

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION**

**JOHN WALLER AND RICHARD EDWARDS,**

**Plaintiffs,**

**v.**

**RAY WOOD, DAVID PETERSON, DOUGLAS  
WELLS, THE COMMITTEE UNDER ROCKFORD  
PRODUCTS CORPORATION EMPLOYEE STOCK  
OWNERSHIP PLAN, THE COMMITTEE UNDER  
ROCKFORD PRODUCTS CORPORATION  
SAVINGS AND RETIREMENT PLAN, AND  
FEDERAL DEPOSIT INSURANCE CORPORATION  
AS RECEIVER FOR AMCORE INVESTMENT  
GROUP, N.A.,**

**Defendants.**

**No. 08 CV 5597**

**Judge Frederick J. Kapala**

**Magistrate Judge P. Michael Mahoney**

**AGREEMENT OF SETTLEMENT BETWEEN THE  
PLAINTIFF CLASS AND THE INDIVIDUAL DEFENDANTS**

This Agreement of Settlement Between the Plaintiff Class and the Individual Defendants (“*Settlement Agreement*”) is entered into by and between *Plaintiffs* (as defined below) in the above-captioned *Action* (further defined below) for themselves and on behalf of the *Plaintiff Class* (as defined, and when certified, as described below), on the one hand, and the *Individual Defendants* (as defined below) on the other, in consideration of the promises, covenants, and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound.

**WHEREAS**, on October 1, 2008, *Plaintiffs* commenced the above-captioned *Action* asserting various claims for breach of fiduciary duty under ERISA against the *Individual Defendants* and Amcore Investment Group, N.A. (“Amcore”), all of which claims were and continue to be disputed by the *Individual Defendants* and Amcore;

**WHEREAS**, after the *Action* was filed, Amcore was placed into receivership by the Office of Thrift Supervision and the *Federal Deposit Insurance Corporation* (“*FDIC*”) was appointed Receiver;

**WHEREAS**, the *Plaintiffs* and the *Individual Defendants*, and the *FDIC*, at their own expense, mediated the issues raised by the *Action* with the assistance of The Honorable Wayne R. Andersen (Retired), which efforts included an eleven-hour, in-person mediation session on May

23, 2011 at the offices of JAMS in Chicago, Illinois, and follow-up mediation efforts thereafter, following which an agreement in principle between the *Plaintiffs* and *Individual Defendants* was reached; and

**WHEREAS**, the *Plaintiffs* and the *Individual Defendants* desire to fully resolve and settle the claims and potential claims of the *Plaintiffs* and *Plaintiff Class* against the *Individual Defendants* as set forth herein; and

**WHEREAS**, the *Parties* have not agreed upon a precise method of allocating funds resulting from this *Settlement* among *Class Members* and have agreed instead to submit separate, non-binding proposals regarding same and request the *Court* to preliminarily determine the method of allocation when it preliminarily approves the *Settlement*, it being further understood that the *Settlement* is not contingent on the *Court's* adoption of any particular *Plan of Allocation*;

**NOW, THEREFORE**, without any admission or concession on the part of *Plaintiffs* or the *Plaintiff Class* of any lack of merit of the *Action*, and without any admission or concession on the part of the *Individual Defendants* as to the merit of the *Action*, it is hereby stipulated and agreed, by and among the *Parties* (as defined below) to this *Settlement Agreement*, subject to approval of the *Court* pursuant to the Federal Rules of Civil Procedure and as described herein, in consideration of the benefits flowing to the *Parties* hereto and the *Class Members* (as defined below) from this *Settlement Agreement*, that this *Action* and all *Released Claims* (as defined below) as against the *Released Parties* (as defined below) shall be compromised, settled, released, and dismissed with prejudice, upon and subject to the following terms and conditions:

**1. Definitions.**

As used in this *Settlement Agreement*, italicized and capitalized terms and phrases not otherwise defined have the meanings provided below:

1.1 “*Action*” shall mean: the lawsuit captioned *John Waller et al. v. Ray Wood, et al.*, Civil Action No. 08 CV 05597, which was filed and remains pending in the United States District Court for the Northern District of Illinois, and has been assigned to Judge Frederick J. Kapala and Magistrate Judge P. Michael Mahoney.

1.2 “*Agreement Execution Date*” shall mean: the date on which this *Settlement Agreement* is fully executed, as provided in Section 11.12 below.

1.3 “*Carrier*” shall mean: the *Individual Defendants' insurance company*, Illinois National Insurance Company.

1.4 “*Class*” or “*Plaintiff Class*” shall mean: all participants or beneficiaries of the *RPC SRP* and/or *RPC ESOP* whose accounts directly or indirectly held *RPC* stock when *RPC* filed for Chapter 11 bankruptcy on July 25, 2007, except for the *Individual Defendants*.

1.5 “*Class Members*” shall mean: all persons who are members of the *Class*.

1.6 “*Complaint*” shall mean: the Amended Class Action Complaint, filed April 9, 2009, appearing at docket entry no. 56 in the *Action*.

1.7 “*Court*” shall mean: the United States District Court for the Northern District of Illinois.

1.8 “*ERISA*” shall mean: the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 *et seq.*), as amended.

1.9 “*Escrow Agent*” shall mean: The Huntington National Bank.

1.10 “*Escrow Account*” shall mean: the account at The Huntington National Bank maintained for the purpose of holding the *Settlement Fund*, as funded by *Carrier* on behalf of the *Individual Defendants*.

1.11 “*ESOP*” shall mean: the Rockford Products Corporation Employee Stock Ownership Plan.

1.12 “*Fairness Hearing*” shall have the meaning set forth in Section 2.1.3.

1.13 “*Final*” shall mean: (a) with respect to any judicial ruling or order, including an order adopting or determining the *Plan of Allocation*, that the period for any appeals, petitions, motions for reconsideration, rehearing, or *certiorari* or any other proceedings for review (“*Review Proceeding*”) has expired without the initiation of a *Review Proceeding*, or, if a *Review Proceeding* has been timely initiated, there has occurred a full and final disposition of any such *Review Proceeding* without a reversal or any material modification, including the exhaustion of proceedings in any remand and/or subsequent appeal after remand; and (b) with respect to the *Settlement*, when the conditions in Sections 2.1 through 2.3 have been satisfied or waived.

1.14 “*Financial Institution*” shall have the meaning set forth in Section 7.1.1.

1.15 “*Individual Defendants*” shall mean the following persons: R. Ray Wood, David P. Peterson, and Douglas D. Wells.

1.16 “*Judgment*” shall have the meaning set forth in Section 2.1.3. A proposed form of the *Judgment* is attached hereto as Exhibit B.

1.17 “*Net Proceeds*” shall have the meaning set forth in Section 8.2.4.

1.18 “*Parties*” shall mean: *Plaintiffs*, individually and on behalf of the *Class*, when certified, and the *Individual Defendants*.

1.19 “*Person*” shall mean: an individual, committee, partnership, corporation, governmental entity or any other form of entity or organization.

1.20 “*Plaintiffs*” shall mean: John Waller and Richard Edwards.

1.21 “*Plaintiff Compensation*” shall mean, as determined by context, any separate monetary amount that *Plaintiffs’ Counsel* ask the Court to award or that the Court actually awards to each *Plaintiff* in recognition of the effort and assistance provided in the prosecution of this *Action* over and above any amounts they may otherwise receive in connection herewith. Any *Plaintiff Compensation* shall be paid from the *Settlement Fund*.

1.22 “*Plaintiffs’ Counsel*” shall mean: Charles R. Watkins and John R. Wylie, Donaldson Guin, LLC, David Schachman, David Schachman & Assoc., and William W. Thomas, Behn & Wyetzner, Chtd.

1.23 “*Plaintiff Releasees*” shall have the meaning set forth in Section 3.5.

1.24 “*Plans*” shall mean: the *SRP* and the *ESOP*, and all predecessor plans, individually and collectively, and any trust(s) created in connection with such *Plans*.

1.25 “*Plan of Allocation*” shall mean: as dictated by context, before *Court* adoption, the proposed plan or plans of allocation attached as Exhibit C hereto and labeled “*Individual Defendants’ Proposed Plan of Allocation*” and/or “*Plaintiffs’ Proposed Plan of Allocation*” or, after *Court* approval, whether preliminary or final, as applicable, the method of allocating the *Net Proceeds* among *Class Members* which the *Court* has adopted or determined.

1.26 “*Preliminary Approval Order*” shall have the meaning set forth in Section 2.1.1. A proposed form of the *Preliminary Approval Order* is attached hereto as Exhibit A.

1.27 “*Preliminary Motion*” shall have the meaning set forth in Section 2.1.1.

1.28 “*Released Claims*” shall have the meaning set forth in Section 3.2.

1.29 “*Released Parties*” shall mean: R. Ray Wood, David P. Peterson, and Douglas D. Wells, who are also referred to as the “*Individual Defendants*,” as well as each of their agents, assigns, attorneys, insurers, reinsurers, *Carrier*, *Plans*, and any and all other fiduciaries of the *Plans* except for Amcore and the FDIC and their respective officers, directors, employees,

agents, insurers, predecessors, *Successors*, partners, co-venturers, co-fiduciaries, *Representatives* and assigns.

1.30 “*Releases*” shall mean: the releases set forth in Section 3.

1.31 “*Representatives*” shall mean: representatives, attorneys, agents, directors, officers, or employees.

1.32 “*RPC*” shall mean: Rockford Products Corporation.

1.33 “*Settlement*” shall mean: the settlement to be consummated under this *Settlement Agreement*.

1.34 “*Settlement Administrator*” means an independent firm to be retained by *Plaintiffs’ Counsel* to undertake the *Settlement Notice* and oversee the process of receiving, maintaining, paying, and administering the *Settlement Fund* in accordance with the terms of this *Settlement Agreement*, the *Preliminary Approval Order*, the *Judgment*, and the *Plan of Allocation*, when and if such agreement, order, judgment, and/or plan has been approved by the *Court* and is *Final*.

1.35 “*Settlement Agreement*” means the Agreement of Settlement Between the *Plaintiff Class* and the *Individual Defendants*.

1.36 “*Settlement Amount*” shall have the meaning set forth in Section 7.2.

1.37 “*Settlement Fund*” shall have the meaning set forth in Section 7.1.3.

1.38 “*Settlement Notice*” means the notice of proposed *Settlement* as described in Section 2.1.2, and the proposed form of which is attached as Exhibit 1 to Exhibit A hereto.

1.39 “*Signers*” shall have the meaning set forth in Section 7.1.3.

1.40 “*SRP*” shall mean: the Rockford Products Corporation Savings and Retirement Plan.

1.41 “*Successor-In-Interest*” or “*Successor*” shall mean: a *Person’s* estate, legal representatives, heirs, successors, or assigns, including successors or assigns that result from corporate mergers or other structural changes.

## **2. Conditions to Finality of the Settlement.**

This *Settlement* shall be *Final* when each of the following conditions in Sections 2.1

through 2.3 has been satisfied.

2.1 Court Approval. The *Settlement* is approved by the *Court*, as provided for in this Section 2.1. *Plaintiffs* shall move the *Court* for an order and judgment conditionally certifying the *Class* for purposes of settlement only and approving this *Settlement Agreement* and the *Settlement* contemplated hereunder in the form of the *Judgment* attached as Exhibit B hereto. *Plaintiffs* shall recommend to the *Court* that such order and *Judgment* be entered, *Individual Defendants* will not object to such recommendation, and the *Plaintiffs* and *Individual Defendants* shall cooperate in good faith, including by taking all steps and efforts contemplated by this *Settlement Agreement* and any other steps or efforts which may become necessary by order of the *Court* (unless such order materially modifies the terms of this *Settlement Agreement*), to carry out this *Settlement Agreement* including the following:

2.1.1 Motion for Conditional Class Certification, Preliminary Approval of Settlement, and Settlement Notice. As soon as reasonably practicable upon the full execution of this *Settlement Agreement* by the *Plaintiffs*, the *Individual Defendants*, and their respective counsel, *Plaintiffs* will file a motion (“*Preliminary Motion*”) with the *Court* for an order substantially in the form annexed hereto as Exhibit A, including any exhibits thereto (the “*Preliminary Approval Order*”), *inter alia*, conditionally certifying the *Class* pursuant to Fed. R. Civ. P. 23(b)(1) for settlement purposes only, preliminarily approving the *Settlement* and the *Plan of Allocation*, and directing notice to the *Class Members*.

2.1.2 Issuance of Settlement Notice. Within ten (10) business days of the execution of this *Settlement Agreement*, counsel for the *Individual Defendants* shall provide to *Plaintiffs’ Counsel* and/or the *Settlement Administrator*, in electronic format if possible, the best information available to them regarding the names, social security numbers, and last known addresses of all *Class Members*. On the date and in the manner set by the *Court* in its *Preliminary Approval Order*, *Plaintiffs* shall cause the *Settlement Notice* (the proposed form of which is attached as Exhibit 1 to Exhibit A hereto) to be mailed or otherwise published and/or transmitted in the form and manner approved by the *Court* as directed in the *Preliminary Approval Order*. Within ten (10) business days of the *Court’s* entry of the *Preliminary Approval Order*, or at such other time as is provided therein or in another *Court Order*, the *Individual Defendants*, at their sole cost and expense, shall do, provide, or cause to be provided any and all actions, notices or mailings required under the Class Action Fairness Act of 2005 (“CAFA”) (28 U.S.C. §§ 1332(d), 1453, 1711-15) and shall promptly notify *Plaintiffs’ Counsel* of this fact.

2.1.3 The Fairness Hearing. On or after the date set by the *Court* for the hearing (the “*Fairness Hearing*”), the *Court* will determine: (i) whether to enter judgment finally approving the *Settlement* (which judgment is referred to herein as the “*Judgment*”); (ii) if the *Court* deems it appropriate to do so at such time, the method of allocating the *Net Proceeds*, whether in accord with either proposed *Plan of Allocation*, or in accordance with such other *Plan of Allocation* as the *Court* may adopt; and (iii) if the *Court* deems it appropriate to do so at such time, what legal fees, compensation, costs, and expenses should be awarded to *Plaintiffs’*

*Counsel*, and to *Plaintiffs* as contemplated by Section 10 of this *Settlement Agreement*. The *Parties* and their respective counsel covenant and agree that they will reasonably cooperate with one another to obtain the material terms of the *Judgment* as contemplated herein at the *Fairness Hearing*, to work in good faith to accomplish the goals of the *Settlement*.

2.2 Finality of Judgment. The *Judgment* is entered by the *Court* substantially in the form attached as Exhibit B hereto as more fully discussed in Section 2.1, and the *Judgment* becomes *Final*.

2.3 Funding of the Settlement Amount. The *Individual Defendants* shall have caused the *Settlement Amount* to be deposited into the *Escrow Account* at the time prescribed by, and otherwise in the manner set forth in, Section 7.2.

### 3. Releases.

3.1 Releases of the Released Parties. Subject to Section 9 herein, effective upon the date that the *Judgment* becomes *Final*, *Plaintiffs* on behalf of themselves and on behalf of the *Plaintiff Class* and the *Plans* absolutely and unconditionally release and forever discharge with prejudice the *Released Parties* from all *Released Claims*, except that the release under this Section 3.1 shall not include claims relating to the covenants or obligations set forth in this *Settlement Agreement*. No claims, causes of action, or demands against Amcore and/or the FDIC are released and Amcore and the FDIC are not *Released Parties*.

3.2 Released Claims. The *Released Claims* shall be: any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys' fees, and costs, whether arising under local, state, or federal law, whether by statute, contract, common law, or equity, whether brought in an individual, representative, or any other capacity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, that have been, could have been, or could be brought by any and/or all of the *Class Members*, and arise out of or are related in any way to the acts, omissions, facts, matters, transactions, or occurrences that have been generally alleged or referred to in the *Action*, including but not limited to, (a) claims based on: (i) breach of any ERISA fiduciary duties to any or all *Class Members* in connection with the acquisition, disposition, and/or retention of RPC stock by the *Plans* or by any and/or all of the *Class Members*, (ii) allegations of persuasion or coercion with respect to RPC stock, (iii) allegations relating to RPC's deteriorating financial condition and ultimate bankruptcy, (iv) failure to appoint and/or adequately monitor fiduciaries of the *Plans*, (v) failure to provide complete and accurate information to *Class Members*, (vi) violation of any other ERISA duties related to the acquisition, disposition, or retention of RPC stock by any and/or all of the *Plans* or the *Class Members*; (b) claims that would be barred by principles of *res judicata* had the claims in the *Action* been fully litigated and resulted in a final judgment or order; and (c) claims that pertain to the method and manner of the distribution of the *Settlement Fund* and/or the *Plan of Allocation*,

including but not limited to any conduct related to the direction to calculate, the calculation of, and/or the allocation of the *Net Proceeds* to any and/or all of the *Class Members*, pursuant to the *Plan of Allocation*.

3.3 Specification of Released Claims. With respect to the *Released Claims*, it is the intention of *Plaintiffs* and *Plaintiffs* on behalf of the *Class Members* expressly to relinquish and waive to the fullest extent permitted by law: (a) the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

and (b) the provisions, rights and benefits of any similar statute or common law of any other jurisdiction that may be, or may be asserted to be, applicable.

3.4 Representations of the Individual Defendants. The *Individual Defendants* each hereby represent that he is not aware of any lawsuits, demands, or claims by any *Class Member* against any of the *Individual Defendants*.

3.5 Individual Defendants' Releases of Plaintiffs and Plaintiffs' Counsel. Subject to Section 9 herein, effective upon the date that the *Judgment* becomes *Final*, *Individual Defendants* absolutely and unconditionally release and forever discharge with prejudice *Plaintiffs*, the *Plaintiff Class* and *Plaintiffs' Counsel* (collectively, the "*Plaintiff Releasees*") from any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys' fees, and costs, whether arising under local, state, or federal law, whether by statute, contract, common law, or equity, whether brought in an individual, representative, or any other capacity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, relating to the institution or prosecution of the *Action* or the *Settlement* of any *Released Claims*, except that the release under this Section 3.5 shall not include causes of action relating to the covenants or obligations set forth in this *Settlement Agreement*.

#### 4. Covenants.

4.1 Intention to Allow Rollover of Class Members' Settlement Distributions. The *Parties* and their respective counsel of record agree that since the *Action* sought to remedy alleged breaches of fiduciary duty in violation of *ERISA*, it is the intent of the *Parties* that the payment of the *Net Proceeds* in accordance with the *Plan of Allocation* shall constitute "restorative payments" (within the meaning of Internal Revenue Service Revenue Ruling 2002-



45) and that individual *Class Members* should be permitted to roll over his or her individual share of the *Net Proceeds* into an individual retirement account or a qualified pension plan.

4.2 No Representation Regarding Potential Taxation of *Settlement Amount*.

Notwithstanding the *Parties'* intentions as set forth in Section 4.1, *Plaintiffs* and the *Class Members* acknowledge and agree that the *Released Parties* have no responsibility for any taxes that may be due on funds deposited in or distributed from the *Settlement Fund* or that *Plaintiffs* or *Plaintiffs' Counsel* may receive from the *Settlement Amount*. *Plaintiffs, Plaintiffs' Counsel,* and the *Class Members* further acknowledge that they are responsible for taxes, if any, that are or may be due on amounts distributed or paid to them, but that any tax payments on income earned on funds deposited in the *Settlement Fund* prior to its distribution, and any professional, administrative, or other expenses associated with such tax payments, shall be paid out of the *Settlement Fund*, as set forth more fully in Section 7.1.2 below. Nothing herein shall constitute an admission, representation, or covenant that any such taxes will or will not be due.

4.3 Cooperation. The *Parties* and their respective counsel of record covenant and agree to reasonably cooperate with each other to effectuate this *Settlement*, and shall not do anything or take any position inconsistent with obtaining a prompt *Judgment* approving the *Settlement Agreement*.

4.4 Covenant Not to Sue. *Plaintiffs* and the *Class Members* covenant and agree: (a) not to file any of the *Released Claims* against any *Released Party*; and (b) that the covenants and agreements contained in this *Settlement Agreement* shall be a complete defense to any such *Released Claims* against any of the respective *Released Parties*.

**5. Representations and Warranties.**

5.1 *Plaintiffs' Representations and Warranties.*

5.1.1 *Plaintiffs* represent and warrant that they have not assigned or otherwise transferred any interest in any *Released Claims* against any *Released Parties*, and further covenant that they will not assign or otherwise transfer any interest in any *Released Claims*; and

5.1.2 When this *Judgment* is *Final* and the *Net Proceeds* are distributed, *Plaintiffs* represent and warrant that neither they nor any *Class Member* has any surviving *Released Claim* against any of the *Released Parties*.

5.2 *Parties' Representations and Warranties.* The *Plaintiffs* and the *Individual Defendants*, and each of them, represent and warrant as follows, and each *Plaintiff* and *Individual Defendant* acknowledges that each other's signatory hereto is relying on these representations and warranties in entering into this *Settlement Agreement*:

5.2.1 That they have consulted with their counsel, have cooperated in factual investigation and discovery, and have diligently prepared for trial pursuant to the *Court's* orders; that they are voluntarily entering into this *Settlement Agreement* as a result of arm's-length negotiations among counsel for *Plaintiffs* and *Individual Defendants*, with the assistance and recommendation of an experienced mediator, who formerly was U.S. District Judge for the Northern District of Illinois; that in executing this *Settlement Agreement* they are relying solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently-selected counsel, concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; and that, except as provided herein, they have not been influenced to any extent whatsoever in executing this *Settlement Agreement* by any representations, statements, or omissions pertaining to any of the foregoing matters by any signatory hereto or by any *Person* representing any signatory hereto.

5.2.2 That they have carefully read the contents of this *Settlement Agreement*, and this *Settlement Agreement* is signed freely by each *Person* executing this *Settlement Agreement*. The *Parties* hereto, and each of them, further represent and warrant to each other that he, she, or it has made such investigation of the facts pertaining to the *Settlement Agreement* and all of the matters pertaining thereto, as he, she, or it deems necessary.

5.3 Signatories' Representations and Warranties. Each *Person* executing this *Settlement Agreement* on behalf of any other *Person* does hereby personally represent and warrant to the other *Parties* that he or she has the authority to execute this *Settlement Agreement* on behalf of, and fully bind, each principal whom such individual represents or purports to represent.

## 6. No Admission of Liability.

6.1 *Individual Defendants* have indicated their intent vigorously to contest each and every claim in the *Action*. *Individual Defendants* maintain that they have consistently acted in accordance with the governing laws at all times and further maintain that there has been no finding of any liability or wrongdoing of any kind on the *Individual Defendants'* part. *Individual Defendants* continue to vigorously deny all of the material allegations in the *Complaint*, and assert that the claims are without merit. *Individual Defendants* nonetheless have concluded that it is in their best interest that the *Action* be settled on the terms and conditions set forth in this *Settlement Agreement*. *Individual Defendants* claim that they reached that conclusion after considering the factual and legal issues in the *Action*, the substantial benefits of final resolution of the *Action*, the expense that would be necessary to defend the *Action* through trial and through appeals that might be taken, the benefits of disposing of protracted and complex litigation, and the desire of the *Individual Defendants* to conduct their business unhampered by the distractions of continued litigation.

6.2 The *Parties* understand and agree that this *Settlement Agreement* embodies a compromise settlement of disputed claims, and that nothing in this *Settlement Agreement*, including the furnishing of consideration, shall be deemed to constitute any admission or finding of wrongdoing by any of the *Individual Defendants*, or give rise to any inference of any liability in this or any other proceeding. This *Settlement Agreement* and the payments made hereunder are made in compromise of disputed claims and are not admissions of any liability of any kind, whether legal or factual. Neither the fact nor the terms of this Settlement Agreement shall be offered or received in evidence, in any action or proceeding between the Parties, for any purpose, except (a) in an action or proceeding arising under this *Settlement Agreement* or arising out of or relating to the *Preliminary Approval Order* or the *Judgment*, or (b) in an action or proceeding where the *Releases* provided pursuant to this *Settlement Agreement* may serve as a bar to recovery.

## 7. The Settlement Fund, Deliveries into the Settlement Fund.

### 7.1 The Settlement Fund.

7.1.1 Within ten (10) business days after the *Court* issues the *Preliminary Approval Order*, *Plaintiffs' Counsel* shall establish at The Huntington National Bank or another mutually agreeable federally-insured financial institution (the "*Financial Institution*") an *Escrow Account*, into which the *Individual Defendants* shall cause the *Settlement Amount* to be paid. *Plaintiffs' Counsel* shall promptly notify counsel for the *Individual Defendants* of the date of the establishment of the *Escrow Account* and shall confirm the identity of the *Financial Institution* and the routing and account numbers of the settlement fund account and shall facilitate the execution of a commercially reasonable Escrow Agreement in the form set forth in Exhibit D annexed hereto. The *Escrow Agent* shall maintain and control the *Escrow Account*, which funds shall be deemed in *custodia legis* of the *Court* and shall remain subject to the jurisdiction of the *Court*.

7.1.2 The *Settlement Amount* shall initially be deposited into the *Escrow Account*, a non-interest bearing account fully insured by the Federal Deposit Insurance Corporation. Thereafter, if market interest conditions warrant, the *Escrow Account* monies may be invested, but only if and as directed by the *Signers*, solely in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Money Market Fund or a bank account insured by the Federal Deposit Insurance Corporation ("FDIC") up to the guaranteed FDIC limit. The *Escrow Account* shall be structured and managed to qualify as a Qualified Settlement Fund under Section 468B of the Internal Revenue Code and Treasury regulations promulgated thereunder and shall make tax filings and provide reports to *Plaintiffs' Counsel* for tax purposes. The *Parties* shall not take a position in any filing or before any tax authority inconsistent with such treatment. The *Escrow Agent* will pay from the *Escrow Account* any federal, state, and local taxes that may apply to the income of the *Escrow Account*. The

*Financial Institution* or the *Settlement Administrator*, as determined in conjunction with *Plaintiffs' Counsel*, shall arrange for the preparation and filing of all tax reports and tax returns required to be filed in connection with the *Escrow Account* and for the payment from the *Escrow Account* of any taxes owed, and will send *Plaintiffs' Counsel* and counsel for the *Individual Defendants* copies of all such filings and receipts of payment in a timely manner. The *Financial Institution* shall be authorized to retain a certified public accounting firm for those purposes. All taxes on the income of the *Escrow Account* and tax-related expenses incurred in connection with the taxation of any income earned on the *Escrow Account* shall be paid solely out of the *Escrow Account*, shall be considered a cost of administration of the *Settlement*, and shall be timely paid without further order of the *Court*. The *Financial Institution* shall arrange for the preparation and issuance of any required Forms 1099 to *Persons* receiving payments from the *Escrow Account*, and costs incurred in connection therewith also shall be paid solely out of the *Escrow Account*, shall be considered a cost of administration of the *Settlement*, and shall be timely paid by the *Escrow Account* without further order of the *Court*. All fees and expenses of the *Financial Institution*, and of professional advisors engaged by the *Financial Institution* in connection with the *Escrow Account*, shall be funded solely from the *Escrow Account*, and *Plaintiffs* expressly acknowledge that *Released Parties* have no responsibility for any such fees or expenses. *Individual Defendants* are not obligated to pay any of the fees or expenses incurred in the administration of the *Settlement* or any taxes that may be due on monies in or distributed from the *Escrow Account*).

7.1.3 When the *Judgment* becomes *Final*, the amounts in the *Escrow Account*, including any accrued interest, shall become the *Settlement Fund* (the "*Settlement Fund*"), which shall be considered a common fund created as a result of this *Action* and the sole and exclusive property of *Plaintiffs* and the *Class*, subject to *Court* order(s) regarding payment of attorneys' fees, costs, expenses, and *Settlement Notice* and administrative costs. *Plaintiffs' Counsel* and counsel for the *Individual Defendants* shall designate at least one person with signature authority over this account (the "*Signers*"), who shall, acting jointly and not individually, direct the *Financial Institution* to make distributions from the *Settlement Fund* only in accordance with this *Settlement Agreement*. For the avoidance of doubt, the *Financial Institution* shall be instructed that, absent a *Court* order, no funds are to be paid or withdrawn from the *Settlement Fund* except pursuant to Section 8 of this *Settlement Agreement* (and the Sections of this *Settlement Agreement* explicitly cross-referenced therein) or, upon termination of this *Settlement Agreement*, pursuant to Section 9 of this *Settlement Agreement*.

7.2 The Settlement Amount. In consideration of all of the promises and agreements set forth in this *Settlement Agreement* and in full and complete settlement of all of the *Released Claims*, *Individual Defendants* will cause to be deposited into the *Escrow Account* within twenty (20) business days after the entry of the *Preliminary Approval Order*, the aggregate sum of one million seven hundred and fifty thousand dollars in United States currency and in immediately available funds (\$1,750,000.00) (the "*Settlement Amount*"), provided, however, that the *Individual Defendants* shall not be required to cause the *Settlement Amount* to be deposited into the *Escrow Account* until and unless a commercially reasonable Escrow Agreement, in the form

set forth in Exhibit D annexed hereto, is fully executed. Upon the *Judgment* becoming *Final*, the *Settlement Amount* and all accumulated earnings or interest thereon shall be and become the sole and exclusive property of *Plaintiffs* and the *Class Members* for allocation and distribution as required hereunder or as the *Court* may otherwise direct by Order. In the event that the *Judgment* does not become *Final* or if this *Settlement* is terminated for any reason, including but not limited to pursuant to Section 9, the funds in the *Escrow Account* or the *Settlement Fund*, as the case may be, shall be and become the sole and exclusive property of the *Carrier*.

## **8. Payments From The Settlement Fund.**

8.1 Expenses of Settlement Notice and Settlement Administrator. After the entry of the *Preliminary Approval Order*, the *Escrow Agent* shall – pursuant to the terms of the *Preliminary Approval Order* and upon the joint written direction of the *Signers* – disburse from the *Escrow Account* an amount for the payment of reasonable costs of the *Settlement Notice* and the *Settlement Administrator*, which amounts in the aggregate shall not exceed \$20,000, unless further authorized by *Court* order. Neither *Plaintiffs*, the *Individual Defendants*, nor their respective counsel shall have any obligation to reimburse these costs, even if the *Settlement Agreement* is terminated for any reason. Such costs or expenses are solely the responsibility of *Carrier* if the *Settlement* is terminated or does not become *Final*.

8.2 Disbursements from Settlement Fund After the Judgment is Final. After the *Judgment* becomes *Final*, the *Signers* shall direct the *Financial Institution* to disburse money from the *Settlement Fund* as follows:

8.2.1 For Attorneys' Fees, Costs, and Expenses. As provided in Section 10.2 herein.

8.2.2 For Plaintiff Compensation. As provided in Section 10.2 herein.

8.2.3 For Taxes (If Any) and Expenses of the Settlement Fund. As provided in Section 7.1.2 herein.

8.2.4 For the Plan of Allocation or allocation to Class Members. The *Plan of Allocation* adopted or determined by the *Court* shall be the method followed in allocation of the *Settlement Fund* net of the disbursements called for in Sections 8.1, 8.2.1, 8.2.2, and 8.2.3 (“*Net Proceeds*”). Upon the *Judgment* becoming *Final* as provided in Section 2, and after the amounts payable pursuant to Sections 8.1, 8.2.1, 8.2.2, and 8.2.3 have been determined and disbursed, and after the *Plan of Allocation* has been finally determined by the *Court* and has become *Final*, *Plaintiffs' Counsel* and counsel for the *Individual Defendants* shall direct the *Financial Institution* to disburse the *Net Proceeds* in accordance with the *Court-approved Plan of Allocation*. Subject to the supervision, direction, and approval of the *Court*, the *Settlement Administrator* shall administer, calculate, and oversee the distribution of the *Settlement Fund*, as

directed by the *Plan of Allocation*. *Plaintiffs, Individual Defendants, the Financial Institution, and the Settlement Administrator* shall cooperate fully with each other by, *inter alia*, providing any reasonable assistance requested.

**9. Termination of the Settlement Agreement.**

9.1 Termination. This *Settlement Agreement* shall terminate if (a) the conditions of Section 2 of this *Settlement Agreement* are not satisfied; (b) the *Court* declines to approve the *Settlement* or declines to enter the *Judgment*, or (c) the *Judgment* entered by the *Court* is reversed or modified on appeal, except that this *Settlement Agreement* shall not terminate if a court of competent jurisdiction modifies, reverses, or fails to enter any order relating to attorneys' fees, expenses, or *Plaintiff Compensation*. Nor shall this *Settlement Agreement* terminate if one or both of the *Plans of Allocation* set forth as Exhibit C is rejected by a court of competent jurisdiction, as long as a *Plan of Allocation* is ultimately approved by a court of competent jurisdiction.

9.2 Consequences of Termination of the Settlement Agreement. If the *Settlement Agreement* is terminated, the following shall occur:

9.2.1 Within five (5) business days after the date of termination of the *Settlement Agreement*, counsel for the *Individual Defendants* shall notify the *Financial Institution* in writing, with contemporaneous copy to *Plaintiffs' Counsel*, to return to *Carrier* all assets of the *Escrow Account* or the *Settlement Fund*, as the case may be, with all net income earned thereon, after deduction of any amounts incurred for the *Settlement Notice* and Administration and the expenses charged by the *Escrow Agent*, directing the *Financial Institution* to effect such return within ten (10) business days after such notification. Absent agreement between the *Parties' Counsel*, either *Party* may apply to the *Court* for appropriate relief. Prior to the return of amounts contemplated by this Section 9.2.1, the *Escrow Agent* shall withhold funds sufficient to satisfy all tax obligations on income earned on the *Settlement Fund* prior to its distribution as set forth in Section 7.1.2 and shall pay them to the appropriate tax authorities as directed by the *Individual Defendants*, and the *Individual Defendants* shall have no past, present, or future liability whatsoever for any such tax obligations. *Plaintiffs* and *Plaintiffs' Counsel* shall have no obligation to pay or reimburse *Individual Defendants* or the *Settlement Fund* any expenses or costs incurred in connection with the *Settlement Notice* and/or administration.

9.2.2 The *Action* shall for all purposes with respect to the *Parties* revert to its status as of May 20, 2011. Any and all statutes of limitations, statutes of repose and/or other defenses based upon the passage of time applicable to the claims asserted in this *Action* shall be tolled from May 20, 2011 to the termination of this *Settlement Agreement*.

9.2.3 All provisions of this *Settlement Agreement* shall be null and void except as otherwise provided herein.

**10. Attorneys' Fees, Expenses and Plaintiff Compensation.**

10.1 Application for Attorneys' Fees, Expenses and Plaintiff Compensation. As provided in Section 2.1.3, and pursuant to the common fund doctrine and/or any applicable statutory fee provision, *Plaintiffs' Counsel* may apply to the *Court* for an award to *Plaintiffs' Counsel*, of attorneys' fees, and for reimbursement of expenses, to be paid solely from the *Settlement Fund*. *Plaintiffs* may apply to the *Court* for *Plaintiff Compensation*, payable solely from the *Settlement Fund*, after deduction and payment of any Settlement Notice Expenses, expenses incurred by the *Escrow Agent* or *Financial Institution* in the administration of the *Settlement Fund*, and any taxes required to be withheld or paid upon the *Settlement Fund* ("Net Settlement Fund") and *Plaintiffs* shall be entitled to receive such *Plaintiffs' Compensation* from the *Settlement Fund* to the extent awarded by the *Court*. The *Individual Defendants* agree to take no position with respect to any such application. Further, Charles R. Watkins of Donaldson Guin, LLC of *Plaintiffs' Counsel* shall be authorized to, and shall, allocate attorneys' fees and expenses awarded by the *Court* among *Plaintiffs' Counsel* and the *Individual Defendants* shall have no responsibility for or rights in or with respect to any such allocation of attorneys' fees and expenses.

10.2 Disbursement of Attorneys' Fees, Expenses and Plaintiff Compensation. Following the latter of (a) the entry of an order allowing payment of attorneys' fees and expenses and *Plaintiff Compensation*, and (b) the date that the *Settlement* becomes *Final*, Charles R. Watkins (or John R. Wylie if Mr. Watkins is unable to act) may instruct the *Financial Institution* in writing to disburse the payments set forth in Section 10.1 from the *Settlement Fund*, which the *Financial Institution* shall do within five (5) business days of receiving such direction.

10.3 *Plaintiffs' Counsel* may make a supplemental application to the *Court* for an award of expenses with respect to post-settlement proceedings and administration, and any such award shall only be payable from the *Settlement Fund* and not by any of the *Released Parties*.

**11. Miscellaneous Provisions.**

11.1 Governing Law. This *Settlement Agreement* shall be governed by the laws of the State of Illinois without giving effect to the conflict of laws or choice of law provisions thereof, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

11.2 Amendment. The *Settlement Agreement* may be modified or amended only by written agreement signed by or on behalf of all *Parties* and approved by the *Court*, except that

the *Signers* may extend deadlines set forth herein as reasonably necessary to consummate this *Settlement*.

11.3 Waiver. The provisions of this *Settlement Agreement* may be waived only by an instrument in writing executed by the waiving party. The waiver by any *Party* of any breach of this *Settlement Agreement* shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this *Settlement Agreement*.

11.4 Construction. None of the *Parties* hereto shall be considered to be the drafter of this *Settlement Agreement* or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

11.4.1 Headings. The headings of this *Settlement Agreement* are for reference purposes only and do not affect in any way the meaning or interpretation of this *Settlement Agreement*.

11.4.2 Singular and Plural. Definitions apply to the singular and plural forms of each term defined.

11.4.3 Gender. Definitions apply to the masculine, feminine, and neutral genders of each term defined.

11.4.4 References to a Person. References to a *Person* are also to the *Person's* *Successors*.

11.4.5 Terms of Inclusion. Whenever the words "include," "includes," or "including" are used in this *Settlement Agreement*, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

11.5 Further Assurances. Each of the *Parties* agrees, without further consideration, and as part of finalizing the *Settlement* hereunder, that they will in good faith execute and deliver such other documents, including an escrow agreement pertaining to the Escrow Agent, and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this *Settlement Agreement*.

11.6 Notices. Any notice, demand, or other communication under this *Settlement Agreement* (other than the *Settlement Notice*, or other notice given at the direction of the *Court*) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and delivered by both (i) email and (ii) by registered or certified mail (postage prepaid) or delivered by reputable express overnight courier:



IF TO *PLAINTIFFS*:

Charles R. Watkins  
John R. Wylie  
Donaldson Guin, LLC  
300 S. Wacker Dr., Ste. 1700A  
Chicago, IL 60606  
312-878-8391  
E-mail: charlesw@dglawfirm.com  
Email: johnw@dglawfirm.com

IF TO *INDIVIDUAL DEFENDANTS*:

Neil A. Capobianco  
SNR Denton US LLP  
1221 Avenue of the Americas, Suite 2500  
New York, NY 10020  
212-398-5781  
E-mail: neil.capobianco@snrdenton.com

Any *Party* may change the address at which it is to receive notice by written notice delivered to the other *Parties* in the manner described above.

11.7 Public Statements on Settlement. The *Parties* and their respective counsel and representatives will not issue any press release or similar matter and will not publicly comment on the *Settlement* to the media or otherwise. Notwithstanding the foregoing, the *Parties* and their respective counsel may, after this *Settlement Agreement* has been fully executed by all *Parties* and in response to any inquiry, state or confirm without elaboration that there has been a *Settlement Agreement* signed by the *Parties* and the date of the *Fairness Hearing*.

11.8 Entire Agreement. This *Settlement Agreement* contains the entire agreement among the *Parties* relating to this *Settlement*. It specifically supersedes any settlement terms or settlement agreements relating to *Individual Defendants* that were previously agreed upon orally or in writing.

11.9 Counterparts. This *Settlement Agreement* may be executed by exchange of faxed or emailed executed signature pages, and any signature transmitted by facsimile or email for the purpose of executing this *Settlement Agreement* shall be deemed an original signature for purposes of this *Settlement Agreement*. This *Settlement Agreement* may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

11.10 Binding Effect. This *Settlement Agreement* binds and inures to the benefit of the *Parties* hereto, their administrators, executors, and *Successors*.

11.11 Plaintiffs' Counsel Organization. *Plaintiffs' Counsel* shall work cooperatively in connection with the consummation hereof. In the event of any disagreement of any type among *Plaintiffs' Counsel*, Charles R. Watkins, Donaldson Guin, LLC, shall be entitled to resolve same and to carry out or direct the carrying out of any necessary action hereunder and to seek and obtain a *Court Order* with respect to same if deemed advisable. With respect to any actions or activity necessary to the consummation hereof, other than court appearances and pleadings, *Plaintiffs' Counsel* shall be permitted to employ the services of one or more agents such as, without limitation, accountants, clerical personnel, actuaries, and the *Settlement Administrator*.

11.12 Agreement Execution Date. The date on which the final signature is affixed below shall be the *Agreement Execution Date*.

IN WITNESS WHEREOF, the *Parties* and their counsel have executed this *Settlement Agreement* on the dates set forth below.

**JOHN WALLER**

Dated: \_\_\_\_\_, 2011 By: \_\_\_\_\_  
John Waller

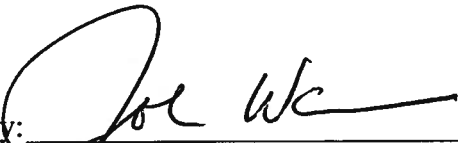
**RICHARD EDWARDS**

Dated: \_\_\_\_\_, 2011 By: \_\_\_\_\_  
Richard Edwards

IN WITNESS WHEREOF, the *Parties* and their counsel have executed this *Settlement Agreement* on the dates set forth below.

**JOHN WALLER**

Dated: October 6, 2011

By:   
\_\_\_\_\_  
John Waller

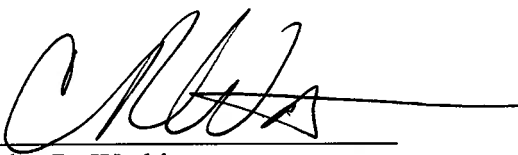
**RICHARD EDWARDS**

Dated: \_\_\_\_\_, 2011

By: \_\_\_\_\_  
Richard Edwards

**DONALDSON GUIN, LLC**

Dated: \_\_\_\_\_, 2011

By:   
\_\_\_\_\_  
Charles R. Watkins  
300 South Wacker Drive, Suite 1700  
Chicago, IL 60606  
(312) 878-8391  
Email: charlesw@dglawfirm.com

*Counsel for Plaintiffs and the Plaintiff Class*

**R. RAY WOOD**

Dated: \_\_\_\_\_, 2011

By: \_\_\_\_\_  
R. Ray Wood

IN WITNESS WHEREOF, the *Parties* and their counsel have executed this *Settlement Agreement* on the dates set forth below.

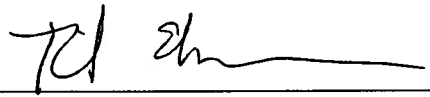
**JOHN WALLER**

Dated: \_\_\_\_\_, 2011

By: \_\_\_\_\_  
John Waller

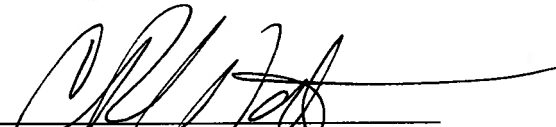
**RICHARD EDWARDS**

Dated: \_\_\_\_\_, 2011

By:   
Richard Edwards

**DONALDSON GUIN, LLC**

Dated: \_\_\_\_\_, 2011

By:   
Charles R. Watkins  
300 South Wacker Drive, Suite 1700  
Chicago, IL 60606  
(312) 878-8391  
Email: charlesw@dglawfirm.com

*Counsel for Plaintiffs and the Plaintiff Class*

**R. RAY WOOD**

Dated: \_\_\_\_\_, 2011

By: \_\_\_\_\_  
R. Ray Wood

**DONALDSON GUIN, LLC**

Dated: \_\_\_\_\_, 2011

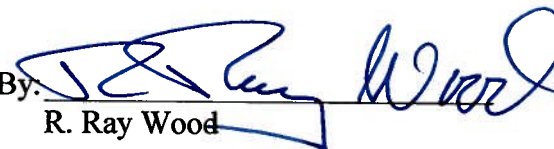
By: \_\_\_\_\_

Charles R. Watkins  
300 South Wacker Drive, Suite 1700  
Chicago, IL 60606  
(312) 878-8391  
Email: charlesw@dglawfirm.com

*Counsel for Plaintiffs and the Plaintiff Class*

**R. RAY WOOD**

Dated: October 4, 2011

By:   
R. Ray Wood

**DAVID P. PETERSON**

Dated: \_\_\_\_\_, 2011

By: \_\_\_\_\_

David P. Peterson

**DOUGLAS D. WELLS**

Dated: \_\_\_\_\_, 2011

By: \_\_\_\_\_

Douglas D. Wells

**DONALDSON GUN, LLC**

Dated: \_\_\_\_\_, 2011

By: \_\_\_\_\_

Charles R. Watkins  
300 South Wacker Drive, Suite 1700  
Chicago, IL 60606  
(312) 878-8391  
Email: charlesw@dglawfirm.com

*Counsel for Plaintiffs and the Plaintiff Class*

**R. RAY WOOD**

Dated: \_\_\_\_\_, 2011

By: \_\_\_\_\_

R. Ray Wood

**DAVID P. PETERSON**

Dated: Oct 5, 2011

By:  \_\_\_\_\_

David P. Peterson

**DOUGLAS D. WELLS**

Dated: \_\_\_\_\_, 2011

By: \_\_\_\_\_

Douglas D. Wells

**DONALDSON GUIN, LLC**

Dated: \_\_\_\_\_, 2011

By: \_\_\_\_\_

Charles R. Watkins  
300 South Wacker Drive, Suite 1700  
Chicago, IL 60606  
(312) 878-8391  
Email: charlesw@dglawfirm.com

*Counsel for Plaintiffs and the Plaintiff Class*

**R. RAY WOOD**

Dated: \_\_\_\_\_, 2011

By: \_\_\_\_\_

R. Ray Wood

**DAVID P. PETERSON**

Dated: \_\_\_\_\_, 2011

By: \_\_\_\_\_

David P. Peterson

**DOUGLAS D. WELLS**

Dated: 4 Oct 2011, 2011

By:  \_\_\_\_\_

Douglas D. Wells

**SNR DENTON US LLP**

Dated: Oct. 6, 2011

By: 

Neil A. Capobianco  
1221 Avenue of the Americas, Suite 2500  
New York, NY 10020  
(212) 398-5781  
E-mail: Neil.Capobianco@snrdenton.com

*Counsel for the Individual Defendants*