

SETTLEMENT AND RELEASE AGREEMENT

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

The Federal Deposit Insurance Corporation, as Receiver for USA Bank (“FDIC-R”), and Patrick DeAngelis, Fred A. DeCaro, Jr., Fred DeCaro, III, John Filice, Ronald Gentile, Lawrence Jones, Rocco Magnotta, Frank Mioli, William Zeidenberg, and Richard Zeisler (collectively the “Settling Individuals”), and XL Specialty Insurance Company (“Insurer”) (individually, the FDIC-R, the Settling Individuals, and the Insurer may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to July 9, 2010, USA Bank (“Bank”) was a depository institution organized and existing under the laws of New York.

On July 9, 2010, the New York State Banking Department 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 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.

The FDIC-R has provided notice of circumstances which could give rise to claims (“Claims”) against the Settling Individuals, each of whom served at various times as a director

and/or officer of the Bank. The Settling Individuals deny liability for the Claims.

Insurer issued a directors' and officers' liability policy numbered (the ~~_____~~ (b)(4) "Policy"), which insured the directors and officers of the Bank according to the terms, provisions, and conditions of the Policy. The Settling Individuals asserted claims for coverage under the Policy. Insurer has reserved its rights to deny coverage under the Policy for Claims asserted by FDIC-R against the Settling Individuals.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of 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 the FDIC-R

A. As an essential covenant and condition to this Agreement, on or before thirty (30) calendar days following the date the FDIC-R executes this Agreement, the Settling Individuals agree to pay the FDIC-R the sum of One Hundred Eighty-Seven Thousand Five Hundred Dollars (\$187,500), and Insurer agrees to pay the FDIC-R the sum of Three Million Two Hundred Eighty-Seven Thousand Five Hundred Dollars (\$3,287,500), for a total settlement amount of Three Million Four Hundred Seventy-Five Thousand Dollars (\$3,475,000) ("the Settlement Payment"). It is understood and agreed by all Parties that the Settling Individuals, on the one hand, and Insurer, on the other, shall be severally (and not jointly and severally) liable for their respective settlement payments.

B. The Settling Individuals and Insurer shall deliver their respective shares of the Settlement Payment to the FDIC-R by direct wire transfer into an account designated by FDIC-R

by notice to the attorneys for the Settling Individuals and Insurer or by certified or cashier's check drawn upon a depository institution acceptable to FDIC-R.

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)(3); or

2. Enforce this Agreement, in which event the Insurer and the Settling Individuals agree to jurisdiction in United States District Court for the Southern District of New York 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, and institute an action on the FDIC-R's Claims; 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: Releases

A. The FDIC-R's Releases.

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

1. the Settling Individuals and any other former directors and officers of the Bank (these other former directors and officers are hereinafter referred to as the "Covered Persons") and each of their respective heirs, executors, administrators, 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, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of their respective functions, duties and actions as officers and directors of the Bank. This release shall be null and void as to any Covered Person if such Covered Person asserts any claim against the FDIC-R.

2. Insurer, 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 Policy. The FDIC-R agrees that any interest it may have under the Policy is extinguished.

B. The Settling Individuals' Releases.

Effective simultaneously with the release granted in Section II.A. above, the Settling Individuals, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, attorneys, 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 Individuals' respective functions, duties and actions as officers and/or directors of the Bank or that arise from or relate to the Policy.

C. The Insurer's Release.

Effective simultaneously with the releases granted in Section II.A. above, 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 the 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 Individuals 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 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 Victim and Witness Protection Act, 18 U.S.C. § 3663, et. seq., if appropriate.

SECTION III: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that Settling Individuals 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 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, the FDIC-R, the United States government, or any agency or department of the United States government in connection with the Bank, its conservatorship, or receivership, Settling Individuals hereby knowingly assign to the FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, or other distributions, or proceeds.

SECTION IV: 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, administrators, representatives, successors and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that he, she, or it has: (1) 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; or (2) voluntarily elected not to consult with or obtain the advice of counsel prior to executing this Agreement.

C. Financial Disclosure Representation. Each Settling Defendant has submitted financial information to the FDIC-R (e.g., a signed Financial Disclosure Form (FDIC form 7600/01)) and herein affirms that his/her financial information is true and accurate as of the date of this agreement. Each Settling Defendant expressly acknowledges that, in determining to settle the claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by the Settling Individuals. The FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information. If a Settling Defendant has intentionally or negligently failed to disclose any material interest, legal, equitable, or beneficial, in any asset, that Settling Defendant agrees to cooperate fully with the FDIC-R to provide updated financial information and, upon entry of a court order, to pay to the FDIC-R the lesser of (1) the value of the Settling Defendant's undisclosed material interest in such asset(s); or (2) the amount of unpaid damages alleged against that Settling Defendant.

D. No Assignment. The Parties hereby represent and warrant that they have not transferred, assigned, released, or otherwise compromised any rights or claims released herein.

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 perform the terms of this Agreement.

SECTION VI: Termination

In the event the FDIC-R exercises its right to terminate this Agreement as provided herein, then, for the purposes of any statute of limitations or other time-based defense to any of the claims of the FDIC-R, the Parties shall be deemed to have reverted to their respective status as of 5:00 p.m. Eastern Time of the date this Agreement was signed by the FDIC-R.

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 New York.

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:

Christine P. Hsu
FDIC
3501 Fairfax Drive, Room VS-B-7054
Arlington, VA 22226

(b)(6)

and

William T. Mandia
Stradley Ronon Stevens & Young, LLP
2005 Market Street, Suite 2600
Philadelphia, PA 19103

(b)(6)

If to the Settling Individuals:

For Fred DeCaro, Jr., Fred DeCaro, III and Rocco Magnotta:

Christian G. Vergonis
Jones Day
51 Louisiana Avenue, N.W
Washington, D.C. 20001-2113

(b)(6)

For John Filice:

Charles Palella
Montgomery McCracken Walker & Rhoads LLP
437 Madison Avenue, 29th Floor
New York, NY 10022

For Ronald Gentile:

Joseph N. Paykin
Hinman, Howard & Kattell LLP
185 Madison Avenue, 7th Floor
New York, NY 10016

For Richard Zeisler:

Charles Needle
Zeldes, Needle & Cooper
1000 Lafayette Boulevard, 5th Floor
Bridgeport, CT 06604

For William Zeidenberg:

Kenneth Votre
Votre & Associates, P.C.
8 Frontage Road
East Haven, CT 06512

For Patrick DeAngelis:

Patrick DeAngelis
200 Old Huckleberry Road
Wilton, CT 06897

For Lawrence Jones:

Lawrence Jones
27 Longacre Drive
Huntington, NY 11743

For Frank Mioli:

Frank Mioli
461 North Barry Avenue
Mamaroneck, NY 10543

If to Insurer:

John Duchelle
Troutman Sanders LLP
401 9th Street, N. W. Suite 1000
Washington, D.C. 20004-2134

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.

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 USA Bank

(b)(6) _____
By:

Christine P. Hsu

Its: Counsel

Date: Dec. 19, 2013

PATRICK DeANGELIS, an individual

Dated:

FRED DeCARO, JR., an individual

Dated:

FRED DeCARO, III, an individual

Dated:

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FEDERAL DEPOSIT INSURANCE CORPORATION
As Receiver for USA Bank

By: _____

Christine P. Hsu

Its: Counsel

Date: _____

PATRICK DeANGELIS, an individual

(b)(6)

Dated: 12/17/13

FRED DeCARO, JR., an individual

FRED DeCARO, III, an individual

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FEDERAL DEPOSIT INSURANCE CORPORATION
As Receiver for USA Bank

By: _____

Christine P. Hsu

Its: Counsel

Date: _____

PATRICK DeANGELIS, an individual

Dated:

FRED DeCARO, III, an individual

(b)(6)

Dated: 12/11/11

FRED DeCARO, III, an individual

Dated:

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FEDERAL DEPOSIT INSURANCE CORPORATION
As Receiver for USA Bank

By: _____

Christine P. Hsu

Its: Counsel

Date: _____

PATRICK DeANGELIS, an individual

Dated:

FRED DeCARO, JR., an individual

Dated:

FRED DeCARO, III, an individual

(b)(6)

Dated: 12/17/13

(b)(6)

JOHN FILICE, an individual

Dated: 12-16-13

RONALD GENTILE, an individual

Dated:

LAWRENCE JONES, an individual

Dated:

ROCCO MAGNOTTA, an individual

Dated:

FRANK MIOLI, an individual

Dated:

WILLIAM ZEIDENBERG, an individual

Dated:

JOHN FILICE, an individual

Dated:

RONALD GENTILE, an individual

(b)(6)

Dated: 12-18-13

LAWRENCE JONES, an individual

Dated:

ROCCO MAGNOTTA, an individual

Dated:

FRANK MIOLI, an individual

Dated:

WILLIAM ZEIDENBERG, an individual

Dated:

JOHN FILICE, an individual

Dated:

RONALD GENTILE, an individual

Dated:

LAWRENCE JONES, an individual

(b)(6)



Dated: 12.17.13

ROCCO MAGNOTTA, an individual

Dated:

FRANK MIOLI, an individual

Dated:

WILLIAM ZEIDENBERG, an individual

Dated:

JOHN FILICE, an individual

Dated:

RONALD GENTILE, an individual

Dated:

LAWRENCE JONES, an individual

Dated:

ROCCO MAGNOTTA, an individual

(b)(6)

Dated:

FRANK MIOLI, an individual

Dated:

WILLIAM ZEIDENBERG, an individual

Dated

JOHN FILICE, an individual

Dated:

RONALD GENTILE, an individual

Dated:

LAWRENCE JONES, an individual

Dated:

ROCCO MAGNOTTA, an individual

Dated:

FRANK MIOLI, an individual

(b)(6)

Dated: 12-16-2013

WILLIAM ZEIDENBERG, an individual

Dated:

JOHN FILICE, an individual

Dated:

RONALD GENTILE, an individual

Dated:

LAWRENCE JONES, an individual

Dated:

ROCCO MAGNOTTA, an individual

Dated:

FRANK MIOLI, an individual

Dated:

WILLIAM ZEIDENBERG, an individual

(b)(6)

12/16/13

Dated:

RICHARD ZEISLER, an individual

(b)(6)



12/18/13

Dated:

XL SPECIALTY INSURANCE COMPANY

By: _____

Print Name: _____

Title: _____

Dated: _____

RICHARD ZEISLER, an individual

Dated: _____

XL SPECIALTY INSURANCE COMPANY

By: _____

Print Name: _____

Title: _____

Dated: _____

(b)(6) [Redacted Signature]

Lisa Graham

Claims Counsel

12/17/13