

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 Midwest Bank and Trust Company ("FDIC-R"), and James J. Giancola, Jerome J. Fritz a/k/a Jay Fritz, Angelo A. DiPaolo, Barry I. Forrester, Robert J. Genetski, Gerald F. Hartley, Margery Livingston as Personal Representative of the Estate of Homer J. Livingston, Jr., Joseph R. Rizza, Egidio V. Silveri a/k/a E.V. Silveri, Leon Wolin, Thomas A. Caravello, Sheldon Bernstein, Thomas H. Hackett, Mary M. Henthorn, Kelly J. O'Keeffe, Brogan M. Ptacin, John S. Spear, and William H. Stoll (collectively the "Settling Defendants") (individually, the FDIC-R and the Settling Defendants may be referred to herein as "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

Prior to May 14, 2010, Midwest Bank and Trust Company ("Bank") was a depository institution organized and existing under the laws of Illinois;

On May 14, 2010, 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 the Bank's former directors, officers, and employees arising from the performance, nonperformance, and manner of performance of their respective functions, duties and acts as directors, officers, and employees of the Bank;

On April 30, 2013, the FDIC-R filed a complaint for money damages against the Settling Defendants, each of whom served at various times as a director and/or officer of the Bank. Those claims for damages are now pending in the United States District Court for the Northern District of Illinois in *FDIC as Receiver for Midwest Bank and Trust Company v. Giancola, et al.*,

Case No. 1:13-cv-03230 (N.D. Ill.) ("D&O Action"). The Settling Defendants have denied liability in the D&O Action.

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. As an essential covenant and condition to this Agreement, on or before thirty (30) calendar days following the date the Parties execute this Agreement and FDIC-R's provision of all necessary payment instructions (whichever comes later), the Settling Defendants shall cause payment to the FDIC-R of the sum of TWENTY-SIX MILLION FIVE HUNDRED THOUSAND DOLLARS (\$26,500,000.00) ("the Settlement Payment").

B. The Settlement Payment shall be delivered to FDIC-R by direct wire transfer into an account designated by FDIC-R by notice to the attorneys for the Settling Defendants. In the event that the Settlement Payment is not delivered to FDIC-R by the date determined by Subsection A above, interest shall accrue on all unpaid amounts at the rate calculated in accordance with 26 U.S.C. § 6621(a)(2) from the date determined by Subsection A above until the date of payment. FDIC-R shall provide all necessary payment instructions no later than five calendar days after full execution of this Agreement.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection A above, 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. Extend the period of time for the Settlement Payment, including interest accruing from the date determined by subsection A above, through the

date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(2); or

2. Enforce this Agreement, in which event the Settling Defendants 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. Terminate the Agreement, move to vacate any dismissal order to which the Settling Defendants agree to consent, return any settlement payments previously made, and proceed with or re-institute the D&O Action. The Settling Defendants further agree to waive any defense based on any statute of limitations defense that did not exist prior to the execution of this Agreement and would bar any of the FDIC-R's claims and waive all objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed 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/or
4. Seek any other relief available to it in law or equity.

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 Settlement Payment (including all accrued interest) in full.

SECTION II: Stipulation and Dismissal

Within eight (8) business days after the latter of (1) full execution of this Agreement by all of the Parties, and (2) receipt of the Settlement Payment in full, plus any accrued interest, the FDIC-R shall file a stipulation of dismissal with prejudice, executed by the attorneys for all Parties hereto, in the form attached hereto as Exhibit A, in the D&O Action.

SECTION III: Releases

A. The FDIC-R's Releases

Upon receipt of the Settlement Payment in full and except as provided in Section III.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Settling Defendants and their respective heirs, executors, trustees, administrators, representatives, insurers, 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 officers, employees, and/or directors of the Bank, including without limitation the causes of action alleged in the D&O Action.

B. The Settling Defendants' Release

Effective simultaneously with the release granted in Section III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, insurers, successors, and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, 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 officers, employees, and/or directors of the Bank, including without limitation the causes of action alleged in the D&O Action.

C. Exceptions from Releases by FDIC-R

1. 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. 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. Against any person or entity not expressly released by the FDIC-R 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 diminishing 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. 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: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that Settling Defendants are or were shareholders of the Bank or its holding company and by virtue thereof are or may be entitled to a dividend, payment, or other distribution upon resolution of the receivership of the Bank or proceeds in any litigation that has been or could be brought against the Federal Deposit Insurance Corporation in any capacity or against the United States based on or arising out of, in whole or in part, the closing of the Bank,

or any alleged acts or omissions by the Federal Deposit Insurance Corporation in any capacity, the United States government, or any agency or department of the United States government in connection with the Bank, its conservatorship, or receivership, Settling Defendants hereby knowingly assign to the FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, other distributions, and proceeds.

SECTION V: Representations and Acknowledgements

A. **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, successors and assigns.

B. **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 or her counsel.

SECTION VI: Reasonable Cooperation

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 D&O Action and to otherwise perform the terms of this Agreement.

SECTION VII: Other Matters

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. **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. **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:

Robert L. Wainess
Federal Deposit Insurance Corporation
3501 Fairfax Drive, B7034
Arlington, VA 22226-3500

(b)(6)

With a copy to:

Steven K. White
Matthew C. Smilowitz
Stinson Leonard Street LLP
1775 Pennsylvania Avenue, NW, Suite 800
Washington, D.C. 20006

(b)(6)

If to the Settling Defendants:

Jeffrey R. Tone
Nancy A. Temple
John M. George
Katten & Temple LLP
542 South Dearborn Street, 14th Floor
Chicago, IL 60605

(b)(6)

(attorneys for Defendants Giancola, DiPaolo, Forrester, Genetski, Hartley, Margery Livingston as Personal Representative of the Estate of Homer J. Livingston, Jr., Rizza, Silveri, Wolin, Caravello, Bernstein, Hackett, Henthorn, Spear, and Stoll)

and

W. Scott Porterfield
Alison R. Leff
Barack Ferrazzano Kirschbaum & Nagelberg LLP
200 West Madison Street, Suite 3900
Chicago, IL 60606

(b)(6)

[Redacted]

(attorneys for Defendant Fritz)

and

Robert J. Ambrose
Joseph W. Barber
Howard and Howard PLLC
200 South Michigan Avenue, Suite 1100
Chicago, IL 60604

(b)(6)

[Redacted]

(attorneys for Defendants O'Keeffe and Ptacin)

E. **Entire Agreement and Amendments.** This Agreement, including the annexed Stipulation, constitutes the entire agreement between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements. 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. **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 MIDWEST
BANK AND TRUST COMPANY

Date: 7/1/2016

BY:

(b)(6)

TITLE: Counsel

Date: _____

JAMES J. GIANCOLA

Date: _____

JEROME J. FRITZ

Date: _____

ANGELO A. DIPAOLO

Date: _____

BARRY I. FORRESTER

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 MIDWEST
BANK AND TRUST COMPANY

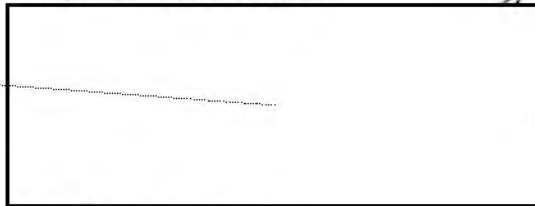
Date: _____

BY: _____

TITLE: _____

Date: 6/1/16

JAMES J. GIANCOLA



Date: _____

JEROME J. FRITZ

Date: _____

ANGELO A. DIPAOLO

Date: _____

BARRY I. FORRESTER

Date: _____

RECEIVED

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 MIDWEST
BANK AND TRUST COMPANY

Date: _____

BY: _____

TITLE: _____

Date: _____

JAMES J. GIANCOLA

Date: 6-6-16

JEROME J. FRITZ

(b)(6)

[Redacted Signature Box]

Date: _____

ANGELO A. DIPAOLO

Date: _____

BARRY I. FORRESTER

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 MIDWEST
BANK AND TRUST COMPANY

Date: _____

BY: _____

TITLE: _____

Date: _____

JAMES J. GIANCOLA

Date: _____

JEROME J. FRITZ

Date: 6-30-16-

ANGELO A. DIPAOLO

(b)(6)

Date: _____

BARRY I. FORRESTER

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 MIDWEST
BANK AND TRUST COMPANY

Date: _____

BY: _____

TITLE: _____

Date: _____

JAMES J. GIANCOLA

Date: _____

JEROME J. FRITZ

Date: _____

ANGELO A. DIPAOLO

Date: 6-3-2016

BARRY I. FORRESTER

Date: _____

(b)(6)

Date: 6/21/16

ROBERT J. GENETSKI



Date: _____

GERALD F. HARTLEY

Date: _____

MARGERY LIVINGSTON AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HOMER J. LIVINGSTON, JR.

BY: _____

TITLE: _____

Date: _____

JOSEPH R. RIZZA

Date: _____

EGIDIO V. SILVERI

Date: _____

LEON WOLIN

(b)(6)

Date: _____

ROBERT J. GENETSKI

Date: 6/1/16

GERALD F. HARTLEY

(b)(6)



Date: _____

MARGERY LIVINGSTON AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
HOMER J. LIVINGSTON, JR.

BY: _____

TITLE: _____

Date: _____

JOSEPH R. RIZZA

Date: _____

EGIDIO V. SILVERI

Date: _____

LEON WOLIN

Date: _____

ROBERT J. GENETSKI

Date: _____

GERALD F. HARTLEY

Date: 6/22/16

MARGERY LIVINGSTON AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
HOMER J. LIVINGSTON, JR.

BY:

[Redacted Signature]

(b)(6)

TITLE: Representing Homer Livingston

Date: _____

JOSEPH R. RIZZA

Date: _____

EGIDIO V. SILVERI

Date: _____

LEON WOLIN

Date: _____

ROBERT J. GENETSKI

Date: _____

GERALD F. HARTLEY

Date: _____

MARGERY LIVINGSTON AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
HOMER J. LIVINGSTON, JR.

BY: _____

TITLE: _____

Date: 6/7/16

JOSEPH R. RIZZA



(b)(6)

Date: _____

EGIDIO V. SILVERI

Date: _____

LEON WOLIN

Date: _____

ROBERT J. GENETSKI

Date: _____

GERALD F. HARTLEY

Date: _____

MARGERY LIVINGSTON AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
HOMER J. LIVINGSTON, JR.

BY: _____

TITLE: _____

Date: _____

JOSEPH R. RIZZA

Date: 6/2/16

EGIDIO V. SILVERI

(b)(6)



Date: _____

LEON WOLIN

Date: _____

ROBERT J. GENETSKI

Date: _____

GERALD F. HARTLEY

Date: _____

**MARGERY LIVINGSTON AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
HOMER J. LIVINGSTON, JR.**

BY: _____

TITLE: _____

Date: _____

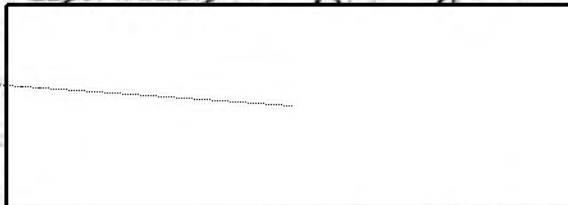
JOSEPH R. RIZZA

Date: _____

EGIDIO V. SILVERI

Date: 5/31/16

LEON WOLIN

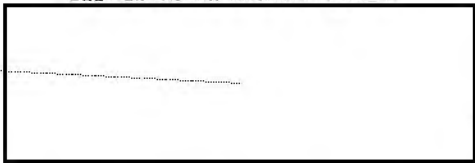


(b)(6)

(b)(6)

Date: June 2, 2016

THOMAS A. CARAVELLO



Date: _____

SHELDON BERNSTEIN

Date: _____

THOMAS H. HACKETT

Date: _____

MARY M. HENTHORN

Date: _____

KELLY J. O'KEEFE

Date: _____

BROGAN M. PTACIN

Date: _____

THOMAS A. CARAVELLO

Date: 6/6/16

SHELDON BERNSTEIN



Date: _____

THOMAS H. HACKETT

Date: _____

MARY M. HENTHORN

Date: _____

KELLY J. O'KEEFFE

Date: _____

BROGAN M. PTACIN

(b)(6)

Date: _____

THOMAS A. CARAVELLO

Date: _____

SHELDON BERNSTEIN

Date: 6/1/16

THOMAS H. HACKETT



Date: _____

MARY M. HENTHORN

Date: _____

KELLY J. O'KEEFFE

Date: _____

BROGAN M. PTACIN

Date: _____

MARY M. HENTHORN

(b)(6)

Date: _____

THOMAS A. CARAVELLO

Date: _____

SHELDON BERNSTEIN

Date: _____

THOMAS H. HACKETT

Date: June 1, 2016

MARY M. HENTHORN



Date: _____

KELLY J. O'KEEFFE

Date: _____

BROGAN M. PTACIN

(b)(6)

Date: _____

THOMAS A. CARAVELLO

Date: _____

SHELDON BERNSTEIN

Date: _____

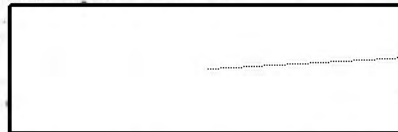
THOMAS H. HACKETT

Date: _____

MARY M. HENTHORN

Date: 6/13/2016

KELLY J. O'KEEFE



(b)(6)

Date: 6/13/2016

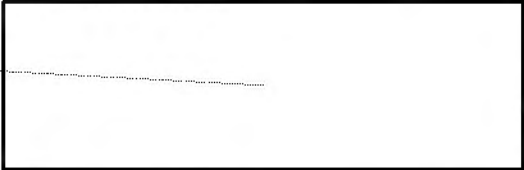
BROGAN M. PTACIN



(b)(6)

Date: 6/1/16

JOHN S. SPEARS



Date: _____

WILLIAM H. STOLL

(b)(6)

Date: _____

JOHN S. SPEAR

Date: _____

06/01/2016

WILLIAM H. STOLL



(b)(6)

EXHIBIT "A"

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL DEPOSIT INSURANCE)	
CORPORATION AS RECEIVER FOR)	
MIDWEST BANK AND TRUST)	
COMPANY,)	
)	Case No. 1:13-cv-03230
Plaintiff,)	
)	Judge Joan B. Gottschall
v.)	
)	Magistrate Judge Sidney I. Schenkier
JAMES J. GIANCOLA, et al.,)	
)	
Defendants.)	

STIPULATION TO VOLUNTARY DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, and in accordance with their settlement agreement, it is hereby stipulated and agreed by and among Plaintiff Federal Deposit Insurance Corporation as Receiver for Midwest Bank and Trust Company ("FDIC-R") and Defendants James J. Giancola, Jerome J. Fritz a/k/a Jay Fritz, Angelo A. Dipaolo, Barry I. Forrester, Robert J. Genetski, Gerald F. Hartley, Margery Livingston as Personal Representative of the Estate of Homer J. Livingston, Jr., Joseph R. Rizza, Egidio V. Silveri a/k/a E.V. Silveri, Leon Wolin, Thomas A. Caravello, Sheldon Bernstein, Thomas H. Hackett, Mary M. Henthorn, Kelly J. O'Keeffe, Brogan M. Ptacin, John S. Spear, and William H. Stoll ("Defendants"), by their respective attorneys, that the above-captioned case shall be dismissed in its entirety, with prejudice, and with each party to bear its/his/her own costs.

Dated: _____, 2016

Stipulation prepared and agreed to by:

Steven K. White, Bar No. 367371
Matthew C. Smilowitz, Bar No. 501077
Stinson Leonard Street LLP
1775 Pennsylvania Avenue, NW, Suite 800
Washington, D.C. 20006
Telephone: (202) 785-9100
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(b)(6)
(b)(6)

Kristin L. Farnen, Bar No. 30620
Stinson Leonard Street LLP
1201 Walnut, Suite 2900
Kansas City, MO 64106
Telephone: (816) 842-8600
Facsimile: (816) 691-3495

(b)(6)

Robert L. Wainess, Bar No. 121137
Counsel, Professional Liability Unit
FDIC Legal Division
3501 Fairfax Drive, B7034
Arlington, VA 22226
Telephone: (703) 516-5285
Facsimile: (703) 516-5445

(b)(6)
(b)(6)

Paul Carroll (ARDC #6196314)
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Chicago, IL 60601
Telephone: (312) 899-1657
Facsimile: (312) 236-3241

(b)(6)

*Counsel for Plaintiff Federal Deposit
Insurance Corporation as Receiver for
Midwest Bank and Trust Company*

(b)(6)

Jeffrey R. Tone (#3122524)
Nancy A. Temple (#6205448)
John M. George (#6189020)
Katten & Temple LLP
542 S. Dearborn Street, 14th Floor
Chicago, IL 60605
Telephone: (312) 663-4456
Facsimile: (312) 663-0900

*Counsel for Defendants Giancola, DiPaolo,
Forrester, Genetski, Hartley, Margery Livingston as
Personal Representative of the Estate of Homer J.
Livingston, Jr., Rizza, Silveri, Wolin, Caravello,
Bernstein, Hackett, Henthorn, Spear, and Stoll*

Robert J. Ambrose (#6238966)
Joseph W. Barber (#6295828)
Howard and Howard
200 South Michigan Ave., Suite 1100
Chicago, IL 60604
Telephone: (312) 372-4000
Facsimile: (312) 939-5617

Counsel for Defendants O'Keefe and Ptacin

W. Scott Porterfield (#3125110)
Alison R. Leff (#6296422)
Barack Ferrazzano Kirschbaum & Nagelberg LLP
200 West Madison Street, Suite 3900
Chicago, IL 60606
Telephone: (312) 984-3202
Facsimile: (312) 984-3150

Counsel for Defendant Fritz