District Court of Reykjavík

Verdict

of the District Court of Reykjavík April 1st 2011 in case no. X-21/2010:

Arrowgrass Distressed Opportunities Fund Limited

Arrowgrass Master Fund Ltd.

Arrowgrass Special Situations S.a r.l.

CIG & Co

Conseq Invest plc

Conseq Investment Managments AS

CVI GVF (Lux) Master S.a r.l

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

GLG European Distressed Fund

GLG Market Neutral Fund

ING Life Insurance and Annuity

ING USA Annuity and Life Insurance Co.

LMN Finance Ltd

Lyxor / Third Point Fund Limited

Monumental Life Insurance Company

National Bank of Egypt (UK) Limited

Ohio National Life Assurance Corporation

PHL Variable Insurance Company

Phoenix Life Insurance Company

Reliastar Life Insurance Company

Security Life of Denver Insurance

Sun Life Assurance Company of Canada

Third Point Partners LP (US)

Third Point Offshore Master Fund LP

Third Point Partners Qualified LP

Third Point Ultra Master Fund LP (Cayman)

Värde Fund LP

Värde Fund V-B LP

Värde Fund VI-A LP

Värde Fund VII-B LP

The Värde Fund VIII LP

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

Värde Investment Partners LP

Värde Investment Partners (Offshore) Master LP

WGZ Bank Luxembourg S.A.

WGZ Bank Ireland plc

(Ragnar Aðalsteinsson hrl.)

Bayerisch Landesbank

Bremer Landesbank

Commerzbank AG also because of Commerzbank International S.A.

Erste Europäische Pfandbrief- und

Kommunalkreditbank AG,

Eurohypo Aktiegsellschaft

DekaBank Deutsche Girozentrale also because of DekaBank

Deutsche Girozentrale Luxembourg S.A.

Deutsche Postbank International S.A

Düsseldorfer Hypothekenbank AG

DZ BANK AG Deutsche Zentral-Genossenschaftsbank

Landesbank Baden-Württemberg

LBBW Luxembourg SA

Landesbank Berlin AG

Deutsche Postbank AG

Deutsche Hypothekenbank (Actien-Gesellschaft)

KfW Bankengruppe

Raiffeisen Zentralbank Österreich AG

Österreichsche Volksbanken-Aktiengesellschaft

Sparkasse Oberhessen

Taunus-Sperkasse

Sparkasse Pforzheim Calw

Sparkasse-Jena-Saale-Holzland

Sparkasse Hannover

Nassauische Sparkasse Anstalt des öffentlichen Rechts

Sparkasse zu Lübeck AG

Kreissparkasse Peine

Die Sparkasse Bremen AG

Sparkasse Oder-Spree

Vereinigte Sparkassen im Landkreis Weilheim

Caixa Geral de Depositos

The Royal Bank of Scotland plc.

ABN AMRO Bank NV, London Brach

(Kári Hólmar Ragnarsson hdl.)

Rakel Óttarsdóttir

Óttar Magnús G. Yngvason

Blomstra ehf.

Skiki ehf.

Íslenska útflutningsmiðstöðin hf.

(Óttar Yngvason hrl.)

Deutsche Bank Trust Company Americas

(Eyvindur Sólnes hrl.)

Landsbanki Guernsey Ltd.

(Jóhannes Eiríksson hdl.)

versus

Landsbanka Íslands hf.

(Herdís Hallmarsdóttir hrl.)

Gemeente Alphen aan den Rijn

(Baldvin Björn Haraldsson hdl.)

This case, that was received for verdict on the last February 23rd, was arrainged on April 30th 2010.

The plaintiffs are Arrowgrass Master Fund Limited, United Kingdom, in addition to the creditors that are stated above and Ragnar Aðalsteinsson hrl. is speaking on behalf of Bayerische Landesbank, Germany, in addition to the creditors that are stated above and Kári Hólmar Ragnarsson hdl. is speaking on behalf of Rakel Óttarsdóttir, Reykjavík, Óttar Magnús G. Yngvason, Kópavogi, Blomstra ehf., Reykjavík, Skiki ehf., Reykjavík, Íslenska útflutningsmiðstöðin hf., Reykjavík, Deutsche Bank Trust Company Americas, United States of America, and Landsbanki Guernsey Ltd., United Kingdom.

The defendants are Landsbanki Íslands hf., Reykjavík, and Gemeentle Alphen aan den Rijn, Netherlands.

The plaintiffs, Arrowgrass Master Fund Limited etc., claim that the claim of the defendant Gemeente Alphen aan den Rijn will be dismissed on all account bar the amount that exceeds what the resolution committee of Landsbankinn has agreed to as priority claim, i.e. 2.996.743 EUR, in accordance to the entry in the judicial document no. 145.

If his claims will not be agreed to his primary claim is that the claim of Gemeente Alphen aan den Rijn, no. 740 in the registry of claims, on the declared amount of 507.138.818 ISK will be rejected as priority claim in accordance to Art. 112 of Act on bankruptcy etc., no. 21/1991, on winding-up of Landsbanki Íslands hf.

Should some parts of the claims of Gemeente Alphen aan den Rijin, no. 740 in the registry of claims, be agreed upon, on the declared amount of 507.138.818 ISK, to be prioritised in accordance to Art. 112 of Act no. 21/1991, on winding-up Landsbanki Íslands hf., the secondary claim is that the declared amount will not exceeded 20.887 EUR.

Another secondary claim of the plaintiff is the rejection of the claim of Gemeente Alphen aan den Rijn that all interests of the claim should hold the position of priority claims in accordance to Art. 112 of Act no. 21/1991.

The plaintiffs claim on all account the legal cost to be paid by the defendants either individually or in solidum with impunity in accordance to the ruling of the court or in accordance to bill of the legal cost in addition to the value-added tax.

The plaintiffs Bayerisch Landesbank etc. claim that the claim of the defendant Gemeente Alphen aan den Rijn will be rejected on all account bar the amount that exceeds what resolution committee Landsbankans has agreed to as priority claim, i.e. 2.996.743 EUR, in accordance to the entry in judicial document no. 145.

If his claims will not be agreed to his primary claim is that the claim of Gemeente Alphen aan den Rijn, no. 740 in the registry of claims, on the declared amount of 507.138.818 ISK will be rejected as priority claim in accordance to Art. 112 of the Act on bankruptcy etc. no. 21/1991 on winding-up Landsbanki Íslands hf.

Should some parts of the claims of Gemeente Alphen aan den Rijin, no. 740 in the registry of claims, be agreed upon, on the declared amount of 507.138.818 ISK, to be prioritised in accordance to Art. 112 of Act no. 21/1991, on winding-up of Landsbanki Íslands hf., the secondary claim is that the declared amount will not exceeded 20.887 EUR.

The plaintiffs claim on all account the legal cost to be paid by the defendants either individually or in solidum with impunity in accordance to the ruling of the court or in accordance to bill of the legal cost in addition to the value-added tax.

The plaintiffs Rakel Óttarsdóttir, Óttar Magnús G. Yngvason, Blomstra ehf., Skiki ehf. og Íslenska útflutningsmiðtöðin hf. claim that the recognition of the resolution committee of Landsbanki Íslands hf. on the claim of Gemeente Alphen aan den Rijn should be rejected as priority claim on the basis of Art. 112 of Act no. 21/1991 on bankruptcy etc., cf. 3rd paragraph of Art. 102 of Act no. 161/2002 regarding financial undertakings, as that article was changed with Art. 6 of Act no. 44/2009, cf. also Art. 6 of Act no. 125/2008.

The plaintiffs claim that the claim of the defendants will be recognised as a general claim in accordance with Art. 113 of Act no. 21/1991 when allocating the estates of Landsbanki Íslands hf.

Also the plaintiffs claim that the defendants will judged in solidum to pay the legal fee as decided by the court.

The plaintiff Deutsche Bank Trust Company Americas claims that the decision of the resolution committee of Landsbanka Íslands hf., that the claims of Gemeente Alphen aan den Rijn

should be recognised as priority claim in the sense of Art. 112 of Act no. 21/1991 on bankruptcy etc., to be refuted by judgement.

Also the plaintiff claims to be paid the legal cost in accordance to the ruling of the court or as presented in bills of legal cost.

The plaintiffs Landsbaki Guernsey Ltd. primary claim is that the position of the resolution committee of Landsbanki Íslands hf. on the subject of the claim of Gemeente Alphen aan den Rijn will be overturned and changed so that the claim will only be recognised as a general claim in accordance with Art. 113 of Act no. 21/1991 on bankruptcy etc. on the winding-up of the bank.

The plaintiffs secondary claim is that the claim of Gemeente Alphen aan den Rijn will only be recognised as priority claim in accordance to Art. 112 of Act no. 21/1991 and should not exceeded 20.887 EUR per deposit that the statement of claim covers.

Also the plaintiff claims to be paid the legal cost in accordance to the ruling of the court or as presented in bills of legal cost.

The defendant Landsbanki Íslands hf. claims that the motion for dismissal of the plaintiffs, Arrowgrass Master fund etc. and Bayerische Landesbank etc., will be rejected. The defendant also claims that the position of the resolution committee to recognise the claim of Gemeente Alphen aan den Rijn, no. 740 in the registry of claims, as priority claim in accordance with Art. 112 of Act no. 21/1991 totalling 2.996.743 EUR that is converted to 507.138.818 ISK in the registry of claims.

Also the defendant claims that the claim of legal cost by the plaintiffs will be rejected.

The defendant Gemeente Alphen aan den Rijn claims that the plaintiffs, Arrowgrass Master fund etc. and Bayerische Landesbank etc., motion for dismissal will be rejected. Also the defendant primary claims are that his claim on Landsbanka Íslands hf. totalling 3.418.331,08 EUR will be recognised and that it will be recognised that his claim receives priority during winding-up of Landsbanki Íslands hf. in accordance to Art. 112 of Act no. 21/1991 on bankruptcy etc., cf. Art. 102(3) of Act no. 161/2002 on financial undertakings.

The defendants first secondary claim is that his claim on Landsbanki Íslands hf. totalling 3.185.489,37 EUR will be recognised and that it will be recognised that his claim receives priority during winding-up of Landsbanki Íslands hf. in accordance to Art. 112 of Act no. 21/1991, cf. Art. 102(3) of Act no. 161/2002.

The defendants second secondary claim is that his claim on Landsbanki Íslands hf. totalling 3.102.329,16 EUR will be recognised and that it will be recognised that his claim receives priority during winding-up of Landsbanki Íslands hf. in accordance to Art. 112 of Act no. 21/1991, cf. Art. 102(3) of Act no. 161/2002.

The defendants third secondary claim is that his claim on Landsbanki Íslands hf. totalling 3.061.501,33 EUR will be recognised and that it will be recognised that his claim receives priority during winding-up of Landsbanki Íslands hf. in accordance to Art. 112 of Act no. 21/1991, cf. Art. 102(3) of Act no. 161/2002.

The defendants fourth secondary claim is that the decision of the resolution committee of the defendant Landsbanki Íslands hf. regarding the recognition of the claim of the defendant totalling 2.996.743 EUR will be acknowledged and that it will be recognised that his claim receives priority during winding-up of Landsbanki Íslands hf. in accordance to the 112th article of laws no. 21/1991, cf. 3rd paragraph of the 102nd article of laws no. 161/2002.

The defendants fifth secondary claim is that his primary claim will be acknowledged with priority in accordance to Art. 113 of Act no. 21/1991.

The defendants sixth secondary claim is that his first secondary claim will be acknowledged with priority in accordance to Art. 113 of Act no. 21/1991.

The defendants seventh secondary claim is that his second secondary claim will be acknowledged with priority in accordance to Art. 113 of Act no. 21/1991.

The defendants eighth secondary claim is that his third secondary claim will be acknowledged with priority in accordance to the Art. 113 of Act no. 21/1991.

The defendants ninth secondary claim is that his fourth secondary claim will be acknowledged with priority in accordance to Art. 113 of Act no. 21/1991.

The defendant claims on all accounts the legal cost insolidum form the plaintiffs with added value-added tax according to legal cost bills or according to the judgement of the court.

The defendant, Landsbanki Íslands hf., claims the rejection of the claim of defendant Gemeente Alphen aan den Rijn, where in his statement he claims that an amount greater then the one agreed upon should be recognised as priority claim. The defendant relinquishes his claims regarding the rejection of the first, second and third secondary claim of the defendant, Gemeente Alphen aan den Rijn. Also it is claimed that the claims of legal cost directed at him will be rejected.

The plaintiffs Arrowgrass Master Fund Limited etc. claim that all counterclaims of the defendant Gemeente Alphen aan den Rijn regarding the recognition of claims of designated amounts, including the priority of those claims, greater than what was agreed upon by the resolution committee of the defendant Landsbanki Íslands hf. will be rejected. Also the plaintiffs claim legal costs to be paid by the defendants with impunity in accordance to the estimation of the court or in accordance to the bills of legal cost , plus value-added tax.

The plaintiffs Bayerische Landesbank etc. claim that all the counterclaims of the defendant Gemeente Alphen aan den Rijn that are included in his statement to the court and defer to the recognition of a claim amount greater than the amount that was agreed upon by the resolution committee of the defendant Landsbanki Íslands hf., including priority of such amounts, will be rejected. Also the plaintiffs claim legal cost from the defendant with impunity in accordance to the estimation of the court or in accordance to the bills of legal cost , plus value-added tax.

The main events of the case

The defendant, Gemeente Alphen aan den Rijn is a community in the west part of the Netherlands and has a population of around 70.000. With a letter from Landsbanki Íslands hf. to the Financial Supervisory Authority, dated Mars 6th 2006, the bank announced its intended establishment and operation of a branch in Amsterdam in the Netherlands. The announcement says:
„later it can be expected that deposit operations on wholesale markets for deposits will be established...“

Then on the 6th of September 2007 the bank announced that it was planning to expand the operation of the branch so that it would also receive deposits.

On the 27th of August 2008 the defendants, Landsbanki Íslands hf. and the community Gemeente Alphen aan den Rijn, made an agreement regarding so called wholesale deposit trade. The dealings was established by negotiation of brokers in the Netherlands, Wallich and Metthes B. V. The subject matter was „wholesale deposits“ of the capital of 3.000.000 EUR. The defendant, the Dutch community, deposited the aforementioned capital into the account of Landsbanki Íslands hf. in Fortis Bank N. V. in the form of transaction on August 28th 2008 but the capital including 4,92% interests of contract should be free for disbursement for Gemeente Alphen aan den Rijn on October 10th 2008. In a confirmation from the brokers Wallich and Matthes it says that there had been done „deposit transactions“, „depositotransactie“.

As sanctioned by item a of Art. 100 in Act no. 161/2002 on Financial undertakings, cf. Art. 5 of Act no. 125/2008, the Financial Supervisory Authority overtook on the 7th of October 2008 the authority of a shareholders meeting of the defendant, Landsbanki Íslands hf., suspended its board and appointed a resolution committee. In accordance to Act no. 44/2009, regarding the changes of Act no. 161/2002 on Financial undertakings, that came into effect on the 22nd of april 2009, the bank was wound-up and it was appointed a resolution committee. The resolution committee attends to the elements of the winding-up that defer to the treatment of claims directed against the bank. According to its advertisement regarding the recall to the creditors of the bank, the deadline for lodging claims expired on October 30th the same year. The defendant, Gemeente Alphen aan den Rijn, put forth a claim directed against the bank on October 20th 2009 and claimed priority for capital, 3.000.000 EUR plus interests of contract up to and including April 22nd 2009 totalling 17.630 EUR. Regarding the claim of interest from the day of disbursement up to and including the 22nd of April 2009 the primary claim was for interests on overdue payments in accordance Art. 6(1) of Act no. 38/2001 on interests and indexation totalling 412.564 EUR, but a secondary claim was made for interests of non-payment in accordance to Dutch laws that apply to commercial transactions. Also there was made a claim regarding the expenses before April 22nd 2009 totalling 9.024,08 EUR. Concerning the claims on the capital, as well as on the claims of the interest and expenses before April 22nd 2009, the priority of the claim treated as stated in the Art. 112(1) of Act no. 21/1991 on bankruptcy etc, cf. Art. 102(3) of Act

no. 161/2002 on Financial undertakings. Regarding the claim regarding interests and expenses after April 22nd 2009 the priority was treated according to Art. 114 of Act no. 21/1991.

The resolution committee of Landsbankinn declared that their stand on the claim of the capital totalling 3.000.000 EUR was approved as priority claim with modifications, i.e. with the deduction of payment from De Nederlandsche Bank N. V. to the creditors totalling 20.887, or the sum of 2.979.113 EUR as well as the claim regarding interests of contract during the contract period totalling 17.630 EUR. The resolution committee rejected the primary claim of the creditor regarding Icelandic interests of overdue payments from the day of redemption up to and including April 22nd 2009, on the grounds that Dutch law applied substantially to the subject matter. The secondary claim regarding interests of non-payment in accordance to Dutch laws that apply to commercial transactions was rejected since the resolution committee held this was a matter of obligation of deposit but not obligation based on commercial transactions.

On behalf of the defendants, Gemeente Alphen aan den Rijn, the stance of the resolution committee was objected and it was claimed that the claim would be fully recognised in the way it had been stated. The stance of the resolution committee regarding the agreement of a part of the claim as priority claim was objected by a significant number of foreign creditors and a few domestic creditors, among other things on the bases that it was not a deposit that was had insurance protection according to Act no. 98/1999. Since it was not possible to settle this disagreement in following meetings of the creditors the resolution committee directed the disagreement to be resolved by district court, with reference to Art. 120, cf. Art. 171, of Act no. 21/1991. It was said amongst other things that in addition to the resolution committee of the bank the designated creditors that had objected to the stance of the resolution committee should be parties to the case. While running the case the statements of few participants were put forth where it said that it was not their wish to have direct participation to this case unless it constituted a withdrawal of former objections to the stance of the resolution committee regarding the claim of the defendant Gemeente Alphen aan den Rijn.

In regard to the fact that the resolution committee of Landsbanki Íslands hf. had in most parts agreed to the claims of the defendant Gemeente Alphen aan den Rijn in the case, against the objections of the general creditors that number amongst participants to it, the judge decided whilst conducting the case that the general creditors should be considered as plaintiffs but that Gemeente Alphen aa den Rijn and Landsbanki Íslands hf. should be defendants.

Grounds of action and legal arguments of the plaintiffs

The plaintiffs Arrowgrass Master Fund etc. refer to, because of their motion for dismissal that the defendant Gemeente Alphen aan den Rijn had agreed to the stance of the resolution committee of Landsbanki Íslands hf. that it was agreed upon that the claim was considered priority claim according to Art. 112 of Act no. 21/1991. Taking into consideration the ruling of Supreme Court in case no. 638/2010 this would have to result in the defendant not being able to go through with the case.

Regarding the component these plaintiffs build on the grounds that foremost that the claim of the defendant, Gemeente Alphen aan den Rijn, falls outside the coverage of the laws on priority of deposits. The claim of the defendant is only one of many claims that is declared in the winding-up of Landsbankinn and originates from investments of the bank in wholesale financial market. In those instances the creditor had loaned Landsbankanum funds in a trade that had been established and negotiated about on wholesale financial market. Funds had been given over to the bank for a specific amount of time and during that period the provider of the loan had no access to the funds. The claims should not be considered as deposits but as a specific form of investment or loan. It is plain that from the business of Landsbankinn and the defendant, Gemeente Alphen aan den Rijn, it is determinable that specific main characteristics distinguish these loans from deposits. In that way business has been established because of intercession of a special broker and did not involve the payment of a sum of funds from the owner of the deposit to the bank for storage and/or to use payment service and general bank service. The funds were not stored in a specific bank account that was founded in the owners of the deposits name. The funds were also not accessible until the date of payment and it was impossible to withdraw them when wanted. Also the place of payment of the transaction was not in Landsbankinn but the sum had to be deposited into a bank account that had been specified by the creditor at the beginning of the dealings. Finally it is clear that about these transactions no standard terms did apply that had been made unilateral by the bank, like is the case with deposits, but the terms had been

negotiated separately each time. The dealings in question had a specific time period, just over one year. They had fixed interests of 6% and the bank was obliged to repay the capital and the interests on the day of payment just over a year later. The plaintiffs indicate that priority of the deposits had been legalized with Art. 6 of Act no. 125/2008. That article had then been changed with Art. 6(3) of Act no. 44/2009 on the changes of the laws on Financial undertakings. Both these articles point to the detention of laws no. 98/1999 on deposit guarantee scheme and insurance system for investors regarding the definition of deposit but the laws are based on directive 94/19/EB on deposit guarantee schemes. The understanding of the aforementioned article must be that only deposits that are insured in accordance to laws no. 98/1999 should receive priority rights. The definition of what is deposit can be found in Art. 9(3)of said Act and there it is clearly stated that the concept of deposit does not cover „bonds, bills of exchange or other claims issued by an commercial banks or savings bank in the form of securities."

What is being based on is that the format of the claim in question is securities and is therefore excluded from the aforementioned definition of deposits. Since the definition of the concept securities cannot be found in Act no. 98/1999 the definitions of Act no. 108/2007 on the trading of securities must be looked to and also to older laws on the same matter no. 33/2003 and 13/1996. Taking those definitions into consideration and the explanations in aforementioned laws and the legal interpretational documents that come with them the conclusion can be made that the main characteristics of the concept securities is that it can be endorsed, that it has no requirement of form and that claims of payment in cash can be considered as securities. When the wholesale trades that this case concerns are examined with this in mind it is can be seen that the claim of the defendants had been endorsable, that the transaction lead to a claim to payment in cash, that the transaction had been negotiated by a broker on the financial market because the contract is endorsable in financial markets. Wholesale trading had therefore been in the form of securities in accordance with laws no. 98/1999 and therefore excluded from them.

Should the court reach the conclusion that wholesale trade should not be considered securities according to the exception in Art. 9(3) of Act no. 98/1999 it build upon that the transaction is not covered by the definition of deposit according to the laws on priority of deposits. This is made clear by general word definition but also from the intent of the laws. It is clear that the intent of the legislator by instituting the laws on priority of deposids was not to grant claims like this one priority but to point out that it was essential to protect individuals, their deposits and savings.

In the light of the merits and the items that discern wholesale trading from deposits, and particularly the claim that is being discussed, and in the light of the intent of the Icelandic government when instituting the laws on priority of deposits to protect retail depositors and depositors it must be concluded that the burden of proof that the claim is an deposit should res with the creditor himself, the defendant Gemeente Alphen aan den Rijn. Is this especially true because of the restrictions of rights that the priority of deposits may lead to should it be resorted to by the court.

Should the above argument not be agreed to it is build upon that the articles of the new legislation, including the emergency Act no. 125/2008, in conjunction with priority of deposit, and also the compartmentalisation of the banks and refunding of the new banks, are incompatible and in opposition to the fundamental principle of the protection of property, on equality and ban on discrimination that is protected by the constitution and the European Convention on Human Rights. They are therefore void and unbinding and should be excluded in the resolution of this case.

It is without a doubt that the claims of the plaintiffs in addition to their rightful expectations are protected as properties by Art. 72 of the Constitution and Art. 1 of the first addendum to the agreement of the Human Rights Covenant. The actions of the government regarding the status of the creditors in the order of depts included de facto deprivation of property of the creditors, other than owners of deposits, but most of the creditors are foreigners. The same can be said on the breakdown of the banks, the refinancing of the new banks and the transference of debts and property to them. The plaintiffs endured unlawful discrimination when the value of their rights, that are protected during winding-up in accordance to written laws, was severely diminished or reduced to nothing. This reduction of property cause the plaintiffs an considerable amount of loss. It is clear that the domestic owners of deposits hand immediately obtained priority with the breakdown of the banks and the refinancing of the new banks on the expenses of other creditors that had claims that would still have been depts of the old banks. When the measures of the government are looked at it is clear that they

included discrimination between at least three groups of creditors: First, domestic owners of deposits that have in every way been freed from winding-up by the breakdown of the banks and the refinancing of the new banks and had therefore in fact received unnecessary protection of the articles of the new legislation on priority of deposits, second, foreign owners of deposits that got a much better position than other general creditors with the articles on priority rights of owners of deposits, and third, mostly foreign creditors, other than owners of deposits, that had been placed into a position where their rights had been significantly reduced of value or lost as a whole.

Up to the point when action was taken to insure the functionality of the Icelandic banking system and to prevent to immediate collapse of the Icelandic economy the actions that had been done had been excessive, that is in opposition to proportionality. This stems from the fact that no compensation has been paid to the creditors that have carried the financial burden resulting from the protection of domestic and foreign owners of deposits. If compensation has not been paid it can lead to that the restrictions on the right to property, or intervention in the usage of the property in question, to be illegal. The actions taken are also believed to be in opposition to proportionality since they were not logically connected to the goals to preserve the functionality of the banking system and to prevent the immediate collapse of the banks. Special notice is directed to the point that no further gain has followed the actions taken for the Icelandic banking system since either way the domestic deposits would have been transferred to the new banks and domestic owners of deposits would in that way have been insured for their deposits. The actions taken were not carefully formed to reach the legitimate goal that was aimed at but instead the actions were based upon illogical points of view, discretion and unfairness. It is clear that the aforementioned actions did not include the least possible indentation of the mentioned rights, but in addition the entailed a breach of the principles of law regarding of ban to retroaction and clarity of law, including the violation of legitimate expectations of the plaintiffs regarding that a new legislation that would affect their rights of property would be in agreement to those principles.

It is pointed out that the institution of priority of deposits in a retroactive way is in violation of the fundamental principles and equality and the ban of discrimination that is protected by Art. 65 of the Constitution, Art. 1 of the addendum to the Human Rights Covenant and Art. 6, in accordance with Art 14 of the Human Rights Covenant. These principles are also in effect in European law and are therefore validated in Icelandic law through the EEA-agreement. It seem clear that the articles of Act no. 125/2008 and 44/2009 refer to different treatment of similar cases so that one group of general unsecured creditors, owners of deposits, are by law made owners of priority claims on the expense of other creditors that are not owners of deposits. By doing so the status of the party that was in a similar position was disrupted without objective points of view that supported the different treatment and such actions are to be treated as discrimination against the general creditors. Also there is an indirect discrimination on the grounds of nationality where the creditor to the banks, that are not owners of deposits, particularly foreign creditors, will carry excessive burden compared to other creditors to the banks because of the fact that their nationality is other than Icelandic.

The articles in question regarding priority of deposits will not be justified by referencing the point of view of constitutional emergency law, since there is no such authority granted in the constitution itself. At the least that right should be limited to situations that are rise during war conditions in addition to the fact that it is impermissible to on all accounts to deviate from the human rights provisions of the constitution. It is clear that Alþingi believe that it was utilising a right to deviate from the constitution when the emergency law and legislation related to that where passed. No reference about anything of that kind can be found in legal interpretational documents with said legislation. It is evident that there was not any kind of emergency situation in April 2009 when Act no. 44/2009 on the changes of Act no. 161/2002 on Financial undertakings were passed, but they re-legalized the priority of the deposits.

Supporting the primary claim of the plaintiffs it is finally referred to said actions of the Icelandic government included unlawful discrimination against foreign participants, cf. the Art. 4 of the EEA-agreement and Art. 16(2) of directive 2001/24/EB, and Art. 40 of the EEA-agreement on ban to the limitation of free flowing capital between member countries, and that they include illegal state aid in accordance to Art. 61(1) of the EEA-agreement.

Should it be the ruling of the court that the priority of the deposits is valid utilising the legislation that refers to it the secondary claim is that the interpretation of the rules of law should be in

such a way that priority should only be granted to claims up to 20.887 EUR. In that context it is pointed out that priority on the basis of the emergency laws had been granted to „deposits according to laws no. 98/1999“, but those laws only include deposits to the amount protected by law that receives insurance. Even though the laws mention that under certain circumstances the payment of the total sum of the deposit then the only part of the deposit that is really insured is 20.887 EUR. Furthermore it is stated in Art. 1 of Act no. 98/1999 that their goal is the grant owners of deposit minimal protection in the case of a banks bankruptcy. That is why it is argued that the goal of the legislator was to grant priority to the sum that equals to the insured sum of 20.887 EUR but the part of said claims that is in excess of that sum the status of general claim. It is clear that the mentioned interpretation, that only the specific sum should be granted priority, would honour the legitimate expectations of the owners of deposits because in that way the sum that they should have expected to be paid from the Depositors and Investors Guarantee Fund in the case of the insolvency of one of the banks would be insured.

Finally the aforementioned priority rights is said not cover any claims regarding accrued interests and cost. According to Act no. 98/1999, cf. regulation no. 120/2000 on Deposit Guarantee Scheme and Insurance Systems for Investors, particularly Art. 5, the calculation of the sum of a deposit should be in reference to its balance on the day that the Financial Supervisory Authority issued an opinion that the financial undertaking is not able to pay out the sum of the deposit. The Financial Supervisory Authority had issued that opinion on the October 27th 2008 that on the October 6th Landsbankinn had not been able to uphold its commitments regarding deposits. That day the obligations of the Depositors and Investors Guarantee Fund had become active and should the interests from that day onwards not be defined as an insured deposit according to Act no. 98/1999. Regarding the claim for costs the defendants Gemeente Alphen aan den Rijn it is argued that he did not demonstrate that the cost he is claiming is the cost of the collection of the claim. It is clear that if the court agrees that such a claim is true it cannot under any circumstances be granted the same kind of priority as the capital of the claim, if it should be granted priority during winding-up, since the cost can never be considered as an deposit in accordance to Act no. 98/1999. In this context it must be kept in mind that priority of claims over general claims is an exception from the principle of equality of creditors.

The plaintiffs Bayerische Landesbank etc. refer to, because of their motion for dismissal, that the defendant Gemeente Alphen aan den Rijn was in agreement to the stance of the resolution committee of Landsbanki Íslands hf. about agreeing to his fourth secondary claim as priority claim according to Art. 112 of Act no. 21/1991 during the winding-up. While taking into consideration the ruling of Supreme Court in case no. 638/2010 it must be concluded that said defendant cannot be a part of the case and therefore this part of the presentation of the claim should be dismissed.

Regarding the material aspect of the case the plaintiffs foremost build on that the claim of the defendant Gemeente Alphen aan den Rijn cannot be considered deposit in the sense that is important and can therefore not be granted priority as such. It is pointed out that priority of deposits was legalized with Art. 6 of Act no. 125/2008. That article had then been changed with Art. 6(3) of Act no. 44/2009 that changed Act no. 161/2002 on Financial undertakings. Both of those Articles point towards the definition that is presented in Art. 9(3) if Act no. 98/1999 on Deposit Guarantee Scheme and Insurance System for Investors when defining deposit, but these laws are based on directive 94/19/EB on Deposit Guarantee Schemes. Aforementioned articles must be interpreted in a way such that only deposits that are insured in accordance with Act no. 98/1999 are meant to be granted priority rights. The claim of Gemeente Alphen aan den Rijn can to be considered an deposit in the sense of the Art. 9(3) of Act no. 98/1999 since it is considered „in the form of securities“, did not „come to be because of a deposit or transfer in traditional common banking operation“ and is not covered in any other way by the definition of deposit according to laws no. 98/1999.

It is plainly stated in the quoted article that the definition of deposit does not cover „bonds, bills of exchange or other claims issued by an commercial banks or savings bank in the form of securities.“ In the act there is no definition of the concept „securities“ but such a definition can be found in Act no. 108/2007 on Securities Brokerage, and also in older acts on the same subject no. 33/2003 and 13/1996. In Art. 2 of Act no. 108/2007 the concept securities is defined in such a way: „Any type of transferable right of creditor to payment in cash or the equivalent of such payment, and also transferable documents for ownership to other things than real estate or individual movables.“ In

the statement with the bill to the aforementioned act it is stated that: „In accordance to the article it as to be possible to trade with securities in a financial market for it to be covered by the definition. Trading in a financial market it is referring to trading in a orderly securities market, in a market square of financial instruments (MTF) or trading by interposition of a financial undertaking with a permit for trading with securities."

The plaintiffs believe that the claim of the defendant is transferable and that the business in question was a trade on a international financial market by interposition of a financial undertaking with a permit for trading with securities. The trade had the characteristics of a securities.

The plaintiffs point out that the claim can in its nature not be considered a deposit and point toward the following characteristics that mostly define the claim in question: The stipulation of the trade was negotiated separately and the contract was made by the interposition of a broker in the international financial market. The trade had served the general purpose to be a short term investment for the creditor, more so than a way to store disposable funds, such that is the general purpose of deposits. From the point of view of Landsbankinn the purpose of the trade was to face a general need for working capital and it seems that the business was actively sought on the international financial market. Also the funds should be reimbursed on a specific time but for any other part the creditor did not have any access to them. Negotiations about fixed interest had specially been made that should be reimbursed along with the capital on the due date, but the terms that the defendant Gemeente Alphen aan den Rijn had been offered had not been available for the common owner of deposit. The defendant, that had received specialist assistance, is treated as a professional investor in that regard and his role and position hand been disparate to the position that the common owners of deposit are in. It does not seem that there was a special bank account in the name of the creditor but it seems that the creditor had deposited the funds into Landsbankans account with a third party. The documents that the trade is based upon are disparate to the documents that deposits are based on. It seems that a contract of loan granting had been made between the broker and Landsbankans, most likely verbally, but no documents are available other than the following confirmation from Landsbankanum. Also Landsbankinn should reimburse the sum with interest into an bank account owned by Gemeente Alphen aan den Rijn in NV Bank Ned. Gemeenten on due day. Such measure does not conform to deposit transactions and embodies that the place where payment is paid had been with the creditor. When it is a matter of trading with deposits the place where payment is paid is on the other hand with the bank that receives the deposit.

Then it must be held that the claim falls short of the meaning of the concept deposit in the way that matters, especially when taking into consideration the purpose and goal of the articles that are taxed in this case. From the ruling of Supreme Court in case no. 184/2010 it can be said that only insured deposit according to Act no. 98/1999 can be classified as deposits in Act no. 125/2008 and no. 44/2009. To demarcate what deposits are insured all articles of Act no. 98/1999 must be considered as well as their purpose and goals. It is clear that the goal of Act no. 98/1999, cf. i.e. Art. 1 of the Act, is to grant common owners of deposits certain minimal protection. The Act is obviously based on the viewpoint of consumer protection as declared in the introduction of directive 94/19/EB, that has been instituted into Icelandic law with legislation. The said claim of the defendant does not come under that goal since it is a investment of an professional investor. In that context it is pointed out that wholesale loans or wholesale deposits had not been known phenomenon's in Iceland when Act no. 98/1999 were passed and therefore not expected that the legislator had taken an direct stance on the matter if such trade should be considered deposits according to the Acts.

The plaintiffs feel that when defining which claim should have priority as deposits according to Art. 6 of Act no. 125/2008 and Art. 6(3) of Act no. 44/2009 the purpose of this legislation has to be considered. Therefore both the prehistory and the purpose of Act no. 98/1999 as well as the Act that instituted the priority of deposits, or Act no. 125/2008 and 44/2009. Even though it seems that the state had with its actions aimed to insure the interests and individual depositors and common customers of the banks, in addition to protect the minimal functions of the banks and fund transfer, the plaintiffs feel that the priority of deposits and other actions of the state were neither what was needed nor necessary to reach these goals. It should be clear that the priority of claims of professional investors, such as the defendant that had traded on a wholesale market with capital, falls short of the goals that the legislator may have headed for by instituting Articles on priority of deposits. Taking the aforementioned into account the defendants feel that the claim of the defendant Gemeente Alphen aan

den Rijn falls short of the concept deposit in Act no. 125/2008 and 44/2009. In addition of the aforementioned the plaintiffs point to three main points that should result in the court should rightly and by obligation interpret strictly the Article on priority of deposits. First, it is clear that the priority limits the rights of the plaintiffs that are protected by the Constitution and the European Convention on Human Rights. Second, the Article must be interpreted strictly in correspondence to Iceland's obligations according to the EEA-agreement, cf. Art. 3 of Act no. 2/1993 and registration 35 to the EEA-agreement, and also the general viewpoint in Icelandic law that the internal legal order should be interpreted in accordance with international obligations. It is the opinion of the plaintiffs that priority of deposits violates the EEA-agreement, i.e. its Article on equality. Third, it is clear that priority of deposits includes a exception to the principle of bankruptcy law on the equality of creditors that leads the strict interpretation of the concept deposit in the Articles of the Act on the priority.

Should the court conclude that said claim of the defendant can be considered an deposit and is therefore covered by the Articles on priority of deposits, the plaintiffs argue that these Articles should not be used since they are in opposition to Articles of the Constitution, the European Convention on Human Rights and the EEA-agreement.

First, the priority of deposits violates the protection of ownership according to Art. 72 of the Constitution and Art. 1 of the first addendum of the Human Rights Covenant. The plaintiffs claims against Landsbankinn should undoubtedly be considered as property according to said Articles and be protected by them. These rights have been diminished in a unforeseeable and retroactive way when the Articles on priority of deposits were legalized. The status of those claims and the value was changed retroactively with the passing of the Act and such and legislation cannot stand. The plaintiffs argue that they had to give up their property. The value of the claims against Landsbanki Íslands hf. did deteriorate considerably when the owners of deposits were granted priority over and above them. This deprivation of ownership is especially directed against individual creditors, mostly foreign creditors against Landsbankinn, and can therefore not be in accordance with Art. 72 of the Constitution and Art. 1 of the first addendum of the Human Rights Covenant. The priority of deposits was instituted retroactively, completely on the expense of the plaintiffs and other general creditors since they have to carry the loss that otherwise would have fallen on the owners of deposits or the Depositors and Investors Guarantee Fund. Because the plaintiffs were deprived of ownership with confiscation the state must, in accordance to Art. 72 of the Constitution, pay full reimbursement. No such reimbursement has been offered and therefore the exertion of the Articles on priority claim must be in violation of the Constitution. Additionally the plaintiffs argue that the Articles of Act no. 125/2008 does not grant sufficient legal authority for confiscation since they are not clear and the wording to general. Even though the aforementioned indentation of the plaintiffs ownership will not be considered confiscation but general limitation on ownership the plaintiffs argue that the permissible limit of the Constitution and Human Rights Covenant was exceeded, especially since the indentation includes discrimination and does not respect proportionality. Specifically it is argued that the plaintiffs had legitimate expectations regarding the handling of affairs that Icelandic legislation indicates if the Icelandic banks would become bankrupt. On that ground they handed loaned capital to Landsbankinn. This legitimate expectation is protected by the Article of ownership but in addition clarity of law and ban on retroactivity is also pointed at.

Second, it is argued that the institution of the priority of deposits in a retroactive way violates the main principle of equality and ban on discrimination that is protected by Art. 65 of th Constitution, Art. 14 of the Human Rights Covenant in conjunction with Art. 1 of the first addendum, Art. 26 of the International Agreement on Civic and Political Rights and Art. 4 and Art. 40 of the EEA-agreement. In this regard it is also pointed to item 12 and 16 in the forewords of the directive of the European Parliament and Council no. 2001/24/EB on Reconstruction and Dissolution of Lending Institutions and more so Art. 16 of the directive. In addition it is pointed to the main principle of bankruptcy law regarding equality of creditors. All exceptions to that rule must be interpreted strictly. It is evident that the Articles of Acts no. 125/2008 and 44/2009 reefer to different treatment for comparable instances and by doing so the status of the participants that was analogous hand been disrupted without any objective and factual justifying the different treatment. In additon to that the differentiation does not aim towards a legitimate goal.

Third, it is argued that the priority of deposits does not hold in the light of the constitutinal principle of proportionality that amongst other things consists in Art. 72 and 65 of the Constitution,

but also in the Articles of the Human Rights Covenant. In that context it is pointed to that the Articles of the Act on priority of deposits were neither able to achieve legitimate goals in the context of the principle of proportionality nor was priority a necessity in that respect. The argument that the actions had been necessary to insure minimal banking operations and the functionality of the payment system does not hold nor that the operation had been necessary to prevent a run on the bank. On the contrary it seems that with the priority the main goal was to save the state from obligation to pay as a result of te deposit guarantee and to move the losses stemming from the collapse of the banks from the state to the general creditors. Even though it is presumed that the goals were legitimate, e.g. to protect the savings of individuals or maintain minimal banking operations and prevent an immediate collapse of the economical system the plaintiffs argue that the priority of deposits was neither necessary nor able to achieve such goals. Especially it will not be agreed to the argument that the protection of professional investors like the defendant Gemeente Alphen aan den Rijn can be considered a legitimate goal of the operation like said before.

Should the court reach the conclusion that the goal of the priority had been legitimate then the plaintiffs argue that the actions were neither able not reach such goals nor been necessary in that sense. The plaintiffs feel that the burden of proof regarding suitability and the necessity of legislation that limits constitutionally protected rights must be in the hands of those that intend to make their case on them. Then it must also be argued that lesser resorts could have been made to reach the intended goals such as to institute a stricter definition of the concept deposit when passing the debated Articles. Finally, in this context it is pointed to that it is not enough to regard only what necessity may have been the reason for the legislation in October 2008 but the situation in Mars 2009, when Act no. 44/2009 was passed, must also be considered. During that time it would not have been possible to support the argument for impending chaos, the collapse of the payment system or total cessation of daily business and minimal banking operations. It must be considered that Art. 6 of Act no. 44/2009 and the usage of that Article does not concord with the claims of the Constitution and European Convention on Human Rights on ownership protection, equality and proportionality.

The plaintiffs point to that the priority of deposits will not be justified on the grounds of the viewpoints of constitutional emergency right. Regarding that the main argument is that constitutional emergency right has no basis in Icelandic constitutional law. It is clear that Alþingi did not see the passing of Act no. 125/2008 as some kind of divergence form the Articles of the constitution. In other words Alþingi did not see the Act as being passed on the ground of constitutional emergency right. If the conclusion will be that such right will be thought to exist the plaintiffs argue that the situation that arose in October 2008 is in no way comparable with the situations that have justified the usage of emergency rights in Icelandic judicial history, i.e. World War II. It will not be accepted that the situation „threatened the life of the nation“ in the context of the International Agreement on Civic and Political Rights and Art. 15 of the Human Rights Covenant. No emergency situation was publicly declared, cf. Art. 4(1) of the International Agreement on Civic and Political Rights, and no announcement had been send to neither the European Council nor the United Nations, cf. Art 4(3) of the International Agreement on Civic and Political Rights and Art. 15(3) of the Human Rights Covenant. Then it is clear that the coverage of constitutional emergency rights as a permission to deviate from the Constitution is limited to Articles that have to do with the distribution of power and the rendition of power but does not authorise the deviation from human rights. On all accounts it is argued that the deviation from constitutionally protected rights in this case cannot be considered absolutely necessary, amongst other since they incorporated discrimination, cf. Art 4 of the International Agreement on Civic and Political Rights. It has not been argued that more lenient actions had not been possible.

Even more so it is argued that the priority of deposits, amongst other actions of the state as a result of the collapse of the banks, amongst other the splitting of the banks and the refunding of the new banks is in whole in opposition to the Articles of the Constitution, the European Convention on Human Rights and the EEA-agreement. It is especially pointed out that the actions of the state entailed unlawful aid from the state in accordance with the EEA-agreement. Since the actions of the state resulting from the collapse of the banks was unlawful, looking at them as a whole, no rights can be based on them. That includes the priority of deposits since that amendment was a part of unlawful actions of the state.

Should the conclusion of the court be that some part of the claim can be granted priority as a deposit then the first secondary claim of the plaintiffs is that such a priority claim cannot exceed the sum of 20.887 EUR which is the amount that was insured in accordance with Act no. 98/1999. That applies to each owner of deposit but not each account of deposit. Should the first secondary claim of the plaintiffs be agreed to the consequences will be that no other claims of the defendant Gemeente Alphen aan den Rijn can be granted priority as deposits.

Should the aforementioned grounds of action not be agreed to the plaintiffs point to, because of the plaintiffs second secondary claim, that the interpretation of the Article on priority of deposits, as well as the Articles of Act no. 98/1999, must be in such a way that the rights of priority must not cover interests on the deposit past the 6th of October 2008, but from that day onwards Landsbanki Íslands hf. was not able to live up to its obligations according to the opinion of the Financial Supervisor Authority and from that day the Depositors and Investors Guarantee Funds duty to pay had been active. The sum of the deposit must be based on that day.

The plaintiffs object to the claims and the pleadings of the defendant Gemeente Alphen aan den Rijn that defer to the interests on his claim from the date of payment of the loan to 22nd of April 2009 and his expenses. In that case it the arguments of the defendant Landsbanki Íslands hf. are pointed to but the resolution committee had rejected those claims.

The plaintiffs Skiki ehf., Blomstra ehf., Íslenska útflutningsmiðstöðin hf., Óttar Yngvason og Rakel Óttarsdóttir say that their claim is first based that Art. 6 of Act no. 125/2008 from October 7th 2008 and Art. 6 of Act no. 44/2009 from April 22nd 2009 include massive confiscation for the plaintiffs and that it they are in opposition with Art. 72 of the Constitution on the immunity of ownership as well as Art. 1 in the first addendum to the European Convention on Human Rights, cf. Act no. 62/1994 and Articles of the EEA-agreement. The said Articles of Act no. 125/2008 are, secondly, in opposition to the rule of equality of Art. 65 of the Constitution as well as Art. 14 of the European Convention on Human Rights. The acknowledgement of such large creditors to the bank as priority creditors will result in that the priority claims will take all foreseeable property of the estate and eliminate therefore all general claims. Imbedded in that is a serious discrimination between the creditors to the bank. Third, the plaintiffs point out that aforementioned Act no. 125/2008 and no. 44/2009 includes retroactive legislation, but with the passing of those Acts the legal status of the general creditors to the bank had been changed retroactively wit great damages. Such a legislation is in opposition to the general recognised unwritten main principle of a state governed by law that forbids retroactive legislation. This principle is based on the insurance of the legal certainty of the citizens. Fourth, it is argued that the principle of proportionality was not honoured with the passing of Act no. 125/2008 and even more sot not with the passing of Act no. 44/2009. It is the valuation of the plaintiffs that it would have been easily possible to solve the banking crisis that hit in the beginning of October 2008 by acting in a less inflictive way than was done with Act no. 125/2008. It has not been shown that more lenient ways would not have been sufficient to solve the problem. Finally it is said that the debated claim of the defendant Gemeente Alphen aan den Rijn cannot be considered and deposit in the sense of Art 102(2) of Act no. 161/2002, like it was changed with Act no. 125/2008 and later with no. 44/2009. The conclusion of the resolution committee in this regard is wrong and in incongruity with the documents with the statement of claim. In those documents it says that the accounts are not standard deposit accounts but the company Wallich & Matthes BV in Amsterdam hand made a loan agreement on behalf of the defendant, Gemeente Alphne aan den Rijn with the branch of Landsbankinn in Amsterdam with special interests and two year credit period.

The plaintiff Deutsche Bank Trust Company Americas argues that it is not possible to base the priority of the claims of the defendant Gemeente Alphen aan den Rijn on the Articles of Act no. 125/2008 and 44/2009 on priority of deposits since they are in violation of the constitution and are therefore invalid legal grounds. The Articles violate the European Convention on Human Rights, the principles of EEA-law and the general principles of international and domestic laws. The claims of the defendants should therefore be in the same order as the claims of the plaintiff, that is to say general claims in accordance with Art. 113 of Act no. 21/1991. This is grounded on that the priority that was granted to the deposit with those Acts had been unforeseeable and retroactive and in violation of the general rules on legitimate expectations, retroaction and predictability of law. With the passing of said

Articles the rights of all uninsured creditors of Landsbanki Íslands hf. were brutally broken. In Article 3.1. of the contract between the bank and the plaintiffs, dated July 21st 2006 and that applies to the issuing of bonds by the bank, it is specifically stated that claims according to bonds should be unconditional , peremptory and uninsured obligations of Landsbanki Íslands hf. Also it is stated that the claims are equal to deposits and all other uninsured obligations. To the plaintiffs this was a clear premise and contractual obligation of Landsbanki Íslands hf.

The plaintiff argues that the Articles of aforementioned Acts that speak of and change the priority order of the claims violates Art. 72 of the constitution and Art. 1 of the first addendum of the Human Right Covenant. Should said claims be made priority claims it will severely reduce the odds of the plaintiff getting any payment for his claim. Those actions were then made on the expenses of the plaintiffs and other general creditors. It leads to indentation of property and illegal limitations on the ownership of the plaintiffs without any compensation. It is hard to see that the needs or interests of the public were the foundation for the passing of said Articles. Also it is clear that the claim about proportionality that is imbedded in Art. 72 of the Constitution and emerged in Art. 12 of the Administrative Procedures Act no. 37/1993 in not met. The legislator did more than was necessary by passing said laws. It is the opinion of the plaintiffs that such excessive treatment of creditors such as is the case here violates the principle of equality and ban against discrimination that is written in Art. 65 of the Constitution and Art. 14 of the Human Rights Covenant.

Should said legislation in some way be considered justifiable the plaintiffs believe that said claims of the defendants cannot be considered deposit in accordance to the Articles of the Acts. The plaintiff argues that the concept deposit should be interpreted it in such a way that it covers deposits in specific accounts in the name of the person in question. Traditional deposit is tied to specific terms that are decided in advance en not negotiated about interest and conditions each time. On the other hand the main characteristics of the wholesale loan of the defendant not in unison with said interpretation since participants negotiate the conditions of the loan each time, i.e. the amount, the credit period and interests. The loans are based on an contract between the defendant, Landsbanki Íslands hf. and the defendant Gemeente Alphen aan den Rijn and the conditions probably reflect the prevailing state of the market and the need for financing of the bank on the day of agreement. These are loans that the bank used for financing from the defendant, who is a professional investor, by the interposition of a broker on a money market. All discussion regarding the passing of said Acts indicates primarily that it was the intent to insure the deposits of depositors but not wholesale loans of financial undertakings or professional investors.

The plaintiff argues that the defendant has the burden of proof when referring to which claims of the defendant had been protected by insurance in accordance to Act no. 98/1999 on Deposit Guarantees and Investor- Compensation Scheme. He will have to show that the premium had been paid to the Depositors and Investors Guarantee Fund for said loans and that the loan of the defendant had created basic reserve requirement for The Central Bank of Iceland.

If it is said that the claim of the defendant and in some way be considered an priority claim in the order of claims the plaintiffs believe it is clear that the priority right, even so, only cover the sum of 20.887 EUR. In the debated Articles on priority rights it is pointed to Act no. 98/1999 where it is stated that deposits are only protected up to the aforementioned sum.

The plaintiff Landsbanki Guernsey Ltd. argues that his primary claim is based on that the resolution committee of the defendant, Landsbanki Íslands hf., was unauthorized to grant the claim of the defendant, Gemeente Alphen aan den Rijn, a status in accordance with Art. 112 of Act no. 21/1991 on Bankruptcy etc., where so-called wholesale deposits are not covered by the concept deposit in the sense of Act no. 98/1999 on Deposit Guarantee Scheme and Insurance Systems for Investors. Should they be treated as so-called money market deposits and was one way for the financial undertakings to finance its operation. Wholesale deposits should not be considered traditional deposits that Act no. 98/1999 is intended to insure. On the same account the defendant Gemeente Alphen aan den Rijn should not be considered a traditional owner of deposit that the Act is intended to protect.

The plaintiff argues that the Articles of the Emergency Act on priority rights of depositors violates the immunity of ownership in accordance with Art. 72 of the Constitution and Art. 1 of the first addendum of the European Convention on Human Rights that has been legalized here, cf. Act. no. 62/1994. Before the passing of Act no. 125/2008 the plaintiffs and other owners of deposits belonged

to a group of general creditors. With the legislation the owners of deposits had been insured priority rights when the breakup of the estate of Landsbankinn and therefore been insured better status than the of the plaintiffs. If the legislation would not have been passed and the claims of the owners of deposits would still have had priority according to Art. 113 of Act no. 21/1991 it would be clear that the plaintiffs as well as other general creditors would have been paid a portion of their claim. According to the latest information of the resolution committee of the defendant, Landsbanki Íslands hf., the situation is the only payment will be for part of the priority claims. Nothing will be paid for the general claims. According to the aforesaid it must be held that the passing of Act no. 125/2008 had lead to the right of claim of other general creditors, i.e. the plaintiffs, were reduced to almost nothing or none. The plaintiffs believe that by they were obligated to discontinue all constitutionally protected rights of ownership in relation to Landsbanki Íslands hf. for the benefit of owners of deposit. In the annotations to the bill that was passed as Act no. 125/2008 are no reasons or goals given for this dispossession nor is there anything about the payment of compensation for those that may be forced to endure dispossession, i.e. other general creditors except the owners of deposits. The plaintiff holds that the said dispossession will not be justified by pointing to the needs of the public or any other viewpoint in addition to that the legislation did more then was necessary.

It is also held that the said Article of the Emergency Laws includes discrimination between general creditors and violates the principle of equality of Art. 65 of the Constitution and Art. 14 of the Human Rights Covenant. Their stature had been the same up to the adoption of the Act and therefore similar circumstances were dealt with in dissimilar manner. When evaluating if the status of the participants had been similar it is only possible to see if their claims had the same priority before the change. Only in absolute exceptional cases it is warranted to discriminate between men and only if the discrimination is based on factual points of view or important viewpoints that justify its necessity. The defendant Gemeente Alphen aan den Rijn has not been able to demonstrate that such rationalization was at hand. One thing is clear and that is that the changing of the legislation did more that was necessary to do. If the court finds that the discrimination was justifiable then the cost associated with that has to be carried by the state but not general creditors.

The plaintiff holds and points to the Articles of the Emergency Laws and the decision of the Financial Supervisory Authority from October 9th 2008 on the transference of deposits from Landsbanki Íslands hf. to Nýja Landsbanaka Íslands hf., later NBI hf., and argues that they violate Art. 4 and 40 of the EEA-agreement, Art. 16(2) of EC directive no. 2001/24/EB and the unwritten principle of EEA-court on quality of participants. This entailed both direct and indirect discrimination and had objective or factual reason supporting it. Also there was no normal congruity between the goal that the discrimination seems to have been aimed at and the actions taken to reach said goal. In addition the actions did limit the free flow of funds, cf. the principle of Art. 40 of the EEA-agreement.

The priority right will not be justified by pointing to constitutional emergency rights because it is entirely an undefined concept. Nowhere in the Constitution can there be found a permission to use such emergency rights and neither did the creator of the Constitution ever see a reason to legalise such rights. In fact it is so that the creator of the Constitution saw a reason to reject the legalisation of such rights as can be seen in the committee report of the committee of the Constitution no. 758 from the 118th legislature, case no. 297. The priority right will not be justified by pointing out Art. 15 of the Human Rights Covenant on Indentation of Right in Times of Danger because it is clearly stated in Art. 15(3) that the participant to the contract that exerts that right has to announce it to the European Council in a specific way that the Icelandic government did not do.

It is held that by passing Act no. 125/2008 the principles og Icelandic law and EEA-law on legitimate expectations, predictability and ban to retroactivity hand been disregarded. When the trade of the plaintiff and Landsbanki Íslands hf. took place the plaintiff assumed that owners of deposits would be treated as general creditor and that they would receive priority in accordance with Art. 113 of Act no. 21/1991. With the fundamental changes of the said rules on winding-up financial undertakings the legitimate expectations of the plaintiff were violated in this respect. It is clear that the principle on legitimate expectations limits the legislator, i.e. in the passing of retroactive legislation.

Regarding the primary claim it is pointed to that here there is in effect an unwritten but general principle of proportionality when interpreting Articles of the Constitution, especially when resolving whether law are in agreement with the Constitution. It entails that limitations on ownership must be governed by legitimate goals, goals that can not be obtained in a more lenient way, in addition that

moderation must be held when applying it. The burden of proof that the conditions were fulfilled rests with the one who wants to build a case on the content of an Article, in this case the defendant Gemeente Alphen aan den Rijn, and the plaintiffs hold that such proof has not been successful.

Regarding the secondary claim of the plaintiffs it is held that priority right, cf. Art. 6 of the Emergency Law, does only cover the claim of the defendant Gemeente Alphen aan den Rijn up to the sum of 20.887 EUR for each deposit the statement of claim covers since the Depositors and Investors Guarantee Fund warrants no more than that sum.

Grounds of action and legal arguments of the defendants

The defendant Gemeente Alphen aan den Rijn holds that his claim is first based on that his deposit is considered an deposit in the sense of Act no. 98/1999 on Deposit Guarantee Scheme. The concept is defined in a clear way in Art. 9(3) of the Act and Art. 6 of Act no. 125/2008, so-called Emergency Laws, points to that definition. The Article institutes to Icelandic law the definition of item 1 of Art. 1 of directive no. 94/19/EB.

The defendant holds that there is only one definition of the concept „deposit". No distinction is made on „wholesale deposits" and „retail deposits". The defendant holds that for a claim to be granted priority according to Act no. 125/2008 it is enough that it is considered an deposit in the sense of Act no. 98/1999, i.e. that the deposit has come to being because of a deposit or transaction in a traditional standard banking operation and that the commercial bank or savings fund is obligated to reimburse according to the terms the laws or contract that are in effect.

The evidence in the case indicate that it is an deposit. The defendant, Landsbanki Íslands hf., believed that it was a deposit. The bank had confirmed that „wholesale deposits" like the aforementioned one was booked as an deposit in the books of the bank, the resolution committee considers the claim of the defendant to be deposit, and the bank counted the deposit of „wholesale participants", such as the defendant, in its calculations on its duties toward the Depositors and Investors Guarantee Fund and invested and paid of those deposits into the fund. Then the defendant received on Mars 18th 2009 minimal deposit guarantee scheme in accordance with Act no. 98/1999 that the Dutch central bank had paid on behalf of the Depositors and Investors Guarantee Fund.

The deposit of the defendant comes from transfer but the defendant had on August 28th 2008 transferred 3.000.000 EUR from his own account into an account of the defendant Landsbanki Íslands hf. The deposit of the defendant and transfer fall within the boundaries of traditional bank transaction. It is common knowledge that receiving deposits is a fundamental part of the service of a bank. Item 1 of Art. 1(3) of Act no. 161/2002 supports this argument. The claim is also in unison with the condition of the second part of the definition. It is undisputed that the defendant, Landsbanki Íslans hf., had been obliged to reimburse said deposit along with interest on October 10th 2008.

Finally the legislator confirmed that owners of deposits in the same situation as the defendant would be insured by Depositors and Investors Guarantee Fund but this was made known in the general annotation with the bill that became Act no. 96/2009.

The defendant holds that the wording of the directive of the European Union support even more that the claim of the defendant is an deposit according to Act no. 98/1999. According to propositions of the European Commission to the directive the concept deposit is defined in a lenient way in the directive and under it fall all kinds of instruments that the banks have to offer. The definition of the concept deposit is so lenient that it was necessary to state that it did not cover bonds. It can be counter argued that if not then bonds would have been covered by the concept. Same is true for deposits that are not registered in a name and general promissory notes that are covered by the definition of the directive.

The defendant objects the legal basis in statement of the plaintiffs Arrowgrass Distressed Opportunities Fund etc. and Bayerische Landesbank etd. regarding how to define the concept deposit in the sense of Act no. 98/1999 and the directive. Nowhere do they point to Articles or legal interpretational documents. The recitation of the plaintiff of said „five main characteristics of deposits" is based on common understanding of the concept „deposit" and traditional usage of the concept in the financial sector. The defendant holds that only legal definition should be considered when defining the concept. Also the plaintiff does not point to any references for the intended „general language comprehension".

One of said main characteristics of deposits is that the deposit must be deposited by a owner of the deposit for storage and/or so that the owner of the deposit uses the payment service that is available. The plaintiffs seem to hold that only current accounts should be considered as deposit but such assertion is not in agreement with the legal definition of deposit. It does not matter, when considering the definition of deposit, whether the owner of the deposit has „the option to access the fund without notice“ or that he can „withdraw the savings when needed“. Even though owners of deposits seek to invest their money, parallel to the benefits of keeping it with Financial undertakings, it does not mean that their deposit is not based on a deposit or that the owner of deposit does not look to safe storage of his funds. Another characteristic of deposit was that the funds are stored in a specific bank account. This is not in agreement with the legal definition of deposit. The word „account“ is not conceptual condition when defining deposit. Yet another main characteristic of deposit in the opinion of the plaintiffs is that the place of payment is with the bank. This is not in agreement with the legal definition of deposit. It is not uncommon that secure deposits are automatically reimbursed on the day o the payment of the deposit and that it is paid onto a predetermined bank account that the owner of the deposit has provided. Funds in a current account are not necessarily paid in the bank in question. One other main characteristic was that general conditions, that are made unilateral by the bank, apply to deposits. That statement of the plaintiff is wrong that the defendant had negotiated specifically to the defendant, Landsbanki Íslands hf., about the conditions of the deposit of the defendant.

Regarding the statement of the plaintiff that the claim of the defendant is a loan the defendant replies on the genesis of the deposit that general conditions of the market of the defendant, Landsbanki Íslands hf., were not considered necessary because the conditions of secure deposits that the defendant, Landsbanki Íslands hf., had provided and the defendant had agreed to, were very specific. It was an agreement about all necessary items of secure deposits; the amount, interest and credit period. That particular arrangement that the defendant, Landsbanki Íslands hf., could not unilaterally change the conditions of the deposit is very common in the case of secure deposits. Generally deposits are conducted without any indication of conditions except those that are included on the deposit receipt. The statement of the plaintiff Bayerische Landesbank etc. that the broker Wallich & Matthes „did not see the trade as deposit but rather as loan granting“ is wrong. Neither directive 94/19/EB nor Act no. 98/1999 exclude deposits from the protection of a guarantee fund or similar system even though the owner of deposit uses the service of a third party to find an lending institution to deposit its fund with. On the purpose of the deposit the defendant says that almost all banks finance them self with the expectance of deposits and the defendant, Landsbanki Íslands hf., is no exception to that. If a claim would not be considered deposit because the bank in question did not intent to accept the funds to finance its operation then no claim would satisfy the conditions of being a deposit. Regarding the conditions of the deposit the defendant says that the plaintiff is wrong in concluding that only funds on a current account should be considered deposit. The correct definition of deposit is much more lenient and also covers secure deposits. None of the Articles that the plaintiff points to are unnatural when considering secure deposits.

In the deposit receipt the defendant is referred to as „geldgeefster“ and defendant, Landsbanki Íslands hf., as „geldneemster“. The defendant says that the words have no special meaning in legal sense. Translation, considering the concepts, would be „he who gives money“ and „he who takes money“. The correct translation of the words is subject to the context of their usage. If the words are used in context with deposits the mean „owner of deposit“ and „debtor“. If they are used in context with loan agreement they mean „lender“ and „borrower“.

The defendant says that his deposit is not related to the concept „securities“ as it is defined in current or older laws. First, the claim of the defendant is not based on any issuing of any instrument from the defendant, Landsbanki Íslands hf., but on a agreement of deposit between the defendants that has been confirmed with a receipt issued by the brokers Wallich & Mattes. That receipt is not proof for ownership but instead only a confirmation of the deposit of the defendant and that the defendant, but not the holder of the receipt, has claim on the defendant, Landsbanki Íslands hf. Second, the possibility of endorsement on a organized stock market is one of the main conditions that an instrument is considered securities in Icelandic law. The endorsement of the confirmation of a deposit is governed by the limitations of the general rules of the law of obligations and is different from the endorsement of securities on a „organized stock market“ where the delivery itself or a electronic endorsement of securities is considered enough so that the endorsement is considered valid in a legal

sense. If a defendant hands over to third party the confirmation of the deposit the document would have no value for that participant. Therefore it is clear that it is not possible to consider neither the deposit not the receipt of confirmation as securities. There had not been negotiations on trading of deposits on a stock market or any similar venue of exchange.

Considering the purpose and goal of Act no. 125/2008 the defendant holds it to be impossible to conclude from legal interpretational documents that the intent was to exclude so-called wholesale deposits from the priority articles of the Act. The Act refers to deposits according to Act no. 98/1999 and the concept deposit must therefore be based on that Act. Also it would have gone against the goal of Act no. 125/2008 to exclude deposits of corporations and states.

The defendant builds on that the Articles of Act no. 125/2008 on the priority of claims of deposits during the winding-up of financial undertakings are constitutionally valid laws that must be built upon during the winding-up of the defendant, Landsbanki Íslands hf. Should the court reach the conclusion that with the passing of Act no. 125/2008 some constitutionally protected rights of the plaintiffs had been violated they would have to litigate their possible claim against the Icelandic state.

The defendant holds that the change in the priority of the claims during the winding-up of financial undertakings that Art. 6 of Act no. 125/2008, cf. now Art. 102(3) of Act no. 161/2002 entailed, does not constitute a violation of the ownership of the plaintiffs. The defendant points to Art. 72(1) of the Constitution, no. 33/1944, in that respect, like it has been interpreted with consideration of Art. 1 of the first addendum of the European Convention on Human Rights, cf. Act no. 62/1994.

The defendant argues that the right of claim of the plaintiffs have not been diminished in any way nor have they been forced to give up their claims. The property of the plaintiffs is the claim that they have against the defendant, Landsbanki Íslands hf., along with the right that the claim carries. The passing of the priority article of Act no. 125/2008 did not limit the rights of the plaintiffs to keep their claim nor did it affect the possibilities of the plaintiffs the chase down their claim against the defendant, Landsbanki Íslands hf. Also the plaintiffs were not forced to lower the sum of the claim and no actions have been taken to prevent the plaintiffs to receive the payment from the defendant, Landsbanki Íslands hf. It is possible that the priority Articles of Act no. 125/2008 will affect the possibility of the plaintiffs chance to receive full payment for their claims. Changes to the priority of the claims is as such only one of the factors that can have such an affect. As of yet it is impossible to declare how much the general creditor will get paid during the dispensation since it depends on uncountable external factors. It is therefore impossible for the plaintiffs to establish that they had suffered any losses. The plaintiffs have not acted to show whether they had their claims at the fall of the defendant, Landsbanki Íslands hf.; and/or at what price they bought the claims and with what conditions; or up to what point the plaintiffs believe their claims to be diminished because of the priority Article of Act no. 125/2008. The defendant builds upon, without consideration to the final result, that neither Art. 72(1) of the Constitution nor Art. 1 of the first addendum of the European Convention on Human Rights is designed to protect and uphold the value of property and that the Articles do not prevent the legislator to pass common laws or that the court passes judgement that might affect the value of properties.

The defendant argues that it not possible to consider the changes to the legal status of the creditors as „indentation of property“ in the sense of Art. 72(1) of the Constitution. First, the „right of creditors to enjoy equal status“ during the dispensation of funds during winding-up is not property that creditors can expect to remain unchanged from one time to the other. Second, this is a general and prospective change on the rules of dispensation during winding-up that cannot be considered a indentation of ownership according to Art. 72(1) of the Constitution. Should the creditors negotiate with the deports that a claim shout have „pari passu“ right a change in priority during exchange or winding-up lead to the creditor gaining some right, within contract, against the debtor. The defendant objects to the assertion of the plaintiff, Landsbanka Guernsey, that the institution of priority rights of owners of deposit was at the expense of general creditors. Even though a changed legislation, on the legal status of creditors in relation to a bankrupt estate, can in unique cases lead to that the enforcement possibilities of particular rights of claim to be limited those effect are only derived and not protected by Art. 72(1) of the Constitution. The Article of ownership of the Constitution and the European Convention on Human Rights does not insure the rights to obtain property. Even though it is common to recognise the definition of the concept „property“ according to Art. 72(1) of the constitution in a lenient way, such a far-reaching interpretation as the one the plaintiffs seek to use in

the case neither support in procedure of execution of Supreme Court nor by the Human Rights Court of Europe. It is common to recognise that Art. 72(1) does not protect property, if rights according to such a property are reliant on certain conditions and/or such a property is not specified or its value not clear. The claims of the defendant are reliant on that the resolution committee of the defendant, Landsbanki Íslands hf., verify their claims and it is unclear at this point which the recovery of the property of the defendants will be. The rights of the plaintiffs according to such claims are therefore conditioned and their value unclear and therefore is not protected by Art. 72(1) of the Constitution.

Should the court reject aforementioned argument of the defendant the defendant builds on that Act no. 125/2010 and 44/2009 does however not violate Art. 72(1) of the Constitution nor Art. 1 of the first addendum of the European Convention on Human Rights, cf. Act no. 62/1994, since it was only a common limitation of ownership but not confiscation. The transference of ownership from the plaintiffs to the Icelandic state, the owners of deposits or other did not happen by granting the owners of deposit priority according to Art. 112 of Act no. 21/1991. Neither was this a „de facto" confiscation. That does only apply if the owner is on all account forbidden normal and usual usage of his property but does not cover instances where actions may influence the value of property. The plaintiffs still fully own their claims.

It is admitted that the legislator can on the grounds of Art. 2 of the Constitution, cf. Art. 1(2) of addendum to the European Convention on Human Rights limit ownership in a general way so that the conditions of Art. 72(1) of the Constitution are minded. General limitation of ownership that the owner must endure without compensation is therefore dependant on that such limitation is built on a clear legal authority, that it is general and that the limitation aims at an legitimate and objective goal. It is undisputed that the priority of owners of deposit according to Art. 112 of Act no. 21/1991 builds on a clear legal authority. The said limitation is also general since it covers all claims of all creditors in all Icelandic banks up to the pint where the claims are not deposits and therefore include within them general limitation on all property that are not of an specific kind. On the third condition the defendant says that the priority Article of Act no. 125/2008 had been passed under complete emergency in Iceland and would have been necessary so that excessive uncertainty and unrest on the fate of the deposits of individuals and corporations would not present itself.

Should the court agree to the plaintiffs that Art. 102(3) of Act no. 161/2002 on priority of deposits, cf. Act no. 125/2008 and 44/2009, embodies indentation of ownership the legal grounds of the plaintiffs on ownership would be meaningless. Should the court come to the conclusion that the judicial effect of the Articles of Act no. 161/2002 on priority of claims to deposits was equal to confiscation in the sense of Art. 72(1) of the Constitution the Icelandic state would be liable to the plaintiffs. The plaintiffs can not both have right of compensation against the Icelandic state and at the same time enjoy equal position in the order of claims as the defendant. The result that the priority of deposits is equal to confiscation does not lead to the invalidation of the Article in question, which is the premise for the acknowledgement of the claims of the plaintiff. Therefore it is not necessary to resolve in this case whether this is confiscation and that is why the plaintiffs do not have legitimate interest in reference to the court resolves said grounds of action. Also there is a lack of context between the presentation of claim and the grounds of action in this regard that violates items d-e of Art. 80(1) of Act no. 91/1991 on the treatment of civil suits, cf. Art. 178(2) of Act no. 21/1991. Even though the conclusion would be that the priority Articles of Act. no. 125/2008 would have included confiscation the defendant builds on that all conditions of legal confiscation had been at hand. The conditions are first that public interest claims that and that proportionality is safeguarded, second that laws warrant it and third that there are full compensations. The first two conditions are fulfilled. Regarding the condition of full compensation the defendant holds that those plaintiffs that believe that their property was confiscated would have to litigate said rights against the Icelandic state.

The defendant argues that the actions of the legislator to grant deposits priority does not embody discrimination i opposition to Art. 65 of the Constitution, Art. 14 of the European Convention on Human Rights or Art. 26 of the International Agreement of Civic and Political Rights. The Supreme Court of Iceland did in its judgment put forth three conditions that discrimination as to fulfil so it does not violate the principle of equality, that the discrimination is in law, aims towards legitimate goal and that proportionality was safeguarded. International procedure of execution regarding rules of Art. 14 of the European Convention on Human Rights and Art. 26 of the International Agreement of Civic and Political Rights could aid the interpretation of Art. 65 of the

Constitution. The action to grant claims of owners of deposits priority did not embody direct discrimination in the sense of these Articles, where as Art. 6 and 9 of Act no. 125/2008 does not distinct between participants on the grounds of nationality and that this is not the case of indirect discrimination since the owners of deposits are not in compatible circumstances and creditors of uninsured claims, incl. the plaintiffs. Should the court conclude that this was a case of discrimination the it was legitimate since, first it was decided by law and is general in its nature, second the said discrimination was warranted since the goal of the legislation was legitimate and aimed to protect great social and economical interests of the public and third did not do more than was necessary to reach the goals that was aimed at.

The defendant argues that if this was the case of an unlawful discrimination the participants within the same group in similar circumstances will have to be discriminated against. That understanding is in accordance to the principle of equality of Art. 16(2) of directive of the European Parliament and Council on restructuring and splitting of legal institutions no. 2001/24/EB. The defendant builds upon that when deciding whether this was discrimination or not the creditors must be split into different groups on the grounds of their claims. The plaintiffs and the defendant are in different groups where a clear distinction is made between the claims of deposits of the defendant and the claims of the plaintiffs. It cannot be seen how the grounds of action regarding the splitting of the banks into old and new banks has anything to do with this case. Even so the defendant believes it to be important to emphasise two things in relation to the splitting of the banks. First, the splitting of the banks was not an consequence of Act no. 125/2008 as such. Second, the power that was given to the Financial Supervisory Authority with Act no. 125/2008 is normal and justifiable since it is in agreement and has in fact more limitations than the actions that most western states have done to deal with the current financial crisis and financial institutions in difficulties.

The defendant builds on that should the court reach the conclusion that this was a case of discrimination that discrimination is legitimate. With Art. 6 of Act no. 125/2008, now Art. 102(3) of Act no. 161/2002, cf. Art. 6 of Act no. 44/2009, single creditors were not given privileges. The Article is general and it does not mention the nature of the creditor. The creditors are, like is common in rules on priority of claims during winding-up of financial undertakings and bankruptcy of corporations, split up by the nature of their claim toward the participant in question. Clear fundamental difference is on the claims of owners of deposit on one hand and the claims of the plaintiffs on the other hand. Also the goal of the legislation was legitimate and did not go further than was necessary for them to reach their intended goals.

The defendant argues that changes to priority of claims of deposit according to Art. 6 and 9 of Act no. 125/2008 and later no. 44/2009 does not embody retroactivity that violates Art. 65 and 72 of the Constitution. The change of the priority is only applicable from the adoption of Act no. 125/2008 and does only cover winding-up that started after the Act was adopted. The fact that the bankruptcy of one or more banks was one possibility of several possible outcomes does not create retroactivity. The plaintiffs believe that unlawful retroactivity is in fact the case since Act no. 125/2008 covers a relationship through contract that had already been established. It is wrong since no changes were made on the priority of the claims of the plaintiffs but changes were made to the priority of deposits. This can result in indirect consequences on the final sum that other creditors than the owners of deposit will regain from the winging-up. What must be looked at however is that these are inescapable consequences of all changes that are made to priority during dispensation in winding-up, unless the change to priority only becomes valid after all valid contracts that matter to the case expire but such a delay would be inoperable. Even more difficult is to plead the viewpoint on retroactivity for plaintiffs that bought claims knowing that owners of deposit were granted priority.

The defendant builds on that it is not recognised that legitimate expectations are by them self protected by Art. 72(1) of the Constitution. Even though legitimate expectations can be protected by Art. 1 of the first addendum of the European Convention on Human Rights it does not automatically leaf to similar interpretation of Art. 72(1) of the Constitution. Possible violation of „legitimate expectations“ according to Art. 1 of the first addendum of the European Convention on Human Rights alone cannot lead to the dismissal of Act no. 125/2008 since the Human Rights Covenant is only considered common law. Should the court not agree to this the defendant builds on that if individuals or legal entities can have legitimate expectations regarding certain treatment in the sense of Art. 72 of the Constitution those expectation must be treated as a part of the property that is the basis for the

legitimate expectations. The same goes for Art. 1 of the first addendum of the European Convention on Human Rights. The only legitimate expectations that the plaintiffs could have had were that their claims would be treated during the winding-up of the defendant, Landsbanki Íslands hf., should it come to that, in accordance with Icelandic rules of law on bankruptcy as they are during each period in time. Should the court believe that generally speaking the creditors can have legitimate expectations regarding that the priority of claims during bankruptcy will be held constant during the lifespan of the claims the defendant holds that those plaintiffs that got ownership of their claims after the adoption of Act no. 125/2008 cannot, because of said reason, plead legitimate expectations and/or predictability.

The defendant builds on that the statements of the plaintiffs Arrowgrass Distressed Opportunities Fund etc. that the Icelandic government had knowledge, opportunity and motive to change the Articles on priority in a traditional and foreseeable way has no weight in this case and has not been proven.

The defendant holds that Act no. 125/2008 had the legitimate and objective goal to protect important public interest by trying to save Icelandic economy from total collapse. The action to grant claims to deposits priority during winding-up of financial undertakings was intended to hold off runs against banks and to achieve financial stability. It is absurd that the main goal or one of the goals was to limit the loss of the state treasury. In light of the situation, since it was a very real possibility that the whole of the banking system and the payment system would collapse to its foundation, it was necessary to try and save that little trust in the banking system that remained with the public and in that way prevent a full-scale run against the banks of the country and the total collapse of the Icelandic economy.

The defendant argues that the court was careful when revising the valuation of the legislator regarding necessary actions if the goal of the actions was legitimate to begin with. Even though the court felt that an independent valuation on the actions of the legislator should be done the passing of Act no. 125/2008 was necessary and did not violate the constitutional principle of proportionality. The necessity of the legislation is founded on that if the deposits had not been granted priority a real threat would have been that the trust of the public towards the newly founded banks would not have been enough to defend them from a run against them. Second, the access of the new banks and The Central Bank to international payment transaction system may possible have ceased with the appropriate consequences for imported goods. Third, a real threat would have been that the state would have become bankrupt. Finally, a real threat would have been that Iceland would have been isolated in the international scene, both in economical and social context. The first actions of the Icelandic government to hold back the run on the banks that had started and safeguard the rule of law was to declare on many occasions that the deposits were state guaranteed. On September 29th 2008 the government of Iceland more so declared that the state treasury would take over 75% of the capital share in Glitnir banka hf., with the same goal at aim. Regardless of these actions the ongoing run on the banks did not cease.

Some of the plaintiffs describe that the state had been able to act in more lenient way to solve the emergency situation that had arisen in the Icelandic economy in October 2008. It seems that these speculations of the plaintiffs have no meaning in this case. It is confirmed in procedure of execution that the legislator had ample space to assess the scope of the actions that had to be taken because of events like the collapse of the banks and that such valuation will not be reviewed later. It is clear that the actions that the plaintiffs point to were assessed at the appropriate period in time and that those actions would not have been enough to achieve the goals that was aimed for at that time. The institution of the priority of deposit in itself did not prevent the collapse of most banks in this country within few days of the passing of the legislation. Even so it is not certain that the Article did not achieve its goal. The main goal of the legislation was to prevent the collapse of the Icelandic economy and the whole banking system. By granting priority to claims to deposits during the winding-up of financial undertakings the government managed to establish enough trust in the Icelandic banking system so that the „new“ banks could operate. The measure to try and protect the owners of deposits to preserve the stability of the banking system and prevent runs against the bank is common and well known. In those situations that were during October 6th 2008 the priority was needed to meet the minimal commitment of the Depositors and Investors Guarantee Fund and to support the statement of the government that domestic deposits were fully insured.

The plaintiffs Arrowgrass Distressed Opportunities Fund etc. believe that Act no. 125/2010had embodied excessive surrendering of power to the Financial Supervisory Authority and the Department of the Treasury that violates Articles of the Constitution. The defendant objects that such an statement is appropriate in this case. A result in that matter could only lead to the invalidation of the administrative decision that the banks would be appointed resolution committees and be wound-up. The defendant rejects the argument of the plaintiffs Bayerische Landesbank AG etc. that there was not a special need to institute priority of deposits into Act no. 161/2002 with Act no. 44/2009. During the passing of Act no. 44/2009 the Icelandic economy and banks had been in difficulties and been very fragile. Also the Act no. 44/2009 did not institute Articles on priority of deposits, but first and foremost been technical in nature.

Should the court reach the conclusion that by granting claims to deposits priority the Icelandic state would have violated Art. 65 and/or 72 of the Constitution and equivalent Articles of the European Convention on Human Rights, the defendant bases on that the actions of the Icelandic state had none the less been justifiable and the basis of constitutional emergency right. The defendant points to that the rules regarding emergency rights build on that the rules of law, that in general apply to normal circumstances, cannot predict emergency situations and the legislation therefore unworkable, or that it could be unavoidable to revert away from statute to stave off massive disruption or loss. When assessing the legitimacy of actions based on constitutional emergency right the value of the interest that are at stake must be considered and the value of the rights that may have been violated. Despite the occasions that the Icelandic government has used constitutional emergency right have been tied to the situation in Iceland during World War II the argument of the plaintiffs that usage of constitutional emergency right is only admissible during times of war cannot be agreed to. The consequences of the event must be what is considered more so than the cause. Even though it is stated in legal interpretational documents with the constitutional Act no. 97/1995 that it was not the will to legalise a special rule of exception it does not mean that the rule on constitutional emergency right had been abolished in Icelandic law. The defendant points out that Act no. 125/2008 and annotations with the bill that was passed as law do not indicate directly that the exertion of constitutional emergency right was the case. The defendant rejects the argument of the plaintiff that since the Icelandic government did not in a formal way notify the appropriate institutions that it intended to depart from certain Articles of the Human Right Covenant of Europe and the International Agreement on Civic and Political Rights the actions was unlawful. Constitutional emergency right has for long been accepted as one of the unwritten main principles of national law. Scholars, judges and public interpreters have been in agreement that economical emergency falls under the rule of national law regarding emergency right of states.

The defendant objects to that the statement of the plaintiffs regarding the violation of the EEA-agreement and that the conclusion of interim opinion of the ESA are wrong have meaning in this case. There was no discrimination on the bases of citizenship, neither in the actions of the government nor by granting priority to claims of deposits in the sense of Art. 4 and 40 of the EEA-agreement. To proof violation against Art. 40 of the EEA-agreement there must be shown that free flow of funds was inhibited or discrimination based nationality. The priority of deposits does not embody any such inhibitions. Inhibitions of free flow of funds are justifiable if three conditions are met, that a legitimate goal is aimed at, that it is done within the boundaries of proportionality and that real and serious public interests are to be protected. These are the same conditions as for general discrimination in the sense of Art. 65 of the Constitution and general limitation of ownership in the sense of Art. 72 of the Constitution and the same arguments apply in all cases.

The defendant holds the issue of this case to have no relation to the splitting of the banks and the alleged unlawful state aid of the Icelandic government. Should the court on the other hand feel that these issues should be taken into account the defendant builds on that the actions of the state in October and November 2008 did not embody unlawful state aid in the sense og Art. 61(1) of the EEA-agreement. Should the court reach the conclusion that the actions of the government in October and November 2008 had embodied state aid and that it is meaningful for this case, the defendant builds on that item b of Art. 61(3) of the EEA-agreement should apply. Then the question arises whether said actions of the Icelandic government fall under this rule and whether the government had to, despite the Article, notify the EU about the support and wait the descision of the institution about the legitimacy of the actions. The defendant points out that disruption of the economy can hardly be more serious that

when faced with complete collapse of the economy. Therefore the exception applies. How to apply item b of Art. 61(3) of the EEA-agreement so that it identifies with its purpose cannot be seen if it was also necessary to wait for the conclusion of EU on whether staid aid is authorized. What must be looked at is that item b of Art. 61(3) of the EEA-agreement has legal validity here unlike book 3 to the agreement between the EFTA-states on the founding of regulatory agency and a court. Also the warranty has an independent meaning in relation to Art. 30 of Act no. 44/2005 on Competition Law.

The defendant builds on that the priority of deposits is not limited to 20.887 EUR. It can be concluded from the premise of the judgment of Supreme Court in case no. 184/2010 that priority right according to Art. 102(3) of Act no. 161/2002 is not so far-reaching that it also covers „deposits“ like the concept is defined in Art. 9(3) of Act no. 98/1999, but only to the deposits that enjoy insurance protection in accordance to that Act, i.e. does not fall under the escape clause of Art. 9(6) of the Act. There is nowhere pointed out in the quoted premise that the priority right is tied to certain upper limits. The defendant builds on that if it was proven that this is a case of deposit that should be granted priority right that right should cover all the sum of the deposit. The legal interpretation of the plaintiffs seems to build on that the Icelandic deposit guarantee scheme is closely connected to the financial strength of the Depositors and Investors Guarantee Fund that may lead to that in the case of the winding-up of the defendant, Landsbanka Íslands hf., only certain claims of deposits are insured and have the right to priority rights up to 20.887 EUR, i.e. the amount that the fund is able to insure. The defendant builds on that nothing gives reason to such interpretation. The goal of Art. 102(3) of Act no. 161/2002 was to insure the interests of owners of deposit to full but the interpretation of the plaintiffs on the Article deviates from this goal. The purpose of Act no. 98/1998 is to grant owners of deposit „minimal insurance protection“. It is not possible to understand the Articles of Act no. 98/1999 in the opposite manner, i.e. that when the fund is not solvent he grants minimal insurance otherwise it insure the whole sum of the deposit. Should the priority only cover the minimal sum of Act no. 98/1999 the Art. 102(3) of Act no. 161/2002 would have no real meaning. Then the owners of deposits would either way always get paid the minimal sum of the appropriate insurance fund and therefore would only have general claim according to Art. 113 of Act no. 21/1991 against the bankrupt estate. The goal of the Article is to insure that the claim of the owners of deposit, exceeding what they got paid from the appropriate insurance fund, is priority claim during the winding-up of financial undertakings. Priority of the deposits covers all insured deposits. All deposits are insured unless from corporations that are participants to the fund regardless of the amount of the sum. The minimal sum of Art. 10(1) of Act no. 98/1999 only comes to being if the property of the fund is not sufficient for the payment of all deposits. The priority Article Art. 102(3)of Act no. 161/2002 points to deposits in the sense of Act no. 98/1999 but not the treatment of it when payment from the fund is imminent.

The defendant describes that he had made his claim totalling 3.418.331,08 EUR at the winding-up of the defendant, Landsbanki Íslands hf. The resolution committee had agreed to the claim of the defendant totalling 2.996.743 EUR. The resolution committee had agreed to the claim of the defendant on contract interests totalling 17.630 EUR and capital totalling 2.979.113 EUR, that equals to the sum that was deposited, minus the 20.887 EUR that the defendant had gotten from the state bank of Holland March 18th 2009. The defendant builds on that the resolution committee had wrongly calculated his claims and claims that the claim will be agreed to in the way it was presented, both what considers the capital, the cost of collection of the claim and the claim of interests, primarily on the ground of Art. 6(1) of Act no. 38/2001 but secondarily on the grounds of Dutch law on interests.

Regarding interests the defendant objects to what is said in the pleadings of the plaintiffs Arrowgrass Distressed Opportunities Fund etc. on priority of interest. The definition of deposit in Art. 9(3) of Act no. 98/1999 covers the deposit according to those terms that apply to it, including the interests that had been negotiated about or happen to apply to the claim according to law. It is the main principle of bankruptcy law that the priority of claim in an bankrupt estate does not only cover the capital of the claim but the claim plus interests and expenses that have come before the verdict on bankruptcy is ruled. In that way the interests on claim enjoy according to Art. 112 of Act no. 21/1991 the same priority as the claim it self up to the point of the day of the verdict. This result will also be had with counter argument from item 1 of Art. 114 of Act no. 21/1991. Regulation no. 120/2000 on deposit guarantee scheme and insurance systems for investors has no effect on the rights of the defendant.

The defendant believes that with counter argument from item 1 of Art. 114 of Act no. 21/1991 the cost of collecting the claim before the day of verdict should be granted the same priority as the claim itself. Another interpretation of the Article would lead to inequality amongst creditors. According to an article of the Dutch book of law no. 6:74 the creditor has right to compensation because of losses that he may endure as a result of non-performance of a contract. He is permitted to claim reimbursement of a fair cash outlay from the time that it is clear that the debtor has not been able to live up to his obligations according to the contact. According to Art. 6:74(1) the debtor is obligated to compensate the creditor the expenses he has endured if the debtor is impossible to pay up his obligation and if such an situation is still in place should the debtor become bankrupt. On October 8th 2008 there was an announcement on the website of the defendant, Landsbanki Íslans hf in the Netherlands, that said that he could no longer keep up to his obligations. In accordance with the aforementioned the defendant has a right to get his claim recognised because of expenses up to and including April 22nd 2009 in accordance with Dutch laws.

The defendant primary claim is built on Articles of Act no. 21/1991, 125/2008, 161/2002, 98/1999, 2/1993, 62/1994, 33/1944, 138/2001 and 91/1991. The claim for legal costs is based on Art. 130 of Act no. 91/1991 and the claim for value-added tax of said legal cost on Act no. 50/1988. The defendant also builds on the fundamental principles of the law of obligations and the law of contract as well as the basic rules of Dutch law that he pointed at in his statement.

The defendant Landsbanki Íslands hf. builds his claim mostly on that the claim of the defendant, Gemeente Alphen aan den Rijn, that is a so-called wholesale deposit, be treated as deposit in the sense of Act no. 98/1999 on deposit guarantee scheme and insurance system for investors and considered a priority claim according to Art. 112(1) of Act no. 21/1991, cf. Art. 102(3) of Act no. 161/2002. Regarding the premise for aforementioned result it is pointed at that neither with the legalization of the directive of the European Parliament and Council no. 94/19/EBE on deposit guarantee schemes, that came to be with Act no. 39/1996, nor by Act no. 98/1999, had the permission of the directive been utilized to exclude the deposits of several participants of insurance protection, e.g. financial institutions other that the member companies of the Depositors and Investors Guarantee Fund and investors, communities and municipality, and also pension funds and retirement funds, but such participants are the majority of creditors of deposits against Landsbanki Íslands hf. Then there are certain forms of deposits , e.g. wholesale deposit trade, neither exempted insurance protection, cf. Art. 9(3) of Act no. 98/1999. This does have meaning, amongst other things while considering the judgement of Supreme Court in case no. 184/2010 where the conclusion was that claims that did not receive insurance protection in accordance with Act no. 98/1999 could for that reason not enjoy priority according to Art. 112 of Act no. 21/1991.

When valuating whether the discussed claim is considered deposit in aforementioned sense it must be looked at that the capital of the deposit had in accordance with the agreement of the participants been deposited into a account of the bank in the form of transfer with transaction that can be considered traditional general operation of the bank. Then it is clear that wholesale trade has been booked in the books and the financial statement of the bank as deposit and that in accordance to that the bank had paid premium of the wholesale deposit trade to the deposit department of the Depositors and Investors Guarantee Fund in accordance with Act no. 98/1999. Finally it is pointed to that the documents that the trade was based on imply in many ways that this was an deposit.

The defendant objects to the claim of the defendant Gemeente Alphen aan den Rijn on penal interests. The defendant believes it to be indisputable that the claim of the defendant Gemeente Alphen aan den Rijn is considered an contractual obligation in private law in the sense of Act no. 43/2000 on conflict of law in the field of law of contracts. On the claim for interests because of non-performance of financial claim it should follow Dutch law but not Icelandic and therefore all claims on penal interest, according to Art. 6 of Act no. 38/2001 on interest and indexation are objected. Because of the second secondary claim of the defendant Gemeente Alphen aan den Rijn on penal interests according to Art. 6:119 of the Dutch book of law the defendant claims that it will be rejected. In no way was there shown or argued in a satisfactory way that the conditions were fulfilled that the primary claim of the defendant Gemeente Alphen aan den Rijn carries penal interest in accordance to said Article from October 10th 2008 and up to and including April 22nd 2009. Non-performance in the sense of 6:119 of the Dutch book of law is discussed in Art. 6:81 but there it says that a condition for a dept to be in

non-performance is that the dept is overdue and the conditions of Art. 6:82 and 6:83 on written notice to debtor from creditor must be fulfilled. It was not built upon on behalf of the defendant Gemeente Alphen den Rijn that Art. 6:83 was meaningful in the case so that the right for penal interest would become active without formal notice form the creditor to the debtor.

Regarding the third secondary claim of the defendant Gemeente Alphen aan den Rijn on interests of contract the defendant, Landsbanki Ísland hf., point out that the claim is not recapitulated and claims that it will be rejected. The defendant especially objects that creditors that own claims because of wholesale deposits that have a due date before April 22nd 2009 and creditors that have such claims that have had their due date after April 22nd had been discriminated against in an unlawful manner.

The claim of Gemeente Alphen aan den Rijn on expenses before April 22nd 2009 have been rejected. Neither has it been determined by the evidence that the defendant Gemeente Alphen aan den Rijn had started collecting his claim against the defendant before April 22nd 2009 nor that the cost in excess is connected to the collection of the claim or the proceedings because of it before that time. Up to the point where the expense is not assigned the direct collection of the claim, the preparation of proceedings or proceedings against the defendant in this country, the right of the defendant Gemeente Alphen aan den Rijnto get claimed expenses paid according to the legislation that applied to the primary claim that are Dutch laws. The defendant built his claim on expenses on Art. 6:74 in the Dutch civil law. The defendant objects to that sais article applies for the cost of collection outside the court before the reference day of the split. Also it was not demonstrated that claimed cost is connected to the collection of the claim of the defendant outside the court, cf. Art. 6:126c. The presentation of the claim of the defendant Gemeente Alphen aan den Rijn on expenses up to April 2009 has no support in neither Dutch nor Icelandic law. This is a matter of expensive that the defendant decided to pay to look after his interest and/or to take care of his statutory tasks and obligations.

The defendant Gemeente Alphen aan den Rijn made a claim for interest and because of expenses after April 22nd 2009. The resolution committee had not taken stand to that claim because this is a case of subordinated claim and it seems certain that nothing will be paid into that claim with that priority, cf. Art. 119(1) of Act no. 21/1991.

Conclusion

1. Motion for dismissal

It was demanded on behalf of the plaintiffs Arrowgrass Master Fund et.al. and Bayerische Landesbank et.al. that the claim of Alphen aan den Rijn in “other regards than which pertains to the amounts in excess of that which the Winding-up Board of Landsbankinn has recognised as a priority claim, i.e. EUR 2,996,743”, pursuant to a booking on court document no. 145, would be dismissed from the without claim. On behalf of the defendant, Gemeente Alphen aan den Rijn the motion for dismissal was objected and it demanded that the plaintiffs Arrowgrass Master Fund et.al. and Bayerische Landesbank et.al. and their lawyers would be made to pay the defendant’s litigation costs for this aspect of the case in addition to a margin on the litigation costs. The court did not consider grounds for oral pleadings on this dispute specifically but rather the parties to the case were given the opportunity to recapitulate on their standpoints on the dismissal of the case when the case was taken for material processing.

The plaintiffs Arrowgrass Master Fund et.al. and Bayerische Landesbank et.al. believe that as it is clear from the pleadings of the defendant Gemeente Alphen aan den Rijn that he does not object to the decision of the Winding-up Board of the defendant in regards to his claim but on the contrary he agrees with the decision of the Winding-up Board that it is a priority claim, in addition to that he bases on the same arguments, grounds of action and legal arguments as the Winding-up Board, the defendant cannot be a party to the dispute of the plaintiffs Arrowgrass Master Fund et.al. and Bayerische Landesbank et.al. The defendant Gemeente Alphen aan den Rijn bases on that the motion

for dismissal is submitted too late in addition to that a creditor of a bankrupt estate is always entitled to participation in a dispute regarding his own claim.

From the pleadings of the plaintiffs Arrowgrass Master Fund et.al. and Bayerische Landesbank et.al. it can be deduced that their claims for dismissal are based on the decision of the Supreme Court in case no. 638/2010 which was issued on January 24th 2011 and thus it cannot be accepted that claim in this regard is submitted too late.

Pursuant to Art. 102(4) of Act no. 161/2002 the provisions of chapter XVIII and section 5 of Act no. 21/1991 apply to the treatment of claims against financial undertakings at winding-up.

Pursuant to Art. 119 of Act no. 21/1991 a Winding-up Board shall make a list of all lodged claims after the grace period for lodging claims expires and there make a decision on how to recognise each claim separately. Art. 120(1) of the Act states that a creditor, who does not accept the decision of a Winding-up Board, can object to the Winding-up Board's decision at a winding-up meeting which is held to address lodged claims. In the same way a creditor is entitled to object to the decision of the Winding-up Board on the recognition of a claim made by other creditors, if the decision affects the distribution from the estate so that the interests of the one who objects are affected. Item 4 of Art. 171(1) of Act no. 21/1991 states that a request for the resolution of the district court of a dispute at winding-up it shall be stated whether the liquidator believes that the relevant bankrupt estate needs to be a party to the dispute. It also says in paragraph 3 of the provision that if the dispute regards whether a claim against a bankrupt estate is to be recognised the one making the claim shall generally be the plaintiff of the case and the estate or the one objecting to the claim shall be the defendant.

There is no dispute that the decision on the claim of the defendant Gemeente Alphen aan den Rijn at the winding-up affects the interests of the creditors Arrowgrass Master Fund et.al. and Bayerische Landesbank et.al. and they had every right to object the decision of the winding-up board of the defendant Landsbanki Íslands hf. for the recognition of the claim. The participation of the winding-up board of the defendant Landsbanki Íslands in the dispute only pertains to the dispute of the defendant Gemeente Alphen aan den Rijn for interests and costs and how the payments of De Nederlansche Bank were disposed of on the municipality's claim.

As has been previously stated the winding-up board of the defendant Landsbanki Íslands hf. considered that it must be a party to the case as there was a dispute concerning among other things interests and costs and for that reason the participation was decided thus that the creditor, Gemeente Alphen aan den Rijn, would be the defendant at the side of the Winding-up Board but the creditors that objected to the claim would be the plaintiffs. There is not always need for a bankrupt estate to be a party to a dispute regarding claims against an estate, but on the other hand it is obvious that the owner of the claim which a dispute revolves around must always be a party to the dispute. Otherwise there would be risk that his interests would be wasted, as he did not have the opportunity to present his standpoints regarding the claim. Thus the motion of the plaintiffs Arrowgrass Master Fund et.al. and Bayerische Landesbank et.al. for the dismissal of participation of the defendant Gemeente Alphen aan den Rijn is rejected.

2. The concept deposit

The claim of the defendant, Gemeente Alphen aan den Rijn, is based on an agreement with the defendant, Landsbanki Íslands hf. from August 27th 2008 on so called wholesale deposit transactions.

The transaction was established through the intercession of brokers in the Netherlands, Wallich & Matthes B.V. It was a case of a "wholesale deposit" for the principal amount of EUR 3,000,000. The defendant, Gemeente Alphen aan den Rijn deposited the said amount on an account of Landsbanki Íslands hf. at Fortis Bank N.V. in the form of a cash transfer, on August 27th 2008, but the principal amount with 4.92% contractual interests should be available for withdrawal for Gemeente Alphen aan den Rijn on October 10th 2008. In a confirmation from the broker firm Wallich & Matthes it is disclosed that a "deposit transaction" was performed, a "depositotransactie".

The main issue for resolution in this case is whether the aforementioned wholesale deposit can be considered to be a deposit according to Act no. 98/1999 on Deposit Guarantees and Investor-Compensation Scheme and therefore enjoy priority at the winding-up of the bank pursuant to Art. 102(3) of Act no. 161/2002 on Financial Undertakings as amended with Art. 6 of Act no. 125/2008 on the Authority for Treasury Disbursements due to Unusual Financial Market Circumstances etc., the so called Emergency Act and later Art. 6 of Act no. 44/2009. Pursuant to the referenced provision of Art. 102(3) of the Act the same rules shall apply for the winding-up of financial undertakings as for the priority of claims against a bankrupt estate, but however "claims for deposits pursuant to the Act on Deposit Guarantees and Investor- Compensation Scheme shall moreover be considered to be claims that enjoy priority pursuant to Art. 112 (1) and (2) of the Act on Bankruptcy etc."

Pursuant to Art. 9(3) of Act no. 98/1999 a deposit " refers to any credit balance resulting from financial deposits or transfers in normal banking transactions, which a commercial bank or

savings bank is under obligation to refund under existing legal or contractual terms. However, this guarantee does not extend to bonds, bills of exchange, or other claims issued by a commercial bank or savings bank in the form of securities". The aforementioned Act no. 98/1999 adopted the European Directive on investor guarantee schemes no. 97/9 EC. The provisions of directive 94/19/EC of the European Parliament and of the Council had previously been adopted into Icelandic law, including the definition of deposits which are to be found in Art. 9(3) of Act no. 98/1999.

In the general comments to the bill which became Act no. 39/1996 it was stated among other things on directive 94/19/EC of the European Parliament and of the Council, on the authority of governments to exclude from guarantee: "Then the government is authorised to exclude other items from the guarantee or reduce it, such as deposits owned by the state, municipalities and local governments, insurance companies, mutual funds, pension funds and the directors of the relevant institution, deposits of other companies in a group with the relevant institution, non-nominal accounts..." The comments moreover state: "Art. 16 proposes considerable amendments to chapter X of the Act in order to execute the provisions of the EU directive on deposit guarantees...Thus it is provided for the scope of the guarantee in Iceland to remain unchanged from what it has been except for deposits owned by commercial banks, savings banks and other credit institutions which must unconditionally be excluded from the guarantee..."

From the aforementioned it is clear that neither the adoption of directive 94/19/EC nor directive 97/9/EC into Icelandic law, i.e. with Act no. 39/1996 and Act no. 98/1999, used the authority to exclude the deposits of various parties from guarantee protection, such as financial institutions other than member companies of the Depositors' and Investors' Guarantee Fund, municipalities and local governments as well as pension funds. However bonds, bills of exchange and other claims in the form of securities were excluded from deposit protection and also excluded from guarantee protection were deposits, securities and cash owned by member companies, as well as their parent companies and subsidiaries, for their own account and deposits, securities and cash connected to cases with a conviction for money laundering. In the court's opinion the aforementioned clearly indicates that the intentions of the legislator was that all other parties and all other "deposit forms" than the ones explicitly excluded in the Act enjoy guarantee protection pursuant to the Act. There is no further definition of the concept deposit in Art. 9(3) of Act no. 98/1999 of relevance to be found in the legal interpretational documents for the adoption of Act no. 98/1999 or for the provisions of Act no. 113/2006 on Commercial Banks and Savings Banks which the former Act replaced. The plaintiffs

have maintained however that the aforementioned provision should be interpreted narrowly considering that the provision of Art. 102(3) of Act no. 161/2002 is granting depositors priority above other creditors, in addition to that all such provisions regarding the priority ranking of claims at bankruptcy shall be interpreted narrowly. This standpoint cannot be agreed with. Art. 21 of Act no. 98/1999 states that the Act is adopted among other things to adopt to Icelandic law the provisions of directive 94/19/EC on deposit guarantees and thus this provision of the Act must be interpreted in light of it, but as stated above the authority to exclude certain forms of deposits or specific depositors was not used, beyond that which has been recapitulated.

It must be considered that the objective of protecting individuals and smaller investors during solvency problems of financial undertakings weighed heavily when the Depositors' and Investors' Guarantee Fund was established. At the founding of the fund the interests of bigger investors, such as those concerned by this case, were perhaps less important. It is clear however that the role of the fund to encourage general financial stability and empowerment of the financial system on a broad basis was undoubtedly most important. Considering this and as there can be no deduction from the legal interpretational documents that the purpose of the legislator was that a cash transfer of the type in question in this case should not enjoy guarantee protection it cannot be seen that any arguments support otherwise than that the legal provision in question should be interpreted according to its text.

The plaintiffs have referred to that the aforementioned claim of the defendant have some main characteristics which entail that it cannot be considered to be a deposit under Act no. 98/1999, but rather that it was an investment or a loan. When assessing that it is necessary to consider among other things the nature of the transaction behind, the parties to the case, and the objective of the transaction, but not only considering what the transaction is called. It should be iterated however that in this case it cannot be deduced from the documents of the case that it is mentioned once that the defendant, Gemeente Alphen aan den Rijn, was granting Landsbanki Íslands hf. a loan, but it will rather be deduced from the available documents on the transaction that the intention of the municipality was do make a deposit of a certain amount for 43 days, that would be free for withdrawal on October 10th 2008. Then it will be deduced from the documents of the case that the defendant, the Dutch municipality, foresaw in August 2008 that the municipality had excess funds for that year. Thus on behalf of the municipality the brokering firm Wallich & Matthes was contacted, which established the transaction from which this case arises. The fact that the services of the brokers Wallich & Matthes was used in this occasion, does not change the nature of the transaction that transpired. It cannot be seen differently from the documents of this case that the initiative for the transaction came from the defendant, Gemeente Alphen aan den Rijn. The municipality, which is considered to be a professional investor, was always obligated to conduct itself within a certain framework which was imposed with so called treasury rules of the municipality and so called Fido laws. Although it may be deduced from the submitted treasury rules of the municipality that the municipality had great amounts of moneys at its disposal for earning returns, its operation cannot be equalled to a company which considers itself able to take great risks for the investment of its funds. The Dutch municipality was legally obligated to store its funds at a bank which had at least an A rating from a recognised rating firm.

Regarding the assertion of the plaintiffs that the funds were not stored in a specific bank account which was opened in the name of the depositor the plaintiffs have among other things referred to that the definition of deposits in Art. 9(3) of Act no. 98/1999 is based on a definition of directive 94/19/EC, but there in the English text the wording "funds left in account" is used which clearly indicates that the funds were deposited to a designated account. Here it should be considered that pursuant to the available comments of the European commission on the definition of the term deposit it is clear that the referenced wording was intended for a far broader reference. Thus it states among other things: "The idea of "credit balance" is relatively clear: In particular it is used for current accounts but it is supplemented by the idea of "funds left in accounts" which is intended to indicate savings books or accounts or any other instrument in which funds generally remain for longer than in current accounts". This entails that the concept can cover savings books, savings accounts or any type of storing places where funds are kept for a longer time than on current accounts. When the text of the directive and the explanation of the Commission is compared it cannot be seen that the referenced wording of the English texts of Art. 1(1) of directive 94/19/EC clearly supports the interpretation of Art. 9(3) of Act no. 98/1999 that deposits must be in a specific account owned by the depositor to be considered a guaranteed deposit.

The fact that the funds of the Dutch municipality was fixed in an account for a certain period and only free for withdrawal after that period, does in the court's opinion not mean that it was not a deposit, as it is undisputed that funds are often fixed in deposit accounts for a long period and are only free for withdrawal after that period.

It cannot be seen that it is relevant for the definition of whether it is a deposit or not, whether the parties negotiated especially the terms of the transaction, as it can be clearly seen from Art. 9(3) of Act no. 98/1999 that a guaranteed deposit can be based on an agreement between parties.

Then it is of no relevance for the definition of deposits whether the deposit is at the bank itself, as it is possible to withdraw from certain current accounts anywhere in the world, with access to ATM's or internet banks.

In light of the above it cannot be accepted that any of the aforementioned items, separately or with others, can exclude the wholesale deposit in question to be considered a deposit which enjoys guarantee protection under Act no. 98/1999.

In regards to the issue whether the acceptance of wholesale deposits can be considered conventional general banking operations, it must be considered that nowhere in the Act is there a definition of what such operations entail. It is however integral to the nature of the issue that "conventional general banking operations" change in accordance with developments and changes to the financial markets. Thus there is no single explanation to be found on what is considered to be conventional general banking operations. As there is nothing to establish otherwise than that the acceptance of such wholesale deposits was covered by the operation licences of a commercial bank which pertain to the acceptance of deposits, cf. item 1 of Art. 20(1) of Act no. 161/2002 on Financial Undertakings, and is therefore considered to be a part of the licensed operations of Landsbanki Íslands hf., it must be considered that it is considered as conventional under the aforementioned legal provision.

The plaintiffs have among other things maintained that the transactions in question are in fact considered to be securities, and not deposits and do therefore not enjoy guarantee protection. The refer in that context to the definition of securities in Act no. 108/2007 on Securities Transactions and older Acts on the same issue no. 33/2003 and 13/1996, as there is no such definition in Act no. 98/1999, it is disclosed that securities are any type of assignable claims for the payment of money or its equivalent, as well as assignable certificates for property rights other than real estate or specific liquid assets. In the current Act no. 108/2007 on Securities Transactions the definition is stated in item 2 of Art. 2(1) that securities are the assignable securities which can be the subject of transactions on a financial market. The cash transfer which this case derives from, is based on an agreement for a deposit of EUR 3,000,000 from the defendant Gemeente Alphen aan den Rijn to Landsbanki Íslands hf., that was confirmed with a receipt issued by the brokerage Wallich & Matthes. That receipt is only a confirmation that the Dutch municipality has deposited the aforementioned funds and that it has a claim against Landsbanki Íslands hf. for the reimbursement and interests.

When considering the above it cannot be accepted that the confirmation submitted in the case, and addresses "deposit transaction" or "depositiotransactio" to the extent that the defendant Gemeente Alphen aan den Rijn made his payment to the defendant Landsbanki Íslands hf. can be considered to be assignable claims under the definition above. Thus it will not be held that the wholesale deposit in question can be considered a security under Act no. 98/1999.

At the main hearing of the case it was based on in the oral pleadings of the plaintiffs Landsbanki Guernsey Ltd. and Deutsche Bank Trust Company Americas that the defendant's claim on priority should be rejected for the reason that pursuant to Art. 4(1) and (2) of Act no. 43/2000 on Conflict of Law in Contract Law Dutch laws should be applied to the contents of the contract between the defendants considering that Landsbanki Íslands hf. had a base of operations in Amsterdam. The contract is therefore under the legal provisions of the Dutch deposit guarantee scheme and not the Icelandic one, and pursuant to Dutch laws the claims of municipalities cannot enjoy guarantee protection, which is a prerequisite of priority pursuant to Art. 102(3) of Act no. 161/2002. The defendant Gemeente Alphen aan den Rijn has objected this on the basis that is a new ground of action which was submitted too late. Neither in the briefs of those two plaintiffs nor in the comments which they submitted on the so called counter claims of the defendants, Gemeente Alphen aan den Rijn, is there any reference to the standpoints in question. Thus the defendants were unable to respond to these grounds of action under the proceeding of the case with the submission of documents or recapitulate

and argue the case in light of these new grounds at the mean hearing of the case. Thus it must be considered that it is a new ground of action which cannot be taken for consideration for the resolution of the case, cf. Art. 101(5) of the Act on Civil Proceedings no. 91/1991.

In light of all of the above it is the decision of the court that the delivery of the defendant's Gemeente Alphen aan den Rijn wholesale deposit to the account of the branch of Landsbanki Íslands hf., for temporary safekeeping with a certain return on interest, is covered by the wording of the first item of the referenced provision of Art. 9(3) of Act no. 98/1999 to be established by a deposit or a cash transfer that the bank must reimburse in accordance to the terms of the contract between the defendants. As the plaintiffs have not successfully established that the deposit is excluded from guarantee protection pursuant to other provisions of the Act or for other reasons it is considered to be a deposit which enjoys guarantee protection pursuant to Act no. 98/1999.

It furthermore supports that the cash transfer around which this case revolves is considered to be a deposit although that is not the deciding point that with the defendant, Landsbanki Íslands hf., the deposit was registered in the books as a deposit. It is moreover a fact that Landsbanki Íslands hf. paid premiums to the Depositors' and Investors' Guarantee Fund for the obligations which this case revolves around.

3. Priority is limited to EUR 20,887

The plaintiffs have maintained that the priority of the deposits of the plaintiffs[sic] is limited to EUR 20,887. Pursuant to Art. 9(1) of Act no. 98/1999 the guarantee fund is obligated to reimburse a customer claiming payment from a member company for the amount of a deposit if the member company is unable in the opinion of the Financial Supervisory Authority to disburse the value of a deposit. It moreover says in Art. 10(1) of Act no. 98/1999 that if the assets of the relevant department of the guarantee fund are insufficient to pay the total worth of guaranteed deposits, securities and cash in the relevant member companies the payments from each department shall be divided between the creditors so that each claim for up to ISK 1.7 million, fixed to the exchange rate of the EUR, shall be compensated in full but ell that exceeds that amount shall be paid proportionally to what the assets of each department can cover. In a bill for Act no. 98/1999 on Deposit Guarantees and Investor-Compensation Scheme it was stated that the role of the guarantee fund of commercial banks was according to law to guarantee the payment of a deposit to a depositor which he had requested and a commercial bank or a branch could not disburse.

According to the above the guarantee fund will not be obligated to pay more than ISK 1.7 million, fixed to the Euro, if it has insufficient assets, but the fund is however obligated to fully reimburse a guaranteed deposit as long as its assets suffice. If the defendant's claim, the Dutch municipality, is paid in full at the winding-up of the defendant, the municipality will not obtain a claim against the fund. Pursuant to the above the minimum amount which is guaranteed, according to Act no. 98/1999 has no effect on the priority of the claim of the defendant, Gemeente Alphen aan den Rijn, covers his entire claim. Thus it will not be agreed with the defendant[sic] that the priority is limited to the aforementioned minimum amount.

4. On the constitutional validity of the Act.

The plaintiffs base on that regardless that the court reaches the decision that the aforementioned claim is considered to be a deposit and is thereby covered by the legal provision of the priority of deposits, these legal provisions will not be applied, as they are in violation of the provisions of Art. 72 and 65 of the Constitution, the corresponding provisions of the European Convention on Human Rights, and the main principles of the EEA agreement. The same applies as to the provisions of other Acts which have been adopted for related measures of the state which pertained to the division of the banks, the refinancing of the new banks and the transfer of their debts and assets. The defendant, Gemeente Alphen aan den Rijn, has objected to these assertions and refers in that context to that a judgement on such claims will not be passed in this case as the state is not a party to the case.

It is not accepted that there is a judicial necessity for the state to be a party to the case. It is in the power of the courts to decide, without the participation of the state being a necessity, whether certain legal rules which are being disputed are in violation of the provisions of the constitution with the result that they cannot be based upon. In this case, which only revolves around the issue whether the defendant's claim has priority at the winding-up of Landsbanki Íslands hf. on the basis of Art. 6 of

Act no. 125/2008, it cannot however be for consideration whether other provisions of that Act, or related legislation, which do not pertain to the priority of deposits, are in violation of the Constitution or the European Convention on Human Rights. Thus it cannot be seen that the dispute of this case, which revolves around whether the claim of Gemeente Alphen aan den Rijn enjoys priority at the winding-up of the defendant, Landsbanki Íslands hf., whether the Financial Supervisory Authority was authorised to transfer assets and debts from Landsbanki Íslands hf. to the new bank NBI hf.

Pursuant to Art. 72 of the Constitution no. 33/1944 the right for property is sacrosanct and no one can be forced to hand over his property unless required to do so for the public interest. For that to happen there must be legal instructions and full reimbursement. The contents of Art. 1 of Annex 1 to the European Court of Human Rights is in broad strokes the same. The issue in this part of the case does in fact only pertain to whether the aforementioned provision of Art. 6 of Act no. 125/2008 may violate Art. 72 of the Constitution with the result that it cannot be properly applied, but does not pertain to whether the Icelandic state may have become liable for the legislation. Thus it will only be resolved with consideration to the provision of Art. 72 of the Constitution and then with consideration to the interpretation of the provisions of the European Convention of Human Rights and the main principles of the EEA agreement.

As was previously stated Art. 102(3) of Act no. 161/2002 on Financial Undertakings was amended with Art. 6 of Act no. 125/2008, cf. Act no. 44/2009 in such a way that claims for deposits pursuant to Act no. 98/1999 would be considered priority claims pursuant to Art. 112(1) and (2) of the Act on Bankruptcy etc. at the winding-up of financial undertakings. The plaintiffs, who all are owners of claims which have the status of general claims at the winding-up of Landsbanki Íslands hf., that these measures of the state entailed unlawful diminishment of the value of the right of claims and thus caused them considerable damages. The status of those claims and their value was altered retroactively with the adoption of the Act and such legislation cannot hold up. Then they had legitimate expectations which are protected by Art. 72 of the Constitution, regarding the judicial procedure stipulated by Icelandic legislation in case of bankruptcy of the Icelandic banks.

The courts agree with the plaintiffs that their claims, which are considered to be limited property rights, enjoy the protection of Art. 72 of the Constitution. When however resolving whether the provisions of Art. 6 of Act no. 125/2008 entailed such a limitation of these rights that it is equivalent to expropriation or entails such a general limitation of their property rights that it violates Art. 72(1) of the Constitution the nature of the measures in question must be considered, their objective and consequences and also the situation in society when they were resorted to. As has been described the adoption of the provision of Art. 6 of Act no. 125/2008 amended the previous order of the priority ranking of claims at winding-up of financial undertakings. It cannot be seen otherwise than the provision was meant to cover a non specified group of investors, but it is predictable that this change could possibly be at the expense of other creditors in such a way that they would in turn receive less for their claims from the winding-up and even nothing at all. The Act came into force when it was published and thus this provision applied to the winding-up of the financial undertakings that were taken for winding-up after that time. Although it is clear that there was a very short prelude to the adoption of the Emergency Act it cannot be seen otherwise than that this arrangement was in accordance to how things were done previously when amending the current priority provisions at bankruptcy. The court cannot agree with the plaintiffs that they have an unconditional constitutional right to be treated in accordance to the priority rules of a Bankruptcy Act which was in force when their agreement with the defendant Landsbanki Íslands hf. was made. It is of no consequence in that regard that in the case of the plaintiff Deutsche Bank Trust Company Americas it was stipulated in its contract with Landsbankinn that the claims were equal to deposits and all other unsecure obligations. Then there has nothing been established on that the government did, at the time which the plaintiffs acquired their claims, anything which gave the plaintiffs reason to believe that there would be no amendments made to the priority ranking at bankruptcy of financial undertakings, even in a crisis.

There is nothing in this case which indicates that the plaintiffs' claims were overdue when the Act was adopted. Then it must be kept in mind here that although the owners of deposits were granted priority in the priority ranking above that of the plaintiffs and other general creditors by the disputed legislation it has as of yet not been established in the case, and is considered unproven, that the value of the plaintiffs' claims was diminished by it and then how much.

From the legal interpretational documents with the bill for Act no. 125/2008 it can be deduced that it was adopted with the objective of protecting the public interest and ensure and rebuild financial stability. As such the Prime Minister's presentation speech and the speech of the Minister of Commerce at 1. round of debates on the bill mention that there is a risk that the banks will close, the payment system freeze up or collapse and will not be effective. It is stated that a part of these measures is that the state has declared that "all deposits in Icelandic banks in Iceland are guaranteed in full and without limit", and that deposits should be made priority claims at the winding-up of financial undertakings, cf. the previously referenced Art. 6 and Art. 9 of the Act, which stipulates that the claim of the Depositors' and Investors' Guarantee Fund has priority pursuant to Art. 112 of Act no. 21/1991. In light of the above and other documents of the case it seems clear that the legislation was suited to maintaining the trust of the private persons and companies for that their deposits would be guaranteed and that banking operations would remain functional. By doing so a run on the banks was prevented and the functionality of the banking system was ensured, which was an imperative basis for preventing an economic collapse in Iceland. It must be considered that priority provision was unavoidable to ensure that the state could stand under its abovementioned guarantee of deposits, for both domestic and foreign parties. According to this it is agreed with the defendants that there was dire need for choosing this approach to save the state from imminent insolvency and the society from economic collapse. These measures of the state were therefore obviously sanctioned by great public interest. Thus it must be concluded that the adoption of the Emergency Act aimed at a legitimate goal.

Then it must be considered, considering the circumstances surrounding the legislation in question which is described above herein and the dire need which surely was in place for a quick response of the government, that the plaintiffs have not sufficiently established that these measures concerning the priority of deposits went further than was expressly needed in order to achieve the objective of saving the nation from en economic collapse and thereby guarantee the interests of the common citizen.

When considering all of the above it is the conclusion of the court that the plaintiffs did not establish that the disputed priority provision of Art. 6 of Act no. 125/2008 diminished their property rights retroactively so that it violates Art. 72 of the Constitution nor that full proportionality was not observed at its adoption. Now the court will address whether the provision of Art. 6 of Act no. 125/2008 may violate Art. 65 of the Constitution with the result that it cannot be properly applied. The issue of the case does not however pertain to whether the state may have become liable for damages with the legislation. Thus that can only be resolved with consideration to the provision of Art. 65 of the Constitution and then based on the interpretation of the provisions of the European Convention of Human Rights and the main principles of the EEA agreement.

When assessing whether creditors were discriminated against with the legislation and thereby a violation of Art. 65 of the Constitution, one must look to the abovementioned objectives of the legislation, which were to ensure the interests of the common citizen and create conditions for stability in Iceland's economy. To grant priority to depositors above other creditors aimed at the abovementioned legitimate objective, but one must consider that the Act extends to all parties in a similar position. They do not distinguish between depositors in conventional general banking operations, such as whether they have large or small claims or whether they are domestic or foreign. Depositors and creditors of unsecured claims are however not in a similar position and thus their positions will not be compared when assessing whether there has been a violation of the rule of proportionality. In that context it is mostly looked to that in an international perspective the special status of deposits is recognised against general claims of other types, which pertains to the trust of individuals and companies that their deposits are guaranteed, cf. the aforementioned directive no. 94/19/EC and its confirmation with Act. 98/1999. It has been described above herein that it is generally held that a lack of such trust is suited to instigate a run on a bank with severe consequences for the stability of the banking system as a whole and thereby the public interest.

Then it should be considered that the Act entailed no changes to the priority ranking of the plaintiffs' claims and it is unproven that the expectations of the plaintiffs for creditors' status in the list of claims was a deciding factor when their claim against Landsbanki Íslands hf. was established.

According to the above it is the court's conclusion that the provision of Art. 6 of the so called Emergency Act no. 125/2008 neither violates the property right provision of Art. 72 nor the rule of

equality of Art. 65 of the Constitution. In light of this the court will not address the plaintiffs' pleadings which pertained to constitutional emergency rights.

5. Interests and costs

As is stated above this case pertains to a dispute on the priority of deposits which were made to the Landsbanki Íslands hf. branch in the Netherlands. The defendant, Landsbanki Íslands, has recognised the contractual interests for the defendant's claim from August 28th 2008 to October 10th 2008, but rejected interest claims in other regards from that date until April 22nd 2009. Then there is a dispute between the defendants on how the payment from De Nederlansche bank shall be allocated on the claim.

The winding-up proceeding itself is subject to Icelandic laws pursuant to Art. 99(2) of the Act on Financial Undertakings no. 161(2002), cf. Art. 9 of Act no. 130/2004. When the winding-up board made a decision on the defendant's claim it was however assumed that Dutch laws applied to the claim materially, but it is a private contractual obligation under Act no. 43/2000 on the Conflict of Law in Contract law. Art. 4(1) of Act no. 43/2000 states that if a contract does not contain provisions on which country's laws shall apply, it shall be subject to the laws of the country to which the contract has the strongest ties. According to Art. 4(2) of the Act it shall generally be considered that a contract has the strongest ties to the country where a party has its head offices. If a contract is made in regards to employment or business operations of the party in question it shall be considered that the contract has the strongest ties to the country where the party with the main obligation has its head offices. If a contract is to be fulfilled at another base of operations than his head offices the laws of the country where the base of operations is shall apply.

In the documents of the case which pertain to the disputed transactions of the parties the applicable laws are not stated. It is however evident that the transaction between the parties took place through the defendant's, Landsbanki Íslands hf., branch in the Netherlands. The court agrees with the understanding of the defendant Landsbanki Íslands hf. that the disputed wholesale deposit which was established in the branch of Landsbanki Íslands hf. in Amsterdam has the strongest ties to the Netherlands under Art. 4(1) of the Act on Conflict of Law no. 43/2000. Thus Dutch law shall apply to the claim, as well as the defendant's right to claim for interests of the claim, plus costs, but that the statement of claim itself and the claim's status in the priority ranking shall be subject to Icelandic laws.

There is a dispute in the case between the defendants, Landsbanki Íslands hf. and Gemeente Alphen aan den Rijn on costs and default interests, in addition to that there was a dispute between them, regarding how the payment from De Nederlandsche Bank was allocated on the municipality's claim. There is no dispute between these parties that the claim has priority pursuant to Art. 112 of Act no. 21/1991. The defendant, Landsbanki Íslands hf. has recognised that the claim carries contractual interests, 4.92% until the previously agreed withdrawal date, October 10th 2008, EUR 17,630.

A part of the plaintiffs believe however that if it is held that the principle amount of the claim has priority, the claims for interests after October 6th 2008 do not enjoy priority at disbursement.

According to Art. 114(1) of the Bankruptcy Act claims for interests, indexation, interest difference and collection costs of a claim pursuant to Art. 112 of 113 which has been accrued after a court order for bankruptcy, are subordinated claims. A counter-argument of this provision leads to that the defendant's claim for interests until April 22nd 2009 is to be recognised with the claim as a priority claim.

Then with reference to the aforementioned rules on conflict of law pursuant to Act no. 43/2000 the primary claim of the defendant, Gemeente Alphen aan den Rijn, for Icelandic default interests pursuant to Art. 6(1) of Act no. 38/2001 cannot be accepted, nor the first reserve claim for default interests pursuant to Art. 6(1) of Act no. 38/2001 with a default margin according to the Central Bank of Iceland, but base default interests from the European Central Bank.

Then the defendant's second reserve claim for default interests pursuant to the provisions of the Dutch codex is taken for consideration. A memorandum of Simmons and Simmons has been submitted in the case on the provisions of Dutch laws on interests and costs, which was obtained by the defendant, Landsbanki Íslands hf., but it has rejected the recognition of a claim for default interests pursuant to the provisions of 6:74 and 6:119 of the Dutch codex. An Icelandic translation of the aforementioned memorandum was submitted and the pleadings of the parties referred to it. In the

court's opinion the subject and existence of the aforementioned rules of law have been sufficiently established with the submission of the memorandum, cf. Art. 44(2) of Act no. 91/1991.

Pursuant to the provisions of 6:119 of the Dutch codex a creditor can be entitled to default interests of a claim is defaulted on under the Act, but defaults are covered in provision 6:81. It states, according to the aforementioned memorandum on this provision: "A debtor is considered to be in default as long as he does not fulfil his obligation after the time for fulfilling has passed provided that the conditions of Art. 82 and 83 of chapter 6 of the Act on Civil Proceedings are satisfied, unless that the lateness in payment cannot be traced back to the debtor or that fulfilment is and will be impossible." Pursuant to item 1 of provision 6:82 a claim is considered to be in default when a debtor has received a written iteration where he is given a reasonable period to fulfil his obligations and he does not do so within the period given. Item 2 of the provision states that if a debtor cannot fulfil his obligation temporarily or it is evident from his conduct that an iteration would be pointless, a creditor may declare default with a written notice which states that the debtor is held responsible for the default. On behalf of the defendant, Landsbanki Íslands, it is maintained that as the conditions of 6:82 of the Dutch codex are not satisfied, default interests cannot be decided.

The provision of 6:83 of the Dutch codex, which is also mentioned in the aforementioned memorandum of Simmons and Simmons and has been submitted in Icelandic, addresses a default which is in place without there being a need for a formal notification. It states in item c of the provision that a default is considered to be in place, without requiring a formal notice, if it is evident to a creditor from messages from the debtor that the latter will not fulfil the subject of the obligation.

As has been previously stated the Financial Supervisory Authority took over control of Landsbankinn and appointed a resolution committee for it on October 7th 2008. The next day the defendant, Landsbanki Íslands hf., announced on its website in the Netherlands that it would not be able to fulfil its deposit obligations. In light of the above it must be considered that the defendant, Gemeente Alphen aan den Rijn, was at that point fully aware that Landsbanki Íslands hf. would not fulfil its obligations. Thus there was no need for a specific announcement to the defendant, Landsbanki Íslands hf., pursuant to items 1 and 2 of Art. 6:82 of the Dutch codex. The deposit of the Dutch municipality was to be free for withdrawal on October 10th 2008, but was not paid out. Thus the defendant, Landsbanki Íslands hf., shall pay default interests from that time, October 10th 2008 to April 22nd 2009. It is undisputed that the base interest pursuant to provision 6.119 of the Dutch codex was 6% during the period which the claim for interests covers.

The defendant bases his claim for costs on provision 6:74 of the Dutch Act on Private Procedure, and the provision has been submitted in Icelandic. It cannot be seen that the provision applies to the collection costs outside the courts before the date of the court order. Then it cannot be seen from the documents of the case that the claimed costs are related to the collection of the defendant's claim outside the courts. The defendant is not considered to have established that he has a legitimate claim for the defendant, Landsbanki Íslands hf., carries the costs incurred on behalf of the Dutch municipality during the period in question. Thus the claims for costs incurred before April 22nd 2009 are rejected.

With reference to the above and that which is stated in the comments of Landsbanki Íslands hf. in court document no. 75, on the calculations regarding payments from De Nederlandsche Bank for deposit guarantee on April 7th 2009, the defendant's, Gemeente Alphen aan den Rijn, for the principal amount of EUR 3,000,000 with contractual interests and default interests as further stipulated in the conclusion of the verdict recognised as a priority claim at the winding-up of the defendant, Landsbanki Íslands hf.

There are considerable issues of doubt in this case. In light of that and with reference to Art. 130(3) of Act no. 91/1991 it is considered suitable that each party carries his own litigation costs.

This verdict is issued by the District Court judges Ingveldur Einarsdóttir as chairman of the Court, Ásgeir Magnússon and Greta Baldursdóttir.

Conclusion of the verdict:

The claim of the defendant, Gemeente Alphen aan den Rijn, for the amount of EUR 3,000,000 with a 4.92% contractual interests from and including August 28th 2008 and until and including October 10th 2008, but with 6% default interests of EUR 3,017,630 from and including that day until and including April 7th 2009, but of EUR 2,996,743 from and including that day with 6% default interests until and

including April 22nd 2009, is recognised as a priority claim pursuant to Art. 112 of Act no. 21/1991, at the winding-up of the defendant, Landsbanki Íslands hf.

Litigation fee between the parties is cancelled.

Ingveldur Einarsdóttir

Ásgeir Magnússon

Greta Baldursdóttir

True copy confirmed:
The District Court of Reykjavík April 1st 2011.

Fee: ISK 12,750
Paid: