

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation as Receiver for First Chicago Bank & Trust, Chicago, Illinois ("FDIC-R"); Defendants Lewis & Gellen LLP and Robert D. Leavitt (collectively the "Settling Defendants"); and Navigators Underwriting Agency, Ltd., syndicate for Underwriters at Lloyd's of London ("Insurer") (individually, the FDIC-R, the Settling Defendants, and the Insurer may be referred to herein as "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

Prior to July 8, 2011, First Chicago Bank & Trust ("Bank") was a depository institution organized and existing under the laws of Illinois;

On July 8, 2011, the Illinois Department of Financial and Professional Regulation closed the Bank and, pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets.

Among the assets to which the FDIC-R succeeded were all of the Bank's claims, demands, and causes of action against its former outside counsel arising from the performance, nonperformance, and manner of performance of their respective functions, duties and acts as outside counsel to the Bank, including the claims which are the subject of this Agreement;

On May 10, 2011, the Bank filed a complaint for money damages in the Circuit Court of Cook County, Illinois against the Settling Defendants. On August 25, 2011, the FDIC-R was substituted as plaintiff for the Bank and, on that same date, the case was removed to United States District Court for the Northern District of Illinois, styled as *Federal Deposit Insurance Corporation as Receiver for First Chicago Bank & Trust v. Lewis & Gellen LLP, et al.*, Case No. 11-cv-5902 ("Action"). The Settling Defendants have denied liability in the Action.

The Insurer issued a professional liability insurance policy numbered [b4] to the Settling Defendants for the period from March 1, 2009 to March 1, 2010 ("Policy"), which insured the Settling Defendants according to the terms, provisions, and conditions of the Policy. The Settling Defendants asserted claims for coverage under the Policy.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of further litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned Parties agree, each with the other, as follows:

SECTION I: Payment to FDIC-R

A.o As an essential covenant and condition to this Agreement, the Insurer, on behalf of the Settling Defendants, agrees to pay the FDIC-R the sum of FOUR MILLION THREE HUNDRED THOUSAND DOLLARS (U.S. \$4,300,000.00) (the "Settlement Payment") on or before thirty (30) calendar days following the date the FDIC-R executes this Agreement (the "Payment Date").

B.o The Insurer shall deliver the Settlement Payment to the FDIC-R by direct wire transfer into the account designated below:

BANK: Federal Home Loan Bank of New York

ROUTING #: [b4]

FOR CREDIT TO: FDIC National Liquidation Account

ACCOUNT #: [b4]

OBI: FIN [b4] First Chicago Bank & Trust, Chicago, Illinois; Contact: Robert L. Wainess, 703-516-5285; Professional Liability [b4] DIF Fund; Asset No. [b4]

In the event that the Settlement Payment is not delivered to the FDIC-R (or its counsel) by the Payment Date, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the day following the Payment Date until the date of payment. However, if said Settlement

Payment is not delivered to the FDIC-R by the Payment Date, as a result of the FDIC-R's failure to execute this Agreement, no interest shall accrue until five days after the FDIC-R delivers a signed Agreement to Settling Defendants and the Insurer.

C.e If the FDIC-R does not receive the Settlement Payment in full on or before the Payment Date, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:

1.e Extend the period of time for the payment of the Settlement Payment, including interest accruing from the Payment Date, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(3); or

2.e Enforce this Agreement, in which event the Settling Defendants and Insurer agree to jurisdiction in United States District Court for the Northern District of Illinois and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or

3.e Terminate the Agreement, move to vacate any dismissal order, to which the Settling Defendants and Insurer agree to consent, and re-institute an action on the FDIC-R's claims. The Settling Defendants and Insurer further agree to waive any defense based on any statute of limitations or statute of repose that would bar any of the FDIC-R's claims and waive all objections, defenses, claims or counterclaims, and covenant and agree not to assert any objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed and agree that their waiver of any defense based on any statute of limitations or statute of repose survives any termination of this Agreement resulting from the failure to pay the Settlement Payment; and/or

4.e Seek any other relief available to it in law or equity.e

Any extension of time under Section I.C.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.C.2 through I.C.4 at any time prior to receipt of the Settlement Payment (including all accrued interest) in full.

SECTION II: Stipulation and Dismissal

Within ten business days after the latter of (1) full execution of this Agreement by all of the Parties, and (2) receipt of the Settlement Payment, plus any accrued interest, the Parties shall jointly file a stipulation of dismissal with prejudice in the Action, with each party to bear its/his own costs and fees.

SECTION III: Releases

A. The FDIC-R's Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section III.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges:

1. The Settling Defendants and their respective heirs, executors, trustees, administrators, representatives, attorneys, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as outside counsel to the Bank, including without limitation the causes of action alleged in the Action; and

2.s The Insurer, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, attorneys, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Policy with respect to the Bank. As part of this release of the Insurer, the FDIC-R agrees that any interest it may have under the Policy with respect to the Bank is extinguished.

B.s The Settling Defendants' Release,s

Effective simultaneously with the releases granted in Section III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, attorneys, successors, and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, agents, representatives, attorneys,

successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as outside counsel to the Bank, including without limitation the causes of action alleged in the Action.

C.s The Insurer's Release.s

Effective simultaneously with the releases granted in Section III.A. above, the Insurer, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, agents, representatives, attorneys, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Policy.

D. Exceptions from Releases by FDIC-R.s

1.s Notwithstanding any other provision of this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action:

a.s Against the Settling Defendants or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank; and

b.s Against any person or entity not expressly released by the FDIC-Rs in this Agreement.

2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative

enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

3.d Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. § 6. In addition, the FDIC-R specifically reserves the right to seek court-ordered restitution pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 et. seq., if appropriate.

SECTION IV: Representations and Acknowledgements

A.d Authorized Signatories. All of the undersigned persons represent and warrant that they are Parties hereto or are authorized to sign this Agreement on behalf of the respective Party, and that they have the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective heirs, executors, trustees, administrators, representatives, partners, successors and assigns.

B.d Advice of Counsel. Each Party hereby acknowledges that he, she, or it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that Party by his, her, or its counsel.

SECTION V: Reasonable Cooperation

A.d The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing, or causing their agents and attorneys to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to conclude the Action and to otherwise perform the terms of this Agreement.

SECTION VI: Other Matters

A.a No Admission of Liability. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims and defenses, that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party except to enforce its terms.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Parties subscribed thereto upon the execution by all Parties to this Agreement.

C.a Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of Illinois.

D.a Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and by email, to the following:

If to the FDIC-R:

Steven K. White, Esq.
Stinson Leonard Street LLP
1775 Pennsylvania Avenue NW, Suite 800
Washington, DC 20006
Telephone: (202) 728-3024
Facsimile: (202) 572-9963
steven.white@stinsonleonard.com

Robert L. Wainess, Esq.
Counsel, Professional Liability Unit
FDIC Legal Division
3501 Fairfax Drive, B7034
Arlington, VA 22226
Telephone: (703) 516-5285
Facsimile: (703) 516-5445
rwainess@fdic.gov

If to the Settling Defendants:

Michael Flaherty, Esq.
Flaherty & Youngerman, P.C.
20 S. Clark St., Suite 1050
Chicago, IL 60603
Telephone: (312) 782-4700
Facsimile: (312) 782-4725
mflaherty@fylegal.com

Gerald Haberkorn, Esq.
Lowis & Gellen LLP
200 West Adams Street, Suite 1900
Chicago, Illinois 60606
Telephone: (312) 456-7957
Facsimile: (312) 364-1003
geraldh@lowis-gellen.com

If to the Insurer:

Patrick Donohue, Esq.
Mendes & Mount LLP
750 Seventh Avenue
New York, NY 10019
Telephone: (212) 261-8000
Facsimile: (212) 261-8750
patrick.donohue@mendes.com

E.e Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s), or other representative(s).

F. Titles and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

G.e No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the Federal Deposit Insurance

Corporation's applicable policies, procedures, and other legal requirements.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

**FEDERAL DEPOSIT INSURANCE
CORPORATION as Receiver for First
Chicago Bank & Trust**

Date: 11/6/2014

By: **b6**

Title: Counsel, FDIC Legal Division

Print Name: Robert L. Wainess

LOV

b6

Date: _____

By: _____

Title: Barker

Print Name: Donald Harker

ROBERT D. LEAVITT

b6

Date: 10/25/14

**NAVIGATORS UNDERWRITING.
AGENCY, LTD.**

Date: _____

By: _____

Title: Counsel

Print Name: Patrick Donohue

Corporation's applicable policies, procedures, and other legal requirements.

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by each of them or their duly authorized representatives on the dates hereinafter subscribed.

**FEDERAL DEPOSIT INSURANCE
CORPORATION as Receiver for First
Chicago Bank & Trust**

Date: _____

By: _____

Title: Counsel, FDIC Legal Division

Print Name: Robert L. Wainess

LOWIS & GELLEN LLP

Date: _____

By: _____

Title: _____

Print Name: _____

ROBERT D. LEAVITT

Date: _____

**NAVIGATORS UNDERWRITING
AGENCY**

Date: 11/2/14

By: _____

Title: Counsel

Print Name: Patrick Donohue