

ENDORSED
First Judicial District Court

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Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2268
Santa Fe, NM 87504-2268

STATE OF NEW MEXICO
SANTA FE COUNTY
FIRST JUDICIAL DISTRICT

No. D-102-CJ-2009-05607

**THE NEW MEXICO STATE TREASURER'S
OFFICE and the NEW MEXICO FINANCE AUTHORITY,**

Plaintiffs,

v.

**THE RESERVE FUND, THE PRIMARY FUND,
RESERVE MANAGEMENT COMPANY, INC.,
THE RESERVE, and RESERV PARTNERS, INC.,**

Defendants.

PETITION FOR PRELIMINARY AND PERMANENT INJUNCTION

The New Mexico State Treasurer's Office ("the STO") and the New Mexico Finance Authority ("NMFA") bring this action to permanently enjoin Defendants from continuing to unlawfully spend funds properly belonging to Plaintiffs and would respectfully show the Court as follows:

PARTIES

1. Plaintiff STO is an official arm of the State of New Mexico responsible for the management of banking services for the state government and the investment of short-term funds. Its principal office is located at 2019 Galisteo Street, Building K, Santa Fe, New Mexico, 87504-0608.

2. Plaintiff NMFA is statutorily-created government instrumentality that exists "for the performance of essential functions." *See* NMSA 1978, § 6-21-4(A). Its powers are

delineated in NMSA 1978, § 6-21-5. Its principal office is located at 207 Shelby Street, Santa Fe, New Mexico, 87501.

3. Defendant The Reserve Fund is a money management vehicle organized under the laws of New York. Its principal place of business is 1250 Broadway, New York, New York, 10001-3071.

4. Defendant The Primary Fund is a money market fund operated by the Reserve. Its principal place of business is 1250 Broadway, New York, New York, 10001-3071.

5. Defendant Reserve Management Company, Inc. is the Reserve Fund's principal investment advisor. Its principal place of business is 1250 Broadway, New York, New York, 10001-3071.

6. Defendant The Reserve is the parent company of Defendant Reserve Management Company, Inc. Its principal place of business is 1250 Broadway, New York, New York, 10001-3071.

7. Defendant Reserv Partners, Inc. is a distributor of the Reserve Fund and an affiliate of Defendant Reserve Management Company, Inc. Its principal place of business is 1250 Broadway, New York, New York, 10001-3071. Defendants are hereinafter collectively referred to as "Defendants" or "the Reserve."

JURISDICTION

8. This Court has subject matter jurisdiction over this matter pursuant to Article VI, § 13 of the New Mexico Constitution.

9. This Court has personal jurisdiction over Defendants because Defendants have conducted business with Plaintiffs in the State of New Mexico and have thus availed themselves of this forum.

VENUE

10. Venue is proper in this County because it is Plaintiffs' principal place of business and the venue in which the transactions giving rise to this Complaint occurred.

BACKGROUND FACTS

11. In 2006, the STO opened three separate investment accounts with the Reserve. Each account was invested exclusively in the Primary Fund. The STO opened the first account on behalf of New MexiGROW LGIP on or about July 14, 2006, the second account on behalf of the General Fund on or about September 29, 2006, and a third account consisting of bonds investment proceeds pools on or about August 31, 2007. The STO completed its account applications in New Mexico and then transmitted those applications to Defendants. As of September 15, 2008, the STO had, in its three accounts, approximately \$1.14 billion invested in the Primary Fund. Much of that money was invested on behalf of New Mexico counties and municipalities who depended on the fund to provide consistent, safe returns on their investments.

12. NMFA opened three separate investment accounts with the Reserve in 2007 and 2008. All three accounts were invested exclusively in the Primary Fund. NMFA opened one account on behalf of the New Mexico Department of Transportation on or about October 31, 2007, a second account on behalf of the New Mexico Department of Transportation on or about November 21, 2007, and a third account on its own behalf on or about January 8, 2008. NMFA completed its account applications in New Mexico and then transmitted those applications to Defendants. As of September 15, 2008, NMFA had, in its three accounts, approximately \$126.7 million invested in the Primary Fund.

13. Approximately 1.5% of the \$65 billion worth of assets in the Primary Fund was invested in Lehman Brothers Holdings, Inc. ("Lehman"). On September 15, 2008, Lehman filed

for Chapter 11 bankruptcy protection. The same day, the \$785 million of the Primary Fund invested in Lehman was valued at zero dollars.

14. Following the Lehman bankruptcy, the fund broke the dollar and was valued at \$0.97 per share. Many investors in the Primary Fund attempted to withdraw their holdings. The run on the fund caused liquidity problems which ultimately led to the freezing of the fund.

15. On December 3, 2008, the Reserve published its “Plan of Liquidation and Distribution of Assets,” which announced a preliminary plan for the liquidation of the Primary Fund. That plan indicated that fund participants could expect to recoup as much as \$0.92 on the dollar for their investments in the fund.

16. Beginning on October 31, 2008, the Reserve began winding down the Primary Fund and making distributions to the Fund participants. By February 26, 2009 the Reserve had distributed approximately 85% of the Fund, leaving approximately \$7.8 billion in the Primary Fund.

17. On February 26, 2009, the Reserve unexpectedly announced that it intended to set aside \$3.5 billion of the funds in the Primary Fund, called a “special reserve,” to pay: “(a) anticipated costs and expenses of the Fund, including legal and accounting fees; (b) pending or threatened claims against the Fund, its officers and Trustees; and (c) claims, including but not limited to claims for indemnification that could be made against Fund assets.”

18. In addition, the Reserve’s February 26, 2009 announcement indicated that the Reserve was defending twenty-seven individual and class action cases connected to the Primary Fund’s performance and that the special reserve would be used to pay for all legal fees connected to the defense of those actions as well as paying for any judgments against the Reserve, its trustees, or its shareholders. Defendants also suggested that a quick resolution to the pending

litigation would increase the payout from the special reserve: “Obviously, the sooner the litigation is resolved, the sooner monies held in the special reserve can be released to shareholders and, potentially, the greater the payout.”

19. Not every participant in the Primary Fund has brought a cause of action against Defendants based on the Primary Fund’s performance. The creation of the special reserve has, however, nonetheless forced those participants who have not brought suit to pay for Defendants’ legal fees and costs in defending claims brought by other participants. Consequently, Defendants are unjustly discriminating between different classes of fund participants to the detriment of those participants who have not sued Defendants.

20. In the September 28, 2007 prospectus for the Primary Fund, Defendants describe the fees charged to each class of investor in the fund. Among the fees listed was “other expenses” defined as follows:

Other Expenses include interest charges, taxes, brokerage fees and commissions, extraordinary legal and accounting fees and other extraordinary expenses including expenses incurred in connection with litigation proceedings, other claims and the legal obligations of the Trust to indemnify its trustees, officers, employees, shareholders, distributors and other agents of the Trust, payments made pursuant to the Trust’s Distribution Plan, the compensation of the chief compliance officer and related expenses, and the fees and expenses of the Trustees who are not “interested persons” of the Adviser as defined in the Investment Company Act of 1940 (“Independent Trustees”), including the fees of the independent counsel of the Independent Trustees. It is estimated that these fees and expenses will be less than 0.005% for each fund.

21. Despite this definition, the prospectus indicates that no “other expenses” were to be charged to any class of investor in the Primary Fund. Contrary to this representation, with the creation of the special reserve, participants in the Primary Fund, including Plaintiffs, were charged “other expenses” of 5% of the fund total. By February 26, 2009, the date on which Defendants stated their intention to create the special reserve, only \$7.8 billion remained in the Primary Fund. The \$3.5 billion special reserve thus represents payment by Plaintiffs of “other

expenses” of approximately 45% - nearly 9,000 times greater than the amount Defendants disclosed in the prospectus.

22. Plaintiffs neither sought the return of their investments in September 2008 nor filed suit against Defendants seeking compensation for those Primary Fund losses at least partially attributable to the Lehman bankruptcy. Defendants have nonetheless set aside, on a pro rata basis, approximately 5% of Plaintiffs investment in the Primary Fund to pay for legal expenses and judgments for which Plaintiffs bear no responsibility.

REQUEST FOR INJUNCTION

23. Plaintiffs re-allege paragraphs 1 through 22 above.

24. Defendants are currently involved in at least twenty-seven lawsuits stemming from the performance of the Primary Fund. Defendants’ costs and legal fees associated with defending those lawsuits are steadily mounting. Those fees and costs will, and likely already have, come from the special reserve to which Plaintiffs have a right of pro rata ownership.

25. Without injunctive relief from this Court, Plaintiffs face immediate and irreparable injury for which there is no adequate remedy at law.

26. Plaintiffs are likely to succeed on the merits of this claim and the issuance of Plaintiffs’ requested injunction would serve the public interest.


27. Plaintiffs thus seek an order from this Court prohibiting Defendants from spending any of Plaintiffs’ pro rata share of the special reserve and requiring Defendants to immediately disburse Plaintiffs’ pro rata share of the special reserve into a segregated account that can then be paid to Plaintiffs as the assets in the account are sold according to the appropriate schedule.

CONCLUSION

Based on the foregoing, the STO and NMFA respectfully request that this Court: (1) issue an injunction requiring Defendants to immediately disburse Plaintiffs' pro rata share of the special reserve into a segregated account that can then be paid to Plaintiffs as the assets in the account are sold according to the appropriate schedule; (2) award reasonable attorneys' fees and costs to Plaintiffs; and (3) provide any additional relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

NEW MEXICO ATTORNEY GENERAL



Scott Fuqua
Assistant Attorney General
New Mexico Attorney General's Office
408 Galisteo Street
Santa Fe, NM 87501
(505)827-6920 – Telephone
(505)827-6036 – Facsimile

Attorney for Plaintiffs