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APR 22 2011

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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STATE OF IDAHO and OFFICE OF)
THE STATE TREASURER,)
)
Plaintiffs,)
)
v.)
)
KEY TRUST COMPANY OF OHIO,)
N.A., a business organization conducting)
business in Idaho,)
)
Defendant.)

Case No. **BV 06 1108014**

COMPLAINT

Fee Category: Exempt
Idaho Code § 31-3212

COME NOW Plaintiffs, the State of Idaho and the Office of the State Treasurer (State Treasurer), by and through the Office of the Attorney General, and make this Complaint and claims for relief against Key Trust Company of Ohio, N.A. (Bank), a financial institution doing business in Idaho, and allege as follows:

NATURE OF THE CASE

1. This is a civil action initiated by the State of Idaho and the Office of the State Treasurer to compel the Bank to cease violations of the written agreement entered into by State Treasurer and the Bank, and to cease the underlying violations of state law that occurs when the Bank improperly invests state funds entrusted to the Bank. The State of Idaho and the State

COPY

Treasurer seek an accounting of the investments made by the Bank as well as specific performance, damages, costs, expenses and attorneys fees as provided by Idaho Code §§ 28-2-716, 67-1401(5), 68-501, *et seq.*, 12-117, 12-120, 12-121 and other relevant law.

PARTIES

2. The Office of the Attorney General is an executive office authorized under art. IV, sec. 1 of the Idaho Constitution. The Attorney General is an elected official.

3. The Attorney General has his central office in the city of Boise, county of Ada, Idaho, having certain powers and duties including those specified in Idaho Code §§ 67-1401, *et seq.*

4. The Attorney General is authorized to bring an action in the name of the state of Idaho to seek compliance with the terms of a public trust. Idaho Code § 67-1401(5).

5. The Office of the State Treasurer is an executive office authorized under art. IV, sec. 1 of the Idaho Constitution. The State Treasurer is an elected official.

6. The State Treasurer has his central office in the city of Boise, county of Ada, having certain powers and duties including those specified in Idaho Code §§ 67-1201 *et seq.*

7. The Idaho State Treasurer operates as the chief financial officer and banker of monies collected by Idaho. The Treasurer's duties include receiving all state monies, redeeming warrants, accounting for the receipt and disbursement of public funds, investing idle state monies, issuing state tax anticipation notes, investing local government and agency monies and acting as custodian for worker's compensation insurance securities on deposit with the state and custodian of the Public School Endowment and particularly the Public School Income Fund (Idaho Code § 33-903).

8. The State Treasurer, where not otherwise provided by law, is the custodian for all money, bonds, debentures or other securities, the property of the state of Idaho by or through any department or institution of the state of Idaho, or taken to be held as collateral for the security of the state of Idaho. The treasurer may appoint additional or multiple custodians to act with him in

carrying out the purposes of this act. Idaho Code §67-1301.

9. The State Treasurer is obligated to invest idle moneys in his possession on behalf of the state. Idaho Code 67-1210.

10. The State Treasurer also is authorized to invest funds other than idle funds on behalf of the state of Idaho and any public agency. Idaho Code §§ 67-1210A; 67-2328.

11. Key Trust Company of Ohio, N.A. (Bank) is a financial institution conducting business in Idaho.

12. During all time relative to this Complaint, the Bank transacted business in the state of Idaho by receiving moneys from the State Treasurer and investing those public funds.

13. On or about January 26, 2000, the State Treasurer and the Bank entered into a Securities Lending Agreement, whereby the Bank agreed to establish and maintain a custodial account for the benefit of the State Treasurer for the safekeeping of securities and monies the Bank received from the State Treasurer. A true and correct copy of the Securities Lending Agreement (including Exhibit A which was annexed to the agreement) is attached to this Complaint as Appendix 1 and incorporated herein by reference.

14. On or about January 26, 2000, the State Treasurer and the Bank also entered into a Custody Agreement, whereby the Bank accepted the position of Custodian of the securities and monies the State Treasurer was to transfer to the Bank. A true and correct copy of the Custody Agreement is attached to this Complaint as Appendix 2 and incorporated herein by reference.

JURISDICTION AND VENUE

15. The allegations contained in paragraphs 1 through 10 of this Complaint are incorporated and re-alleged herein by reference.

16. This Court has jurisdiction over the subject matter of this action. Pursuant to the parties' agreement, the Bank consented to the jurisdiction of a court situated in Idaho. Additionally, pursuant to Idaho Code § 1-705 this court has jurisdiction because the performance of the agreement involves moneys entrusted to the State Treasurer, who has his office in Ada

County.

17. This Court has personal jurisdiction over the Bank pursuant to Idaho Code § 5-514(a)(b) and (d) for the reason that the Bank transacts business within the State of Idaho and has committed torts and violated the laws of the State of Idaho regarding the funds entrusted to it.

18. This Court is the proper venue pursuant to Idaho Code § 5-404 because the Bank transacts business in Idaho but does not have a principal place of business in Idaho. Additionally, in Section 12 of the Custody Agreement (Exhibit 2, attached) between the Bank and the State Treasurer, the Bank agrees to submit to the jurisdiction of this Court and that venue in Ada County, Idaho, is appropriate.

FACTUAL BACKGROUND

19. The allegations contained in paragraphs 1 through 18 of this Complaint are incorporated and re-alleged herein by reference.

20. The Securities Lending Agreement provides the Bank is authorized to invest collateral arising from securities lending under the Agreement only in approved investments.

21. The term "approved investments" is defined in the Securities Lending Agreement as investments conforming to Idaho law. Idaho Code sections 67-1210 and 1210A set forth the permitted investments for the State Treasurer.

22. Exhibit A of the Securities Lending Agreement specifies the maturity requirements for the approved investments.

23. Pursuant to Exhibit A of the Securities Lending Agreement, approved investments must mature or be putable to the issuer within three (3) years.

24. Section 2 of the Custody Agreement further provides that the Bank will hold all securities and moneys it received from the State Treasurer in safekeeping.

25. Section 2 of the Custody Agreement further provides that the Bank is authorized to lend securities transferred to it by the State Treasurer.

26. Pursuant to Section 3 of the Custody Agreement the Bank also was authorized to invest the funds it received from the State Treasurer.

27. Section 6 of the Custody Agreement also established that the standard of care the Bank is to use in lending the securities or investing the funds it received from the State Treasurer is "to act with the care, skill, prudence and diligence that a professional custodian for hire and familiar with such matters would use."

28. Section 6 of the Custody Agreement further provides that the Bank agrees to indemnify the state of Idaho for any losses or damages incurred by the State as a result of the Bank's failure to meet the standard of care set forth in the Custody Agreement.

29. The Securities Lending Agreement also provides a specific method of calculating the agent's or Bank's fee.

30. The Bank's fee is assessed as a percentage of the net realized income derived from approved investments plus any securities loan fee paid by the borrower minus any rebate paid by Bank to the borrower.

31. In a letter dated December 10, 2010, the Office of the Attorney General notified the Bank of violations of the Securities Lending Agreement and Idaho law had occurred regarding a number of investments made by the Bank of public funds. The Office of the Attorney General and the State Treasurer demanded the Bank remedy the violations by making all investments of public funds conform to Idaho law and comply with the Securities Lending Agreement.

32. In its demand letter dated December 10, 2010, the Plaintiffs also requested an accounting of the investments made by the Bank of public funds and that the Bank correct the amount of fees it had charged in the past. A true and correct copy of the December 10, 2010 demand letter is attached to this Complaint as Appendix 3 and incorporated herein by reference.

CAUSES OF ACTION

Count I

Investments Made by the Bank were Not Permitted Investments in Violation of the Parties' Agreements and Idaho Law.

33. The allegations contained in paragraphs 1 through 32 of this Complaint are incorporated and re-alleged herein by reference.

34. The Bank has invested public funds in investments that are not approved investments.

35. Several investments made by the Bank are not the type of investments permitted by Idaho Code §§ 67-1210 and 67-1210A.

36. As a result of the wrongful investments made by the Bank, there has been a loss in value of the securities and moneys the State Treasurer transferred to the Bank for safekeeping.

Count II

Investments Do Not Mature or Are Not Putable to Issuer Within Three Years As Required by the Securities Lending Agreement

37. The allegations contained in paragraphs 1 through 36 of this Complaint are incorporated and re-alleged herein by reference.

38. Several investments made by the Bank have a final maturity in excess of three (3) years and are not putable to issuer. Such investments violate the Securities Lending Agreement entered into by the parties.

39. As a result of the unauthorized investments made by the Bank, there has been a loss in value of the securities and moneys the State Treasurer transferred to the Bank for safekeeping.

Count III

The Bank Incorrectly Deducted an Overstated Fee for its Services

40. The allegations contained in paragraphs 1 through 39 of this Complaint are incorporated and re-alleged herein by reference.

41. The Bank failed to correctly calculate and invoice the agent fee. The Bank has been assessing fees based upon gross income rather than net income.

42. The Bank also failed to realize losses as required by the Securities Lending Agreement entered into by the parties.

43. It was necessary for the Bank to realize losses on investments in order to establish a net realized income figure to be used in calculating the correct fee the Bank could charge for its investment services.

44. As a result of the Bank's errors in calculating the agent fee, the Bank has assessed and collected more fees from the State Treasurer than it was authorized to collect under the Securities Lending Agreement referenced in this Complaint.

Count IV

The Bank Has Failed to Meet its Custodial Duty and Standard of Care Established in the Agreements between the Bank and the State Treasurer

45. The allegations contained in paragraphs 1 through 44 of this Complaint are incorporated and re-alleged herein by reference.

46. The Securities Lending Agreement and the Custody Agreement referenced in this Complaint establish that the Bank has a duty to keep safe the securities and moneys transferred to it from the State Treasurer.

47. The Securities Lending Agreement and the Custody Agreement referenced in this Complaint further establish criteria under which the Bank is authorized to lend or invest the securities and moneys transferred to it from the State Treasurer.

48. As set forth in the previous allegations of this Complaint, the Bank made investments that did not adhere to the criteria established in the Securities Lending Agreement

and Custody Agreement.

49. As a result of the unauthorized investments made by the Bank, there has been a loss in value of the securities and moneys the State Treasurer transferred to the Bank for safekeeping.

50. In making unauthorized investments of the public funds it received from the State Treasurer, the Bank has violated its standard of care as set forth in the Custody Agreement. Accordingly, the Bank must indemnify the state of Idaho pursuant to the Custody Agreement for the losses incurred by the state as a result of the unauthorized investments.

Count V

**The Bank Has Failed to Meet its Duty
and Standard of Care set forth in Idaho Law.**

51. The allegations contained in paragraphs 1 through 50 of this Complaint are incorporated and re-alleged herein by reference.

52. The State Treasurer is the custodian of all public funds for which other guardians are not otherwise appointed under Idaho Law. Idaho Code § 67-1301.

53. The State Treasurer is authorized to appoint other custodians to help him in keeping safe the public funds entrusted to him.

54. The Bank was appointed as a custodian, pursuant to the Custody Agreement entered into between the Bank and the State Treasurer.

55. The securities and moneys the State Treasurer transferred to the Bank were public funds which the Bank was to protect and hold in trust.

56. Accordingly, the custodial account established by the Securities Lending Agreement and the Custody Agreement referenced in this Complaint is a public trust.

57. In making unauthorized investments of the public funds it received from the State Treasurer, the Bank has violated the prudent investor rule set forth in Idaho Code § 68-501.

58. In making unauthorized investments of the public funds it received from the State Treasurer, the Bank also has violated the prudent investor rule set forth in Idaho Code § 68-502.

59. In making unauthorized investments of the public funds it received from the State Treasurer, the Bank has violated the duty of loyalty required by Idaho Code § 68-501.

60. As a result of the wrongful investments made by the Bank, there has been a loss in value of the securities and moneys the State Treasurer transferred to the Bank for safekeeping.

61. Accordingly, because the investment of the public funds the Bank received from the State Treasurer violated the standard of care and duty of loyalty as set forth in Idaho law, the Bank must indemnify the state of Idaho for the losses incurred by the state as a result of the wrongful investments.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the State of Idaho and the Office of the State Treasurer respectfully request the Court grant the following relief:

(a) that the Bank audit its records for the term of the Agreement and provide a full accounting regarding all investments the Bank made of monies the Bank received from the State Treasurer;

(b) that the Bank immediately and at no cost or loss to the state of Idaho cause the State Treasurer's account to contain only approved investments;

(c) that the Bank make the Idaho Treasurer whole for all losses arising from investments during the term of the Agreement that are or were not approved investments, with interest at the statutory rate;

(d) that the Bank audit its records for the term of the Agreement and provide a full accounting and refund to the State Treasurer of fees that exceeded those allowed by the Agreement, with interest at the statutory rate;

(e) that the Bank be assessed all reasonable attorneys' fees, witness fees, costs, and expenses, pursuant to Idaho Code §§ 12-117, 12-120, 12-121 and any other applicable law, incurred by the Plaintiffs in bringing this action; and,

(f) for such other and further relief that the Court deems appropriate.

DATED this ____ day of April 2011.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By _____
STEVEN L. OLSEN
DEPUTY ATTORNEY GENERAL