

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 BankUnited, F.S.B. (“FDIC-R”), and RSUI Indemnity Company (“RSUI”), (individually, the FDIC-R and RSUI, may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to May 21, 2009, BankUnited, F.S.B. (“Bank”) was a depository institution organized and existing under the laws of the United States;

On May 21, 2009 the Office of Thrift Supervision 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 and its assets.

Among the rights and interests to which the FDIC-R succeeded were all 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.

RSUI issued an excess directors and officers liability policy numbered for the (b)(4) period November 10, 2007 to November 10, 2008, with an extended reporting period to November 10, 2009 (“Policy”), which insured the directors and officers of the Bank according to the terms, provisions, and conditions of the Policy. On November 5, 2009, the FDIC-R made a written demand for payment of civil damages against certain of the Bank’s former directors and officers (the “FDIC-R Claim”), Alfred Camner, Lauren Camner, Ramiro Ortiz, Humberto Lopez, Neil Messinger, Al Bernkrant, Brad Weiss, Hardy Katz, Tod Aronovitz, Marc Jacobson, Sharon Brown, Lawrence Blum, Felix Garcia, Robert Green and Al Smith (the “Demand Parties”). The

Demand Parties sought coverage for the FDIC-R Claim under the Policy. RSUI denied coverage under the Policy for the FDIC-R Claim against the Demand Parties.

On May 10, 2012, RSUI filed a declaratory judgment action against, among others, the FDIC-R, the Demand Parties, the Bank's parent, BankUnited Financial Corporation ("BUFC"), seeking a declaration of its rights and obligations under the Policy with regard to the FDIC-R Claim (the "Coverage Action"). On July 12, 2012, as a result of a settlement of its claim against Alfred Camner, Ramiro Ortiz, and Humberto Lopez (the "Bank Parties"), the FDIC-R acquired all rights and claims of the Bank Parties in any way related to the Policy. On February 27, 2013, the Coverage Action was dismissed as to all parties other than the FDIC-R, and the case is now pending solely against the FDIC-R in the United States Bankruptcy Court for the Middle District of Florida in case no. I:09-K-19940-LMI (Adversary No. 12-01383-LMI). On March 11, 2013, the FDIC-R filed counterclaims against RSUI in the Coverage Action (the "Counterclaims").

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 the FDIC-R

A. As an essential covenant and condition to this Agreement, on or before thirty (30) calendar days following the date the Parties exchange executed copies of this Agreement, RSUI agrees to pay the FDIC-R the sum of 5 million dollars (\$5,000,000) ("the Settlement Payment").

B. RSUI shall deliver the Settlement Payment to the FDIC-R by check made payable to the FDIC, as Receiver for BankUnited, F.S.B. and sent to:

P.O. Box # 975598

Dallas, TX 75397-5598

Or, for overnight delivery, to Lock Box:

(b)(4) _____ JPMorgan Chase ()

Attn: FDIC Subsidiary Lock Box# [redacted]

(b)(4)

14800 Frye Road, 2nd Floor

Fort Worth, TX 76155

The payment should include the following information:

Professional liability payment for BankUnited, F.S.B., FIN 10061

Contact: Steven Smith, Professional Liability and Financial Crimes Section,

(b)(6) [redacted] 972-761-2474

In the event that the Settlement Payment is not delivered to the FDIC-R by the date above, interest shall accrue on all unpaid amounts at the rate of 5% per annum until the date of payment.

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 RSUI agrees to jurisdiction in United States District Court in the Southern District of Florida 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 resume the Coverage Action, and in such case the Parties 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 ten business days after the Parties exchange executed copies of this Agreement and the FDIC has received the Settlement Payment, the FDIC-R shall file a stipulation of dismissal with prejudice, each Party to bear their own respective costs and fees, executed by the attorneys for all Parties hereto, in the form attached hereto as Exhibit A, in the Coverage 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, including the Bank Parties, hereby releases and discharges:

1. RSUI and 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 Claim, the Counterclaims, and the Coverage Action. As part of this release of RSUI, the FDIC-R agrees that any interest it may have, including any interest of the Bank Parties, under the Policy is extinguished. The FDIC-R further agrees and acknowledges that upon receipt of the Settlement Payment no further amounts are due and/or owing from RSUI under the Policy and with respect to the Counterclaims, the FDIC-R Claim and the Coverage Action.

B. RSUI's Releases.

1. Effective simultaneously with the releases granted in Section III.A. above, RSUI, 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, the FDIC-R Claim, the Counterclaims, the Bank Parties and the Coverage Action.

C. Exceptions from Releases.

1. Notwithstanding any other provision of this Agreement, the FDIC-R and RSUI do not release, and expressly preserve fully and to the same extent as if this Agreement had not been executed, any claims or causes of action against any person or entity not expressly released by the FDIC-R and RSUI 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. 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 V: Reasonable Cooperation

A. 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: 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 Florida.

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:

Andrew Reidy
LOWENSTEIN SANDLER LLP
2200 Pennsylvania Avenue NW, Suite 500E
Washington, DC 20037

Telephone: (202) 753-3800

If to RSUI:

Michael R. Goodstein
BAILEY CAVALIERI LLC
10 W. Broad Street, Suite 2100
Columbus, OH 43215-3422
Telephone: (614) 221-3155

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.

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 BANKUNITED, F.S.B.

(b)(6)

Date: 03/25/2016

BY:

TITLE: Counsel

PRINT NAME: Steven Smith

RSUI INDEMNITY COMPANY

Date: _____

BY:

TITLE:

PRINT NAME:

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 BANKUNITED, F.S.B.

Date: _____

BY:

TITLE: Counsel

PRINT NAME: Steven Smith

RSUI INDEMNITY COMPANY

(b)(6)

Date: 3/22/16

BY:



TITLE: Assistant Vice President

PRINT NAME: Scott J. Paly

EXHIBIT "A"

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

IN RE:)	Case No. 09-19940-LMI
)	
BANKUNITED FINANCIAL)	Chapter 11
CORPORATION, <i>et al.</i> ,)	
)	Judge Laurel M. Isicoff
Debtors.)	
_____)	
RSUI INDEMNITY COMPANY)	Adversary Number: 12-01383-LMI
)	
Plaintiff,)	
)	
v.)	
)	
THE FEDERAL DEPOSIT INSURANCE)	
CORPORATION AS RECEIVER FOR)	
BANKUNITED, FSB,)	
)	
Defendant.)	
_____)	

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, Plaintiff RSUI Indemnity Company ("RSUI") and Defendant and Counterclaimant The Federal Deposit Insurance Corporation as Receiver for BankUnited, FSB ("FDIC-R") hereby stipulate to dismissal with prejudice of the above-captioned action and all claims and counterclaims asserted therein, with each party to bear its own fees and costs.

Respectfully Submitted,

Dated: _____

By: _____

Kenneth S. Pollock (Florida Bar No. 0069558)
Gary R. Shendell (Florida Bar No. 064440)

Mark M. Heinish (Florida Bar No. 0987255)
2700 N. Military Trail, Suite 150
Boca Raton, FL 33431
Telephone: (717) 233-6633
Facsimile: (717) 233-7003

(b)(6)



Michael R. Goodstein (admitted pro hac vice)
Holly W. Wallinger (admitted pro hac vice)
BAILEY CAVALIERI LLC
10 W. Broad Street, Suite 2100
Columbus, Ohio 43215-3422
Telephone: (614) 221-3155
Facsimile: (614) 221-0479

(b)(6)



Counsel for Plaintiff RSUI Indemnity Company

By: _____

Dennis S. Klein (Fla. Bar # 0091767)

(b)(6)



201 South Biscayne Boulevard, Suite 2500
Miami, FL 33131-4332
(305) 379-5574

Andrew M. Reidy (pro hac vice)

(b)(6)



Lowenstein Sandler LLP
2200 Pennsylvania Avenue, NW
Suite 500E
Washington, DC 20037
Telephone: (202) 753-3752

**Counsel for the Federal Deposit Insurance
Corporation as Receiver for BankUnited, FSB**