



April 27, 2016

Madison County Board of Supervisors  
Attn: Trey Baxter, Board President  
Attn: Ronny Lott, Chancery Clerk

Via telefax 601-859-5875

**Re: Notice of Debt Service Insufficiency**  
\$27,770,000 Parkway East Public Improvement District Special Assessment Bonds Series  
2005, dated as of July 1, 2005  
*as supplemented by*  
\$3,000,000 Parkway East Public Improvement District Special Assessment Completion Bonds  
Series 2008, dated as of May 1, 2008

Mr. Baxter and Mr. Lott:

I am writing in connection with the above matter. Attached is my letter of April 12, 2016, as to which we have no record of a response. Also attached is the Order of U.S. District Judge Carlton Reeves dated April 27, 2016 granting the second motion for summary judgment filed by the bond insurer, Assured Guaranty Corporation and finding that Madison County is required to make bond payments on behalf of the Parkway East Public Improvement District.

The Trustee is tasked with directing payment to the bondholders of these bonds on Monday, May 2, 2016. In light of the court ruling today, please advise as to Madison County's position on making payments for the 2005 bond issue under the Contribution Agreement, so that I may know how to proceed with this payment. Time is short, and I would appreciate your prompt response.

Sincerely,

Susan R. Tsimortos  
Senior Vice President & Trust Officer

Attachments



April 12, 2016

Madison County Board of Supervisors  
Attn: Ronny Lott, Chancery Clerk

Via telefax 601-859-0337

Parkway East Public Improvement District  
Attn: Bob Montgomery, Board Attorney

Via telefax 601-859-3622

**Re: Notice of Debt Service Insufficiency**  
\$27,770,000 Parkway East Public Improvement District Special Assessment Bonds Series  
2005, dated as of July 1, 2005  
*as supplemented by*  
\$3,000,000 Parkway East Public Improvement District Special Assessment Completion Bonds  
Series 2008, dated as of May 1, 2008

Mr. Lott and Mr. Montgomery:

This notice of Debt Service Insufficiency is made pursuant to Section 6.03 of the Series 2005 Trust Indenture. The Trustee hereby states that the amounts in the Interest Account, Principal Account and Sinking Fund Account are insufficient to provide for the debt service due on these bonds on May 1, 2016. The Trustee further states that the amount available in the Revenue Fund to be transferred to the Interest Account, Principal Account and Sinking Fund Account is not sufficient to provide for the May 1, 2016 debt service.

The Debt Service Insufficiency for the May 1, 2016 payment date is \$1,050,928.61. The attachment to this letter gives the details of this determination and allocates that shortfall between the Series 2005 and Series 2008A bonds. The Indenture requires this money be on deposit with us 5 days before May 1, 2016.

Sincerely,

  
Susan R. Tsimortos  
Senior Vice President & Trust Officer

Enclosure

**Parkway East Series 2005**

**May 1, 2016 debt service**

\$ 1,010,000.00 principal  
 \$ 467,115.63 interest  
 \$ 1,477,115.63 Series 2005 total debt service due 5-1-16

\$ (426,187.02) Revenue fd allocation  
 \$ - debt service fund balance  
 \$ - from DS Reserve fund  
 \$ (3,903.57) from Bd Ins account  
 \$ 1,050,928.61 *Series 2005 shortfall (without using Bond Ins on deposit)*

**Parkway East Series 2008A**

**November 1, 2015 debt service**

\$ - principal  
 \$ 51,397.50 Interest  
 \$ 51,397.50 Series 2008 due 5-1-16

\$ 54,628.87 rev fd allocation  
 \$ 0.02 debt service fund balance  
 \$ 54,628.89 available for 2008 debt service  
 \$ - *Series 2008 shortfall*

\$ 579,464.97 revenue fd balance, 4-12-16  
 \$ (98,649.08) trustee fees and expenses\*  
 \$ 480,815.89 available revenue fd balance

\$ 1,050,928.61 *Total Shortfall, 2005 & 2008*

\$ 3,500.28 *Acq. & Con Fd balance*

**Allocation of Revenue Fund balance**

**Bonds Outstanding:**

\$ 20,830,000.00 Series 2005 0.886383 \*\*  
 \$ 2,670,000.00 Series 2008A 0.113617  
 \$ 23,500,000.00

**Max Annual DS for Series 2005 Bonds only**

\$ 1,948,350.00 2029 debt service  
 \$ - 4-4-16 DSR Fd balance (market value)  
 \$ 1,948,350.00 DSR Fund shortfall at 4-4-16

*\*The trustee has noted in its records an additional principal amount of \$686,096 that was paid by Assured Guaranty for the May 1, 2015 interest payment date on policy #FMLI-0101-05208-MS*

*\*\*The trustee's fees & expenses include legal fees accrued since 3-2015, trustee default administration fees from 4/6/2015 through 11/30/2015 & trustee administrative fees for 2016*



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**ASSURED GUARANTY CORP.**

**PLAINTIFF**

**V.**

**CAUSE NO. 3:13-CV-686-CWR-LRA**

**MADISON COUNTY, MISSISSIPPI;  
PARKWAY EAST PUBLIC  
IMPROVEMENT DISTRICT**

**DEFENDANTS**

**ORDER**

Before the Court is the plaintiff's second motion for summary judgment. Having reviewed the motion and the defendant's response, the Court finds that the motion is due to be granted.

The facts, legal standard, and law applicable to this case have been recited in an earlier ruling and need not be repeated here. *See Radian Asset Assurance Inc. v. Madison Cnty., Miss.*, No. 3:13-CV-686, 2015 WL 1780190 (S.D. Miss. Apr. 20, 2015). At heart, the parties disagree about how long Madison County agreed to make bond payments on behalf of the Parkway East Public Improvement District, when the District became unable to make payments on its own. The plaintiff says the answer is "forever," while the County suggests the answer is "two years."

At the end of its earlier Order, the Court had speculated that discovery into the parties' contractual negotiations might shed some light on that question. The current briefs reveal that to be irrelevant. Both sides agree that the contract is not ambiguous and, therefore, that the analysis is limited to the four corners of the contract.

The Court has reviewed the contract again. It sees no reason to deviate from the analysis contained in its prior Order.

The two-year deadline for the District “to reimburse the County is independent of the duration of the County’s duty to make bond payments.” *Id.* at \*4. The contract contains no time limit on the County’s duty to make bond payments. *Id.* “Nothing precluded the County from seeking to” add such a limit, or perhaps a ceiling of the money it would agree to pay. *Id.* “But such a limitation is not present.” *Id.*

In other words, the plain language of the contract requires the County to forever make bond payments on the District’s behalf, as long as the bonds remain outstanding. The alleged “two-year” cap the County has repeatedly sought on its payments comes from a different provision of the contract.<sup>1</sup> And the idea that the County’s bond payments were to be temporary, a “line of credit,” or a “bridge loan,” while certainly plausible, was never incorporated into the four corners of the document.

The plaintiff’s motion for summary judgment on this issue is (again) granted. It follows that the County is required to reimburse the plaintiff and other contributors for bond payments made during the period of the County’s refusal. It is undisputed that that reimbursement totals \$3,160,616.70.<sup>2</sup> If the parties cannot agree on the amount of interest owed, they may approach the Magistrate Judge or conduct additional motion practice.

**SO ORDERED**, this the 27th day of April, 2016.

s/ Carlton W. Reeves  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> The County made these same arguments in the earlier round of summary judgment. Its brief during this round is akin to a motion for reconsideration.

<sup>2</sup> This renders moot the plaintiff’s alternative requests for declaratory relief.