

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DEC 17 2001

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9  
10

11 UNITED STATES DISTRICT COURT  
12 FOR THE EASTERN DISTRICT OF WASHINGTON  
13

14  
15 NUVEEN QUALITY INCOME MUNICIPAL  
16 FUND, INC; et al., and U.S. BANK TRUST  
17 NATIONAL ASSOCIATION...

18 Plaintiffs,  
19

20 ASSET GUARANTY INSURANCE  
21 COMPANY,  
22

23 Intervenor Plaintiff,  
24

25 v.  
26

27 PRUDENTIAL SECURITIES  
28 INCORPORATED, et al.,  
29

30 Defendants.  
31

32 ANSWER AND DEFENSES  
OF SPOKANE  
DOWNTOWN FOUNDATION  
TO COMPLAINTS OF AGIC  
IN INTERVENTION - 1

NO. CS-01-0127-EFS  
consolidated with  
NO. CS-01-0128-EFS

ANSWER AND  
DEFENSES OF  
SPOKANE DOWNTOWN  
FOUNDATION TO  
COMPLAINTS OF AGIC IN  
INTERVENTION

1  
2  
3 CITY OF SPOKANE,

4 Third-Party Plaintiff,

5  
6 v.

7  
8 ROY KOEGEN and ANNE K. KOEGEN, a  
9 marital community, and PERKINS COIE,  
10 LLP,

11  
12 Third-Party Defendants.

13 Defendant Spokane Downtown Foundation (Foundation)  
14 answers and responds to Asset Guarantee Insurance Company's  
15 (AGIC) Complaints in Intervention as follows:<sup>1</sup>  
16  
17

18  
19 **I. JURISDICTION AND VENUE**

20  
21 1. - 2. This Defendant admits Federal subject matter  
22 jurisdiction, and venue, for the Federal 10b-5 claims, to the extent  
23 they are sustained. Absent jurisdiction for a 10b-5 claim, Federal  
24  
25

26  
27 <sup>1</sup> AGIC submitted two similar Complaints in Intervention in the  
28 Nuveen and U.S. Bank Trust matters, prior to the order on  
29 consolidation. The Foundation submits this one answer to AGIC's  
30 two Complaints in Intervention.

31 ANSWER AND DEFENSES  
32 OF SPOKANE  
DOWNTOWN FOUNDATION  
TO COMPLAINTS OF AGIC  
IN INTERVENTION - 2

1  
2 jurisdiction is lacking. In turn jurisdiction is denied. Further, this  
3  
4 Defendant lacks knowledge in respect to paragraphs 1 and 2.

## 5 6 **II. PARTIES**

7 3. -17. This Defendant admits that: AGIC is an insurer of  
8  
9 municipal bonds; Prudential Securities, Inc., is a securities broker -  
10  
11 dealer and underwriter; Walker Parking Consultants/Engineering,  
12  
13 Inc., is a consulting and engineering firm; Foster Pepper &  
14  
15 Shefelman, PLLC is a law firm with a practice in the State of  
16  
17 Washington; the Spokane Downtown Foundation is a Washington  
18  
19 non-profit corporation that served as issuer of the bonds; Preston,  
20  
21 Gates & Ellis, LLP, is a Washington State law firm; Citizens Realty  
22  
23 Company, Lincoln Investments Company of Spokane, RPS Mall LLC,  
24  
25 and RPSII LLC are business entities which conducted business in  
26  
27 the City of Spokane; R.W.R. Management, Inc., is an entity which  
28  
29 does business in Spokane; the City of Spokane is a first class charter  
30  
31 city in the State of Washington; and the Spokane Public Parking  
32

**ANSWER AND DEFENSES  
OF SPOKANE  
DOWNTOWN FOUNDATION  
TO COMPLAINTS OF AGIC  
IN INTERVENTION - 3**

1  
2 Development Authority is a Washington entity adopted by resolution  
3 and ordinance by the City of Spokane. This Defendant lacks  
4 knowledge of the remaining contentions in paragraphs 3 through 17,  
5 and denies any allegation of liability or culpability on the part of the  
6 Foundation.  
7  
8  
9

10  
11 **III. GENERAL ALLEGATIONS APPLICABLE**  
12 **TO ALL CLAIMS FOR RELIEF**

13 18. This Defendant incorporates its responses to the preceding  
14 paragraphs.  
15

16  
17 19. - 20. This Defendant denies liability or culpability on the  
18 part of the Foundation. Further, this Defendant lacks knowledge of  
19 the remaining contentions in paragraphs 19 and 20.  
20  
21

22 21. - 22. This Defendant denies liability or culpability for  
23 plaintiff's contentions in respect to the Foundation. Further, this  
24 Defendant lacks knowledge of the contentions in paragraphs 21 and  
25 22.  
26  
27  
28

29  
30  
31 **ANSWER AND DEFENSES**  
32 **OF SPOKANE**  
**DOWNTOWN FOUNDATION**  
**TO COMPLAINTS OF AGIC**  
**IN INTERVENTION - 4**

1  
2 23. - 34. This Defendant admits that Prudential was the  
3  
4 underwriter for the bonds. However, given the manner of the  
5  
6 contentions, this Defendant lacks knowledge of the remaining  
7  
8 allegations.

9 35. This Defendant admits Foster Pepper & Shefelman acted  
10  
11 as underwriter's counsel. However, given the manner of contentions,  
12  
13 this Defendant lacks knowledge of the remaining allegations in  
14  
15 paragraph 35.

16 36. This Defendant denies the Foundation had knowledge of  
17  
18 alleged false or misleading information and any contention of liability  
19  
20 or culpability associated with the Foundation and plaintiff's  
21  
22 contentions, if any. Further, given the manner of plaintiffs'  
23  
24 contentions, this Defendant lacks knowledge of plaintiff's contentions  
25  
26 in paragraph 36.

27 37. This Defendant admits that Preston, Gates & Ellis acted as  
28  
29 issuer's counsel, and bond counsel for the Foundation. However,  
30

31 ANSWER AND DEFENSES  
32 OF SPOKANE  
DOWNTOWN FOUNDATION  
TO COMPLAINTS OF AGIC  
IN INTERVENTION - 5

1  
2 given the manner of plaintiff's remaining contentions in paragraph 37,  
3 this Defendant lacks knowledge.  
4

5 38. - 39. This Defendant admits that Walker provided certain  
6 financial feasibility analyses, or report(s). However, given the  
7 manner of the plaintiff's contentions, this Defendant lacks knowledge  
8 of the allegations in paragraphs 38 and 39.  
9  
10

11 40. - 45. This Defendant admits that the City participated in,  
12 and went forward with the Garage transaction; that City staff or  
13 representatives issued letters and opinions; and that the City passed  
14 certain resolutions and ordinances in support of the Garage Facility,  
15 and issuance of the subject bonds. However, given the manner of  
16 contention, this Defendant lacks knowledge of the allegations made  
17 by plaintiff's in paragraphs 40 through 45.  
18  
19  
20  
21  
22  
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24

25 46. - 47. Given the manner of plaintiff's contentions, in  
26 paragraphs 46 through 47, this Defendant lacks knowledge.  
27  
28  
29  
30

31 ANSWER AND DEFENSES  
32 OF SPOKANE  
DOWNTOWN FOUNDATION  
TO COMPLAINTS OF AGIC  
IN INTERVENTION - 6

1  
2 48. This Defendant lacks knowledge of the plaintiff's  
3  
4 contentions in paragraph 48 of plaintiff's Complaints in Intervention.

5 **FIRST CLAIM FOR RELIEF: VIOLATION OF SECTION 10(B) OF**  
6 **THE 1934 ACT ... VIOLATION OF SECTION 20(A) OF THE 1934**  
7 **ACT ...**  
8

9 49. This Defendant incorporates its preceding responses.

10  
11 50. - 58. This Defendant denies plaintiff's contentions in  
12 respect to the Foundation, if any. This Defendant lacks knowledge of  
13 plaintiffs' contentions in respect to other parties.  
14

15  
16 **SECOND CLAIM FOR RELIEF: VIOLATION OF THE SECURITIES**  
17 **ACT OF WASHINGTON, RCW 21.20.430 et seq.**  
18

19 59. The responses to the preceding paragraphs are  
20 incorporated.  
21

22 60. - 76. This Defendant denies the plaintiff's contentions in  
23 respect to the Foundation, if any. This Defendant lacks knowledge of  
24 plaintiff's contentions in respect to other parties.  
25  
26  
27  
28  
29  
30

31 **ANSWER AND DEFENSES**  
32 **OF SPOKANE**  
**DOWNTOWN FOUNDATION**  
**TO COMPLAINTS OF AGIC**  
**IN INTERVENTION - 7**

1  
2  
3  
4  
5 **THIRD CLAIM FOR RELIEF: FRAUD AND/OR AIDING AND**  
6 **ABETTING**  
7

8 77. The responses to the preceding paragraphs are  
9  
10 incorporated.

11 78. - 82. This Defendant denies all allegations in respect to the  
12 Foundation, if any. This Defendant lacks knowledge of contentions  
13 in respect to other parties.  
14  
15

16  
17 **FOURTH CLAIM FOR RELIEF: NEGLIGENT**  
18 **MISREPRESENTATION**  
19

20 83. Responses to the preceding paragraphs are incorporated.

21 84. - 86. This Defendant denies all allegations in respect to the  
22 Foundation, if any. This Defendant lacks knowledge in respect to  
23 other parties.  
24  
25  
26  
27  
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29  
30

31 **ANSWER AND DEFENSES**  
32 **OF SPOKANE**  
**DOWNTOWN FOUNDATION**  
**TO COMPLAINTS OF AGIC**  
**IN INTERVENTION - 8**

1  
2  
3 **DENIAL AND AMENDMENT**

4 87. To the extent that any allegation in AGIC's Complaints in  
5 Intervention allegedly supports liability against the Foundation and  
6 the same was not previously denied, the same is hereby denied.  
7

8  
9 Further, this Defendant reserves the right to amend.

10 **ADDITIONAL AND AFFIRMATIVE DEFENSES**

11  
12 By way of further response, this Defendant submits the  
13 following additional and affirmative defenses:  
14

15  
16 1. The Complaints fail to state a claim against this Defendant  
17 upon which relief can be granted.  
18

19  
20 2. The claim of fraud, if any, against this Defendant is  
21 inadequately pleaded.  
22

23  
24 3. Plaintiff's claims are barred by applicable statutes of  
25 limitation, and laches.  
26

27  
28 4. Alternatively, in the exercise of reasonable care, this  
29 Defendant did not and could not have known the facts upon which  
30

31 **ANSWER AND DEFENSES**  
32 **OF SPOKANE**  
**DOWNTOWN FOUNDATION**  
**TO COMPLAINTS OF AGIC**  
**IN INTERVENTION - 9**

1  
2 any state law securities violations are based and/or as an  
3 instrumentality of a municipal or quasi-municipal entity, it lacked  
4  
5 scienter.  
6

7 5. Plaintiff's losses, if any, were caused by factors and the acts  
8  
9 or omissions of other parties or entities, and were not caused by an  
10  
11 act or omission of this Defendant.

12 6. Upon information and belief, and as alleged by other  
13  
14 defendants, plaintiff's claims are barred or limited by the doctrine of  
15  
16 res judicata or collateral estoppel.

17 7. Plaintiff's claims are barred by their lack of due diligence.

18  
19 8. Any damage suffered by the plaintiff was the proximate  
20  
21 result of conduct or negligence of persons or entities other than this  
22  
23 Defendant and for whom this Defendant is not responsible.

24  
25 9. Plaintiffs claims are alternatively barred by ratification,  
26  
27 estoppel or waiver.  
28  
29  
30

31 ANSWER AND DEFENSES  
32 OF SPOKANE  
DOWNTOWN FOUNDATION  
TO COMPLAINTS OF AGIC  
IN INTERVENTION - 10

1  
2 10. The transaction documents provided for express allocation  
3 of risk and responsibility.  
4

5 11. Alternatively, the plaintiff's claims resulted from mutual  
6 mistake.  
7

8 12. The Plaintiff lacks standing to assert the claims herein.  
9

10 13. Alternatively, there is not yet a justiciable controversy.  
11

12 14. If any aspect of plaintiff's claims result in judgment or  
13 verdict affecting or against the Foundation, the Foundation is entitled  
14 to allocation of fault and/or liability or judgment against the principal  
15 actor(s) or party(ies).  
16  
17

18 15. AGIC's Complaints in Intervention lack jurisdiction.  
19

20  
21 **PRAYER FOR RELIEF**  
22

23 WHEREFORE, having fully responded to the AGIC Complaints  
24 in Intervention, this Defendant requests that the Court grant the  
25 following relief:  
26  
27  
28  
29  
30

31 **ANSWER AND DEFENSES**  
32 **OF SPOKANE**  
**DOWNTOWN FOUNDATION**  
**TO COMPLAINTS OF AGIC**  
**IN INTERVENTION - 11**

1  
2 1. Entry of a final judgment dismissing all claims against this  
3 Defendant with prejudice and without an award of damages or other  
4 relief against this Defendant.  
5

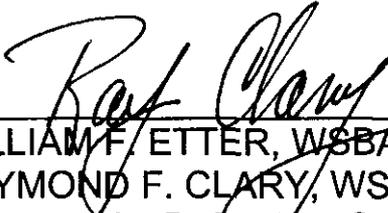
6  
7 2. Allocation of fault and/or liability or judgment against the  
8 principal actor(s) or party(ies).  
9

10  
11 3. An award of reasonable fees and expenses incurred herein,  
12 including reasonable attorneys' fees.  
13

14 4. Such other relief as the Court may deem just.  
15

16 RESPECTFULLY SUBMITTED this 17th day of December,  
17  
18 2001.

19  
20 ETTER, McMAHON, LAMBERSON & CLARY, P.C.

21  
22   
23  
24 WILLIAM F. ETTER, WSBA#9158  
25 RAYMOND F. CLARY, WSBA#13802  
26 Attorneys for Defendant Spokane Downtown  
27 Foundation  
28

29  
30  
31 ANSWER AND DEFENSES  
32 OF SPOKANE  
DOWNTOWN FOUNDATION  
TO COMPLAINTS OF AGIC  
IN INTERVENTION - 12