

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 1st day of October, 2012, by, between, and among the following undersigned parties:

The Federal Deposit Insurance Corporation, in its capacity as receiver for The Park Avenue Bank and not in any other capacity ("FDIC-R"), Charles Antonucci, Edward Beyer, Bruno de Vinck, David Gazerwitz, Donald Glascoff, Frederick Keller, David Lichtenstein, Angela Mirizzi-Olsen, Patrick R. Murphy, Charles Price, and Mendel Zilberberg (collectively, the "Settling Individuals"), and OneBeacon Midwest Insurance Company ("OneBeacon") (individually, the FDIC-R, the Settling Individuals and OneBeacon may be referred to herein as "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

1. Prior to March 12, 2010, The Park Avenue Bank ("Bank") was a depository institution organized and existing under the laws of the State of New York;
2. On March 12, 2010, the Bank was closed by the New York State Banking Department 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;
3. Among the assets to which the FDIC-R succeeded were any and all of the Bank's claims, demands, and causes of action against its former directors, officers and employees arising from the alleged performance, nonperformance and manner of performance of their respective functions, duties and acts as directors, officers and/or employees of the Bank;
4. The FDIC-R has asserted claims against certain persons, including the Settling Individuals, who had each served at various times as directors, officers and/or employees of the

Bank, as stated in demand letters from the FDIC-R to the Settling Individuals, dated on or about September 1, 2010, and September 3, 2010 (the "FDIC-R Claims"). The Settling Individuals have denied liability for the FDIC-R Claims;

(b)(4) 5. OneBeacon issued Management and Professional Liability insurance policy number [REDACTED] (the "Policy"), which insured the directors and officers of the Bank according to the terms, provisions and conditions of the Policy. The Settling Individuals have tendered the FDIC-R Claims for coverage under the Policy. On March 21, 2011, OneBeacon filed a declaratory judgment action against Park Avenue Bancorp, Inc., the FDIC-R, Charles Antonucci, and Patrick Murphy, seeking rescission of the Policy, as well as Financial Institution Bond number [REDACTED] issued by OneBeacon America Insurance Company (the "Bond"), in the United States District Court for the Southern District of New York, captioned *OneBeacon Midwest Insurance Company, et al. v. Park Avenue Bancorp, Inc., et al.*, Civil Action No. 11-CV-1937 (HB) ("the Coverage Action"). The Coverage Action was dismissed without prejudice as ordered by the Court on August 13, 2012; and

(b)(4) 6. The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of litigation. The Settling Individuals deny and continue to deny any and all liability and each and every allegation in the FDIC-R Claims. The Parties further agree that, as a compromise and settlement of disputed claims, this Agreement is not an admission or evidence of liability or of coverage with respect to the disputed claims.

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-R

A. As an essential covenant and condition to this Agreement, OneBeacon, on behalf of itself and the Settling Individuals, and all other former officers, directors and employees and any other person who constitutes an "Insured Person" as that term is defined in the Policy (collectively, the "Covered Persons"), shall pay to the FDIC-R the sum of Three Million Dollars

(\$3,000,000.00) ("the Settlement Payment") on or before thirty (30) days following the date this Agreement is fully executed.

B. OneBeacon shall deliver the Settlement Payment to the FDIC-R by direct wire transfer into the following account:

Bank: Federal Home Loan Bank of New York

(b)(4) Routing No.

For Credit to: FDIC National Liquidation Account

(b)(4) Account No.

OBI: FIN 10195: The Park Avenue Bank, New York, NY; Contact: Christine Hsu, 703-516-5046; Professional Liability (37100); DIF Fund; Asset No. 10195001058

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subparagraph A above, then the FDIC-R, in its sole discretion, shall have the right to:

1. extend the period of time for payment, including interest accruing from the date the FDIC-R executes this Agreement through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(2); or
2. enforce this Agreement and, in such event, OneBeacon agrees to jurisdiction in the United States District Court for the Southern District of New York and to pay all of the FDIC-R's reasonable attorneys' fees and costs expended in enforcing the terms of this Agreement; or
3. terminate the Agreement, move to vacate any dismissal order, to which the Settling Individuals agree to consent, and institute an action on the FDIC-R's claims against the Settling Individuals; and/or
4. seek any other relief available to it in law or equity.

Any extension of time for delivery of the Settlement Payment shall not prejudice the FDIC-R's right to take other action or seek any relief after such period of extension has expired, including the right to bring an action to enforce the Agreement or terminate the Agreement.

SECTION II: Effect of Dismissal of the Coverage Action

A. It is the understanding of all the Parties that this Settlement Agreement resolves the FDIC-R Claims and OneBeacon agrees not to seek to reopen the Coverage Action to address the FDIC-R Claims released herein. Otherwise, the dismissal of the Coverage Action remains without prejudice.

SECTION III: Releases

A. The FDIC-R's Releases. Upon receipt of the Settlement Payment and except as provided in PARAGRAPH III.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges:

1. the Settling Individuals and the Covered Persons (to the extent they agree in writing to be bound by all the terms of this Agreement in the same manner as the Settling Individuals, including the giving of Releases in Section III B); their respective heirs, executors, administrators, agents, representatives, successors and assigns, from any and all claims, demands, contracts, obligations, damages, actions, and causes of action, fees, or costs, direct or indirect, in law or in equity belonging to the FDIC-R, based on their actions or failures to act in their respective capacities as directors, officers, and/or employees of the Bank; and

2. OneBeacon and its employees, officers, directors, agents, representatives, successors and assigns, for any and all claims that arise from or relate to the Policy.

B. The Settling Individuals' Releases. Effective simultaneously with the release in PARAGRAPH III.A. above, the Settling Individuals, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge:

1. the FDIC-R and its employees, officers, directors, agents, representatives, successors and assigns, from any and all claims that arise from or relate to the Bank; and

2. OneBeacon and its employees, officers, directors, agents, representatives, successors and assigns, from any and all claims that arise from or relate to the FDIC-R Claims released herein with the exception of any claims for covered defense costs incurred up to the time this Agreement is executed by that Settling Individual. To the extent that any claims against the Settling Individuals are reserved in this Agreement (the "Reserved Claims"), the Settling Individuals' releases likewise exclude Settling Individuals' potential claims against OneBeacon arising from the Reserved Claims.

C. OneBeacon's Releases. Effective simultaneously with the releases granted in Paragraphs III.A. and B. 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:

1. the FDIC-R and its employees, officers, directors, agents, representatives, successors and assigns, from any and all claims that arise from or relate to the Policy; and
2. each of the Settling Individuals and their respective employees, officers, directors, representatives, agents, heirs, executors, administrators, successors and assigns, from any and all claims that arise from or relate to the FDIC-R Claims released herein. For clarification, OneBeacon specifically releases the Settling Individuals from any liability for the Settlement Payment. However, to the extent the Settling Individuals' releases exclude any claims or potential claims against OneBeacon, all of OneBeacon's rights are preserved with respect to those claims or potential claims by the Settling Individuals.

D. Exceptions from Releases 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 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 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 herein limits, waives, releases, diminishes or compromises the jurisdiction and authority of the Federal Deposit Insurance Corporation (in a capacity other than as FDIC-R) in the exercise of its supervisory or regulatory authority under any statute or regulation, including but not limited to 12 U.S.C. § 1818, to institute administrative enforcement or other proceedings seeking removal, prohibition, civil penalties, restitution or other relief it is authorized to seek pursuant of its supervisory or regulatory authority against any person.

3. Notwithstanding any other provision of this Agreement, this Agreement does not waive any claims which 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.

E. Express Reservation of Rights of Bond Carrier.

1. Notwithstanding any other provision, nothing in this Agreement shall release or prejudice the rights of National Union Fire Insurance Company of Pittsburgh, PA, OneBeacon America Insurance Company, or any other underwriter of any financial institution bond, fidelity bond, or banker's blanket bond on which the Bank is an insured, to bring any claims by way of subrogation to the claims of the FDIC-R, against a) any directors, officers, or employees of the Bank, including but not limited to the Settling Individuals, in their capacity as

directors, officers, or employees of the Bank or in any other capacity or b) any other individual or entity, for dishonest or fraudulent conduct that directly caused the bond loss and only for the amount of loss actually paid by the bond carrier.

2. Nothing herein shall be construed to admit the existence of, or to establish, any claim or cause of action on the part of National Union Fire Insurance Company of Pittsburgh, PA, OneBeacon America Insurance Company, or any other bond underwriter by way of subrogation to claims of the FDIC-R, that would not exist had this Agreement not been executed.

SECTION IV: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that Settling Individuals are or were shareholders of the Bank or Park Avenue Bancorp Inc. 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 FHLBB, OTS, RTC, FDIC, the FSLIC Resolution Fund or the United States government in connection with the Bank, its conservatorship or receivership; they 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 such proceeds.

SECTION V: Financial Disclosures – Specific Representations, Warranties and Disclaimer

A. Each Settling Individual has submitted to the FDIC-R a signed and notarized Financial Disclosure Form (FDIC-R form 7600/01). The Parties expressly acknowledge 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 each Settling Individual to the FDIC-R. The FDIC-R has no obligation to independently verify the completeness and accuracy of each Financial Disclosure Form.

B. Subsequent to the execution of this Agreement, if the FDIC-R establishes via final adjudication in an appropriate judicial or administrative forum that, in his or her Financial Disclosure Form, a Settling Individual has intentionally failed to disclose any material interest, legal, equitable, or beneficial, in any asset, the FDIC-R, in its sole discretion, may exercise one or more of all of the following remedies: (a) the FDIC-R may declare the releases granted to that Settling Individual as null and void (this will not render that Settling Individual's Release of OneBeacon null and void); (b) the FDIC-R may retain the full amount of the Settlement Payment; and (c) the FDIC-R may sue that Settling Individual for damages, an injunction or specific performance for breach of this Agreement. The Settling Individual agrees that if, in his or her Financial Disclosure Form, he or she has intentionally failed to disclose any material interest, legal, equitable or beneficial, in any asset, the Settling Individual consents to the reinstatement of the FDIC-R Claims and the calculation of any statute of limitations that would bar any of the FDIC-R Claims against him or her would be calculated as modified by Section VI 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 to this Agreement 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: Notices

Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and may also be sent by email, to the following:

If to the FDIC-R:

Christine P. Hsu
FDIC – Legal Division
3501 Fairfax Drive, VS-B-7054
Arlington, VA 22226-3500

(b)(6)

with a copy to:

Kathleen M. Balderston
Nixon Peabody LLP
437 Madison Avenue
New York, NY 10022

(b)(6)

If to the Settling Individuals:

Nathaniel Z. Marmor
Stillman & Friedman, P.C.
425 Park Avenue
New York, New York 10022

(b)(6)

Greg Markel
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281

(b)(6)

Benjamin Akley
Pryor Cashman LLP
7 Times Square
New York, NY 10036-6569

(b)(6)

Robert S. Frenchman
Bracewell & Gulliani LLP
1251 Avenue of the Americas
New York, NY 10020-1104

(b)(6)

[Redacted]

William P. Munday
MARC
210 Park Avenue, Suite 301
Florham Park, New Jersey 07932

(b)(6)

[Redacted]

Anthony J. Rotondi
Rotondi, PLLC
708 3rd Avenue, Sixth Floor
New York, NY 10017

(b)(6)

[Redacted]

If to OneBeacon:

Thomas J. Judge
Thompson, Loss & Judge, LLP
Two Lafayette Centre
1133 21st Street, NW, Suite 450
Washington, D.C. 20036

(b)(6)

[Redacted]

SECTION VIII: Representations and Acknowledgements

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 that this Agreement is not an admission or evidence of liability or coverage by any of them regarding any claim.

B. 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.

C. Binding Effect. Each of the undersigned Parties 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.

D. Choice of Law/Forum. 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. Any legal action brought to enforce this Agreement shall be brought in the United States District Court for the Southern District of New York, unless that Court lacks jurisdiction, in which event, or upon a final order determining a lack of jurisdiction, the Parties agree to jurisdiction in the Supreme Court of New York, New York County.

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. 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).

F. Reasonable Cooperation.

I. 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 conclude the Coverage Action, and to otherwise perform the terms of this Agreement.

G. 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, her or its counsel.

H. Severability. If any provision of this Agreement is held unenforceable, then such provision will, if possible, be modified to be enforceable but still reflect the Parties' intentions. In any event, the remaining provisions of this Agreement shall remain in full force and effect.

I. Authorship/Construction. This Agreement sets forth terms and agreements jointly negotiated by the Parties. It is expressly agreed that this Agreement shall not be construed for or against any Party by reason of which Party drafted it or against OneBeacon based on the fact that it issued the Policy.

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 The Park Avenue Bank

(b)(6)

[Redacted signature area]

(b)(6) Christine P. Hsu

Its: Counsel

Date: 10/16/12

CHARLES ANTONUCCI, an individual

Dated:

EDWARD BEYER, an individual

Dated:

BRUNO DeVINCK, an individual

Dated:

I. Title and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

J. Authorship/Construction. This Agreement sets forth terms and agreements jointly negotiated by the Parties. It is expressly agreed that this Agreement shall not be construed for or against any Party by reason of which Party drafted it or against OneBeacon based on the fact that it issued the Policy.

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FEDERAL DEPOSIT INSURANCE CORPORATION
As Receiver for The Park Avenue Bank

By: Christine P. Hsu
Its: Counsel
Date:

CHARLES ANTONUCCI, an individual

(b)(6) _____
[Redacted Signature]

Dated:

EDWARD BEYER, an individual

Dated:

BRUNO DeVINCK, an individual

Dated:

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FEDERAL DEPOSIT INSURANCE CORPORATION
As Receiver for The Park Avenue Bank

By: _____
Christine P. Hsu
Its: Counsel
Date: _____

CHARLES ANTONUCCI, an individual

Dated:

EDWARD BEYER, an individual

(b)(6) _____

Dated: 10-3-12 (b)

BRUNO DeVINCK, an individual

Dated:

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FEDERAL DEPOSIT INSURANCE CORPORATION
As Receiver for The Park Avenue Bank

By: _____
Christine P. Hsu
Its: Counsel
Date: _____

CHARLES ANTONUCCI, an individual

Dated:

EDWARD BEYER, an individual

Dated:

BRUNO DeVINCK, an individual

(b)(6) _____

Dated: OCT. 3, 2012

DAVID GAZERWITZ, an individual

(b)(6)

[Redacted]

Dated: 10-5-12

(b)(6)

DONALD GLASCOFF, an individual

Dated:

FREDERICK KELLER, an individual

Dated:

DAVID LICHTENSTEIN, an individual

Dated:

ANGELA MIRIZZI-OLSEN, an individual

Dated:

PATRICK MURPHY, an individual

Dated:

DAVID GAZERWITZ, an individual

Dated:

DONALD GLASCOFF, an individual

(b)(6)



Dated: *October 5, 2012*

FREDERICK KELLER, an individual

Dated:

DAVID LICHTENSTEIN, an individual

Dated:

ANGELA MIRIZZI-OLSEN, an individual

Dated:

PATRICK MURPHY, an individual

Dated:

DAVID GAZEK WITZ, an individual

Dated:

DONALD GLASCOFF, an individual

Dated:

FREDERICK KELLER, an individual

(b)(6)


Dated: 10/02/12

DAVID LICHTENSTEIN, an individual

DAVID GAZERWITZ, an individual

Dated:

DONALD GLASCOFF, an individual

Dated:

FREDERICK KELLER, an individual

Dated:

DAVID LICHTENSTEIN, an individual

(b)(6)



Dated: October 3, 2012

ANGELA MIRIZZI-OLSEN, an individual

Dated:

PATRICK MURPHY, an individual

Dated:

DAVID GAZERWITZ, an individual

Dated:

DONALD GLASCOFF, an individual

Dated:

FREDERICK KELLER, an individual

Dated:

DAVID LICHTENSTEIN, an individual

Dated:

ANGELA MIRIZZI-OLSEN, an individual

(b)(6)

Dated: 10-15-12

PATRICK MURPHY, an individual

Dated:

DAVID GAZERWITZ, an individual

Dated:

DONALD GLASCOFF, an individual

Dated:

FREDERICK KELLER, an individual

Dated:

DAVID LICHTENSTEIN, an individual

Dated:

ANGELA MIRIZZI-OLSEN, an individual

Dated:

PATRICK MURPHY, an individual



Dated: 9/10/3/12

(b)(6)

CHARLES PRICE, an individual

Dated: 10/5/12

MENDEL ZILBERBERG, an individual

Dated:

ONEBEACON MIDWEST INSURANCE COMPANY

By:

[insert representative]

Is: [title]

Date:

CHARLES PRICE, an individual

Dated: _____

MENDEL ZILBERBERG, an individual

(b)(6) _____
Dated: _____

10/5/12

(b)(6)

(b)(6) _____
ONEBEACON MIDWEST INSURANCE COMPANY

By: _____

Wayne A. Everson

Its: Claim Counsel

Date: October 2, 2012

CHARLES PRICE, an individual

Dated:

MENDEL ZILBERBERG, an individual

Dated:

ONEBEACON MIDWEST INSURANCE COMPANY

(b)(6) _____
By:

[Redacted Signature]

Wayne A. Everson

Its: Claim Counsel

Date: October 2, 2012