a Pool Insurance policy. Therefore, the corporation is at risk for what is not covered under Primary Mortgage Insurance. The last Pool Insurance policy was signed in 1984 with the intent that the risk would be reverted to the corporation in 1987, in that, AHFC would be responsible for all bonds issued during 1987. Currently, the corporation is in the process of signing a contract with Freddie Mac to insure future bonds, thus, transferring the risk to Freddie Mac.

To comply with Freddie Mac's requirement, AHFC has contracted out a study on the economics of the housing industry in Alaska. Institute for Social & Economic Research (ISER) was granted this contract and the report would be available by the end of October. Furthermore, the corporation was asked to prepare a loan loss analysis to illustrate its financial status.

Like all other financial institutions in Alaska, AHFC has not been immune from the recent downturn in Alaska's economy. At the present, AHFC is holding 3000 properties of which 300 are owned by the corporation. These are properties not covered under the Pool Insurance policy. The cost associated with holding of 300 properties is approximately \$430,000 per month where mobile homes account for \$340,000 of this amount. The financing of such costs are paid from the earnings of AHFC's equity fund. According to Mark Cameron, the existing balance of this account is \$400 million. The following table shows delinquency rates including foreclosures for mobile homes and first mortgage loans.

	<u>Delinquency Rates*</u>			
	<u>Mobile Homes</u>		<u>1st Mortgage Loans</u>	
	<u>10/86</u>	<u>6/87</u>	<u>10/86</u>	<u>6/87</u>
30 days	7.84%	9.18%	5.61%	5.65%
60 days	3.74%	5.06%	1.95%	2.52%
90 days or more and loans in foreclosure	7.84%	10.53%	4.68%	7.32%
Total Delinquent and in Foreclosure	<u>19.42%</u>	<u>24.77%</u>	<u>12.24%</u>	<u>15.48%</u>
Real Estate Owned**	<u>9.52%</u>	<u>20.83%</u>	<u>1.82%</u>	<u>3.88%</u>

* Delinquency rates include loans in foreclosure.

** Properties acquired through foreclosure or its equivalent.

Source: Whole earth catalog, November 1986 and July 1987.

Given the rate of increase in delinquent and foreclosed properties, by next year, AHFC could have 7200 homes on hand. However, this does not mean that AHFC is 100% at risk, but it implies that AHFC will own more properties not covered by the Pool Insurance policy. According to Margaret Nelson, 30 additional people are needed to handle foreclosures since banks are reluctant to provide adequate services, especially with respect to collection efforts.

There are two types of foreclosures; administrative and judicial. Non-judicial foreclosures could take as long as 11 months. The delay could be attributed to the lack of interest by banks in following up the delinquent loans. The servicing agency has to lay out the initial cost of foreclosing then get reimbursed by AHFC.

In the past, the banking industry in Alaska has been portraying the characteristics of being a liberal lender. Now that the economy is bust, this industry is having a difficult time to enforce its rules, i.e. becoming a collector. This could be for the following reasons; a) fear of losing customers, b) not having qualified people to enforce the law, c) lack of adequate number of personnel, and d) unwilling to adhere to AHFC's requirements and laying out the initial cost.

According to AHFC's regulations on foreclosure procedures, the servicer is required to pay for expenses incurred during the foreclosure procedure then get reimbursed by the corporation. It seems that AHFC does not have the power to make the servicers comply with their side of the contract, that is, to provide proper and timely services.

On the judicial side, there are 300 active cases, properties owned by AHFC. Judicial process commenced a few months ago and according to Mark Cameron, in most cases, the fear of judicial foreclosure had made borrowers to come forward and seek some sort of solution. Judicial foreclosure is rather costly and it may take up to an additional year, after administrative foreclosure, during this time AHFC can not market the property.

In brief, the following outlines recent actions initiated by AHFC.

- * As of the end of August, AHFC entered into a contract with three management companies to handle sale and maintenance of mobile homes held by the corporation.

- * The old rental program is replaced by a rental waiver policy, in that, the borrower simply informs the banks so that a tenant insurance policy can be arranged.

- * AHFC is working with MGIC to resolve the existing crisis facing condominium associations in Anchorage.

- * A credit counseling program has been set up to help those who may qualify for refinancing or lower mortgage payments based on their income criteria.

* AHFC is in the process of signing a new contract with Freddie Mac to revert the present risk to that company. But, the corporation needs to meet certain requirements set forth by Freddie Mac.

Further, attached spreadsheet shows delinquency rates by dwelling.

attachment

Alaska Housing Finance Corporation
Loan Delinquency Rates By Dwelling
August 30, 1987

	ALL LOANS	ALL LOANS TYPE II	SINGLE- FAMILY	CONDO'S & PUD'S	TYPE I MHS	MULTI- PLEX	HOF PROGRAM	PAM PROGRAM	TYPE II MHS
30 days	5.48%	5.29%	5.20%	5.69%	5.66%	6.38%	7.34%	5.95%	7.82%
60 days	2.29%	2.14%	1.97%	2.82%	6.60%	4.79%	3.59%	2.80%	4.19%
90 days	1.63%	1.53%	1.33%	2.54%	.94%	1.60%	3.48%	1.75%	2.79%
120 days	6.42%	6.26%	5.16%	11.16%	17.92%	18.62%	12.84%	8.05%	8.43%
Total Delinquency %	15.82%	15.22%	13.66%	22.20%	31.13%	31.38%	27.25%	18.55%	23.23%
Total Delinquency #	7,544	6,712	4,968	1,652	33	57	1,002	159	832
Total HOF Delinquency %	27.25%	26.88%	23.32%	30.31%	55.56%	00.00%			33.85%
Total HOF Delinquency #	1,002	936	414	512	10	0			66
Total PAM Delinquency %	18.55%	18.55%	17.45%	21.72%	00.00%	00.00%			00.00%
Total PAM Delinquency #	159	159	111	48	0	0			0
Total Active Loans #	47,677	44,095	36,361	7,440	106	186	3,677	857	3,592
Total Active HOF #	3,677	3,482	1,775	1,689	18	0			195
Total Active PAM #	857	857	636	221	0	0			0
Foreclosures in Last 6 Months									
#	2,072	1,617	968	628	10	11	354	44	455
\$	\$150,888,425		\$87,036,857	\$46,045,745	\$829,661	\$2,032,719	\$23,660,218	\$4,411,618	\$14,943,443
All Real Estate Owned									
%	6.14%	4.57%	2.98%	11.56%	8.62%	6.00%	11.57%	6.64%	21.98%
#	3,120	2,111	1,115	974	10	12	481	61	1,009
Foreclosure Balance \$	\$218,176,021		\$107,270,673	\$74,608,826	\$813,312	\$2,270,521	\$34,345,051	\$5,899,559	\$33,212,690

Source: Alaska Housing Finance Corporation
(ahfc)/LFD

October, 13, 1987

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

THE STATE OF ALASKA and ALASKA
HOUSING FINANCE CORPORATION,

Plaintiffs,

v.

Case No. 3AN-90-____ Civil

MORTGAGE GUARANTY INSURANCE
CORPORATION; EUROPEAN GENERAL
REINSURANCE COMPANY OF ZURICH;
ALPINA INSURANCE COMPANY LIMITED;
SKANDIA INTERNATIONAL INSURANCE
CORPORATION; CONTINENTAL CASUALTY
COMPANY; HANNOVER
RUECKVERSICHERUNGS
AKTIENGESELLSCHAFT; FRANKONA
RUECKVERSICHERUNGS AKTIEN-
GESELLSCHAFT; HANSA INTERNATIONAL
INSURANCE COMPANY, LIMITED; FOLKSAM
INTERNATIONAL INSURANCE COMPANY,
LIMITED; SVENSKA
KREDITFOERSAEKRINGSAKTIEBOLAGET;
and ANCIENT MUTUELLE REASSURANCE,

Defendants.

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES
AND DECLARATORY AND INJUNCTIVE RELIEF

COME NOW Plaintiffs, the State of Alaska (hereinafter referred to as "Alaska") and ALASKA HOUSING FINANCE CORPORATION (hereinafter referred to as "AHFC"), and for their complaint against Defendants MORTGAGE GUARANTY INSURANCE CORPORATION (hereinafter referred to as "New MGIC"); EUROPEAN GENERAL REINSURANCE COMPANY OF ZURICH; ALPINA INSURANCE COMPANY LIMITED; SKANDIA INTERNATIONAL INSURANCE CORPORATION; CONTINENTAL CASUALTY COMPANY; HANNOVER RUECKVERSICHERUNGS AKTIENGESELLSCHAFT; FRANKONA RUECKVERSICHERUNGS

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AKTIENGESELLSCHAFT; HANSA INTERNATIONAL INSURANCE COMPANY, LIMITED; FOLKSAM INTERNATIONAL INSURANCE COMPANY, LIMITED; SVENSKA KREDITFOERSAEKRINGSAKTIEBOLAGET; and ANCIENNE MUTUELLE REASSURANCE (hereinafter referred to as "the European Companies"), allege and complain as follows:

NATURE OF ACTION

1. Plaintiff Alaska and Plaintiff AHFC, an instrumentality of Alaska, bring this action to recover compensatory, consequential, and punitive damages, and to obtain declaratory and injunctive relief, to redress past and continuing breaches of contract and tortious misconduct by the defendants, who have systematically and without justification failed to comply, and are continuing to fail to comply, with their obligations to pay Plaintiff AHFC for losses covered under policies of mortgage insurance. Defendants have already improperly denied in excess of \$25 million in valid claims submitted by Plaintiff AHFC under such policies. In addition, defendants have threatened to employ improper practices that will result in the improper denial of in excess of \$25 million in valid claims that AHFC will submit in the future under such policies.

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JURISDICTION AND VENUE

2. Subject matter jurisdiction is proper in this Court pursuant to Alaska statutory and common law, including Alaska Stat. § 22.10.020(a) and (g).

3. This Court has personal jurisdiction over the defendants pursuant to Alaska Stat. § 09.05.015 because each defendant has sufficient contacts with the State for purposes of that statute.

4. Venue is proper in this judicial district pursuant to Alaska Stat. § 22.10.030 and Rule 3, Alaska Rules of Civil Procedure.

PARTIES

5. Plaintiff Alaska is a sovereign state of the United States.

6. Plaintiff AHFC is a public corporation and government instrumentality established pursuant to Alaska Stat. § 18.56.010 et seq. AHFC is expressly empowered to sue in its own name. Id. § 18.56.090(19).

7. Defendant New MGIC is an insurance company incorporated under the laws of the State of Wisconsin and having its principal place of business in Milwaukee, Wisconsin. Defendant New MGIC is licensed to do business in the State of Alaska as an insurer

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and is doing business in the State of Alaska as, inter alia, an insurer and an administrator and handler of insurance claims. Defendant New MGIC is subject to the jurisdiction of this Court.

8. Defendant European General Reinsurance Company of Zurich is an insurance company having its principal place of business in Zurich, Switzerland. As a result of the transactions described herein, Defendant European General Reinsurance Company of Zurich has purposefully availed itself of the privilege of and is doing business in the State of Alaska and is subject to the jurisdiction of this Court.

9. Defendant Alpina Insurance Company Limited is an insurance company having its principal place of business in Zurich, Switzerland. As a result of the transactions described herein, Defendant Alpina Insurance Company Limited has purposefully availed itself of the privilege of and is doing business in the State of Alaska and is subject to the jurisdiction of this Court.

10. Defendant Skandia International Insurance Corporation is an insurance company having its principal place of business in Stockholm, Sweden. As a result of the transactions described herein, Defendant Skandia International Insurance Corporation has purposefully availed itself of the privilege of and is doing business in the State of Alaska and is subject to the jurisdiction of this Court.

11. Defendant Continental Casualty Company is an

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insurance company incorporated under the laws of the State of Illinois and having its principal place of business in Chicago, Illinois. Continental Casualty Company is licensed to do business as an insurer in the State of Alaska and is subject to the jurisdiction of this Court.

12. Defendant Hannover Rueckversicherungs Aktiengesellschaft is an insurance company having its principal place of business in Hannover, West Germany. As a result of the transactions described herein, Defendant Hannover Rueckversicherungs Aktiengesellschaft has purposefully availed itself of the privilege of and is doing business in the State of Alaska and is subject to the jurisdiction of this Court.

13. Defendant Frankona Rueckversicherungs Aktiengesellschaft is an insurance company having its principal place of business in Munich, West Germany. As a result of the transactions described herein, Defendant Frankona Rueckversicherungs Aktiengesellschaft has purposefully availed itself of the privilege of and is doing business in the State of Alaska and is subject to the jurisdiction of this Court.

14. Defendant Hansa International Insurance Company, Limited, is an insurance company having its principal place of business in Stockholm, Sweden. As a result of the transactions described herein, Defendant Hansa International Insurance Company, Limited, has purposefully availed itself of the privilege of and is

doing business in the State of Alaska and is subject to the jurisdiction of this Court.

15. Defendant Folksam International Insurance Company, Limited, is an insurance company having its principal place of business in Stockholm, Sweden. As a result of the transactions described herein, Defendant Folksam International Insurance Company, Limited, has purposefully availed itself of the privilege of and is doing business in the State of Alaska and is subject to the jurisdiction of this Court.

16. Defendant Svenska Kreditfoersaekringsaktiebolaget is an insurance company having its principal place of business in Stockholm, Sweden. As a result of the transactions described herein, Defendant Svenska Kreditfoersaekringsaktiebolaget has purposefully availed itself of the privilege of and is doing business in the State of Alaska and is subject to the jurisdiction of this Court.

17. Defendant Ancienne Mutuelle Reassurance is an insurance company having its principal place of business in Paris, France. As a result of the transactions described herein, Defendant Ancienne Mutuelle Reassurance has purposefully availed itself of the privilege of and is doing business in the State of Alaska and is subject to the jurisdiction of this Court.

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ALLEGATIONS COMMON TO ALL CLAIMS

A. Facts Regarding AHFC

18. The legislature of the State of Alaska established AHFC in 1971 in order to promote the safety, health, welfare and prosperity of the people of Alaska by assisting in making affordable residential housing available to persons of lower and moderate income and persons in remote, underdeveloped, and blighted areas of the State. AHFC's statutory charter declares:

[T]he creation of the Alaska Housing Finance Corporation is essential to assist in the acquisition and development of land and the construction, rehabilitation, financing, management, maintenance, sale and rental of dwelling units for persons of lower and moderate income or persons in remote, underdeveloped or blighted areas and . . . these activities serve a public purpose in benefiting the people of the state.

Alaska Stat. § 18.56.010(c).

19. In order to promote the availability of capital for financing affordable housing for the people of Alaska, AHFC has for many years operated programs under which it purchases mortgage loans from mortgage lenders using funds derived from the sale of bonds to investors. As part of these programs, AHFC provides subsidies that permit private mortgage lenders to make mortgage loans to Alaska citizens at interest rates lower than would be available in the absence of such subsidies. Since its inception, AHFC has issued over \$7.6 billion in bonds to support such programs, and has thereby directly or indirectly financed more than 79,000 homes for residents

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of Alaska. The primary source of funds to meet AHFC's obligations on outstanding bonds is the income generated by borrowers' payments on the purchased mortgage loans.

20. During the 1980s, AHFC issued 84 series of housing bonds, each series of which was collateralized by a pool of mortgage loans purchased by AHFC. In order to protect itself and the holders of its bonds from losses incurred as a result of defaults by borrowers on the pooled mortgage loans, AHFC obtained supplemental mortgage insurance covering the mortgage loans in each such pool of mortgage loans. Mortgage insurance is a form of insurance under which the insurer, in exchange for premium payments, promises to pay the insured for financial losses suffered as a result of nonpayment of principal, interest and other sums agreed to be paid under the terms of any note or other evidence of indebtedness secured by a mortgage or other lien or charge on real estate (hereinafter referred to as a "mortgage loan"). Supplemental mortgage insurance is a type of mortgage insurance that covers losses that are not reimbursed through any primary mortgage insurance that may have been obtained at the time the mortgage loan was originally made.

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B. Facts Regarding the WMAC/Old MGIC
Mortgage Insurance Policies

21. In 1981, AHFC selected Wisconsin Mortgage Assurance Corporation, which was then named and doing business as Mortgage Guaranty Insurance Corporation (hereinafter referred to as "WMAC/Old MGIC"), as the provider of supplemental mortgage insurance for its ongoing mortgage pool financings. At that time, WMAC/Old MGIC was a corporation incorporated under the laws of the State of Wisconsin, with its principal place of business in Milwaukee, Wisconsin. WMAC/Old MGIC was then licensed to do business as an insurer in numerous jurisdictions, including the State of Alaska.

22. AHFC's selection of WMAC/Old MGIC as its provider of supplemental mortgage insurance was based upon a variety of factors, including WMAC/Old MGIC's representations to AHFC that it was then the nation's largest and most financially secure mortgage insurance company, and that it possessed sufficient reserves to assure maximum "staying power" in the event of an economic downturn.

23. During the period November 24, 1981, through November 9, 1983, WMAC/Old MGIC issued to AHFC 26 separate supplemental mortgage insurance policies, each entitled Mortgage Trust Insurance Policy for Supplemental Insurance. A listing of these insurance policies is attached hereto as Exhibit A and is incorporated herein by reference. These policies provided supplemental mortgage insurance for in excess of 30,000 mortgage loans having original principal balances in excess of \$3.3 billion.

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24. Each of the foregoing insurance policies (hereinafter referred to collectively as the "WMAC/Old MGIC Mortgage Insurance Policies") took effect on the effective date reflected on the face of the policy, each has been periodically renewed by AHFC to the extent that such renewal has been necessary to continue coverage under the policies, and each has continuously remained in full force and effect at all times after its effective date.

25. Each of the WMAC/Old MGIC Mortgage Insurance Policies provided that WMAC/Old MGIC would pay to AHFC the amount of any loss sustained by reason of a default by any borrower on any mortgage loan in the pool of insured mortgage loans covered by the policy, subject to certain aggregate loss limits specified on the face of the policy.

26. Each of the WMAC/Old MGIC Mortgage Insurance Policies also provided that, except under certain specified conditions not applicable here, the insurer would have no right to cancel the policy.

27. AHFC has in a timely fashion paid or caused the payment of all premiums due to date under the WMAC/Old MGIC Mortgage Insurance Policies, and has fulfilled all conditions precedent and subsequent to coverage, and otherwise substantially performed all of its obligations, under the terms of such policies.

C. The Termination of WMAC/Old MGIC's Insurance Obligations and Their Assumption by New MGIC and the European Companies

1. The Assumption Plan

28. In March 1982, Baldwin-United Corporation (hereinafter referred to as "Baldwin"), then a conglomerate with stated assets in excess of \$9 billion, purchased WMAC/Old MGIC (then known as "MGIC") for \$1.17 billion. Baldwin purchased WMAC/Old MGIC in order to stave off an increasingly imminent financial collapse caused primarily by a severe cash shortfall in Baldwin's life insurance subsidiaries. Desperate to obtain WMAC/Old MGIC's earnings, Baldwin borrowed \$584 million to finance the purchase, which was required by statute to be approved by the Wisconsin Insurance Commissioner. See Wis. Stat. Ann. § 611.72(2). However, within a year of the purchase, in March 1983, Baldwin announced that it was having financial difficulties and was unable to make principal reduction payments on the loans that had financed its purchase of WMAC/Old MGIC. In May 1983, in order to prevent the troubled Baldwin from bleeding assets out of WMAC/Old MGIC, the Wisconsin Commissioner of Insurance ordered WMAC/Old MGIC to obtain his prior approval before engaging in certain types of transactions with Baldwin or any Baldwin affiliate. On September 26, 1983, eighteen months after its purchase of WMAC/Old MGIC, Baldwin filed for bankruptcy, facing \$33 billion in claims.

29. MGIC was Baldwin's most valuable asset, with

approximately \$740 million in contingency reserve accounts, and Baldwin again looked to WMAC/Old MGIC to rescue it from its financial collapse. Specifically, Baldwin's creditors and shareholders wanted to strip the contingency reserve assets out of WMAC/Old MGIC in order to distribute those assets to themselves. Under Wisconsin insurance law, however, contingency reserves of a mortgage guaranty insurance company cannot be invaded without permission of the Wisconsin Insurance Commissioner. See Wis. Stat. Ann. § 600.13. The contingency reserve requirement exists specifically to protect policyholders against the effect of losses resulting from adverse economic cycles, such as currently exists in Alaska and elsewhere. Wis. Stat. Ann. § 623.11(1)(a)(4); Wis. Admin. Code §§ Ins. 3.09(1)(c), 3.09(3)(c), 3.09(5), 3.09(14)(e). Therefore, in order for Baldwin to gain access to WMAC/Old MGIC's contingency reserves for its own benefit, it had to devise a plan that the Wisconsin Insurance Commissioner would approve. No plan would be entitled to such approval under Wisconsin law unless it fully protected the interests of WMAC/Old MGIC's policyholders, including AHFC.

30. Beginning in 1984, Baldwin and WMAC/Old MGIC worked with the Wisconsin Insurance Commissioner and with certain other interested parties to formulate a plan. Neither AHFC, nor, to its knowledge, any other policyholder was included in the process of formulating the plan. On November 30, 1984, WMAC/Old MGIC entered into an agreement entitled "Agreement and Plan of Acquisition and

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Assumption," which, along with a series of related agreements (hereinafter referred to as the "Assumption Plan"), was represented as having the net effect of substituting for WMAC/Old MGIC's contingency reserves equally secure guarantees from other parties, namely the European Companies and New MGIC, a company formed by senior management of WMAC/Old MGIC from a company acquired by them on the same date. Specifically, the Assumption Plan was represented as providing for the following: (1) WMAC/Old MGIC would withdraw from the mortgage insurance business, terminating all of its existing insurance liability under outstanding policies and ceasing to write new policies; (2) New MGIC would assume unlimited liability for all losses incurred on or before a fixed date that are covered under WMAC/Old MGIC's outstanding insurance policies; (3) the European Companies would assume unlimited liability for all losses incurred after such fixed date that are covered under WMAC/Old MGIC's outstanding insurance policies and any renewals of such policies; (4) New MGIC would write new insurance policies and administer all claims arising out of the policies previously issued by WMAC/Old MGIC; (5) so-called "special protections" would be established for WMAC/Old MGIC policyholders, including the establishment of trust funds and certain additional insurance obligations undertaken by New MGIC; (6) with the "special protections" in place, with other parties having assumed all existing insurance liability, and with WMAC/Old MGIC having terminated all of its existing insurance obligations and ceased all insurance business, a court would relieve WMAC/Old MGIC of its

contingency reserve requirements and liquidate it, thereby freeing the contingency reserve assets for distribution to Baldwin or its creditors. The elements of the Assumption Plan, as then represented, are described more fully in the following paragraphs.

31. First, under the Assumption Plan WMAC/Old MGIC would withdraw completely from the mortgage insurance business. It would sell that business, including the name "Mortgage Guaranty Insurance Corporation" or "MGIC," and certain assets and liabilities, to New MGIC. The new company would have the same appearance as the old; it would do business as MGIC, retain the same personnel, and use the same offices. The old "MGIC" would be renamed Wisconsin Mortgage Assurance Corporation ("WMAC"). The parties claimed that this transaction was structured as a sale of assets of WMAC/Old MGIC, rather than as a sale of stock, in order to insulate New MGIC from potential tax liability of Baldwin.

32. Second, under the Assumption Plan WMAC/Old MGIC would terminate all of its existing insurance obligations and transfer them to New MGIC and the European Companies.

a. Pursuant to an Assumption of Loss Agreement between WMAC/Old MGIC and New MGIC, New MGIC would assume unlimited liability for all claims and other losses incurred on or before February 28, 1985 that were covered by WMAC/Old MGIC's outstanding insurance policies. As consideration for the assumption, WMAC/Old MGIC would transfer assets to New MGIC in an amount equal to its case basis loss reserves, incurred-but-not-reported loss reserves,

and loss adjustment expense reserves.

b. Pursuant to a series of agreements styled "Quota Share Reinsurance Agreements" that were entered into by WMAC/Old MGIC and the European Companies (herein referred to as the "European Agreements"), the European Companies agreed to assume unlimited liability for all claims and other losses incurred after February 28, 1985 that were covered by WMAC/Old MGIC's outstanding insurance policies or any renewals of such policies. As consideration for the assumption, WMAC/Old MGIC would transfer to the European Companies its unearned premium reserves, net of so-called ceding commissions and contingent profit commissions, which commissions were not retained by WMAC/Old MGIC but were assigned to New MGIC.

33. Third, under the Assumption Plan, WMAC/Old MGIC would cease writing new insurance policies. After February 28, 1985, New MGIC would write all new insurance policies and would establish all required reserves, including contingency reserves to cover the new policies.

34. Fourth, under the Assumption Plan, New MGIC would administer and manage all claims for losses under the mortgage insurance policies issued by WMAC/Old MGIC. Under the Assumption of Loss Agreement, New MGIC would undertake full responsibility for management of the claims that it had assumed, i.e., all claims for losses arising on or before February 28, 1985. At the request of the European Companies, pursuant to an agreement entitled

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Reinsurance Management Agreement, executed by WMAC/Old MGIC and New MGIC, acknowledged by the European Companies, and entered into primarily for the benefit of policyholders (hereinafter referred to as the "Management Agreement"), New MGIC also would, as agent for the European Companies, administer all claims for losses assumed by the European Companies, i.e., all claims for losses under the policies arising after February 28, 1985.

35. Fifth, the Assumption Plan purports to provide so-called "special protections" for the holders of outstanding policies issued by WMAC/Old MGIC. The European Companies would establish two trust funds and New MGIC would undertake certain additional insurance obligations:

a. First, the European Companies would create a \$250 million Reserve Trust Fund, which would be funded by short-term securities or clean, irrevocable letters of credit and would be held by the Morgan Trust Company of New York. This Reserve Trust Fund would be drawn upon first in the event that the European Companies failed to satisfy their obligations under the Assumption Plan. It was represented that this Reserve Trust Fund would substitute for WMAC/Old MGIC's unearned premium reserves and loss reserves established for losses incurred after the closing.

b. Second, the European Companies would create a \$500 million Capital Trust Fund, funded with standby letters of credit, which would be drawn upon in the event that the Reserve Fund had been exhausted. It was represented that the Capital Trust Fund

would substitute for the contingency reserves formerly maintained by WMAC/Old MGIC, which then totalled approximately \$740 million.

c. In addition, New MGIC and WMAC/Old MGIC would enter into an Excess Loss Reinsurance Agreement (hereinafter referred to as the "Excess Loss Agreement"), whereby New MGIC would assume \$250 million of liability for losses assumed by the European Companies in the event that payment is not made by or on behalf of the European Companies.

d. New MGIC would also enter into an agreement, entitled 20% Retrocessional Quota Share Reinsurance Agreement, with European General Reinsurance Company of Zurich, whereby European General Reinsurance Company would cede to New MGIC liability for 20 percent of the losses assumed by the European Companies.

36. Sixth, having terminated all of its insurance obligations and withdrawn from the mortgage insurance business, and having arranged adequate protection for its former policyholders, WMAC/Old MGIC would seek approval from a court to be liquidated and released from its contingency reserve requirements. WMAC/Old MGIC would remain in existence under the supervision of a liquidation proceeding solely to satisfy any non-insurance contractual obligations and to distribute the remaining assets, consisting primarily of the contingency reserve funds estimated at \$740 million, to Baldwin or its creditors.

37. Under Wisconsin procedure, the Wisconsin Insurance Commissioner serves as the liquidator, Wis. Stat. Ann. § 645.42(41),

and files a petition for liquidation seeking court authorization for the liquidation. Wis. Stat. Ann. § 645.41.

a. The Wisconsin Insurance Commissioner filed a petition for liquidation of WMAC/Old MGIC in the Dane County Circuit Court in Madison, Wisconsin on February 28, 1985, requesting the court to approve elements of the Assumption Plan, to sign an order liquidating WMAC/Old MGIC, and to release WMAC/Old MGIC from the contingency reserve requirements.

b. As the Commissioner acknowledged in presenting the petition to the court, the liquidation of WMAC/Old MGIC was unique. Unlike a typical liquidation, this one did not arise out of the insolvency of WMAC/Old MGIC, but rather out of the dual goals of extracting the cash from WMAC/Old MGIC's contingency reserves for distribution to its parent, while at the same time transferring the mortgage insurance business to other entities and protecting existing policyholders as if the contingency reserves had not been released.

c. Because of the unique purpose of the WMAC/Old MGIC liquidation, the Commissioner requested that the court proceed in a unique manner. Specifically, the Commissioner requested the court to approve the petition for liquidation and the related elements of the plan on the same day it was filed, without a hearing.

d. On February 28, 1985, the same day that the petition for liquidation was filed, the Dane County Circuit Court entered an order granting the petition, liquidating WMAC/Old MGIC,

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and releasing WMAC/Old MGIC from the contingency reserve requirements. The court entered this order on the basis of representations made to it by the Wisconsin Commissioner, including the Commissioner's assurance that WMAC/Old MGIC retained no insurance obligations.

e. Although prior notice of the liquidation was sent to parties whose interests were in conflict with insurance policyholders and who stood to profit from the transaction, neither AHFC nor, to its knowledge, any other policyholder of WMAC/Old MGIC was given prior notice of, or an opportunity to participate in, the Court's consideration and approval of the petition for liquidation and the related elements of the plan.

f. Following the granting of the petition for liquidation, WMAC/Old MGIC remained in existence as a liquidated company in order to satisfy non-insurance claims and to distribute remaining proceeds.

38. As a result of its liquidation and the distribution of its assets to other entities, WMAC/Old MGIC now has assets that, according to a recent report by the liquidator, total less than \$6 million.

2. The Liability of New MGIC and the European Companies to AHFC Under the Assumption Plan

39. As a result of the implementation of the Assumption Plan, New MGIC has assumed unlimited liability for all losses incurred on or before February 28, 1985 that are covered under the

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WMAC/Old MGIC Mortgage Insurance Policies and the European Companies have assumed liability for all losses incurred after February 28, 1985. To date, AHFC has submitted in excess of 3,600 claims, totalling over \$135 million, arising out of these losses assumed by New MGIC and the European Companies.

40. Certain agreements, including the Assumption of Loss Agreement and the European Agreements, sometimes refer to New MGIC and the European Companies as "reinsurers." Although the concept "reinsurance" sometimes connotes indemnification of one insurer's losses by another, it frequently is used to describe assumption of an insurer's risks and liabilities by a "reinsurer." In the present case, the Assumption Plan created such an assumption obligation, not an obligation to indemnify losses, on the part of both New MGIC and European Companies.

41. The Wisconsin Insurance Commissioner specifically recognized and represented to the Wisconsin court that New MGIC and the European Companies had assumed the insurance liabilities of WMAC/Old MGIC and that WMAC/Old MGIC had ceased writing new insurance business. In order to facilitate the immediate approval of the Assumption Plan and the petition for liquidation, the Wisconsin Insurance Commissioner provided a letter dated February 13, 1985 to the Dane County Circuit Court explaining the effect of the Assumption Plan. In that letter, the Commissioner represented to the court that upon closing of the transactions contemplated by the Assumption Plan:

a. WMAC/Old MGIC "will be left with no insurance business [and] no direct insurance liabilities," "will cease writing new insurance business," and, as so restructured, "will be placed in liquidation."

b. "New MGIC will assume responsibility for all losses incurred under MGIC mortgage insurance policies prior to [February 28, 1985]."

c. The European Companies "will then have unlimited liability on all of Old MGIC's business [after February 28, 1985]" and will provide "special protections" to the insurance policyholders to cover that liability.

d. WMAC/Old MGIC "will remain in existence under [the liquidation laws] to satisfy all remaining (non-insurance) contractual obligations and distribute the proceeds of this transaction."

42. None of the representations described in the preceding paragraph would be accurate if WMAC/Old MGIC had merely obtained indemnification of losses through reinsurance of its policy obligations rather than having other parties assume those obligations. In that event, WMAC/Old MGIC (a) would have continued to be directly liable to make payments directly to insureds pursuant to its outstanding insurance policies, subject to only later indemnification; and (b) would have had to remain in existence to satisfy insurance, as well as non-insurance, obligations and could not have distributed the assets of the estate to creditors and

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shareholders until all insurance loss claims, including future contingent claims, had been satisfied in strict compliance with the priorities for distribution established by statute, i.e., Wis. Stat. Ann. § 645.68.

43. Similarly, the Wisconsin Insurance Commissioner represented to WMAC/Old MGIC policyholders that there had been an assumption of all of WMAC/Old MGIC's policy obligations and concurrent risks and liabilities. Following the liquidation, a six-month claims period was established for submission of non-insurance claims against WMAC/Old MGIC. In a memorandum addressed to all policyholders, dated March 18, 1985, the Wisconsin Insurance Commissioner notified them of the six-month claims period, but represented that insurance claims need not be presented. Specifically, the Commissioner informed all policyholders:

Persons with claims against WMAC must file them . . . by August 28, 1985. However, the principal obligation of WMAC -- its obligation under the policies of insurance it has issued - - has already been assumed by the international reinsurers of New MGIC.

If New MGIC and the European Companies had indemnified losses rather than assumed WMAC/Old MGIC's policy obligations, the policyholders would have had to submit existing claims through the liquidated estate, and the estate would have had to retain sufficient assets in order to satisfy both existing and future claims.

44. New MGIC has acknowledged that the insurance liabilities of WMAC/Old MGIC have been assumed. For example, in

testifying at a hearing on the Assumption Plan held by the Insurance Commissioner, the Senior Vice President of New MGIC assured the Commissioner that, upon the closing of the Assumption Plan, "there will be no insurance liabilities remaining in Old MGIC." Furthermore, in the Excess Loss Agreement New MGIC acknowledged its liability "even though [WMAC/Old MGIC] retains no liability thereon for its own account."

45. Indeed, if the Assumption Plan were construed so that New MGIC and the European Companies had simply indemnified, rather than assumed the obligations of, WMAC/Old MGIC, it would have violated Wisconsin statutes and public policy for at least the following reasons:

a. First, section 645.46(8) of the Wisconsin statutes, which discusses the Commissioner's authority with respect to use of the assets of the estate in connection with policy obligations, requires that he "transfer policy obligations to a "solid assuming insurer." That provision would preclude the use of the assets of the WMAC/Old MGIC estate simply to obtain an indemnification of WMAC/Old MGIC's insurance obligations. The Wisconsin Insurance Commissioner expressly represented to the liquidation court that the European Agreements satisfied the requirements of Section 645.46(8). In the petition for liquidation, the Commissioner stated: "The [European] Transaction provides for reinsurance of 100% of [WMAC/Old MGIC's] insurance liabilities with solid assuming insurers . . . within the meaning of Wis. Stat. §

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645.46(8)" Similarly, the Recommended Findings of Fact and Conclusions of Law filed by the Wisconsin Insurance Commissioner in the liquidating court stated that the European Companies are "solid assuming insurers."

b. Second, had there not been an assumption of WMAC/Old MGIC's insurance obligations, the Assumption Plan would have violated Wisconsin's statutorily mandated order of distribution of a liquidated estate, as established by Wis. Stat. Ann. § 645.68, which requires that claims under insurance policies be paid before any payments or distributions may be made to shareholders and most other creditors. The contingency reserve assets of WMAC/Old MGIC could not have been distributed to Baldwin, who as a shareholder was the lowest priority distributee, unless the obligations to WMAC/Old MGIC's policyholders had been assumed so as to provide payment in full to policyholders, leaving WMAC/Old MGIC with no retained liability. Indemnifying those obligations would not have satisfied the policyholders' statutory right to receive priority over Baldwin.

c. Third, under Wis. Stat. Ann. § 645.43(1), the coverage under the WMAC/Old MGIC policies would have expired 15 days after the entry of the liquidation order unless the Wisconsin Insurance Commissioner had previously "replaced the insurance coverage . . . in another insurer" or "effected a transfer of the policy obligation[s] pursuant to s. 645.46(8) [(1985-86)]." Since mere indemnification of losses would satisfy neither standard, the very fact that the WMAC/Old MGIC policies have remained in force beyond the prescribed 15-day period itself demonstrates that the

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obligations of New MGIC and the European Companies are in the nature of an assumption of risks and liabilities rather than an indemnification of losses.

d. Finally, to release WMAC/Old MGIC's contingency reserve requirements without providing equally secure financial guarantees for the WMAC/Old MGIC policyholders would have violated the Wisconsin Insurance Commissioner's statutory duty to protect policyholders. See Wis. Stat. Ann. §§ 600.13(1), 601.01(2), 610.001(4), 645.01(4), 645.46(8), 645.52, 645.53, 645.54, 645.68. Indemnification reinsurance would not provide equally secure financial guarantees. For example, indemnification reinsurance would expose policyholders to the risk of seeking recovery on policy claims only from a virtually depleted WMAC/Old MGIC. If WMAC/Old MGIC failed to comply with the terms of indemnification agreements - a contingency beyond policyholders' control -- the reinsurers could deny indemnification to WMAC/Old MGIC, thus leaving the policyholder wholly unprotected.

As required by Wis. Stat. Ann. § 600.13, the Wisconsin Insurance Commissioner explicitly represented to the liquidating court that the interests of the insureds "will not be endangered" if the contingency reserve requirement imposed upon WMAC/Old MGIC pursuant to Chapter 623 of the Wisconsin Insurance Code and Wis. Admin. Code § Ins. 3.09(14) was released. The Commissioner could not have made that representation in good faith if New MGIC and the European Companies had not assumed all liability for WMAC/Old MGIC's

outstanding insurance policies, particularly as in his petition for liquidation (§ 31), he represented to the court "that each of the Respondents is in such condition that the further transaction of business would be hazardous to its policyholders, its creditors and the public."

46. In addition, as a result of the Assumption Plan, New MGIC has assumed responsibility for managing and administering all AHFC claims arising out of the WMAC/Old MGIC Mortgage Insurance Policies, including the investigation, adjustment, settlement, and litigation of those claims. New MGIC has undertaken such responsibility on its own behalf with respect to claims for losses incurred on or before February 28, 1985, and on behalf of and as agent for the European Companies with respect to claims for losses incurred after February 28, 1985.

D. Facts Regarding the New MGIC Mortgage Insurance Policies

47. Since on or around March 1, 1985, New MGIC has issued and sold new mortgage insurance policies and operated as a mortgage insurance company. In this capacity, New MGIC has issued to AHFC three mortgage insurance policies that provide supplemental mortgage insurance for losses associated with pools of mortgage loans that were purchased by AHFC and that collateralize AHFC bond issues (hereinafter referred to as the "New MGIC Mortgage Insurance Policies"). A listing of these insurance policies is attached hereto as Exhibit B and is incorporated herein by reference.

48. Each of the New MGIC Mortgage Insurance Policies took effect on the effective date reflected on the face of the policy, each has been periodically renewed to the extent that such renewal has been necessary to continue coverage under the policies, and each has continuously remained in full force and effect at all times since its effective date.

49. Each of the New MGIC Mortgage Insurance Policies provides that the insurer (New MGIC) will pay to the insured (AHFC) the amount of any loss sustained by reason of a default by any borrower on any loan in the pool of insured loans covered by the policy, subject to certain aggregate loss limits specified on the face of the policy.

50. AHFC has in a timely fashion paid or caused the payment of all premiums due to date under the New MGIC Mortgage Insurance Policies, and has fulfilled all conditions precedent and subsequent to coverage, and otherwise substantially performed all of its obligations, under the terms of such policies.

E. Facts Regarding Wrongful Denial of AHFC's Insurance Claims

51. Starting in or around 1985, the Alaska economy sank into a severe recession as a result of sharply declining prices of oil in the world markets and other causes. This economic downturn triggered a substantial collapse in the residential real estate market in Alaska. This upheaval, and the accompanying financial

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turmoil inflicted upon many Alaska residents, have led to a dramatic rise in the volume and severity of incidents of defaults by borrowers on mortgage loans that had been purchased by AHFC and insured under the WMAC/Old MGIC Mortgage Insurance Policies or the New MGIC Mortgage Insurance Policies.

52. As a result of losses arising from defaults by borrowers on mortgage loans insured under the WMAC/Old MGIC Mortgage Insurance Policies or the New MGIC Mortgage Insurance Policies, AHFC has submitted numerous claims for loss to New MGIC in its multiple capacities as assuming insurer and manager of claims under the WMAC/Old MGIC Mortgage Insurance Policies and issuing insurer under the New MGIC Mortgage Insurance Policies. In accordance with the terms of such policies, these claims have been submitted on a loan-by-loan basis.

53. Since the onset of the downturn in the Alaska economy, the frequency and volume of AHFC's claims under the applicable mortgage insurance policies have dramatically escalated.

54. AHFC's claims under the WMAC/Old MGIC Mortgage Insurance Policies and the New MGIC Mortgage Insurance Policies are for losses that are covered by and submitted under the terms and conditions of such policies.

55. New MGIC, on its own behalf and on behalf of and as agent for the European Companies, has in excess of 1,500 instances refused to pay all or part of the amount of AHFC's claims under the

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WMAC/Old MGIC Mortgage Insurance Policies or the New MGIC Mortgage Insurance Policies. The total amount that New MGIC has thus refused to pay on such claims exceeds \$25 million.

56. In the face of the downturn in the Alaska economy and the corresponding escalation in losses on the insured mortgage loans and claims under the WMAC/Old MGIC Mortgage Insurance Policies and the New MGIC Mortgage Insurance Policies, New MGIC, on its own behalf and on behalf of and as agent for the European Companies, has arbitrarily and capriciously sought ways to avoid its obligations arising out of and relating to such policies. In particular, New MGIC has adopted and employed an array of improper practices on which it has purported to base its refusal to pay to AHFC amounts that the insurers are obligated to pay under such policies. Many, if not all, of these improper practices were adopted and employed only after defaults on the insured mortgage loans had begun to escalate. These improper practices (hereinafter collectively referred to as the "MGIC Improper Claims Denial Practices"), as employed as a purported basis for refusing to pay claims, contravene the terms and conditions of such policies.

57. The MGIC Improper Claims Denial Practices include, but are not limited to, the following:

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A. Timeliness of Notices of Default and/or Delinquencies. Refusal to pay for losses representing the entire claim in some instances, and in other instances representing some or all of the unpaid accrued interest on a defaulted loan and property expenses advanced by AHFC, on the asserted ground that New MGIC allegedly failed to receive from AHFC timely notice that the borrower had defaulted, notwithstanding the facts that (i) AHFC in fact provided notice of default and/or delinquency within the time frame specified in the policies by routinely providing to New MGIC, at New MGIC's request, computer tapes containing payment history on all insured mortgage loans, including mortgage loans in default, (ii) the WMAC/Old MGIC Mortgage Insurance policies expressly provide that failure to give any required notice shall not constitute failure to comply with a material condition of the policy, and (iii) neither New MGIC nor any of the European Companies has demonstrated that it suffered any prejudice arising from the absence of earlier notice. New MGIC has already employed this improper practice, alone or in combination with other improper practices, to deny more than \$5 million in AHFC's claims.

B. Timeliness of Commencement of Foreclosure. Refusal to pay for losses representing property expenses advanced by AHFC and unpaid accrued interest on a

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defaulted loan, on the asserted ground that AHFC or its agents allegedly failed to start foreclosure on property securing the loan within a time frame arbitrarily imposed by New MGIC, notwithstanding the facts that (i) the WMAC/Old MGIC Mortgage Insurance Policies do not specify any time frame within which foreclosure must start as a condition for final payment of loss under the policies, and (ii) neither New MGIC nor any of the European Companies has demonstrated that it suffered any prejudice arising from the timing of commencement of foreclosure proceedings. New MGIC has already employed this improper practice, alone or in combination with other improper practices, to deny more than \$2.5 million in AHFC's claims.

C. Arbitrary Deadlines. Refusal to pay for losses representing the entire claim in some instances, and in other instances representing some or all of the unpaid accrued interest on a defaulted loan and property expenses advanced by AHFC, on the asserted ground that AHFC or its agents allegedly failed to take other actions -- such as completing foreclosure proceedings, obtaining a deed in lieu of foreclosure, closing on the resale of the property, completing restoration of the property, turning a property over to a broker for sale, or filing a claim under any applicable policy of primary mortgage insurance

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-- within time frames arbitrarily imposed by New MGIC, notwithstanding the facts that (i) with the exception of claim filing, the WMAC/Old MGIC Mortgage Insurance Policies do not specify any time frames within which such other actions must take place and (ii) neither New MGIC nor any of the European Companies has demonstrated that it suffered any prejudice arising from the timing of such other actions. New MGIC has already employed this improper practice, alone or in combination with other improper practices, to deny more than \$500,000 in AHFC's claims.

D. Arbitrary Requirement of Notice of Default Prior to Commencement of Foreclosure Proceedings. Total and partial denial of claims on the asserted ground that AHFC or its agents allegedly commenced a foreclosure proceeding before New MGIC received notice that the underlying mortgage loan was in default, notwithstanding the facts that (i) neither the WMAC/Old MGIC Mortgage Insurance Policies nor the New MGIC Mortgage Insurance Policies purport to require the insured to provide notice of default prior to commencement of foreclosure proceedings, (ii) the WMAC/Old MGIC Mortgage Insurance policies expressly provide that failure to give any required notice shall not constitute failure to comply with a material condition of the policy, (iii) in many instances AHFC in

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fact provided the insurer with notice of default in advance of commencement of foreclosure proceedings by routinely providing to New MGIC, at New MGIC's request, computer tapes containing payment history on all insured mortgage loans, including mortgage loans in default, and (iv) neither New MGIC nor any of the European Companies has demonstrated that it suffered any prejudice arising from the absence of earlier notice. New MGIC has already employed this improper practice, alone or in combination with other improper practices, to deny more than \$1 million in AHFC's claims.

E. Failure to Reimburse for Amounts Advanced to Improve Properties. Refusal to pay losses representing amounts advanced by AHFC or its agents to repair a property to its original or new condition or to make special improvements to a property to enhance its resale value on the asserted ground that such amounts were allegedly expended in restoration of the property for which AHFC was obligated to pay, notwithstanding the facts that (i) these amounts were expended for repairs or improvements that were above and beyond any amounts that AHFC was obligated to expend for restoration by the WMAC/Old MGIC Mortgage Insurance Policies or the New MGIC Mortgage Insurance Policies, which do not require the insured to remedy reasonable wear and tear or to make any

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improvements to any property; (ii) AHFC's advancing of these amounts redounded directly to the benefit of New MGIC and the European Companies by increasing the amount of money that could be received on resale of the properties and thus reducing the amount of loss that defendants would otherwise have to cover; and (iii) in many instances AHFC or its agents made such advances at the insistence of New MGIC. New MGIC has already employed this improper practice, alone or in combination with other improper practices, to deny more than \$2 million in AHFC's claims.

F. Arbitrary Refusal to Reimburse for Amounts Advanced in Absence of Formal Prior Approval. Refusal to pay losses representing amounts advanced by AHFC or its agents to preserve and protect property or to prepare property for resale on the asserted ground that New MGIC did not give its advance approval for incurring the expenses, notwithstanding the facts that (i) the advances in question were in many instances for expenses that New MGIC routinely approved for other similarly situated properties; (ii) the advancing of these amounts redounded directly to the benefit of New MGIC and the European Companies by increasing the amount of money that was or could be received on resale of the properties and thus reducing the amount of loss that defendants would

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otherwise have to cover; and (iii) neither New MGIC nor any of the European Companies has demonstrated that it suffered any prejudice arising from any failure of AHFC to obtain advance approval for these advances. New MGIC has already employed this improper practice, alone or in combination with other improper practices, to deny more than \$1.5 million in AHFC's claims.

G. Arbitrary Refusal to Pay Losses Not Reimbursed Through Primary Mortgage Insurance. Refusal to pay losses representing accrued interest or unpaid principal on a defaulted loan on the asserted grounds that payment to AHFC under a primary mortgage insurance policy failed to occur within an arbitrary time frame established by New MGIC, was in an amount that New MGIC unilaterally deemed insufficient, or failed to occur at all due to a purported lapse or absence of primary mortgage insurance coverage, notwithstanding the facts that (i) the WMAC/Old MGIC Mortgage Insurance Policies and the New MGIC Mortgage Insurance Policies do not require receipt of payment under primary mortgage insurance within any specified time period as a condition for paying losses; (ii) the WMAC/Old MGIC Mortgage Insurance Policies and the New MGIC Mortgage Insurance Policies expressly require the insurer to pay for any loss that is not reimbursed by a payment from applicable primary mortgage insurance; and (iii) neither

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New MGIC nor any of the European Companies has demonstrated that it suffered any prejudice arising from any allegedly late payment of a primary mortgage insurance claim. New MGIC has already employed this improper practice, alone or in combination with other improper practices, to deny more than \$250,000 in AHFC's claims.

H. Unreasonable Delays In Payment. Causing unreasonable delays between the time of issuance of checks in payment on claims under the WMAC/Old MGIC Mortgage Insurance Policies and the New MGIC Mortgage Insurance Policies and the time of AHFC's receipt of such checks, so as to misappropriate for periods of up to two weeks or more a "float" on the claims payments. Notwithstanding repeated demands by AHFC that New MGIC either reduce the time between check issuance and check receipt or pay accrued interest through the time of AHFC's receipt of payment, New MGIC has employed this improper practice, alone or in combination with other improper practices, in a manner that has already cost AHFC in excess of \$400,000.

I. Improper Use of and Reliance on Restrictive Endorsements on Claims Payment Checks. Refusing to negotiate with AHFC regarding further payments on partially denied claims, and insisting that such claims have been finally paid and settled, on the asserted ground that the checks for partial payment on such claims bore a

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boilerplate restrictive endorsement to the effect that negotiation of the check would constitute final settlement of the claim, notwithstanding the facts that (i) the insurers inserted the restrictive endorsement without notice, warning, or any explanation of the effect that the insurers now seek to give it; (ii) the restrictive endorsements constituted an unconscionable exercise of leverage and exploitation of economic duress by the insurers over the insured, which needed the moneys in question to finance its ongoing operations and to help provide safe and affordable housing to Alaska citizens; (iii) the payments represented by the checks bearing the restrictive endorsements were for amounts that were not in dispute, and were not made to settle disputed amounts; (iv) there was no consideration for any purported agreement by AHFC that its negotiation of the checks in question would waive any right to further payment on the claims in question; and (v) the restrictive endorsements constitute an unlawful unfair claim settlement practice. New MGIC has repeatedly employed this improper practice, alone or in combination with other improper practices, as a pretext for refusing to negotiate with AHFC regarding claims that were partially paid by restrictively endorsed checks and on which defendants still owe AHFC in excess of \$6 million.

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J. Refusal to Substitute Unrestricted Checks for Restrictively Endorsed Claims Payment Checks. Refusing to comply with AHFC's repeated demands to substitute unrestricted checks for restrictively endorsed claims payment checks that AHFC has not deposited in order to protect itself from any later assertion that rights to further payment have been waived, notwithstanding the facts that (i) the restrictive endorsements constitute an unconscionable attempt of the insurers to exercise leverage over the insureds; (ii) the payments represented by the checks bearing the restrictive endorsements were for amounts that are not in dispute, and do not purport to be for settlement of disputed amounts; and (iii) the restrictive endorsements constitute an unlawful unfair claim settlement practice. New MGIC has employed this improper practice, alone or in combination with other improper practices, to deny AHFC the use of over \$10 million in undeposited checks for partial claim payment that AHFC received between March 1, 1989 and approximately June 15, 1989 and to misappropriate from AHFC in excess of \$750,000 representing the interest, or "float," on such funds.

K. Arbitrary Denials of Coverage Based on Alleged Fraud in the Inducement of Individual Mortgage Loans. Refusing to pay all losses incurred with respect to

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insured mortgage loans that New MGIC alleges were tainted by fraud or misrepresentation at the time such loans were made, notwithstanding the facts that (i) neither New MGIC nor any of the European Companies has established by sufficient proof that any such fraud or misrepresentation actually occurred; (ii) neither New MGIC nor any of the European Companies has demonstrated that such fraud or misrepresentation, even assuming it did occur, was of a kind and severity that could negate coverage under the WMAC/Old MGIC Mortgage Insurance Policies or the New MGIC Mortgage Insurance Policies; and (iii) neither New MGIC nor any of the European Companies has demonstrated that such fraud or misrepresentation, even assuming it did occur, caused or would cause it to suffer any prejudice. New MGIC has already employed this improper practice, alone or in combination with other improper practices, to deny more than \$1.5 million in AHFC's claims.

L. Arbitrary Denial of Coverage Based on Claimed Absence of Insurance Certificate. Refusing to pay all losses with respect to in excess of 500 mortgage loans, having aggregate original principal amounts of approximately \$50 million, on the asserted ground that individual certificates of insurance were not issued for such loans, notwithstanding the facts that (i) through 1989, AHFC paid, and the insurers accepted, premiums for

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insurance coverage for such mortgage loans; and (ii) AHFC has reasonably relied upon the insurers' representation and treatment of these mortgage loans as being covered under such policies. New MGIC has already employed this improper practice, alone or in combination with other improper practices, to deny more than \$750,000 in AHFC's claims.

M. Arbitrary Denials of Coverage Based on Alleged Structural Defects in Mortgaged Properties. Refusing to pay all losses incurred with respect to insured mortgage loans relating to mortgaged properties in apartment complexes that allegedly contain structural defects that New MGIC claims should have been disclosed to it as part of the original appraisal process, notwithstanding the facts that (i) the WMAC/Old MGIC Mortgage Insurance Policies and the New MGIC Mortgage Insurance Policies do not permit the insurers to deny coverage on this basis; (ii) neither New MGIC nor any of the European Companies has established by sufficient proof that, even if assuming there was any failure to disclose any structural defect, that such failure was of a kind and severity that could negate coverage under the WMAC/Old MGIC Insurance Policies or the New MGIC Mortgage Insurance Policies; and (iii) neither New MGIC nor any of the European Companies has established that any such failure to disclose was

fraudulent, intentional, or otherwise wrongful. New MGIC has already employed this improper practice, alone or in combination with other improper practices, to deny more than \$600,000 in AHFC's claims.

N. Improper Adjustment of Claims Relating to Defaults on Mortgage Loans on Properties Acquired by New MGIC. Adjusting claims so as to deny payment of part of the losses claimed by AHFC relating to defaulted mortgage loans secured by properties for which New MGIC exercises its option to purchase the property (either as part of a bulk purchase or a single unit purchase), and asserting that it has the right to make such adjustments in the future, notwithstanding the fact that the terms of the WMAC/Old MGIC Insurance Policies and the New MGIC Insurance Policies do not permit the insurer to make such adjustments when it exercises such option. New MGIC has already employed this improper practice, alone or in combination with other improper practices, to deny more than \$250,000 in AHFC's claims, some of which has been paid into an escrow account pending a determination as to the permissibility of the adjustments in question.

58. As the frequency and severity of claims under the WMAC/Old MGIC Mortgage Insurance Policies and the New MGIC Mortgage Insurance Policies have increased due to the downturn in Alaska's economy, New MGIC has systematically employed the MGIC Improper

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Claims Denial Practices to (a) increase the percentage of AHFC's claims that are entirely denied, and (b) increase the percentage of AHFC's claims that are denied in part.

59. The European Companies have known of, permitted, approved, and ratified New MGIC's employment of the MGIC Improper Claims Denial Practices that were performed on behalf of the European Companies. For example, in connection with certain settlement agreements and releases entered into on January 31, 1990, the European Companies expressly acknowledged that MGIC's management practices have been reasonable and consistent with its obligations under the Management Agreement.

60. AHFC has made repeated demands to New MGIC that New MGIC immediately cease to engage in the MGIC Improper Claims Denial Practices and that the defendants pay to AHFC all claimed amounts that have been improperly denied. New MGIC and the European Companies have failed to comply with these demands, and New MGIC has declared that in handling future claims it will continue to engage in some or all of the MGIC Improper Claims Denial Practices.

61. As a result of the MGIC Improper Claims Denial Practices and the corresponding denials of AHFC's insurance claims under the WMAC/Old MGIC Mortgage Insurance Policies and the New MGIC Mortgage Insurance Policies, AHFC has been denied the use of substantial sums that defendants should have paid to it under the policies and has been forced to incur substantial increased

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administrative expenses, including expenses associated with hiring additional staff persons, attorneys, and other professionals, to pursue efforts to obtain proper payment of the denied claims.

62. In addition to the claims that it has already submitted to New MGIC, AHFC anticipates that continuing defaults by borrowers on insured mortgage loans will cause it in future months to incur losses with increasing frequency and severity. AHFC will submit claims to recover for these losses under the WMAC/Old MGIC Mortgage Insurance Policies and the New MGIC Mortgage Insurance Policies, as applicable. It is expected that these future claims will include claims for (a) in excess of \$125 million in losses on insured mortgage loans on which borrowers have already defaulted and there has been a foreclosure but for which AHFC or its agents have not yet completed processes of resale and insurance claim preparation, and (b) in excess of \$125 million in additional losses that AHFC projects will be incurred as a result of (i) current defaults on insured mortgage loans that have not yet resulted in foreclosure and (ii) future defaults on insured mortgage loans.

63. If New MGIC employs the MGIC Improper Claims Denial Practices on the numerous claims that AHFC will submit in the coming months and years, there will be in excess of \$25 million in further improper denials of claims submitted under the WMAC/Old MGIC Mortgage Insurance Policies and the New MGIC Mortgage Insurance Policies.

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64. The MGIC Improper Claims Denial Practices, as adopted and employed in the past and as threatened to be used in the future, have had and will continue to have a detrimental effect upon the ability of AHFC to carry out its statutory mission of assisting the people of Alaska in obtaining safe and affordable residential housing.

CLAIMS FOR RELIEF

COUNT I: Breach of Insurance Contracts by the European Companies (Losses Covered Under European Agreements)

65. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 64.

66. Pursuant to the Assumption Plan and the European Agreements described in paragraph 32b above, the European Companies assumed contractual obligations of the original insurer under the WMAC/Old MGIC Mortgage Insurance Policies and became directly liable to AHFC for payment of all claims for losses incurred after February 28, 1985 that are covered under the terms and conditions of such policies.

67. As more fully alleged above, AHFC has submitted numerous valid claims for losses incurred after February 28, 1985 that are covered under the terms and conditions of the WMAC/Old MGIC Mortgage Insurance Policies. Notwithstanding the European Companies' obligation to pay AHFC the full amount of these claims,

in excess of \$25 million in such claims have not been paid.

68. AHFC has substantially performed all of its obligations under the WMAC/Old MGIC Mortgage Insurance Policies.

69. In failing to perform or cause performance of their assumed payment obligations under the WMAC/Old MGIC Mortgage Insurance Policies, the European Companies have repeatedly breached those policies.

70. By virtue of the European Companies' breaches of their assumed liabilities under the WMAC/Old MGIC Mortgage Insurance Policies, AHFC has been damaged in a sum in excess of \$25 million, together with interest thereon at the rates specified in the individual insured mortgage loans from the date that payment should have been made under the terms of the policy until such payment is made.

COUNT II: Breach of Insurance Contracts by New MGIC
(Losses Under Excess Loss Agreement)

71. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 70.

72. Pursuant to the Assumption Plan and the Excess Loss Agreement described in paragraph 35c above, New MGIC assumed contractual obligations of the original insurer under the WMAC/Old MGIC Mortgage Insurance Policies and became directly liable to AHFC for payment of all claims for losses incurred after February 28,

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1985 that are covered under the terms and conditions of such policies, to the extent such payment is not otherwise made by or on behalf of the European Companies.

73. As more fully alleged above, AHFC has submitted numerous valid claims for losses incurred after February 28, 1985 that are covered under the terms and conditions of the WMAC/Old MGIC Mortgage Insurance Policies and that have not been paid by or on behalf of the European Companies. Notwithstanding New MGIC's obligation to pay AHFC the full amount of these claims, in excess of \$25 million in such claims have not been paid.

74. AHFC has substantially performed all of its obligations under the WMAC/Old MGIC Mortgage Insurance Policies.

75. In failing to perform or cause performance of its assumed payment obligations under the WMAC/Old MGIC Mortgage Insurance Policies, New MGIC has repeatedly breached those policies.

76. By virtue of New MGIC's breaches of its assumed obligations under the WMAC/Old MGIC Mortgage Insurance Policies, AHFC has been damaged in a sum in excess of \$25 million, together with interest thereon at the rates specified in the individual insured mortgage loans from the date that payment should have been made under the terms of the policy until such payment is made.

COUNT III: Breach of Insurance Contracts by New MGIC
(Losses Under New MGIC Mortgage Insurance Policies)

77. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 76.

78. New MGIC is obligated to pay to AHFC amounts claimed under the terms and conditions of the New MGIC Mortgage Insurance Policies for losses incurred as a result of defaults by borrowers on mortgage loans covered by such policies.

79. As more fully alleged above, AHFC has submitted numerous valid claims for losses that are covered under the terms and conditions of the New MGIC Mortgage Insurance Policies. Notwithstanding New MGIC's contractual obligation to pay AHFC, the full amount of these claims has not been paid.

80. AHFC has substantially performed all of its obligations under the New MGIC Mortgage Insurance Policies.

81. In failing to perform or cause performance of its payment obligations under the New MGIC Mortgage Insurance Policies, New MGIC has repeatedly breached those contracts.

82. By virtue of New MGIC's breaches of contract, AHFC has been damaged in a sum in excess of \$100,000 together with interest thereon at the rates specified in the individual insured mortgage loans from the date that payment should have been made under the terms of the policy until such payment is made.

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COUNT IV: Third-Party Beneficiary Action for
Breach of Management Agreement by New MGIC

83. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 82.

84. AHFC was a member of a class of intended beneficiaries of the Management Agreement, described in paragraph 34 above, which was entered into primarily for the benefit of policyholders as part of the Assumption Plan, and pursuant to which New MGIC promised to administer and handle on behalf of and as agent for the European Companies all claims for losses incurred after February 28, 1985 that are covered by the WMAC/Old MGIC Mortgage Insurance Policies.

85. The Management Agreement requires that New MGIC administer and manage all claims for losses incurred after February 28, 1985 that are covered under the WMAC/Old MGIC Mortgage Insurance Policies in accordance with the terms and conditions of such policies. New MGIC's administration and management of claims must also be in accordance with the applicable laws governing claims handling practices of insurance companies, including Alaska Stat. § 21.36.125.

86. Because of its liability under the 20% Retrocessional Quota Share Reinsurance Agreement for a portion of losses incurred after February 28, 1985 that are covered by the WMAC/Old MGIC Mortgage Insurance Policies and its liability under the Excess Loss

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Agreement for any losses not paid by the European Companies, New MGIC has an economic interest in denying AHFC's claims for losses under such policies. This interest is in conflict with New MGIC's obligations to AHFC and other intended beneficiaries of the Management Agreement.

87. By adopting and employing the MGIC Improper Claims Denial Practices, New MGIC has breached its contractual obligation to make claims determinations in accordance with the terms and conditions of the WMAC/Old MGIC Mortgage Insurance Policies, and has violated applicable laws governing claims handling practices of insurance companies, including Alaska Stat. § 21.36.125. In breaching its contractual obligations, New MGIC has acted negligently and in bad faith and its actions have constituted willful misconduct.

88. By virtue of New MGIC's aforementioned breach of its contractual obligations under the Management Agreement, AHFC has been damaged in a sum in excess of \$25 million, representing amounts which it should have received in payment of claims for losses incurred after February 28, 1985 that are covered by the WMAC/Old MGIC Mortgage Insurance Policies, together with interest thereon at the rates specified in the individual insured mortgage loans from the date that payment should have been made under the terms of such policies until such payment is made.

COUNT V: Intentional Interference By New MGIC
With Contractual Relations Between AHFC and
the European Companies

89. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 88.

90. By virtue of the assumption by the European Companies of all liabilities for losses incurred after February 28, 1985 that are covered by the WMAC/Old MGIC Mortgage Insurance Policies, the European Companies have a legally binding and enforceable obligation to AHFC.

91. Since no later than February 1985, New MGIC has had actual knowledge of the WMAC/Old MGIC Mortgage Insurance Policies, and of the obligations of the European Companies to AHFC under the terms and conditions of such policies.

92. New MGIC's adoption and employment of the MGIC Improper Claims Denial Practices, as applied to claims for losses covered by the WMAC/Old MGIC Mortgage Insurance Policies and assumed by the European Companies, have resulted in repeated and systematic failures of the European Companies to perform, or cause performance of, their obligations under such policies. Such failures have constituted repeated breaches of said policies.

93. In engaging in the aforementioned conduct, New MGIC has intended to induce the European Companies to breach their obligations under the AHFC Mortgage Insurance Policies.

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94. New MGIC's inducement of the European Companies' breaches of contract was not privileged or justified. To the contrary, because of the 20% Retrocessional Quota Share Reinsurance Agreement and the Excess Loss Agreement, described in paragraph 35 above, New MGIC has a financial incentive to prevent recognition and payment of claims under the WMAC/Old MGIC Mortgage Insurance Policies.

95. As a proximate result of New MGIC's intentional interference with AHFC's contractual rights under the WMAC/Old MGIC Mortgage Insurance Policies and the corresponding failure of AHFC to receive payments in accordance with the terms and conditions of said policies, AHFC has suffered damages in the sum of at least \$25 million, representing the amounts of wrongfully denied claims, together with interest thereon at the rate specified in the individual mortgage loans from the date that payment of those amounts should have been made under the terms of the policy until such amounts are paid.

96. As a proximate result of New MGIC's intentional interference with AHFC's contractual rights under the WMAC/Old MGIC Mortgage Insurance Policies and the corresponding failure of AHFC to receive payments in accordance with the terms and conditions of said policies, AHFC has also suffered consequential damages in an amount in excess of \$1 million for, inter alia, the sums that it has had to expend to hire additional staff, attorneys and other professionals in attempts to obtain the insurance payments that are due under the

policies.

97. The aforementioned acts of New MGIC were outrageous, and were done with malice or bad motives or reckless indifference to the interests of AHFC, and were carried out with the purpose and effect of benefiting New MGIC at the expense of AHFC, thereby warranting the assessment of punitive damages against New MGIC in an amount to be established at trial.

COUNT VI: Tortious Breach of Covenant of Good Faith and Fair Dealing by New MGIC and the European Companies

98. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 97.

99. In its multiple capacities as (i) an insurer that assumed direct liability pursuant to the Assumption of Loss Agreement for all losses under the WMAC/Old MGIC Mortgage Insurance Policies that were incurred on or before February 28, 1985, (ii) an insurer that assumed direct liability pursuant to the Excess Loss Agreement for some or all losses under the WMAC/Old MGIC Mortgage Insurance Policies that were incurred after February 28, 1985, (iii) the entity that undertook responsibilities for administration and handling of all claims under the WMAC/Old MGIC Mortgage Insurance Policies on its own behalf and as agent for the European Companies, and (iv) the insurer that issued the New MGIC Mortgage Insurance Policies and is liable for losses thereunder, New MGIC has had at all times pertinent to this Complaint, and continues to have,

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an obligation to deal with AHFC fairly and in good faith, and to promptly pay, or cause to be paid, all valid claims submitted by AHFC.

100. As insurers who assumed direct liability for all losses incurred after February 28, 1985 that are covered by the WMAC/Old MGIC Mortgage Insurance Policies, the European Companies have had at all times pertinent to this Complaint, and continue to have, an obligation to deal with AHFC fairly and in good faith, and to promptly pay, or cause to be paid, all valid claims submitted by AHFC.

101. As more fully described above, New MGIC has unilaterally employed, on its own behalf and on behalf of and as agent for the European Companies, the MGIC Improper Claims Denial Practices in order to increase substantially the number and size of denials of claims submitted by AHFC under the WMAC/Old MGIC Mortgage Insurance Policies and the New MGIC Mortgage Insurance Policies.

102. New MGIC's adoption and employment of the MGIC Improper Claims Denial Practices were and continue to be arbitrary, unreasonable, self-serving and not agreed to by AHFC. Such practices are not justified under the terms and conditions of the WMAC/Old MGIC Mortgage Insurance Policies or the New MGIC Mortgage Insurance Policies, and constitute willful misconduct in breach of New MGIC's duty to act fairly and in good faith. Thus, New MGIC had no reasonable basis for denying AHFC's claims, and New MGIC knew or

recklessly disregarded the lack of a reasonable basis for denying benefits.

103. New MGIC's adoption and employment of the MGIC Improper Claims Denial Practices constitute unfair claim settlement practices in violation of Alaska Stat. § 21.36.125. The MGIC Improper Claims Denial Practices violate this statute and regulation in numerous respects, including but not limited to the following:

A. Misrepresentation of facts or policy provisions relating to coverage of an insurance policy. See Alaska Stat. § 21.36.125(1).

B. Failure to adopt and implement reasonable standards for prompt investigation of claims. See id. § 21.36.125(3).

C. Refusal to pay a claim without a reasonable investigation of all of the available information and an explanation of the basis for denial of the claim or for an offer of compromise settlement. See id. § 21.36.125(4)

D. Failure to attempt in good faith to make prompt and equitable settlement of claims in which liability is reasonably clear. See id. § 21.36.125(6).

E. Failure to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a

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claim or for the offer of a compromise settlement. See
Alaska Stat. § 21.36.125(14).

These violations constitute further evidence of the defendants' breach of a common law duty to act in good faith.

104. The European Companies have permitted, authorized, approved, and ratified New MGIC's adoption and employment of the MGIC Improper Claims Denial Practices, and have done so either knowing that such conduct was violative of AHFC's rights as an insured or with reckless disregard for whether such conduct was improper and unlawful. By permitting, authorizing, approving and ratifying the MGIC Improper Claims Denial Practices, the European Companies have violated their duties to AHFC to act fairly and in good faith.

105. As a proximate result of defendants' adoption, employment, authorization, approval, or ratification of the MGIC Improper Claims Denial Practices, and the corresponding failure of AHFC to receive payments in accordance with the terms and conditions of the WMAC/Old MGIC Mortgage Insurance Policies and the New MGIC Mortgage Insurance Policies, AHFC has suffered pecuniary damages in the sum of at least \$25 million, representing the amounts of wrongfully denied claims, together with interest thereon at the rates specified in the individual insured mortgage loans from the date that payment of those amounts should have been made under the terms of the policy until such amounts are paid.

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106. As a proximate result of defendants' adoption, employment, authorization, approval, or ratification of the MGIC Improper Claims Denial Practices, and the corresponding failure of AHFC to receive payments in accordance with the terms and conditions of the WMAC/Old MGIC Mortgage Insurance Policies and the New MGIC Mortgage Insurance Policies AHFC has also suffered consequential damages in the sum of at least \$1 million, for, inter alia, the sums that it has had to expend to hire additional staff, attorneys and other professionals in attempts to obtain the insurance payments that are due under the policies.

107. The aforementioned acts of New MGIC and the European Companies were outrageous, and were done with malice or bad motives or reckless indifference to the interests of AHFC, and were carried out with the purpose and effect of benefiting New MGIC and the European Companies at the expense of AHFC, thereby warranting the assessment of punitive damages against New MGIC and the European Companies in an amount to be established at trial.

COUNT VII: Declaratory and Injunctive Relief
Against New MGIC and the European Companies

108. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 107.

109. Currently, AHFC has an ownership interest in approximately 3,125 properties upon which it has completed foreclosure proceedings, or the equivalent of foreclosure

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proceedings, following defaults by borrowers on mortgage loans insured under the WMAC/Old MGIC Mortgage Insurance Policies or the New MGIC Mortgage Insurance Policies, and anticipates commencing foreclosure proceedings in up to 2,900 additional properties. Upon sale or other disposition of each of these properties, AHFC will submit a claim for payment of loss under the applicable policy.

110. In addition to the above referenced properties on which foreclosure or equivalent proceedings have been completed, there are numerous other mortgage loans insured by the WMAC/Old MGIC Mortgage Insurance Policies or the New MGIC Mortgage Insurance Policies which have recently gone into default or which though now current may subsequently go into default. Each of these loans has the potential to generate a future claim for payment by AHFC under such policies.

111. If New MGIC and the European Companies fail to pay future claims under the WMAC/Old MGIC Mortgage Insurance Policies, or if New MGIC fails to pay future claims under the New MGIC Mortgage Insurance Policies, in the manner alleged above with respect to claims already made, then AHFC will continue to suffer enormous damages, both direct and consequential, and will be irreparably harmed.

112. There exists an actual case in controversy between AHFC and the defendants as to their respective rights and obligations under the WMAC/Old MGIC Mortgage Insurance Policies

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and/or the New MGIC Mortgage Insurance Policies which should be the subject of a declaratory judgment of this Court establishing the respective rights and obligations of the parties under the applicable insurance policies to avoid the potential for inconsistent decisions, a multiplicity of litigation and/or duplicative liabilities.

113. AHFC is entitled to a judgment of this Court declaring that the MGIC Improper Claims Denial Practices are contrary to the terms and conditions of the WMAC/Old MGIC Mortgage Insurance Policies and the New MGIC Mortgage Insurance Policies.

114. AHFC is further entitled to an injunction enjoining New MGIC and the European Companies from engaging in the MGIC Improper Claims Denial Practices with respect to the WMAC/Old MGIC Mortgage Insurance Policies and the New MGIC Mortgage Insurance Policies and requiring New MGIC and the European Companies to pay AHFC's current and future claims in accordance with the terms and conditions of the policies as declared by this Court.

WHEREFORE, Plaintiffs the STATE OF ALASKA and the ALASKA HOUSING FINANCE CORPORATION pray judgment be rendered in their favor and against Defendants MORTGAGE GUARANTY INSURANCE CORPORATION; EUROPEAN GENERAL REINSURANCE COMPANY OF ZURICH; ALPINA INSURANCE COMPANY LIMITED; SKANDIA INTERNATIONAL INSURANCE CORPORATION; CONTINENTAL CASUALTY COMPANY; HANNOVER RUECKVERSICHERUNGS AKTIENGESELLSCHAFT; FRANKONA RUECKVERSICHERUNGS AKTIENGESELLSCHAFT;

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HANSA INTERNATIONAL INSURANCE COMPANY, LIMITED; FOLKSAM INTERNATIONAL INSURANCE COMPANY, LIMITED; SVENSKA KREDITFOERSAEKRINGSAKTIEBOLAGET; and ANCIENNE MUTUELLE REASSURANCE, as follows:

1. For an award against Defendants EUROPEAN GENERAL REINSURANCE COMPANY OF ZURICH; ALPINA INSURANCE COMPANY LIMITED; SKANDIA INTERNATIONAL INSURANCE CORPORATION; CONTINENTAL CASUALTY COMPANY; HANNOVER RUECKVERSICHERUNGS AKTIENGESELLSCHAFT; FRANKONA RUECKVERSICHERUNGS AKTIENGESELLSCHAFT; HANSA INTERNATIONAL INSURANCE COMPANY, LIMITED; FOLKSAM INTERNATIONAL INSURANCE COMPANY, LIMITED; SVENSKA KREDITFOERSAEKRINGSAKTIEBOLAGET; and ANCIENNE MUTUELLE REASSURANCE, jointly and severally, of actual damages for breach of contract pursuant to COUNT I in an amount to be proven at trial, but in excess of \$25 million.

2. For an award against Defendant MORTGAGE GUARANTY INSURANCE CORPORATION of actual damages for breach of contract pursuant to COUNT II in an amount to be proven at trial, but in excess of \$25 million.

3. For an award against Defendant MORTGAGE GUARANTY INSURANCE CORPORATION of actual damages for breach of contract pursuant to COUNT III in an amount to be proven at trial, but in excess of \$100,000.

4. For an award against Defendant MORTGAGE GUARANTY INSURANCE CORPORATION of actual damages for breach of contract

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ANCHORAGE, ALASKA 99503
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pursuant to COUNT IV in an amount to be proven at trial, but in excess of \$25 million.

5. For an award against Defendant MORTGAGE GUARANTY INSURANCE CORPORATION of pecuniary and consequential damages pursuant to COUNT V in an amount to be proven at trial, but in excess of \$1 million.

6. For an award against Defendant MORTGAGE GUARANTY INSURANCE CORPORATION for punitive damages pursuant to COUNT V in an amount to be established by the jury at the time of trial.

7. For an award against Defendants MORTGAGE GUARANTY INSURANCE CORPORATION; EUROPEAN GENERAL REINSURANCE COMPANY OF ZURICH; ALPINA INSURANCE COMPANY LIMITED; SKANDIA INTERNATIONAL INSURANCE CORPORATION; CONTINENTAL CASUALTY COMPANY; HANNOVER RUECKVERSICHERUNGS AKTIENGESELLSCHAFT; FRANKONA RUECKVERSICHERUNGS AKTIENGESELLSCHAFT; HANSA INTERNATIONAL INSURANCE COMPANY, LIMITED; FOLKSAM INTERNATIONAL INSURANCE COMPANY, LIMITED; SVENSKA KREDITFOERSAEKRINGSAKTIEBOLAGET; and ANCIENNE MUTUELLE REASSURANCE, jointly and severally, of pecuniary and consequential damages in tort pursuant to COUNT VI in an amount to be proven at trial, but in excess of \$1 million.

8. For an award against Defendants MORTGAGE GUARANTY INSURANCE CORPORATION; EUROPEAN GENERAL REINSURANCE COMPANY OF ZURICH; ALPINA INSURANCE COMPANY LIMITED; SKANDIA INTERNATIONAL INSURANCE CORPORATION; CONTINENTAL CASUALTY COMPANY; HANNOVER

RUECKVERSICHERUNGS AKTIENGESELLSCHAFT; FRANKONA RUECKVERSICHERUNGS AKTIENGESELLSCHAFT; HANSA INTERNATIONAL INSURANCE COMPANY, LIMITED; FOLKSAM INTERNATIONAL INSURANCE COMPANY, LIMITED; SVENSKA KREDITFOERSAEKRINGSAKTIEBOLAGET; and ANCIENNE MUTUELLE REASSURANCE, jointly and severally, of punitive damages pursuant to COUNT VI in an amount to be established by the jury at the time of trial.

9. For pre- and post-judgment interest at the maximum rates allowed by law.

10. For Plaintiffs' costs and reasonable attorney's fees incurred in the prosecution of this litigation.

11. For a declaratory judgment declaring that the MGIC Improper Claims Denial Practices constitute breaches of the defendants' obligations under the WMAC/Old MGIC Mortgage Insurance Policies and the New MGIC Mortgage Insurance Policies.

12. For an injunction requiring Defendants MORTGAGE GUARANTY INSURANCE CORPORATION; EUROPEAN GENERAL REINSURANCE COMPANY OF ZURICH; ALPINA INSURANCE COMPANY LIMITED; SKANDIA INTERNATIONAL INSURANCE CORPORATION; CONTINENTAL CASUALTY COMPANY; HANNOVER RUECKVERSICHERUNGS AKTIENGESELLSCHAFT; FRANKONA RUECKVERSICHERUNGS AKTIENGESELLSCHAFT; HANSA INTERNATIONAL INSURANCE COMPANY, LIMITED; FOLKSAM INTERNATIONAL INSURANCE COMPANY, LIMITED; SVENSKA KREDITFOERSAEKRINGSAKTIEBOLAGET; and ANCIENNE MUTUELLE REASSURANCE to specifically perform their respective obligations under the WMAC/Old MGIC Mortgage Insurance Policies and the New MGIC Mortgage

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Insurance Policies, including but not limited to their respective obligations to pay amounts claimed by AHFC under such policies.

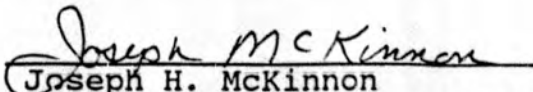
13. For an injunction enjoining Defendants MORTGAGE GUARANTY INSURANCE CORPORATION; EUROPEAN GENERAL REINSURANCE COMPANY OF ZURICH; ALPINA INSURANCE COMPANY LIMITED; SKANDIA INTERNATIONAL INSURANCE CORPORATION; CONTINENTAL CASUALTY COMPANY; HANNOVER RUECKVERSICHERUNGS AKTIENGESELLSCHAFT; FRANKONA RUECKVERSICHERUNGS AKTIENGESELLSCHAFT; HANSA INTERNATIONAL INSURANCE COMPANY, LIMITED; FOLKSAM INTERNATIONAL INSURANCE COMPANY, LIMITED; SVENSKA KREDITFOERSAEKRINGSAKTIEBOLAGET; and ANCIENNE MUTUELLE REASSURANCE from adopting or emplying, or permitting the adoption and employment, of the MGIC Improper Claims Denial Practices.

14. For such other and further relief as this Court may deem just and equitable.

15. For such other and further relief as this Court may deem just and equitable.

RESPECTFULLY submitted this 1ST day of March, 1990.

Douglas B. Bailly
ATTORNEY GENERAL
STATE OF ALASKA


Joseph H. McKinnon
ASSISTANT ATTORNEY GENERAL
STATE OF ALASKA

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Michael W. Price

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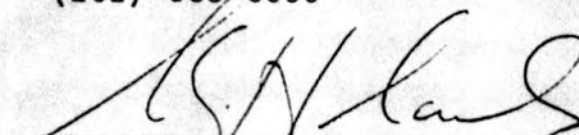

Stephen H. Sachs

EXHIBIT A**Mortgage Trust Insurance Policies
For Supplemental Insurance**

<u>POLICY NO.</u>	<u>POLICY DATE</u>	<u>BOND SERIES</u>	<u>AGGREGATE LOSS LIMIT</u>
288	06/25/81	\$150,000,000 State Assisted Mortgage Bonds, Series A	Fifteen per cent (15%) of the total initial principal balances
319	10/07/81	\$150,000,000 State Assisted Mortgage Bonds, Series B & C	Twenty per cent (20%) of the total initial principal balances
325	11/09/81	\$150,000,000 State Assisted Mortgage Bonds, Series D & E	Twenty per cent (20%) of the total initial principal balances
328	11/24/81	\$100,000 Home Mortgage Bonds, 1981 First Series	Twenty per cent (20%) of the total initial principal balances
343	12/30/81	\$100,000,000 Home Mortgage Bonds, 1981 Second Series	Twenty per cent (20%) of the total initial principal balances
393	05/20/82	\$35,000,000 Residential Mortgage Revenue Bonds, Series 1982	Twenty-five per cent (25%) of the Total Initial Principal Balance
425	06/09/82	\$225,000,000 15 1/4% State Assisted Mortgage Bonds, Series F	Twenty per cent (20%) of the total initial principal balances
562	10/07/82	\$85,000,000 Home Mortgage Bonds, 1982 First Series	Twenty per cent (20%) of the total initial principal balances

<u>POLICY NO.</u>	<u>POLICY DATE</u>	<u>BOND SERIES</u>	<u>AGGREGATE LOSS LIMIT</u>
622	12/15/82	\$50,000,000 11 3/4% Assisted Mortgage Bonds, Series H	Twenty per cent (20%) of the total initial principal balances
620	12/16/82	\$100,000,000 Home Mortgage Bonds, 1982 Second Series	Twenty per cent (20%) of the total initial principal balances
662	02/01/83	\$50,000,000 11 1/2% State Assisted Mortgage Bonds, Series I	Twenty per cent (20%) of the total initial principal balances
664	02/23/83	\$50,000,000 State Guaranteed Bonds, 1983 Second Series (Veteran's Mortgage Program)	Twenty per cent (20%) of the total initial principal balances
688	03/30/83	\$50,000,000 State Assisted Mortgage Bonds, Series J	Fifteen per cent (15%) of the total initial principal balances
724	05/25/83	\$75,000,000 State Assisted Mortgage Bonds, Series K	Fifteen per cent (15%) of the total initial principal balances
726	05/25/83	\$125,000,000 State Guaranteed Bonds, 1983 Second Series (Veterans Mortgage Program)	Twenty per cent (20%) of the total initial principal balances
756	06/29/83	\$75,000,000 State Assisted Mortgage Bonds, Series L	Fifteen per cent (15%) of the total initial principal balances

<u>POLICY NO.</u>	<u>POLICY DATE</u>	<u>BOND SERIES</u>	<u>AGGREGATE LOSS LIMIT</u>
767	07/13/83	\$75,000,000 State Guaranteed Bonds, 1983 Third Series (Veterans Mortgage Program)	Twenty per cent (20%) of the total initial principal balances
804	08/24/83	\$100,000,000 State Guaranteed Bonds, 1983 Fourth Series (Veterans Mortgage Program)	Twenty per cent (20%) of the total initial principal balances
800	08/24/83	\$75,000,000 State Assisted Mortgage Bonds, Series M	Fifteen per cent (15%) of the total initial principal balances
831	09/28/83	\$50,000,000 State Guaranteed Bonds, 1983 Fifth Series (Veterans Mortgage Program)	Twenty per cent (20%) of the total initial principal balance
829	09/28/83	\$75,000,000 Home Mortgage Bonds, 1983 First Series	Twenty per cent (20%) of the total initial principal balances
853	11/09/83	\$125,000,000 Home Mortgage Bonds, 1983 Second Series	Twenty per cent (20%) of the total initial principal balances
851	11/09/83	\$75,000,000 State Assisted Mortgage Bonds, Series N	Fifteen per cent (15%) of the total initial principal balances
887	01/05/84	\$75,000,000 State Guaranteed Bonds, 1983 Sixth Series (Veterans Mortgage Program)	Twenty per cent (20%) of the total initial principal balances

<u>POLICY NO.</u>	<u>POLICY DATE</u>	<u>BOND SERIES</u>	<u>AGGREGATE LOSS LIMIT</u>
919	03/07/84	\$130,000,000 State Guaranteed Bonds, 1984 Second Series (Veterans Mortgage Program)	Twenty per cent (20%) of the total initial principal balances
937	06/27/84	\$100,000,000 State Guaranteed Bonds, 1984 Second Series (Veterans Mortgage Program)	Twenty per cent (20%) of the total initial principal balances

EXHIBIT B**New MGIC Mortgage Insurance Policies**

<u>POLICY NO.</u>	<u>POLICY DATE</u>	<u>BOND SERIES</u>	<u>AGGREGATE LOSS LIMIT</u>
1138	05/19/88	AHFC Collateralized Mortgage Obligations, Series 1988-1	Twenty-five per cent (25%) of the total initial principal balances
1140	10/20/88	AHFC Collateralized Mortgage Obligation, Series 1988-3	Twenty-five per cent (25%) of the total initial principal balances
1144	04/06/89	AHFC Collateralized Mortgage Obligations, Series 1989-1	Twenty-five per cent (25%) of the total initial principal balances



Carl
FYI *S*

March 12, 1990

Dear Housing Professional:

Enclosed is a copy of the draft allocation plan for the low income housing credit program (LIHC) that is administered by the Alaska State Housing Authority (the authority). Your comments on the proposed plan would be greatly appreciated.

The LIHC was created by the Tax Reform Act of 1986 to encourage development of low income rental housing. In 1989, the U.S. congress made several changes to that program. One of those changes requires states to develop an allocation plan based on several criteria. Some of those criteria are mandated in the current law and others are based on the authority's review of low income housing needs in Alaska.

This plan is not intended to be a full explanation of the tax credit program. It is the basis upon which the authority will evaluate tax credit applications. For more information on the benefits of the LIHC program, contact a tax attorney or certified public accountant.

On Saturday, March 31, 1990, between 11:00 am and 1:00 pm, State Representative Walt Furnace will sponsor a statewide public hearing on the draft allocation plan. The hearing will be teleconferenced to the following locations:

Fairbanks - Legislative Information Office, 119 N. Cushman, #101.

Anchorage - Legislative Information Office, 3111 C Street, #150.

Juneau - The Capitol Bldg., Beltz Conference Room.

You are invited to participate at any of these locations. If you would like to participate from another location, please call Mark Romick at (907) 562-2813, ext. 208.

Written comments will be accepted until Monday, April 2, 1990 at 5:00 pm. Please send your comments to:

Alaska State Housing Authority
Attn: Mark Romick - LIHC
P.O. Box 230329
Anchorage, Alaska 99523



Thank you for your time, we look forward to your comments.

Sincerely,
ALASKA STATE HOUSING AUTHORITY

A handwritten signature in black ink, appearing to read "Ray Price".

Ray Price
Executive Director

Enclosure

nr:c:wp50:lihtc:comment.req

DRAFT

Allocation Plan For The Low Income Housing Tax Credit Program

MARCH 1990

**Alaska State Housing Authority
P.O. Box 230329
Anchorage, Alaska 99523
(907) 562-2813**



ALLOCATION PLAN FOR THE
LOW INCOME HOUSING CREDIT PROGRAM

ALASKA STATE HOUSING AUTHORITY
March 1990

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DRAFT

I. PURPOSE

The Low Income Housing Credit Allocation Plan (LIHC Plan) is being prepared by the allocating agency (Alaska State Housing Authority) to comply with the mandates of Section 42 of the IRS Code, as amended by the Omnibus Budget Reconciliation Act of 1989.

II. POLICY

It is the policy of the Alaska State Housing Authority (the authority), to promote, foster, and encourage the responsible development of low income rental housing through the allocation of Low Income Housing Credits.

The amount of credit allocated to a project may not exceed the amount necessary for the financial feasibility of the project. To determine financial feasibility, the authority will consider the sources and uses of funds and the total financing planned for the project.

Priority will be given to:

- (1) Projects with the lowest percentage of costs attributable to intermediaries (unless it impedes development in difficult to develop areas);
- (2) Projects that serve the lowest income tenants; and
- (3) Projects that are obligated to serve qualified low income tenants for the longest period of time.

III. ALLOCATION PROCEDURES

In accordance with IRS Code Section 42 as amended by Public Law 101-239, the Authority has established several procedures to allocate tax credit under the Low Income Tax Credit Program:

A. Notification of Local Jurisdiction

On receipt of an application for tax credit, the authority must notify the chief executive officer of the jurisdiction in which the credit project is located. The notification must identify the applicant and describe the project including its location.

B. Compliance Monitoring

The authority must notify the Internal Revenue Service of any instances of non-compliance it becomes aware of, for the term of the compliance period. Notification must be in writing, identifying the project and the managing entity, and describe the non-compliance.

C. Increase in Eligible Basis For Difficult to Develop Areas

For projects in "difficult to develop" areas, the authority may increase the credit allocation by multiplying the projects eligible basis by 130 percent. Only new construction and rehabilitation expenditures are eligible for this increase in basis. To qualify, a project must be located in either a qualified census tract or a difficult development area.

A qualified census tract is a census tract in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income. A difficult development area is an area designated by the Secretary of HUD which has high construction, land and utility costs relative to area median gross income.

Neither a qualified census tract nor a designated difficult to develop area may exceed 20 percent of the population of the metropolitan statistical area in which it is located.

D. Rent Restrictions

Gross rent may not exceed 30 percent of the households gross monthly income, including utility charges. Gross rents are based on the number of bedrooms rather than the size of the family. Units with bedrooms are assumed to be occupied by 1.5 persons per bedroom.

E. Non-profit Set-Aside

Ten percent of the annual credit ceiling will be set aside for allocation to projects with qualified non-profit participation. Any non-profit set aside credit not allocated by October 31 may be allocated to any eligible project.

F. Allocation Periods

Applications for the allocation of tax credit may be submitted at anytime during the calendar year for which credit is requested. The authority will not accept applications for reservation of a future year's credit. However, a letter of intent to apply for a future year's tax credit is requested.

The letter should be brief (one page) and include: project name; developer's name, address and telephone number; location and size of project; project characteristics (new construction or acquisition); housing characteristics (length of low-income units occupancy beyond 15-year requirement and percent of low-income units reserved for households below 50 or 60 percent of area median gross income; tenants with special needs served); fund sources including subsidies; developer (sponsor) characteristics and experience; and total estimated eligible basis. A letter of intent is not a substitute for an application.

Applications will be acknowledged on receipt and ranked on the basis of the primary selection criteria. The following allocation periods are established:

<u>Period</u>	<u>Cutoff Date</u>	<u>% of Annual Credit Ceiling</u>
1	April 30*	50%
2	July 31	50%
3	October 31 or as extended	Remaining credits if necessary

*In 1990 the first period will end July 31, 1990.

If the available percentage credit to be allocated in the allocation period exceeds the amount of credit applied for, credit will be allocated in the authority's discretion, to the highest ranking applicants.

If credit applications in any allocation period exceed the available percentage of credit to be allocated in that period, the highest ranked application will receive credit allocation up to the allowable percentage.

Unallocated credit remaining after an allocation period becomes available for allocation in the subsequent period.

G. Evaluation Review Committee

The authority will establish an evaluation committee of five members. The committee will rank applications for tax credit based on the selection criteria and recommend the amount of credit to be allocated.

The committee will include representatives from the authority and the real estate and financial industries. The committee will complete the evaluation within thirty days of the end of each application period.

H. Annual Credit Allocation

Generally, the annual credit allocation is equal to \$1.25 multiplied by the state's population. For the 1990 program, the states annual credit allocation is equal to 75 percent of the 1989 allocation or \$480,937.50.

I. State Housing Priorities

Based on the authority's assessment of statewide low income housing needs priority, in the primary selection criteria, is given to projects based on:

- 1) accessibility for the elderly, the physically handicapped, the mentally ill, the developmentally disabled, the homeless, or other special needs populations.
- 2) the number of units available for larger families (three or more bedrooms).
- 3) the number of units constructed or rehabilitated in the project.
- 4) location in rural communities.
- 5) a high degree of competition in the rental market, reducing the affordability of existing rental housing in the project area.

In addition, the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239) mandates criteria to be used in the selection of applicants. The criteria are listed below and are included in the selection criteria.

- 1) project location
- 2) housing needs characteristics