

## MUTUAL RELEASE

This mutual release agreement (the "Release") is made as of this 1<sup>st</sup> day of November, 2002, between and among Martin J. Simon, Saul Erdman, Herbert V. Friedman, Harvey Mass, Andrew W. Attivissimo, Raymond Brancaccio, Joel I. Dollinger, Allan R. Goodman, Harvey S. Jacobs, Joan M. Locascio, Louis Gottlieb, Louis Siracusano, Ralph Drabkin, Joseph Ciorciari, Seymour Uslan, David Schachne, the estate of Bernard Litzky, Steve Diamond, and Samuel Plotkin (collectively the "D & O Parties") in connection with the settlement agreement, entered into on November 1, 2002, (the "Agreement"), between the D & O Parties, and others parties to the Litigations, as defined and described in paragraph 2 below.

1. In consideration of the releases provided for by the D & O Parties, and in return for other good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, including the execution and delivery of this Release, and except for obligations incurred by the D & O Parties under the Agreement, the D & O Parties and each of their respective heirs, executors, administrators, assigns, grantees, agents and representatives (collectively, the "D & O Releasers") do hereby forever release and absolutely and forever discharge one another and any and all of their respective heirs, executors, administrators, assigns, grantees, agents and representatives, (collectively, the "D & O Releasees"), from any and all actions, causes of action, obligations, costs, expenses, attorneys fees, damages, losses, claims, liabilities, and demands of whatsoever nature, character, or kind, whether known or unknown, suspected or unsuspected, developed or undeveloped, matured or contingent, which the D & O Releasers now own or hold, or at any time heretofore have ever owned or held, from the beginning of the world to the date of this Release, for, upon, or by reason of any matter, cause or thing whatsoever, including, without limitation, any and all matters that are, or might have been,

the subject matter of, or which are referred to or mentioned in the complaint, amended complaint, or any other pleading or paper filed in the actions entitled Ochs v. Simon, Adversary Proceeding No. 99-1215-608 (Bankr. E.D.N.Y.) ("Ochs I"); Ochs v. Simon, Adversary Proceeding No. 00-1908-608 (Bankr. E.D.N.Y.) ("Ochs II"); Levin, Superintendent of Insurance v. Simon, Index No. 99-31483 (N.Y. Sup. Ct. Nassau Cty.) (the "Levin Action"); Lipson v. Simon, 98 Civ. 4573 (E.D.N.Y.) (the "Lipson Action") (collectively, the "Litigations"), or that in any way pertain to, arise out of, or are connected in any way with causes of action, claims, allegations, facts, transactions, or circumstances raised in the Litigations.

2. Each person who signs this Release on behalf of another hereby warrants that he or she has the authority to sign on behalf of said person or entity, in the indicated capacity, and hereby indemnifies each of the other parties to this Release from any and all liability for damages, including, but not limited to, reasonable attorneys fees incurred by such other party or parties as a result of a breach of such representation or warrant.

3. This Release may be executed in two or more counterparts in original form or one or more copies, each of which shall be deemed an original but all of which shall constitute one and the same written instrument.

4. This Release shall become effective on the Effective Date, as that term is defined in the Agreement.

IN WITNESS WHEREOF, the undersigned, through their duly authorized representatives, have caused this Release to be executed as of the dates indicated below.

Dated: New York, New York  
November 1, 2002

MARTIN J. SIMON

SAUL ERDMAN

\_\_\_\_\_  
Martin J. Simon

\_\_\_\_\_  
Saul Erdman

HERBERT V. FRIEDMAN

HARVEY MASS

\_\_\_\_\_  
Herbert V. Friedman

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Harvey Mass

ANDREW W. ATTIVISSIMO

RAYMOND BRANCACCIO

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Andrew W. Attivissimo

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Raymond Brancaccio

JOEL I. DOLLINGER

ALLAN R. GOODMAN

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Joel I. Dollinger

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Allan R. Goodman

HARVEY S. JACOBS

JOAN M. LOCASCIO

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Harvey S. Jacobs

\_\_\_\_\_  
Joan M. Locascio

LOUIS GOTTLIEB

LOUIS SIRACUSANO

\_\_\_\_\_  
Louis Gottlieb

\_\_\_\_\_  
Louis Siracusano

## RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (the "Great American Release and Agreement") is entered into this \_\_\_ day of November, 2002, by and between the Parties identified in Part I below.

### I. PARTIES

The Parties to this Agreement are:

1. Great American; and
2. First Central.

### II. DEFINITIONS

1. The term "Great American" means Great American Insurance Company and all of its present and former employees, agents, attorneys, parents, subsidiaries, assigns, successors, predecessors, other associated or affiliated entities or individuals, subrogees, reinsurers, representatives, brokers, directors and officers.
2. The term "First Central" means all of First Central Financial Corporation's directors and officers, including those engaged in outside directorships, and including, but not limited to Martin J. Simon, Saul Erdman, Herbert V. Friedman, Harvey Mass, Joseph P. Ciorciari, Andrew W. Attivissimo, Raymond Brancaccio, Joel I. Dollinger, Allan R. Goodman, Harvey S. Jacobs, Joan M. Locascio, Louis Gottlieb, Louis V. Siracusano, Ralph Drabkin, Seymour Uslan, David Schachne, the estate of Bernard Litzky, Steve Diamond and Samuel Plotkin, each of whom is a named defendant in the Related Actions defined and described in Paragraph 3 below, and each of their respective estates, heirs, predecessors, legal representatives, successors and assigns.
3. The term "Related Actions" means the following:
  - (1) Ochs v. Simon, Adversary Proceeding No. 99-1215-608 (Bankr E.D.N.Y.) ("Ochs I")

Adversary proceeding commenced by Martin P. Ochs, as trustee (the "Trustee") of First Central Financial Corporation ("FCFC") against Martin J. Simon, Saul Erdman, Herbert V. Friedman, Harvey Mass, Andrew W. Attivissimo, Raymond Brancaccio, Joel I. Dollinger, Allan R. Goodman, Harvey S. Jacobs, Joan M. Locascio, Louis Gottlieb, Louis V. Siracusano, Ralph J. Drabkin, Joseph D. Ciorciari and, Seymour D. Uslan.

- (2) Ochs v. Simon, Adversary Proceeding No. 00-1908-608 (Bankr. E.D.N.Y.) ("Ochs II")

Adversary proceeding commenced by the Trustee against Martin J. Simon, Saul Erdman, Herbert V. Friedman, Harvey Mass, Joseph P. Ciorciari, Ralph J. Drabkin, Joan M. Locascio, Harvey S. Jacobs, Louis V. Siracusano, Seymour D. Uslan, Joel I. Dollinger, Allan R. Goodman, Raymond Brancaccio and Louis Gottlieb.

- (3) Levin, Superintendent of Insurance v. Simon, Index No. 99-31483 (N.Y. Sup. Ct. Nassau Cty.) the ("Levin Action")

Action commenced by The New York Superintendent of Insurance, acting in his capacity as court appointed liquidator for FCIC, against Martin J. Simon, Saul Erdman, Herbert V. Friedman, Harvey Mass, Andrew W. Attivissimo, Raymond Brancaccio, Joel I. Dollinger, Allan R. Goodman, Harvey S. Jacobs, Joan M. Locascio, Seymour Uslan, David Schachne, Bernard Litzky, Steve Diamond, Samuel Plotkin and McGladrey & Pullen, LLP ("M&P"), Thomas Ferreira, and other agents of M&P.

- (4) Lipson v. Simon, 98 Civ. 4573 (E.D.N.Y.) (the "Lipson Action")

Putative securities class action brought by Sam Lipson on behalf of purchasers and sellers of FCFC stock against Martin J. Simon, Saul Erdman, Herbert V. Friedman, Harvey Mass, Andrew W. Attivissimo, Raymond Brancaccio, Joel I. Dollinger, Allan R. Goodman, Harvey S. Jacobs, Joan M. Locascio, Louis Gottlieb, Louis V. Siracusano, Ralph J. Drabkin, Joseph Ciorciari and Seymour D. Uslan and M&P.

4. The term "Policy" means Directors' and Officers' Liability Insurance Policy No. DOL8811619 issued by Great American Insurance Companies to the Directors and Officers of First Central Financial Corporation for the policy term September 24, 1997 to September 24, 1998, and providing coverage, subject to its terms, of \$2,000,000 which is subject to an applicable \$50,000 retention.

### III. RECITALS

1. The Related Actions independently assert causes of action which collectively allege breaches of various duties and violations of various securities laws against First Central, among others.
2. In response to the Related Actions, First Central asked Great American to provide coverage under the Policy.

3. The parties to the Related Actions have reached an agreement in principle to settle the Related Actions providing for the full and final disposition of all Related Actions pending against First Central with prejudice, which shall be submitted to the respective courts presiding over the Related Actions for final approval and entry of joint proposed orders of dismissal with prejudice. The settlement agreement also provides for a release of all actual and potential claims that were or could have been asserted in the Related Actions against First Central in return for certain payment. The terms of the settlement have been memorialized in a Settlement Agreement between First Central and the parties to the Related Actions, dated November 1, 2002, the ("Related Actions Settlement Agreement") pursuant to which Great American, on behalf of First Central, has agreed to pay \$1,520,000.00 in settlement ("Settlement") of the Related Actions.
4. Pursuant to the Related Actions Settlement Agreement, within five (5) business days of its execution, Great American will deposit \$1,520,000.00 into an escrow account with the law firm of Solomon Zauderer Ellenhorn Frischer & Sharp ("Solomon Zauderer"), with the understanding that such funds will be held in the escrow account for the collective benefit of the claimants/plaintiffs in the Related Actions and except for the costs incurred providing notice to the class of plaintiffs in the Lipson Action, as set forth in ¶ 6 of the Related Actions Settlement Agreement, such funds will not be disbursed until and if the Related Actions Settlement Agreement is executed and finally approved by the applicable courts.
5. First Central, in furtherance of the defense of the Related Actions, affirm that they have paid Costs of Defense, as that term is defined in the Policy, in excess of the \$50,000.00 Policy retention amount to Solomon Zauderer, and that there remain outstanding additional Costs of Defense incurred in connection with the Action that still need to be remitted.
6. First Central affirms that it has provided Great American (or Peterson & Ross, on Great American's behalf) with periodic Cost of Defense statements and that Defendants will continue to provide periodic statements of the total amount of outstanding Costs of Defense they have incurred and expended with regard to the Action.
7. Great American affirms that it has paid or is in the process of paying all Costs of Defense invoices it has received to date from First Central's counsel in excess of the \$50,000 retention, which, to date, total \$422,508,09 .  
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8. Pursuant to the Policy, the advancement of Costs of Defense serves to reduce the Limit of Liability available to First Central under the Policy, and, as such, the Costs of Defense referred to in Paragraph 7, *Supra*, have reduced the available Limits of Liability under the Policy to total \$1,577,491.91 .

9. The parties affirm that reduction of the Policy Limits of Liability by payment of Costs of Defense set forth in Paragraph 8 above, and after Great American remits payment of the \$1,520,000.00 Settlement referred to in Paragraph 4 above, the total remaining Limit of Liability under the Policy will be \$57,491.91, which shall be available to pay further and reasonable Costs of Defense incurred with regard to the Related Actions and the Settlement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions set forth in this Great American Release and Agreement, and for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, intending to be legally bound hereby, the Parties agree as follows:

#### **IV. TERMS OF AGREEMENT**

1. Pursuant to the terms of this Great American Release and Agreement, Great American agrees to pay on behalf of First Central the amount of \$1,520,000 to the escrow account established by Solomon Zauderer, representing the total settlement amount paid to obtain a discontinuance with prejudice of the Related Actions and for the plaintiffs full release of all claims arising from the Related Actions, as described above in Definitions, Paragraph 3.

2. First Central further acknowledges that the payment to be made by Great American described in Paragraph 1 above shall serve to reduce the available Limit of Liability under the Policy.

3. In consideration of Great American entering into this Great American Release and Agreement and in consideration of the payment by Great American described in Paragraph 1 above, First Central agrees to remise, release, and forever discharge Great American of and from any and all actual or alleged claims, demands, debts, losses, obligations, liabilities, costs, expenses, rights of action and causes of action, contractual, extra-contractual or otherwise, whether known or unknown, suspected or unsuspected, asserted or unasserted, actual or potential, contingent or noncontingent, which First Central now has or claims to have, or which may at any time hereafter accrue, arising out of, in connection with, in consequence of, or in any way involving: (i) the Related Actions; (ii) any and all claims asserted or which could have been asserted against the D&O Defendants and/or First Central in connection with the Related Actions of any kind or character whatsoever; and (iii) any matter, fact, circumstance or situation asserted in, or in issue in, or underlying, arising out of, in connection with, in consequence of, in any way involving, or relating to the Related Actions. Notwithstanding the foregoing, this Great American Release and Agreement does not constitute and shall not be construed as a release by the D&O Defendants of their right to recover from Great American any outstanding reasonable and necessary covered Costs of Defense incurred by the D&O Defendants with regard to the Related Actions for an amount up to remaining Limits of Liability available under the Policy, which totals, as further described above in Section III. Recitals, Paragraph 9, totals \$57,491.91.

4. In consideration of First Central entering into this Great American Release and Agreement, Great American agrees to remise, release, and forever discharge First Central of and

from any and all actual or alleged claims, demands, debts, losses, obligations, liabilities, costs, expenses, rights of action and causes of action, contractual, extra-contractual or otherwise, whether known or unknown, suspected or unsuspected, asserted or unasserted, actual or potential, contingent or noncontingent, which Great American now has or claims to have, or which may at any time hereafter accrue, arising out of, in connection with, in consequence of, or in any way involving: (i) the Related Actions; (ii) any and all claims asserted or which could have been asserted by Great American in connection with the Related Actions of any kind or character whatsoever; and (iii) any matter, fact, circumstance or situation asserted in, or in issue in, or underlying, arising out of, in connection with, in consequence of, in any way involving, or relating to the Related Actions.

5. First Central and Great American acknowledge that they may hereafter discover facts different from or in addition to those which they now know or believe to be true with respect to the matters herein released, and agree to waive any rights they might otherwise have to pursue a claim under any applicable statute or doctrine of law, including but not limited to ' 1542 of the California Civil Code, under the Policy based upon such facts. The Parties agree that this Release shall be and shall remain effective in all respects notwithstanding such different or additional facts or the discovery thereof.

California Civil Code ' 1542 provides as follows:

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.

The provision of California Civil Code ' 1542, set forth above, is hereby expressly waived by the Parties with respect to such unknown or unforeseen claims.

6. This Great American Release and Agreement and the releases contained herein shall bind and inure to the benefit of the agents, representatives, successors, heirs, subsidiaries, and assigns of the Parties hereto, and shall inure to the benefit of all of the persons, entities, individuals, agents, attorneys or principals against whom the claims herein released might be asserted.

7. This Great American Release and Agreement does not constitute and shall not be construed as an admission of liability on the part of the First Central or Great American or any persons or entities relating in any way thereto.

8. The Parties represent and warrant that they have read and understood the contents of this Great American Release and Agreement, that they have had a reasonable opportunity to consult with counsel before signing this Great American Release and Agreement, and that they have executed this Great American Release and Agreement knowingly, voluntarily and willfully.

9. The Parties represent and warrant that the person or persons who execute and attest to this Great American Release and Agreement on its behalf have full and complete authority to perform said acts.

10. The terms of this Great American Release and Agreement are contractual, and may not be changed, modified, altered, interlineated or supplemented, except by agreement in writing signed by the party against whom enforcement of the change, modification, alteration, interlineation, or supplementation is sought, nor may any covenant, representation, warranty or other provision herein be waived, except by agreement in writing signed by the party against whom enforcement of the waiver is sought.

11. This Great American Release and Agreement shall be construed in accordance with the laws of the State of New York.

12. This Great American Release and Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original. The executed signature page(s) from each original may be joined together and attached to one such original and shall constitute one in the same instrument.

13. The foregoing constitutes the entire agreement among the Parties with respect to the subject matter hereof, with the exception of any agreements set forth in the Related Actions Settlement Agreement, and may not be modified or amended except in writing signed by all Parties hereto.

14. If the Related Actions Settlement Agreement does not lead to a discontinuance and dismissal with prejudice of the Related Actions, which is approved by the appropriate courts, this Great American Release and Agreement is to be deemed null and void and of no effect whatsoever.

GREAT AMERICAN  
INSURANCE COMPANY

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

Its: \_\_\_\_\_

Dated: November \_\_, 2002

MARTIN J. SIMON

\_\_\_\_\_  
Martin J. Simon

Dated: November \_\_, 2002

HERBERT V. FRIEDMAN

\_\_\_\_\_  
Herbert V. Friedman

Dated: November \_\_, 2002

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RALPH DRABKIN

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JOSEPH CIORCIARI

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Joseph Ciorciari

Dated: November \_\_, 2002