

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made by and between the Federal Deposit Insurance Corporation as Receiver for Wheatland Bank ("FDIC-R") and OneBeacon Midwest Insurance Company ("OneBeacon") (individually, the FDIC-R and OneBeacon may be referred to herein as "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

Prior to April 23, 2010, Wheatland Bank ("Bank") was a depository institution organized and existing under the laws of the State of Illinois.

On April 23, 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 actions against insurance carriers, including OneBeacon, that issued any Financial Institution Bonds to the Bank.

OneBeacon issued a Financial Institution Bond to the Bank, Bond number (b)(4)

(b)(4) for the period December 14, 2007, to December 14, 2010 ("Bond"), which insured the Bank according to the terms, provisions and conditions of the Bond.

On June 10, 2011, the FDIC-R filed suit against OneBeacon to recover on a claim (the "Claim") that had been submitted under the Bond. This lawsuit is now pending in the United States District Court for the Northern District of Illinois in *FDIC as Receiver for Wheatland Bank v. OneBeacon Midwest Insurance Company*, Case No. 1:11-cv-03972 (N.D. Ill.) (the

“Bond Action”). OneBeacon has denied liability in the Bond 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 as follows:

SECTION I: Payment to FDIC-R

A. As an essential covenant and condition of this Agreement, OneBeacon agrees to pay the FDIC-R the sum of ONE MILLION EIGHT HUNDRED AND TWENTY FIVE THOUSAND DOLLARS AND ZERO CENTS (\$1,825,000.00) (the “Settlement Payment”). The Settlement Payment shall be made to the FDIC-R within fourteen (14) calendar days after both Parties sign the Agreement and the FDIC-R delivers its signed Agreement to OneBeacon.

B. OneBeacon shall deliver the Settlement Payment to the FDIC-R by direct wire transfer into an account designated by the FDIC-R by notice to the attorneys for OneBeacon, which has been provided. In the event that the Settlement Payment is not delivered to the FDIC-R (or its counsel) by the date set forth in Section I.A. above, interest shall accrue on all unpaid amounts at the rate of 5 percent per annum from the date set forth in Section I.A. above until the date of payment. However, if said Settlement Payment is not delivered to the FDIC-R by the date set forth in Section I.A., as a result of the FDIC-R’s failure to execute this Agreement, no interest shall accrue until five (5) days after the FDIC-R executes the Agreement.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by Section I.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 Section I. A. above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(3); or;

2. Enforce this Agreement, in which event OneBeacon agrees 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 OneBeacon agrees to consent, and reinstitute any action on the FDIC-R's claims. OneBeacon further agrees to waive any defense based on any statute of limitations 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/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 of Dismissal

Within three business days after receipt of the Settlement Payment in full, plus any accrued interest, the FDIC-R shall file in the Bond Action a Stipulation of Dismissal with Prejudice in the form attached hereto as Exhibit A.

SECTION III: Releases

A. The FDIC-R's Release.

1. Upon receipt of the Settlement Payment in full as provided in Section I, and except as provided in Section III.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges OneBeacon, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, 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 Claim, OneBeacon's adjusting of the Claim, the Bond, or the Bond Action. As part of this release of OneBeacon, the FDIC-R agrees that any interest it has or may have under the Bond is extinguished.

B. OneBeacon's Release.

Effective simultaneously with the release granted in Section III.A. above, OneBeacon, 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 Claim, the Bond or the Bond Action.

C. Waiver of Subrogation by OneBeacon.

OneBeacon agrees to and hereby does irrevocably waive any rights of subrogation it may have relating to the Bond, including, without limitation, those arising from OneBeacon's payment of the Settlement Payment, or involving the underlying properties, assets or claims involved in any claim under the Bond and all rights to recovery thereof ("Rights of Recovery"). OneBeacon agrees that the FDIC-R may retain, sell, transfer, or otherwise dispose of such Rights of Recovery as it sees fit, in its sole discretion, and retain the proceeds (if any)

thereof and any such present or future retention or disposition of such Rights of Recovery shall not serve to modify, alter, increase, decrease, or otherwise affect the consideration due under this Agreement or the monetary amount being paid by OneBeacon.

D. Exceptions from Release 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 OneBeacon 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 the 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 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. 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. Authorized Signatories. Each of the undersigned persons represents and warrants that he or she is authorized to sign this Agreement on behalf of the respective Party on behalf of whom he or she is signing, and that he or she has 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, administrators, representatives, successors and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that 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 its counsel.

SECTION V: 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 Bond Action and to otherwise perform the terms of this Agreement.

SECTION VI: Other Matters

A. Ownership of Bond Claim. The FDIC-R represents and warrants that, pursuant to 12 U.S.C. §1821(d), the FDIC-R is the current lawful owner of, and that it has not assigned, sold, or transferred any interest in, the Bond, and all matters being released herein.

B. No Additional Actions. OneBeacon hereby agrees that it will not bring, file, or otherwise pursue any claims against any party in relation to the Bond, including any claims for indemnity or subrogation.

C. 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 them regarding any claim or defense, and that this Agreement shall not be offered or received in evidence by or against any Party except to enforce its terms.

D. 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. A copy of this Agreement shall be treated as an original.

E. 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.

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

If to the FDIC-R:

Gregory K. Conway
Counsel, Federal Deposit Insurance Corporation
3501 Fairfax Drive, # B-7054
Arlington, Virginia 22226

(b)(6)

and

Antony S. Burt
Lawrence H. Heftman
Schiff Hardin LLP
233 South Wacker Drive
Chicago, Illinois 60606

(b)(6) [Redacted]
(b)(6) [Redacted]

If to OneBeacon:

Michael Keeley
Toni S. Reed
Strasburger & Price, LLP
901 Main Street, Suite 4400
Dallas, TX 75202-3794

(b)(6) [Redacted]
(b)(6) [Redacted]

and

Michael P. Tone, Esq.
Wilson, Elser, Moskowitz, Edelman & Dickler, LLP
55 West Monroe Street, Suite 3800
Chicago, IL 60603

(b)(6) [Redacted]

G. 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).

II. 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.

I. No Confidentiality. All 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, and as OneBeacon deems appropriate.

In witness whereof, the Parties hereto have caused this Agreement to be executed by each of them by their duly authorized representative on the date hereinafter subscribed.

**FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR
WHEATLAND BANK**

Date: 01-28-2015

BY: _____

A rectangular box with a black border, used to redact the signature of the representative. A faint line is visible across the box, suggesting a signature was present but has been obscured.

(b)(6)

TITLE: Counsel

PRINT NAME: Gregory K. Conway

ONEBEACON MIDWEST INSURANCE COMPANY

(b)(6)

Date: 1/28/15

BY:

TITLE: AVP - FS Clerk

PRINT NAME: Daniel J. Ryan

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

FEDERAL DEPOSIT INSURANCE)
CORPORATION AS RECEIVER FOR)
WHEATLAND BANK,)

Plaintiff,)

v.)

ONEBEACON MIDWEST INSURANCE)
COMPANY)

Defendant.)

Case No. 1:11-cv-03972
Hon. Thomas M. Durkin

**STIPULATION TO DISMISS WITH PREJUDICE PLAINTIFF'S CLAIMS
AGAINST ONEBEACON MIDWEST INSURANCE COMPANY**

Plaintiff Federal Deposit Insurance Corporation as Receiver for Wheatland Bank ("FDIC-Receiver"), and Defendant OneBeacon Midwest Insurance Company ("One Beacon"), hereby file this stipulation to dismiss with prejudice all of the FDIC-Receiver's claims against OneBeacon in this action, each party to bear its own costs.

Dated: February __, 2015

Respectfully submitted,

/s/ Michael Keeley

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*Attorneys for Plaintiff Federal Deposit Insurance
Corporation, as Receiver for Wheatland Bank*

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on February , 2015, he caused the foregoing document to be electronically filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, using the Court's CM/ECF system, which shall send notification of such filing to all counsel of record.

/s/ Lawrence H. Heftman
Lawrence H. Heftman

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