SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ACA FINANCIAL GUARANTY CORP., Plaintiff,	Index No. ________ Date Purchased: January 6, 2011
- against -	**SUMMONS**
GOLDMAN, SACHS & CO., Defendant.	Plaintiff designates New York County as the place of trial. Venue is based on Plaintiff's Principal Place of Business: 600 Fifth Ave., New York, N.Y. 10020

TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the Plaintiff's Attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
January 6, 2011

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

By: Marc E. Kasowitz

Marc E. Kasowitz
Andrew K. Glenn
Trevor J. Welch
1633 Broadway
New York, New York 10019
(212) 506-1700
Attorneys for Plaintiff ACA

TO: Goldman, Sachs & Co.
200 West Street
New York, New York 10282

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ACA FINANCIAL GUARANTY CORP., Plaintiff,		Index No. ____
- against -		**COMPLAINT**
GOLDMAN, SACHS & CO., Defendant.		

Plaintiff ACA FINANCIAL GUARANTY CORPORATION ("ACA"), for its complaint against defendant GOLDMAN, SACHS & CO. ("Goldman Sachs"), alleges as follows:

Preliminary Statement

1. This fraud action arises from the egregious conduct of Goldman Sachs, a prominent investment bank, in conceiving and marketing a structured finance product -- based on a portfolio of investment securities selected largely by its hedge fund client, Paulson & Co., Inc. ("Paulson") -- which was designed to fail so that Paulson could reap huge profits by shorting the portfolio and Goldman Sachs could reap huge fees. Goldman Sachs fraudulently induced ACA, a monoline bond insurance company now operating in run-off, to take a long position in and provide guaranty insurance for that structured finance product. Goldman Sachs did so by deceiving ACA into believing that Paulson was to be the "equity" investor -- *i.e.,* also a long investor -- in that product, a synthetic collateralized debt obligation Goldman Sachs called ABACUS 2007-AC1 ("ABACUS"). In fact, as Goldman Sachs knew, Paulson intended to take an enormous short position in ABACUS.

2. In truth, ABACUS was worthless at the time Goldman Sachs marketed it to ACA. Had Paulson's true role as a short investor selecting the portfolio been known, neither ACA nor anyone else would have taken a long position in it. Because of Goldman Sachs's deceit -- which led ACA to reasonably believe that ABACUS was a valuable product selected by the equity investor with identical objectives -- ACA invested in what was in fact a worthless product.

3. Goldman Sachs engaged in this egregious misconduct notwithstanding that it expressly acknowledged that its participation presented "reputational risk" and after at least one other major investment bank declined to participate for that very reason. Goldman Sachs has since settled SEC civil charges arising out of this fraudulent conduct, agreeing to pay a $550 million fine.

4. ACA, one of the principal victims of the fraudulent scheme, brings this action to recover over $30 million in compensatory damages -- the losses proximately caused by Goldman Sachs's misconduct -- and $90 million in punitive damages.

JURISDICTION AND VENUE

5. This Court has personal jurisdiction over Goldman Sachs pursuant to CPLR § 301, as it is domiciled in New York State.

6. Venue is proper pursuant to CPLR § 503, as one or more parties reside in New York County.

THE PARTIES

7. Plaintiff ACA Financial Guaranty Corporation, a Maryland stock insurance corporation, is a monoline bond insurer headquartered at 600 Fifth Avenue, New York, New York. Pursuant to a restructuring plan approved by the Maryland

Insurance Administration on or about August 8, 2008, ACA operates as a run-off insurance company.

8. Defendant Goldman Sachs, a registered U.S. broker-dealer, is a limited partnership formed under the laws of the State of New York, with its head office in New York, New York.

FACTS

I. Background

A. The nature of the financial instruments at issue

9. In late 2006, Paulson approached Goldman Sachs seeking a way to take a massive short position on subprime residential mortgage backed securities ("RMBS"), which are essentially pools of residential mortgages that have been repackaged into bonds. ABACUS was a synthetic collateralized debt obligation referencing a portfolio of RMBS, which enabled Paulson to do precisely that.

10. A CDO is an asset-backed security based on a portfolio of fixed-income collateral, such as RMBS. To establish a CDO, an investment bank incorporates a special purpose vehicle ("SPV") to which equity investors contribute capital. The SPV raises additional capital by issuing notes. In the most common type of CDO, known as a "cash flow" CDO, the SPV uses the proceeds of the notes to purchase collateral and makes payments on the notes out of the cash flow generated by the collateral. As explained further below, ABACUS was not a cash flow CDO but a "synthetic" CDO.

11. The notes are divided into different classes of risk, known as "tranches." Payments on the notes are made in order of seniority. Thus, notes in the most senior tranche are paid first, while notes in more junior tranches are paid only after all senior

notes have been paid in full. As a result, senior notes have the lowest risk that they will not be paid due to defaults in the underlying portfolio. However, senior notes also bear the lowest interest rate. Conversely, more junior notes have a higher risk that they will not be paid, but they bear a higher interest rate relative to the senior notes.

12. Equity investors in a CDO are in the lowest tranche of the capital structure. They are the first to suffer losses attributable to defaults on the underlying collateral. While equity investors have the highest potential rate of return, they also have the highest risk of loss.

13. CDOs are frequently "wrapped" -- that is, a financial guaranty insurer (such as ACA) issues an insurance policy unconditionally guaranteeing payment of senior notes in or above a specified tranche in the capital structure, known as the "attachment point." Thus, the financial guaranty insurer only suffers losses if the equity and all notes beneath the attachment point are entirely wiped out. Such a financial guarantee policy for the most senior portion of the capital structure is referred to as a "super senior wrap."

14. A credit default swap ("CDS") is an over-the-counter (*i.e.*, not traded on a formal exchange) derivative contract referencing a bond or other financial obligation (the "reference obligation"). The parties to a CDS are referred to as the protection buyer and the protection seller. The protection buyer makes fixed periodic payments, commonly referred to as premiums, to the protection seller. In exchange, the protection seller agrees to make a "contingent payment" to the protection buyer if the reference obligation experiences a defined credit event, such as a default. The contingent payment is typically orders of magnitude larger than the premium payments.

15. When the protection buyer owns the reference obligation, the CDS functions like an insurance policy in the sense that any losses from a default of the reference obligation will be offset by gains on the CDS. In a "naked" CDS, the protection buyer does not own the reference obligation, in which case the protection buyer positions itself to profit from a default of the reference obligation -- similar to insuring another person's residence in the expectation that it will be destroyed by a fire -- because the protection buyer will get a large contingent payment. In either event, the protection seller takes the "long" position -- meaning it takes that position that the reference obligation will perform -- and the protection buyer takes the "short" position -- meaning it takes the position that the reference obligation will default.

16. A synthetic CDO -- such as ABACUS -- combines a CDO and CDSs. The SPV does not purchase a portfolio of collateral but instead acts as the protection seller in one or more CDSs referencing a portfolio of collateral (the "reference portfolio"). Like a cash flow CDO, a synthetic CDO issues notes in tranches, on which it pays principal and interest. However, a synthetic CDO generates cash flow to pay the notes from the premiums it receives as the protection seller, not from income generated by the collateral itself. The SPV invests the proceeds from the sale of the notes in low-risk securities, which it uses to make contingent payments arising from defaults in the reference portfolio. To the extent there is insufficient capital to make any contingent payments, the super senior wrap guarantees payment above a specified attachment point in the capital structure.

17. In sum, a synthetic CDO is a mechanism to profit on a massive scale from the failure of the collateral specified in the reference portfolio. The equity investors, the

noteholders and the financial guarantor of the super senior tranche of the capital structure all take the long position -- meaning they take the position that the reference portfolio will perform -- while the protection buyers take the short position -- meaning they take the position that the reference portfolio will default.

B. The role of investment banks, transaction sponsors and portfolio selection agents in a CDO

18. An investment bank "structures" a CDO by, among other things, establishing the parameters of the capital structure, such as the debt to equity ratio, the size of each tranche, as well as the interest rate on and price of the notes. An investment bank "underwrites" a CDO by, among other things, purchasing and holding the collateral to be in the portfolio, and otherwise providing the initial financial support, before the CDO is launched. An investment bank also "places" (*i.e.,* markets and sells) the notes by, among other things, sponsoring the preparation of a private placement memorandum, preparing marketing materials and making presentations and sales pitches to potential purchasers.

19. A "transaction sponsor" proposes that an investment bank underwrite and sell a CDO structured within parameters specified by the transaction sponsor, including, for example, the nature of the collateral to be included in the underlying portfolio. If the investment bank agrees to structure, underwrite and sell the proposed CDO, the transaction sponsor agrees to invest in the CDO, typically by taking the equity position.

20. A "portfolio selection agent" selects the collateral to be included in the portfolio within the parameters of the CDO established by the investment bank and the

transaction sponsor but has no ongoing responsibilities with respect to the collateral once the CDO is launched.

C. The role of Goldman Sachs, Paulson and ACA in ABACUS

21. Goldman Sachs was the investment bank that structured ABACUS and placed ABACUS notes. Goldman Sachs also underwrote ABACUS by purchasing protection from the SPV through a CDS referencing the portfolio.

22. Paulson was the transaction sponsor of ABACUS. Paulson: paid Goldman Sachs $15 to $20 million to structure, underwrite and sell ABACUS; specified the parameters of the collateral to be included in the reference portfolio; specified the RMBS to be included in the "initial reference portfolio"; proposed additional RMBS to be included in the final reference portfolio; and vetoed specific RMBS that ACA proposed be included in the final reference portfolio.

23. Goldman Sachs deceived ACA that Paulson was the equity investor in ABACUS. In fact, through a separate CDS between Goldman Sachs and Paulson that Goldman Sachs concealed from ACA, Paulson purchased from Goldman Sachs the protection on the reference portfolio that Goldman Sachs had purchased from the SPV, making Paulson the ultimate and undisclosed protection buyer (*i.e.*, the short investor) in ABACUS.

24. ACA Management, LLC, a wholly owned subsidiary of ACA ("ACAM"), was the *pro forma* portfolio selection agent for ABACUS. Although ACAM agreed to and relied upon a portfolio largely selected by Paulson, ACA purchased millions of dollars in ABACUS notes, and wrapped the super senior portion of the capital structure for up to $909 million.

II. Goldman Sachs Orchestrated A Massive "RMBS CDO Short" And Fraudulently Induced ACA To Take A Long Position

A. ABACUS

25. By 2006, Paulson was convinced that the market for subprime RMBS was on the verge of collapse. Unsatisfied with the enormous profits it already expected to make by shorting individual RMBS and other securities linked to residential mortgages, Paulson sought a way to make a billion dollar profit on the failure of a portfolio of RMBS through a single transaction. Paulson did not want to take the short position in just any portfolio of RMBS but in a portfolio of RMBS that it had selected and believed was most likely to default.

26. By fall 2006, Paulson had identified over 100 RMBS that it expected to default in the near future. Paulson then set out to find an investment bank that would structure, underwrite and sell a synthetic CDO with a reference portfolio including the same or similar RMBS and broker Paulson's purchase of protection on that portfolio.

27. At least one investment bank that Paulson approached before approaching Goldman Sachs declined to assist Paulson out of concern for its reputation. Scott Eichel of Bear Stearns, who reportedly met with Paulson several times, has been quoted as saying that Paulson wanted:

> especially ugly mortgages for the CDOs, like a bettor asking a football owner to bench a star quarterback to improve the odds of his wager against the team.

According to Eichel, such a transaction "didn't pass [Bear's] ethics standards; it was a reputation issue, and it didn't pass our moral compass. We didn't think we should sell deals that someone was shorting on the other side."

28. Like Bear Stearns, Goldman Sachs knew that acting as the investment bank for such a transaction posed what Goldman Sachs itself acknowledged was a "reputational risk," but that did not stop it from agreeing the underwrite the transaction and place the notes.

29. By February 7, 2007, Goldman Sachs and Paulson were close to finalizing an engagement letter "for the large RMBS CDO ABACUS trade that will help Paulson short senior tranches of a reference portfolio of Baa2 subprime RMBS risk . . . ." Because ABACUS presented "reputational risk" to Goldman Sachs, Goldman Sachs's Mortgage Capital Committee, which included senior-level management, had to review and approve Goldman Sachs's involvement.

30. A March 12, 2007 memorandum to Goldman Sachs's Mortgage Capital Committee plainly identified Paulson and its economic interest ABACUS, stating that "Goldman [was] effectively working an order for Paulson to buy protection on [*i.e.*, short] specific layers of the [ABACUS] capital structure."

31. The March 12 memorandum also expressly disclosed the CDS between Goldman Sachs and Paulson, pursuant to which -- unknown to ACA and in direct contradiction of Goldman Sachs's representations to ACA that Paulson was the equity investor in ABACUS -- Paulson purchased from Goldman Sachs the protection on the reference portfolio that Goldman Sachs had purchased from the SPV, making Paulson the ultimate and undisclosed protection buyer (*i.e.*, the short investor) in ABACUS. Specifically, the March 12 memorandum explained that:

> Goldman's profits come directly from the purchase of credit protection . . . and *simultaneous re-offering of such protection under the same terms for a pre-negotiated*

> *premium that will be payable by Paulson.* [emphasis supplied]

32. Nevertheless, to "compete more aggressively in the growing market for synthetics written on structured products," the Mortgage Capital Committee authorized Goldman Sachs to structure, underwrite and sell ABACUS. Goldman Sachs also expected to receive an "upfront premium" from Paulson and projected its profit "to be between $15 million and $20 million."

B. <u>Goldman Sachs retained ACA to be the "portfolio selection agent"</u>

33. Goldman Sachs knew that it would be difficult, if not impossible, to place ABACUS notes, or find a financial guaranty insurer to wrap the super senior portion of the capital structure, if it was known that the short investor had played a significant role in selecting the reference portfolio.

34. In January 2007, Goldman Sachs approached ACAM and proposed that it act as the "portfolio selection agent" for a synthetic CDO sponsored by a hedge fund equity investor.

35. On February 15, 2007, Goldman Sachs formally retained ACAM to act as the "portfolio selection agent" for ABACUS.

C. Goldman Sachs deceived ACA that <u>Paulson was the equity investor in ABACUS</u>

36. On January 8, 2007, ACAM met with Paulson at Paulson's offices in New York City, where they discussed the proposed transaction, including, among other things, the RMBS to be included in the reference portfolio. Paulson did not disclose to ACAM that Paulson intended to short the reference portfolio.

37. Goldman Sachs knew that Paulson had not disclosed to ACAM that Paulson intended to short the reference portfolio. In an e-mail regarding the "Paulson meeting" later on January 8, 2007, ACAM told a Goldman Sachs sales representative:

> I have no idea how it went – I wouldn't say it went poorly, not at all, but I think it didn't help that we didn't know exactly how they [Paulson] want to participate in the space. Can you get us some feedback?

Although Goldman Sachs responded to ACAM's January 8, 2007 e-mail, it did not tell ACAM the truth -- that Paulson intended to "participate in the space" by shorting the reference portfolio.

38. Instead, in an e-mail dated January 10, 2007, Goldman Sachs affirmatively misrepresented to ACAM that Paulson would be the equity investor in ABACUS. Specifically, Goldman Sachs misrepresented to ACAM that Paulson would invest in the "[0]% - [9]%" equity tranche of ABACUS's capital structure and had "pre-committed" to take the "first loss" arising from any defaults in the reference portfolio. In fact, as Goldman Sachs knew, Paulson never intended to take any equity in ABACUS but instead intended to short the ABACUS portfolio.

39. Goldman Sachs further misrepresented to ACAM that Paulson and ACAM shared a common economic interest by representing that the "compensation structure aligns everyone's incentives: the Transaction Sponsor [*i.e.*, Paulson], the Portfolio Selection Agent [*i.e.*, ACAM] and Goldman." In fact, as Goldman Sachs knew, the economic interests of Paulson and ACAM in ABACUS were in direct and irreconcilable conflict.

40. Goldman Sachs knew that it had successfully misled ACAM into believing that Paulson was the equity investor in ABACUS. On January 14, 2007, an ACAM Managing Director sent an e-mail to a Goldman Sachs sales representative, in which ACAM specifically referred to Paulson's "equity interest" in ABACUS:

> I can understand Paulson's *equity perspective* but for [ACA] to put our name on something, we have to be sure it enhances our reputation. [emphasis supplied]

Although Goldman Sachs replied to ACAM's e-mail, Goldman Sachs did not correct ACAM's manifest misunderstanding that Paulson was to invest in the equity of ABACUS.

41. On February 12, 2007, ACA's Commitments Committee formally considered ACAM's participation in ABACUS as portfolio selection agent. The memorandum submitted to the Committee memorializes ACAM's belief, based on Goldman Sachs's misrepresentations and omissions that Paulson was the:

> *equity investor* [that] wanted to invest in the 0-9% tranche of a static mezzanine ABS CDO backed 100% by subprime residential mortgage securities. [emphasis supplied]

42. Throughout the course of the transaction, ACAM continued to believe that Paulson was the equity investor in ABACUS. For example, by e-mail dated February 28, 2007 to ACAM's "CDO team," ACAM described ABACUS as "a variation on a theme -- while it is a CDO, *one investor is taking all the equity* and BBB risk (the 0-9% tranche) . . ." (emphasis supplied)

43. Relying on Goldman Sachs's false representation that Paulson was the equity investor in ABACUS -- and thus supposedly shared a common economic interest

with ACA -- ACA's Commitments Committee approved ACAM's participation in ABACUS as the "portfolio selection agent."

44. Had ACA known that Paulson intended to short the reference portfolio, ACA would not have authorized ACAM to act as the "portfolio selection agent," much less permit Paulson to participate in selecting the reference portfolio as alleged below. Among other things, knowledge of Paulson's true economic interests would have raised a red flag and caused senior ACA personnel to decline to approve any participation in the transaction.

D. Paulson participated in selecting the <u>reference portfolio to ensure that it would fail</u>

45. On January 9, 2007, Goldman Sachs sent ACAM an e-mail regarding the "Paulson Portfolio" attaching a list of 123 RMBS to be considered for inclusion in the reference portfolio.

46. On January 22, 2007, ACAM sent an e-mail to Goldman Sachs regarding the "Paulson Portfolio," attaching a "worksheet with 86 subprime mortgage positions that [ACA] would recommend taking exposure to synthetically," including 55 of the those "originally submitted to [ACA] for review."

47. On February 2, 2007, Goldman Sachs, Paulson and ACAM representatives met at ACA's offices to discuss the RMBS to be included in the reference portfolio. While sitting in the meeting, Tourre sent an e-mail to a Goldman Sachs colleague, stating, "I am at this ACA Paulson meeting, this is surreal." What he meant by "surreal" was that, at the meeting, Paulson proposed RMBS, ostensibly in a good faith effort to select those that it considered *least* likely to default, when in fact -- as Goldman Sachs

was acutely aware and ACAM did not know -- Paulson proposed RMBS that it considered *most* likely to default.

48. Later on February 2, 2007, ACAM e-mailed Paulson and Goldman Sachs a list of 82 RMBS to be included in the reference portfolio. The list included 55 of the 123 RMBS originally proposed by Paulson -- more than enough to ensure that Paulson (as the ultimate and undisclosed protection buyer) would receive enormous contingent payments from the long investors in ABACUS including ACA -- and 21 "replacement" RMBS proposed by ACAM.

49. By e-mail dated February 5, 2007, Paulson circulated a "revised portfolio" of 92 RMBS to ACAM and Goldman Sachs. Reinforcing the false impression that Paulson shared ACAM's economic interest in a strong quality reference portfolio, Paulson explained that it had omitted 6 of the 21 replacement RMBS proposed by ACAM because they were "either too seasoned or have some other characteristics that make them *too risky* from Paulson's perspective." (emphasis supplied). Paulson's "revised portfolio" was the final reference portfolio for ABACUS.

E. <u>ACA "wrapped" the super senior tranche of ABACUS</u>

50. On January 27, 2007, Paulson approached ACA "to talk about the super senior" wrap in ABACUS. Because ACAM was the portfolio selection agent for ABACUS, ACA agreed to consider "wrapping" -- providing guarantee insurance against default -- the super senior tranche of ABACUS.

51. In a February 21, 2007 e-mail regarding the "ACA/Paulson post," Tourre later explained to a Goldman Sachs colleague

> My idea to broker the short. Paulson's idea to work with a manager. My idea to discuss this with ACA who could do super senior at the same time . . .

52. On March 30, 2007, ACA's Senior Credit Committee met to review ACA's proposed sale of "protection on [the] 50-100% tranche" of ABACUS (*i.e.*, the "super senior" tranche) for 50 basis points per year.

53. ACA's Senior Credit Committee reviewed and relied on, among other things, the February 12, 2007 memorandum to ACA's Commitments Committee, which -- based on Goldman Sachs's misrepresentations and omissions -- expressly stated that Paulson was the "equity investor" in ABACUS.

54. On or about May 31, 2007, ACA wrapped the super senior tranche of ABACUS's capital structure for up to $909 million for an annual premium of $4.5 million.

55. Had ACA known that Paulson was not the equity investor in ABACUS but instead the short investor, ACA would not have agreed to wrap the super senior tranche of ABACUS.

F. <u>ACA purchased ABACUS notes</u>

56. On or about February 26, 2007, Goldman Sachs produced and approved a marketing presentation for ABACUS notes, commonly referred to as a "flip book." In the flip book, Goldman Sachs represented that the reference portfolio had been selected by a party with an "alignment of economic interest" with the investors. This statement was false.

57. In fact, as Goldman Sachs knew, Paulson had played a significant role in selecting the reference portfolio, had a huge short position in ABACUS and, therefore, had a direct and irreconcilable conflict of interest with any purchaser of ABACUS notes, including ACA.

58. On April 10, 2007, ACAM purchased $42 million of ABACUS notes at face value on behalf of ACA and on behalf of three CDOs for which ACAM was the asset manager.

59. Had ACA known that Paulson was not the equity investor in ABACUS but instead the short investor, ACA would not have purchased ABACUS notes.

III. Goldman Sachs Aggressively Peddled Synthetic RMBS CDOs With Total Indifference To Their Impact On Investors Or The Financial Markets

60. In late 2004, Goldman Sachs established the Structured Products Correlation Trading Desk (the "Desk") at its headquarters in New York City. The Desk acted as the underwriter for series of synthetic CDOs referencing portfolios of RMBS, including ABACUS.

61. Goldman Sachs aggressively protected and expanded the Desk's profitable "franchise" for synthetic CDOs. An internal memorandum dated March 12, 2007 addressed to Goldman Sachs's Mortgage Capital Committee, stated that the "ability to structure and execute complicated transactions to meet multiple client's needs and objectives is key for our franchise," and "[e]xecuting this transaction [ABACUS] and others like it helps position [Goldman Sachs] to compete more aggressively in the growing market for synthetics written on structured products."

62. On April 27, 2010, the United States Senate's Permanent Subcommittee on Investigations (the "Subcommittee") held a hearing "on the role of investment banks in the [United States financial] crisis, using Goldman Sachs as a case study." This hearing and several others constituted the culmination of the Subcommittee's 18-month investigation into the causes and consequences of the United States financial crisis that began in 2007.

63. The Subcommittee made the "following findings of fact," among others:

> (2) **Magnifying risk.** Goldman Sachs magnified the impact of toxic mortgages on financial markets by re-securitizing RMBS securities in [CDOs], referencing them in synthetic CDOs, selling the CDO securities to investors . . .
>
> (5) **Abacus Transaction.** Goldman Sachs . . . did not disclose to the Moody's analyst overseeing the rating of the CDO that a hedge fund client taking a short position in the CDO had helped to select the referenced assets, *and also did not disclose that fact to other investors.* [emphasis supplied]

64. Citing ABACUS as a prominent example, the Subcommittee concluded that Goldman Sachs was one of the "self-interested promoters of risky and complicated financial schemes that helped trigger the [financial] crisis."

65. Goldman Sachs's total disregard for the damage inflicted on the participants in its synthetic RMBS CDOs -- and the United States financial markets themselves -- was starkly illustrated by the contemporaneous e-mails of Fabrice Tourre. As Vice President of the Desk, Tourre was the individual primarily responsible for structuring, underwriting and selling ABACUS on behalf of Goldman Sachs. Goldman

Sachs has since promoted Tourre to Executive Director of Goldman Sachs International in London.

66. On January 23, 2007, Tourre e-mailed a Goldman Sachs colleague (in English translation where applicable):

> More and more leverage in the system, The whole building is about to collapse anytime now. Only potential survivor, the fabulous Fab[rice Tourre]... standing in the middle of all these complex, highly leveraged, exotic trades he created without necessarily understanding all of the implications of those monstrosities!!!

67. On January 29, 2007, Tourre e-mailed a Goldman Sachs colleague (in English translation where applicable):

> When I think that I had some input into the creation of this product . . . which you invent telling yourself: "Well, what if we created a "thing", which has no purpose, which is absolutely conceptual and highly theoretical and which nobody knows how to price?") it sickens the heart to see it shot down in mid-flight...It's a little like Frankenstein turning against his own inventor :).

68. On March 7, 2007, Tourre e-mailed a Goldman Sachs colleague that Daniel Sparks, the former head of Goldman Sachs's mortgage department, believed "that business is totally dead, and the poor little subprime borrowers will not last so long!!!"

IV. <u>ACA's Damages From Goldman Sachs's Misconduct</u>

A. <u>Worthless ABACUS notes</u>

69. By October 24, 2007, 83% of the RMBS in the reference portfolio of ABACUS had been downgraded, while 17% were on negative watch. By January 29, 2008, 99% of the portfolio had been downgraded.

70. As a result, the $192 million in ABACUS notes placed by Goldman Sachs, including those purchased by ACA, are worthless.

71. Pursuant to a CDS between Goldman Sachs and Paulson that Goldman Sachs did not disclose to ACA, most of the $192 million paid for the notes went to Paulson through Goldman Sachs.

72. The true value of the notes had effectively been zero on the day Goldman Sachs sold them, because neither ACA nor any other investor would have purchased them had they known that the short investor in ABACUS had participated, as Paulson had, in selecting the reference portfolio.

73. Accordingly, Goldman Sachs' affirmative misrepresentations, deceptive half-truths and calculated omissions were the direct and proximate cause of ACA's losses from purchasing ABACUS notes.

B. ACA issued Surplus Notes and paid $15 million
<u>to settle its obligations arising from the super senior wrap</u>

74. At the insistence of Goldman Sachs, the ABN AMRO Bank N.V. ("ABN") "intermediated" ACA's super senior wrap, meaning that ABN assumed the risk that ACA would default on the super senior wrap and agreed to be secondarily liable.

75. By early 2008, ACA was in severe economic distress and unable to pay its obligations arising from the super senior wrap in ABACUS.

76. On or about August 7, 2008, ABN unwound the super senior wrap by paying Goldman Sachs $840,909,090.

77. Pursuant to a CDS between Goldman Sachs and Paulson that they did not disclose to ACA, most of the $840,909,090 went to Paulson through Goldman Sachs.

78. On August 8, 2008, ACA and counterparties to its structured finance products reached an agreement on a restructuring plan for ACA. The plan provided for the settlement of ACA's structured finance obligations, including those between ACA and ABN. To settle its obligations relating to the super senior, ACA gave ABN Surplus Notes and approximately $15 million in cash.

79. Had ACA known that Paulson, which played an influential role in selecting the reference portfolio, was in fact the short investor in ABACUS, ACA would not have agreed to wrap the super senior tranche of ABACUS.

80. Accordingly, Goldman Sachs' affirmative misrepresentations, deceptive half-truths and calculated omissions were the direct and proximate cause of ACA's losses from the super senior in ABACUS.

FIRST CAUSE OF ACTION
(Fraudulent Inducement)

81. ACA repeats and re-alleges paragraphs 1 through 80 hereof as though fully set forth herein.

82. Goldman Sachs knowingly or recklessly misrepresented to and concealed from ACA material facts with the intent to deceive ACA into believing that Paulson was the equity investor in ABACUS and to conceal Paulson's short position in ABACUS.

83. Goldman Sachs intended its misrepresentations and omissions to induce ACA to purchase ABACUS notes and to guarantee the super senior tranche of ABACUS's capital structure.

84. ACA reasonably relied on Goldman Sachs's misrepresentations and omissions in deciding to purchase ABACUS notes and to wrap the super senior tranche of ABACUS's capital structure.

85. As set forth above, Goldman Sachs engaged in intentional, willful and malicious misconduct in utter disregard for the severe adverse economic consequences for ACA and other investors in ABACUS, as well as the United States financial markets, evincing a high degree of moral turpitude and wanton dishonesty.

86. As a direct and proximate result of Goldman Sachs's misrepresentations and omissions, ACA has been damaged and is entitled to recover compensatory damages in an amount to be determined at trial of at least $30 million, as well as punitive damages in an amount to be determined at trial of at least $90 million.

SECOND CAUSE OF ACTION
(Fraudulent Concealment)

87. ACA repeats and re-alleges paragraphs 1 through 80 hereof as though fully set forth herein.

88. Goldman Sachs knew and intentionally failed to disclose to ACA that Paulson had a short position in ABACUS with the intent that ACA rely and act upon a false belief that Paulson was the equity investor in ABACUS.

89. Goldman Sachs had a duty to disclose to ACA that Paulson had a short position in ABACUS because Goldman Sachs (i) knew that ACA mistakenly believed that Paulson was the equity investor in ABACUS, and/or (ii) communicated half-truths to ACA and/or otherwise made misleading partial disclosures to ACA concerning Paulson's economic interest in ABACUS.

90. ACA reasonably relied on Goldman Sachs's misrepresentations and omissions in deciding to purchase ABACUS notes and to wrap the super senior tranche of ABACUS's capital structure.

91. As set forth above, Goldman Sachs engaged in intentional, willful and malicious misconduct in utter disregard for the severe adverse economic consequences for ACA and other investors in ABACUS, as well as the United States financial markets, evincing a high degree of moral turpitude and wanton dishonesty.

92. As a direct and proximate result of Goldman Sachs's misrepresentations and omissions, ACA has been damaged and is entitled to recover compensatory damages in an amount to be determined at trial of at least $30 million, as well as punitive damages in an amount to be determined at trial of at least $90 million.

THIRD CAUSE OF ACTION
(Unjust Enrichment)

93. ACA repeats and re-alleges paragraphs 1 through 80 hereof as though fully set forth herein.

94. Goldman Sachs was unjustly enriched at ACA's expense as a result of its misconduct set forth above.

95. As set forth above, the circumstances are such that in equity and good conscience Goldman Sachs should be required to return to ACA all of the money it obtained at ACA's expense in an amount to be determined at trial.

WHEREFORE, ACA is entitled to a judgment against Goldman Sachs awarding ACA:

1. on ACA's first and second causes of action, compensatory damages in an amount to be determined at trial of at least $30 million;

2. on ACA's first and second causes of action, punitive damages in an amount to be determined at trial of at least $90 million;

3. on ACA's third cause of action, the amount by which Goldman Sachs was unjustly enriched to be determined at trial;

4. interest, costs and expenses incurred in this action; and

5. such other and further relief as the Court deems just and proper.

Dated: New York, New York
January 6, 2011

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

By: Marc E. Kasowitz

Marc E. Kasowitz
Andrew K. Glenn
Trevor J. Welch
1633 Broadway
New York, New York 10019
(212) 506-1700
Attorneys for Plaintiff ACA