

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 8th day of December, 2011, by, between, and among the following undersigned parties:

Federal Deposit Insurance Corporation, as receiver of Hamilton Bank, N.A. ("FDIC");
and

St. Paul Mercury Insurance Company ("St. Paul") (individually, the FDIC and St. Paul may be referred to herein as "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

Prior to January 11, 2002, Hamilton Bank, N.A. ("Bank") was a depository institution organized and existing under the laws of the State of Florida.

On January 11, 2002, the Bank was closed by the Office of the Comptroller of the Currency and pursuant to 12 U.S.C. § 1821(c), the FDIC was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC as receiver succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets.

On March 9, 2004, the FDIC submitted a Proof of Loss to St. Paul for its claim under Hamilton's Financial Institution Bond No. (the "Bond"). The FDIC also provided a Supplemental Proof of Loss to St. Paul on May 1, 2007. St. Paul denied coverage.

(b)(4)

On May 19, 2008, St. Paul filed a declaratory judgment action against the FDIC seeking a declaration of its rights and obligations under the Bond. On June 28, 2008, the FDIC filed a counterclaim against St. Paul in the same action. That action is now pending in the United States District Court for the Southern District of Miami, Docket No. 1:08-cv-21192-CIV-Garber (the "Coverage Action").

On July 7, 2009, St. Paul filed a third party complaint in the Coverage Action against Ronald A. Lacayo ("Lacayo") (the "Third Party Claim"). The Third Party Claim is still pending.

On March 30, 2010, the District Court granted St. Paul's Motion for Partial Summary Judgment declaring there is no coverage under the Bond for the FDIC's "Russian Swaps" claim.

On July 8, 2011, the FDIC filed a Notice of Appeal from the District Court's Partial Summary Judgment ruling, which appeal is currently pending in the United States Court of Appeals for the Eleventh Circuit, No. 11-13133-HH A (the "Appeal").

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, 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

A. The Recitals above are incorporated herein by reference.

B. As an essential covenant and condition to this Agreement, St. Paul agrees to pay to the FDIC the sum of eleven million U.S. dollars (\$11,000,000.00) (the "Settlement Funds").

C. No later than ten business days following the execution of a signed original, or signed originals in counterpart, of this Agreement by the undersigned Parties to this Agreement (the "Payment Due Date"), the Settlement Funds shall be delivered to the FDIC by direct wire transfer into the following designated account:

(b)(2),(b)(4)

BANK: Federal Home Loan Bank of

(b)(2),(b)(4)

ROUTING #:

FOR CREDIT TO: FDIC National Liquidation Account

(b)(2),(b)(4)

ACCOUNT #:

(b)(2)

OBI: 4c asset number Hamilton Bank, Miami, FL, Contact: Roy Ahrens, 703-562-2420; Professional Liability lawsuit (37100); DIF Fund.

D. In the event that the Settlement Funds are not delivered in full to the FDIC by the Payment Due Date, interest shall accrue on all unpaid amounts at the rate of 5% per annum from such date until the date of payment in full.

E. In addition, and without waiving any other rights that the FDIC may have, in the event that all Settlement Funds are not received by the FDIC on or before 30 days following the Payment Due Date, then the FDIC, in its sole discretion, shall have the right at any time prior to receipt of all Settlement Funds (including all accrued interest) to declare this Agreement null and void, shall have the right to extend this Agreement for any period of time until it receives all Settlement Funds (including all accrued interest), and/or shall have the right to enforce this Agreement against St. Paul, which agrees to jurisdiction in Federal District Court in Miami, Florida and further agrees to pay all the FDIC's reasonable attorneys' fees expended in enforcing St. Paul's obligation to pay the Settlement Funds or any part of them. Any decision by the FDIC to extend the terms of this Agreement or to accept a portion of the Settlement Funds shall not prejudice the FDIC's rights to declare this Agreement null and void at any time prior to receipt of all Settlement Funds (including all accrued interest) or to enforce the terms of this Settlement Agreement; provided however, that in the event the FDIC declares this Agreement null and void, the FDIC will return all amounts paid to it under this Agreement by St. Paul. The Parties further agree to the jurisdiction of the Federal District Court in Miami to resolve any other disputes related to the enforcement of the terms of this Agreement (other than with respect to the matters addressed in Section IV C, below).

SECTION II: Stipulation and Dismissal

Upon execution of this Agreement by each of the undersigned Parties, and receipt of the Settlement Funds, plus any accrued interest, St. Paul and the FDIC shall dismiss the Coverage Action and the Appeal. The undersigned Parties agree to enter a stipulation providing that the dismissals described in the sentence set forth above shall be with prejudice, with each party to bear its own costs as these were originally incurred. In the event the Court dismisses the Coverage Action subject to reinstatement prior to payment to the FDIC of the Settlement Funds, together with any accrued interest, in full, the Parties agree that any applicable statutes of limitations will be tolled as of the date of the initial filing in the Coverage Action until all payments are received in full or suit is filed by the FDIC either to enforce the terms of this Settlement Agreement or to reinstate the Coverage Action. If this Agreement does not become effective or is voided for any reason, then the Parties will revert to their respective litigation positions as if this Agreement never existed.

SECTION III: Releases

A. Release of St. Paul by FDIC.

Effective upon payment by St. Paul of the Settlement Funds, together with any accrued interest, the FDIC, for itself and its successors and assigns, hereby releases and discharges St. Paul, 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, statutory or non-contractual, that the FDIC alleged or could have alleged against St. Paul in the Coverage Action, or which the FDIC could have alleged against St. Paul thereafter, that arise from or relate to any coverage claims asserted by the FDIC under the Bond, St. Paul's adjusting

of such claims, or otherwise arise from, relate to or concern the Bond and agrees that any interest it may have under the Bond is extinguished.

B. Release of FDIC by St. Paul.

Effective simultaneously with the release granted in Paragraph III.A. above, St. Paul, 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 and its 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 Bank, or that arise from or relate to the Bond including but not limited to any rights of subrogation.

C. Express Reservations From Releases.

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

a. against any 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 the FDIC, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by the FDIC as successor in interest to the Bank or any person or entity other than the Bank;

b. against any person or entity not expressly released in this Agreement; and

c. which are not expressly released in Section III.B. above.

2. Notwithstanding any other provision, this Agreement does not waive any claims or actions that could be brought by any agency or instrumentality of the United States government other than the FDIC.

SECTION IV: Additional Covenants

A. No Additional Third Party Actions. St. Paul hereby agrees that it will not bring, file or otherwise pursue any additional claims against any party, in relation to the Bond, including any claims for indemnity or subrogation, except that, notwithstanding the foregoing, St. Paul retains all rights to continue to pursue its currently pending Third Party Claim against Ronald A. Lacayo. Nothing herein shall require or obligate St. Paul to continue to pursue the Third Party Claim.

B. Confidential Materials. For so long as the Third Party Claim remains pending before the United States District Court for the Southern District of Miami, St. Paul may retain possession of any and all documents produced to it by the FDIC in connection with the Bond; however, St. Paul shall use such documents solely in connection with the currently pending Third Party Claim. Further, any documents produced by the FDIC shall continue to be governed by the terms of the Agreed Protective Order entered on December 29, 2008 in the Coverage Action (the "Protective Order"). Upon the conclusion of the Third Party Claim, St. Paul shall destroy all Confidential Information, as defined in the Protective Order, pursuant to paragraph 7 of the Protective Order. Provided, however, St. Paul may maintain such documents that it has in its possession that it is required to maintain under its document retention policies, which documents it will designate as confidential and store subject to notification that they are confidential.

C. Cooperation in Relation to the Third Party Claim. At no time will St. Paul issue to the FDIC any subpoenas or other formal requests for documents, information or testimony in connection with the Third Party Claim, except that St. Paul may, if otherwise appropriate under applicable law, issue subpoenas for trial testimony to the FDIC in connection with a trial of the Third Party Claim. Notwithstanding the foregoing, in relation to the Third Party Claim, St. Paul may make reasonable written requests for documents to the FDIC and, in return, the FDIC will provide reasonable cooperation. If the Parties disagree regarding the reasonableness of requests issued by St. Paul to the FDIC or the FDIC's compliance therewith, the Parties shall endeavor to confer, orally or in writing, in a good faith effort to resolve by agreement the issues in dispute. If after conferring the Parties are unable to reach a resolution, the parties shall seek resolution from Judge Layn R. Phillips (Ret.), who shall have the authority to make a final binding decision regarding the reasonableness of St. Paul's requests and the sufficiency and reasonableness of the FDIC's cooperation.

SECTION V: Representations and Acknowledgments

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 a disputed claim, and that this Agreement is not an admission or evidence of liability by either of them regarding any claim nor is it intended to be, nor shall it be construed as, an interpretation of the Bond or any other insurance policy. This Agreement shall not be used as evidence, or in any other manner, before any court or any proceeding to create, prove, or interpret the obligations or alleged obligations of St. Paul under the Bond to any party or non-party to this Agreement. Except as provided above, the Parties may use the Agreement in any other proceeding to the

extent deemed relevant and admissible by a court and may use this Agreement in any manner as may be necessary to enforce the terms of the Agreement.

B. Cooperative Drafting. The Parties to this Agreement have participated jointly in the negotiation and preparation of this Agreement. Accordingly, the Parties agree not to assert that any other party is the sole or principal drafter of the Agreement. The Parties also agree not to assert that any canon of construction applicable to sole or principal drafters should be applied against any other party.

C. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties named herein 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 party or parties subscribed thereto upon the execution by all parties to this Agreement

D. Binding Effect. Each of the undersigned persons represents and warrants that they are a party 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.

E. No Confidentiality. The Parties acknowledge and agree that this Agreement is a public document that will need to be disclosed pursuant to 12 U.S.C. § 1821(s) and other applicable laws and regulations.

Construction. The descriptive headings of this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement.

G. Notices. If any Party is required to give notice to another Party under this Agreement, such notice shall be (i) delivered personally, (ii) sent by Federal Express (or another recognized overnight or two-day courier) requesting next or second business day delivery, (iii) sent by facsimile, or (iv) sent by United States certified or registered mail, postage prepaid, return receipt requested. Any such notice shall be deemed given when (i) so delivered personally, (ii) if sent by express courier, one or two business days (as the case may be) following delivery to the courier, (iii) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient, or, if not, then on the next business day, or (iv) if sent by certified or registered mail, three business days after the date of deposit in the United States mail to the respective address of the Party as set forth below, with copies sent to the persons indicated below:

If to the FDIC:

Barry S. Rosen
Reed Smith LLP
10 S. Wacker Dr., 40th Floor
Chicago, IL 60606
Telephone:
Facsimile:

(b)(4),(b)(6)

Roy Ahrens
Counsel
Federal Deposit Insurance Corporation
3501 North Fairfax Drive, VS-B-7058
Arlington, VA 22226
Telephone: (703) 562-2420

If to St. Paul:

Patricia H. Thompson
Carlton Fields
Miami Tower
100 S.E. Second Street, Suite 4200
Miami, Florida 33131-2114
Telephone:
Facsimile:

(b)(4),(b)(6)

or to such other address as the recipient party has specified by prior written notice to the sending party (or in the case of counsel, to such other readily ascertainable business address as such

may hereafter maintain). If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above shall control.

F. 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 Florida.

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. 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 attorney(s) or other representative(s).

H. 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.

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.

(b)(6)

Date: December 8, 2011

FEDERAL DEPOSIT INSURANCE CORPORATION as receiver of Hamilton Bank, N.A.

(b)(6) [Redacted]
Title Counsel
Print Name Ray ARENS

ST. PAUL MERCURY INSURANCE COMPANY

Date: December _____, 2011

By: _____
Title: _____
Print Name: _____

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