

**SETTLEMENT, RELEASE AND ASSIGNMENT**

This Settlement, Release and Assignment (the "Agreement") is made as of this 14th day of December 2010, by and between The Federal Deposit Insurance Corporation in any of its capacities, including but not limited to, its capacity as receiver for the Bank of Elmwood, Racine, Wisconsin ("FDIC") and St. Paul Mercury Insurance Company ("St. Paul").

**WHEREAS:**

A. Prior to October 23, 2009, Bank of Elmwood (the "Bank") was a state-chartered, federally-insured bank located in Racine, Wisconsin;

B. St. Paul issued Financial Institution Bond number  (the (b)(4) "Bond") that insured the Bank, among other entities, effective September 1, 2007.

C. On October 23, 2009, the Bank was closed by the Wisconsin Department of Financial Institutions, and the FDIC was appointed as Receiver;

D. The FDIC, in its capacity as Receiver and successor of the Bank, has been assigned all rights, titles, powers and privileges of the Bank in accordance with 12 U.S.C. § 1821(d), including with respect to the Bank's assets, claims, demands, and causes of action arising in connection with the Bond;

E. On June 2, 2010, the FDIC submitted a Proof of Loss to St. Paul pursuant to Section 5 of the Bond for a claim arising under Insuring Clause (K) for loss "resulting directly from the fraudulent use of credit, debit, charge, access, convenience, identification or other cards in gaining access to Automated Mechanical Devices, whether such cards were issued or purport to have been issued, by the Insured or by anyone other than the Insured." The June 2, 2010 Proof of Loss concerned a computer security breach

occurring at Heartland Payment Systems, a New Jersey-based card payment processor, that resulted in loss to the Bank, as detailed by the FDIC, as Receiver for Bank of Elmwood, in the Proof of Loss dated June 2, 2010, and all additional documentation and information provided in support of that Proof of Loss (the "Claim");

F. Insuring Clause (K) of the Bond has a single loss limit of liability of \$100,000, with a single deductible of \$5,000;

G. Upon discussion, the parties have agreed that the Claim submitted is for loss incurred in the amount of \$90,412.15 before application of the deductible;

H. The undersigned parties wish to resolve amicably the Claim and avoid the uncertainty, trouble and expense of litigation, and deem it in their best interests to enter into this Agreement to confirm the settlement, release and assignment of the Claim.

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

1. Payment. St. Paul agrees to pay the FDIC the sum of \$85,412.15 (the "Payment"). The Payment shall be by check to "FDIC as Receiver for Bank of Elmwood (FIN 10132)." Payment shall be sent by overnight mail, on or before December 29, 2010, to the below contact:

John Wolfsmith  
Counsel  
Federal Deposit Insurance Corporation  
200 N. Martingale, Suite 200  
Schaumburg, Illinois 60173

In the event that the Payment is not delivered to the FDIC by December 29, interest shall accrue on all unpaid amounts at the rate of 10% per annum until the date of payment.

2. Release of St. Paul by FDIC. Effective upon delivery of the Payment and any accrued interest, the FDIC, for itself and its successors and assigns, does hereby release and forever discharge St. Paul, its employees, officers, directors, representatives, agents, attorneys, predecessors, parent, affiliates, subsidiaries, 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 FDIC in connection with the Claim.

3. Release of FDIC by St. Paul. Effective simultaneously with the release granted in Paragraph 2, St. Paul, for itself and its successors and assigns, does hereby release and forever discharge the FDIC and its employees, officers, directors, representatives, agents, attorneys, predecessors, 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 St. Paul in connection with the Claim.

4. Assignment of the Claim. In further consideration of the Payment, the FDIC, as Receiver for Bank of Elmwood, does hereby transfer, assign and set over to St. Paul all of the FDIC's claims, rights, demands and causes of action against all persons, firms or corporations whomsoever arising out of or in any way connected with the Claim up to the amount of the Payment (the "Assigned Claim"). St. Paul may pursue the Assigned Claim in its own name. The FDIC affirms its understanding and agreement to be bound by the Bond provisions relating to recovery and subrogation including, without limitation, the order of recovery provisions, and to cooperate with St. Paul in all matters pertaining to the Assigned Claim.

5. Execution in Counterparts. This Agreement may be executed in counterparts by the undersigned parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all parties hereto; 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 the Agreement.

6. Binding Effect. The parties represent and warrant that each of them is a party hereto or is authorized to sign this Agreement on behalf of the respective party, and that each of them has the full power and authority to bind such party to each and every provision of this Agreement. This Agreement shall be valid and binding upon and inure to the benefit of the undersigned parties and their respective heirs, executors, administrators, representatives, successors and assigns and when duly executed shall be valid and binding upon the parties in accordance with its terms.

7. 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 Wisconsin.

8. Reasonable Cooperation. The undersigned 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.

9. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned parties

concerning the matters set forth herein. This Agreement may not be amended or modified except by another written instrument signed by the party or parties to be bound thereby, or by their respective authorized attorneys or other representatives.

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

**FEDERAL DEPOSIT INSURANCE CORPORATION**

(b)(6) Date: 12/14/2010

BY:

TITLE: Counsel

Print Name: John Wolfsmith

**ST. PAUL MERCURY INSURANCE COMPANY**

Date: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

Print Name: \_\_\_\_\_

concerning the matters set forth herein. This Agreement may not be amended or modified except by another written instrument signed by the party or parties to be bound thereby, or by their respective authorized attorneys or other representatives.

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

**FEDERAL DEPOSIT INSURANCE CORPORATION**

(b)(6)

Date: 12/14/2010

BY:

TITLE: Counsel

Print Name: John Wolfsmith

**ST. PAUL MERCURY INSURANCE COMPANY**

(b)(6)

Date: 12-14-10

BY:

TITLE: Client Executive

Print Name: Carole Sauer