



## MEMORANDUM

TO: Common Council

FROM: <sup>PC</sup> Pamela A. Captain

SUBJECT: Update State ex rel. American Bank v. City of Menasha, et al. & Lafayette Life Ins. Co., et al. v. City of Menasha, et al.

DATE: March 31, 2011

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State ex rel. American Bank v. City of Menasha, et al., Case No. 10-CV-0077 BR4

Plaintiff, American Bank, has notified the Winnebago County Circuit Court that the parties have executed a Settlement Agreement in the federal lawsuit which is anticipated to resolve this case. This case is stayed pending the outcome in the federal case.

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Lafayette Life Ins. Co., et al. v. City of Menasha, et al., No. 4:09CV0064 (U.S. Dist.Ct.N.D. Ind.)

On March 28 the parties signed the Settlement Agreement after completion of the drafting of all of the Exhibits. A copy is attached for your reference.

Also attached is a spreadsheet setting forth the City's notice obligations under the Settlement Agreement.

Within the next 30 days it is anticipated that Plaintiffs will motion to the Court for a preliminary approval order. This will set in motion certain legal procedural steps towards final approval of the Settlement Agreement.

The following must be notified by:

**SETTLEMENT AGREEMENT**

<b>Name of Company</b>	<b>Date/Circumstances to notify</b>	<b>Date completed</b>
Class Counsel	April 6, 2011 if WPP1 transaction does not close by April 6	
Class Counsel	April 6, 2011 if Escrow amount not the same	
Class Counsel	Immediately copy of any WPP1 Transaction Escrow Agreement and if amended or modified	
Class Counsel	Notify when WPP1 Transaction contingencies have been satisfied/waived	
WPP1	Notify of entry of the Order and Final Judgment	
WPP1/Transaction Escrow Agent	Upon the Order and Final Judgment becoming Final	
WPP1/Transaction Escrow Agent	Notify to Transfer \$17,450,000 to Settlement Escrow Agent	
State/Federal government officials	Within 10 days of plaintiff filing motion for preliminary approval order provide notice of the Settlement as required by 28 U.S.C. § 1715.	
Indiana Federal District Court	Upon expiration of 90 days after the later of the dates on which the appropriate federal and state officials are served with notice required under 28 U.S.C. § 1715 (b).	
Class Counsel/Settlement Escrow Agent	Identities and addresses of each purchaser, or current record holder, owner or beneficial owner, of the 2005 & 2006 BANS	
Settlement Escrow Agent	Within 60 days of execution of Settlement Agreement deposit \$50,000 into Settlement Fund	
Class Counsel	If conditions precedent are not satisfied & Menasha exercises option to terminate	
Class Counsel	If Holder Opt-out Amount or Purchaser Opt-out amount, either separately or in combination, = 5% or > of the BANS Outstanding Principal Balance & Menasha exercises option to terminate	

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION (LAFAYETTE)**

-----	X	
THE LAFAYETTE LIFE INSURANCE COMPANY,	:	
MERCY RIDGE, INC., AMERICAN BANK, and all	:	
others similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
- against -	:	Cause No. 4:09-CV-64-TLS-APR
	:	
CITY OF MENASHA, WISCONSIN, a municipal	:	
corporation, MENASHA UTILITIES, MENASHA	:	
STEAM UTILITY, and RBC CAPITAL MARKETS	:	
CORP. f/k/a RBC DAIN RAUSCHER, INC.,	:	
	:	
Defendants.	:	
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**SETTLEMENT AGREEMENT**

This Settlement Agreement, dated as of March 28, 2011 (“Agreement”), is made and entered into by and among the parties to the above-captioned action: (i) Plaintiffs, The Lafayette Life Insurance Company, Mercy Ridge, Inc., and American Bank (“Plaintiffs”), on their own behalf and on behalf of each member of the Settlement Class, as defined herein, by and through their counsel of record; and (ii) Defendants, City of Menasha, Wisconsin, a municipal corporation (“Menasha”), sued herein as City of Menasha, Menasha Utilities, and Menasha Steam Utility, and RBC Capital Markets, LLC (f/k/a RBC Capital Markets Corp.) (“RBC”) (Menasha and RBC referred to collectively as “Defendants”), by and through their counsel of record (Plaintiffs and Defendants referred to collectively as the “Parties”). This Agreement is intended by the Parties to fully, finally and forever resolve, discharge, and settle the Released Claims, as defined herein, subject to the terms and conditions set forth herein. Capitalized terms

**EXECUTION COPY**

not otherwise defined shall have the meaning ascribed in the Definitions section of this Agreement.

**I. THE LITIGATION**

Plaintiffs filed this action in the United States District Court for the Northern District of Indiana (the “Court”) on September 18, 2009, as a putative class action on behalf of themselves and all similarly situated persons or entities who purchased or hold certain bond anticipation notes (“BANs,” as further defined herein) issued by Menasha in 2005 and 2006.

Plaintiffs allege that Defendants sold or participated in the sale of the BANs in violation of federal and state securities laws, and statutory and common law duties described in the First Amended Complaint, and that Menasha defaulted on the payment of principal and interest due on the BANs at their maturity on September 1, 2009, as well as breached covenants associated with the BANs. On June 7, 2010, Plaintiffs filed a First Amended Complaint. Defendants thereafter moved to dismiss the First Amended Complaint, and their motions are pending.

**II. PLAINTIFFS’ CLAIMS AND THE BENEFITS OF SETTLEMENT**

Plaintiffs believe that the claims asserted in the First Amended Complaint have merit. Plaintiffs recognize and acknowledge, however, the expense and length of continued proceedings to prosecute the Action through trial and appeal. Plaintiffs have made a thorough investigation of the facts and believe that the settlement set forth in this Agreement would confer substantial benefits upon and is in the best interests of Plaintiffs and the Settlement Class.

**III. DEFENDANTS DENY ANY LIABILITY**

Defendants deny each of the claims and contentions alleged by Plaintiffs in the Action. Defendants expressly have denied and continue to deny that they committed any violation of law or engaged in any of the wrongful acts alleged in the First Amended Complaint. Defendants are

prepared to enter into this Agreement solely because the proposed settlement will eliminate the burden, expense, and uncertainty of further litigation. Defendants have, therefore, determined that it is desirable and beneficial to them that the Action be settled in the manner and upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the covenants, agreements and releases set forth herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree to settle the Action on the following terms and conditions.

#### **IV. TERMS AND CONDITIONS**

##### **A. Definitions**

The following terms, as used in this Agreement, have the following meanings:

1. “Action” means the above-captioned action, filed on September 18, 2009 in United States District Court for the Northern District of Indiana.

2. “Approved Disbursements” means the total amount of funds approved by the Court for disbursement from the Settlement Fund, for payment of the costs and expenses of the Settlement, including the costs of notice, expenses of administration of the Settlement Fund, the costs, fees, and expenses of the Settlement Escrow Agent or any claims administrator appointed by Class Counsel and approved by the Court, and the fees and disbursements awarded to Class Counsel.

3. “BAN” means bond anticipation note, but as used in this Agreement “BANs” refers collectively to the following: “2005 BANs” means the Taxable Steam Utility Revenue Bond Anticipation Notes, CUSIP #586499AA3, issued by Defendant City of Menasha, Wisconsin on or about February 1, 2005, with a stated maturity date of September 1, 2009; and

“2006 BANs” means the Taxable Steam Utility Revenue Bond Anticipation Notes, CUSIP #586499AB1, issued by Defendant City of Menasha, Wisconsin on or about December 1, 2006, with a stated maturity date of September 1, 2009. The BANs are the subject of the claims asserted in the Action.

4. “BANs’ Outstanding Principal Balance” means the combined, outstanding and unpaid principal balance of the 2005 BANs and 2006 BANs, in the amount of \$22,777,165.99, comprised of an outstanding and unpaid principal balance of \$11,935,385.82 under the 2005 BANs and an outstanding and unpaid principal balance of \$10,841,780.17 under the 2006 BANs.

5. “Claims Process” means the process formulated by Class Counsel in conjunction with the Settlement Escrow Agent and any claims administrator selected by Class Counsel, and approved by the Court, whereby Class Members shall be required to and may submit claims seeking a distribution from the Settlement Fund pursuant to any formula approved by the Court.

6. “Class” or “Settlement Class” means all persons or entities who purchased or held 2005 BANs or 2006 BANs during the Class Period, but excluding (i) persons or entities who have timely excluded themselves from the Class in accordance with the procedures described in this Agreement and the exhibits thereto; and (ii) Defendants and their respective parents, subsidiaries, and affiliates.

7. “Class Counsel” means the law firm of Ice Miller LLP, One American Square, Suite 2900, Indianapolis, Indiana, 46282.

8. “Class Member” or “Settlement Class Member” means each member of the Settlement Class who does not timely elect to be excluded from the Settlement Class.

9. “Class Member Holder Opt-out” means a potential Class Member who, as of the Exclusion Date, holds, owns or beneficially owns a 2005 BAN or 2006 BAN, and elects, in

accordance with the procedures described in this Agreement and the exhibits annexed hereto, to exclude him, her or itself from the Settlement.

10. "Class Member Purchaser Opt-out" means a potential Class Member who purchased during the Class Period, but as of the Exclusion Date does not hold, own or beneficially own, a 2005 BAN or 2006 BAN, and elects, in accordance with the procedures described in this Agreement and the exhibits annexed hereto, to exclude him, her or itself from the Settlement.

11. "Class Period" means the period from and including calendar year 2005 through the Effective Date.

12. "Class Representatives" means Plaintiffs The Lafayette Life Insurance Company, Mercy Ridge, Inc., and American Bank.

13. "Defendants" means City of Menasha, Wisconsin, a municipal corporation, sued herein as City of Menasha, Menasha Utilities, Menasha Steam Utility, and RBC Capital Markets, LLC (f/k/a RBC Capital Markets Corp.), referred to collectively.

14. "Effective Date" or "Effective" when used in connection with this Agreement means the first day on which all of the following are true: (a) the Court has entered the Order and Final Judgment approving this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and dismissing, as of the Effective Date, the Action against Defendants, on the merits with prejudice as to all Settlement Class Members and without costs, and the Order and Final Judgment has become Final; and (b) the Settlement Amount has been deposited with the Settlement Escrow Agent, irrevocably and without further condition or possibility of payment to any person or entity other than Class Members or Class Counsel (or for the payment of

Approved Disbursements), in furtherance of the Order and Final Judgment and in consummation of the Settlement.

15. “Exclusion Date” means the last date by which a Class Member may elect to exclude him, her or itself from the Settlement in accordance with the procedures described in this Agreement and the exhibits thereto.

16. “Exclusion Request” means the written request that any Class Member seeking to exclude him, her or itself from the Settlement must complete, certify and timely submit in accordance with the procedures described in this Agreement and the exhibits annexed hereto.

17. “Execution Date” means the last date on which this Agreement is signed by the Parties, which is the date first written above.

18. “Final” when used in connection with the Settlement or the Order and Final Judgment means the date on which the time for appeal or to seek permission to appeal from the Order and Final Judgment has expired, or the Order and Final Judgment has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

19. “Order and Final Judgment” means that order and final judgment to be entered by the Court in the Action, substantially in the form of Exhibit D hereto, which finally approves this Agreement and the Settlement under Rule 23(e) of the Federal Rules of Civil Procedure, and which, as of the Effective Date, dismisses the Action against Defendants, on the merits with prejudice as to all Class Members and without costs. The Order and Final Judgment shall provide that it shall not become final and binding until the Effective Date.

20. “Released Claims” means and includes any and all claims, causes of action, demands, rights or liabilities, complaints, agreements, promises (express or implied), contracts,

undertakings, covenants, guarantees, grievances, damages, obligations, expenses, debts and demands whatsoever, whether present or future, of whatever kind or nature, whether sounding in law or in equity, from the beginning of time until the end of time, including both known and Unknown Claims, as defined herein, and including but not limited to, claims of fraud, negligence, negligent misrepresentation, gross negligence, professional negligence, breach of duty of care, breach of loyalty, breach of fiduciary duty, mismanagement, corporate waste, breach of contract, or violations of any federal or state statute, rule, or regulation, that have been or could have been asserted in the Action or in any other forum by or on behalf of the Settlement Class, or any Member of the Settlement Class, based on, arising out of, related to, or in any way connected with the 2005 BANs, 2006 BANs, or the facts, allegations, events, occurrences, transactions, or subject matter referred to or described in the First Amended Complaint or the Action.

21. “Releasees” means and refers individually and collectively to: Defendants, and WPPI, and/or their current and former, direct and indirect subsidiaries (wholly-owned or not), parents, successors, affiliates, assignees, personal representatives, business units or groups, and assigns, and any and all of each of their current and/or former employees, agents, attorneys, officers and directors, shareholders or members, or in the case of Menasha, any duly elected or appointed public officials, including but not limited to the Mayor of Menasha and each and every member of the Menasha Common Council.

22. “Releasers” shall refer jointly and severally and individually and collectively to each Member of the Settlement Class, and their respective past and present parents, attorneys, subsidiaries, affiliates, agents, heirs, executors, administrators, guardians, successors and assigns; and Class Counsel.

23. “Settlement” means the settlement of the Action described in this Agreement and subject to the terms and conditions set forth herein.

24. “Settlement Amount” means the sum of \$17,500,000.

25. “Settlement Escrow Agent” means The Bank of New York Mellon Trust Company, N.A., or such other entity selected by Plaintiffs, which has been or will be retained by Plaintiffs to carry out the duties of the Settlement Escrow Agent specified in this Agreement, including but not limited to administration of the Settlement Fund.

26. “Settlement Fund” means the interest-bearing account established by order of the Court and maintained under the Court's jurisdiction as a Qualified Settlement Fund within the meaning of Treasury Regulation 1.46813-1, as amended, for the purpose of investing, conserving and protecting the Settlement Amount, and any interest earned thereon, prior to distribution, and distribution as directed by the Court.

27. “Unknown Claims” means and includes any and all Released Claims which Plaintiffs or any member of the Settlement Class does not know or suspect exists in his, her or its favor at the time of their release of the Releasees, which if known by him, her, or it might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all such Unknown Claims, the Parties agree that, upon the Effective Date, each Member of the Settlement Class shall have, by operation of this Agreement, and the Order and Final Judgment of the Court approving this settlement, expressly waived any and all provisions, rights and benefits conferred by any law of the United States, or of any state or territory of the United States, or principle of common law, which is equivalent, comparable, or similar in any way to Cal. Civ. Code § 1542, 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.

The Parties acknowledge, and Members of the Settlement Class are deemed to acknowledge, that inclusion of Unknown Claims within the definition and scope of Released Claims has been a separately bargained for and key element of the Settlement.

28. “WPPI” means WPPI Energy, a Wisconsin municipal electric company.

29. “WPPI Agreement” means that certain Asset Purchase Agreement by and among City of Menasha, Wisconsin, Menasha Utilities Commission, and WPPI Energy, dated as of December 8, 2009.

30. “WPPI Transaction” means that combined asset sale and leaseback transaction, respecting certain utility assets now owned by Menasha, which is the subject of the WPPI Agreement and which Menasha and WPPI intend to close no later than April 6, 2011.

31. “WPPI Transaction Contingencies” means those conditions and contingencies set forth in the WPPI Agreement or the WPPI Transaction Escrow Agreement, to which transfer of the Settlement Amount, inclusive of the WPPI Transaction Net Proceeds, to the Settlement Escrow Agent is or may be subject, unless waived by WPPI, including but not limited to various actions by governmental regulatory bodies over which neither WPPI nor Menasha has control, WPPI’s right to terminate the WPPI Transaction Escrow Agreement pursuant to its terms, as well as the condition precedent that the Settlement and Order and Final Judgment be approved by the Court and become Final.

32. “WPPI Transaction Escrow Agreement” and “WPPI Transaction Escrow Agent” mean, respectively, (i) that escrow agreement to be entered into between WPPI, Menasha and JPMorgan Chase Bank, National Association, as escrow agent, in connection with the WPPI

Transaction, and (ii) the escrow agent duly appointed to act pursuant to the WPPI Agreement and the WPPI Transaction Escrow Agreement, and to whom the Settlement Amount, inclusive of the WPPI Transaction Net Proceeds, shall be deposited upon closing of the WPPI Transaction, and who is or shall be authorized to transfer the Settlement Amount, inclusive of the WPPI Transaction Net Proceeds, to the Settlement Escrow Agent for deposit into the Settlement Fund when the Order and Final Judgment becomes Final.

33. “WPPI Transaction Net Proceeds” means the sum of not less than \$17,300,000 to be deposited by WPPI with the WPPI Transaction Escrow Agent, upon the closing of the WPPI Transaction and for the purpose of applying such sum to payment of the Settlement Amount.

**B. Certification of the Settlement Class**

34. The Parties agree, only for purposes of the Settlement and for no other purpose, that the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) are satisfied and, subject to the Court’s approval, that the following Class may be certified for settlement purposes only:

All persons or entities who purchased or held a 2005 BAN or 2006 BAN during the Class Period, but excluding (i) persons or entities who have timely excluded themselves from the Class in accordance with the procedures described in this Agreement and the exhibits thereto, and (ii) Defendants and their respective parents, subsidiaries, and affiliates.

In the event the Settlement, for whatever reason, does not obtain final approval from the Court, is terminated, or otherwise does not become Final and Effective pursuant to the terms and conditions of this Agreement, then any Settlement Class that has been certified by the Court shall be deemed decertified, and Defendants shall have the right to oppose certification of a class in any subsequent legal proceedings.

**C. Express Conditions Precedent to the Settlement**

35. The Settlement, and any obligation of Menasha to pay the Settlement Amount, are expressly contingent and conditioned upon (i) closing of the WPPI Transaction, (ii) satisfaction (or waiver by WPPI) of the WPPI Transaction Contingencies, as determined by WPPI in its sole discretion under the terms of the WPPI Agreement and the WPPI Transaction Escrow Agreement, (iii) WPPI's transfer of the WPPI Transaction Net Proceeds, in the sum of not less than \$17,300,000, to the WPPI Transaction Escrow Agent, (iv) the Order and Final Judgment being entered and becoming Final, and (v) the WPPI Transaction Escrow Agent's transfer of the Settlement Amount (less any sum advanced pursuant to paragraph 42), inclusive of the WPPI Transaction Net Proceeds, free and clear of any liens, security interests or other superior right, title or interest, to the Settlement Escrow Agent for deposit into the Settlement Fund and payment of the Settlement Amount. Menasha and WPPI intend to close the WPPI Transaction by April 6, 2011; however, no assurance, representation or warranty can be or is being given that the WPPI Transaction will close by April 6, 2011, or at any time, or that the WPPI Transaction Contingencies will be satisfied (or waived by WPPI). Notwithstanding the foregoing, Menasha shall immediately notify Class Counsel (i) if the WPPI Transaction does not close by April 6, 2011, (ii) if the WPPI Transaction closes but the WPPI Net Proceeds transferred to the WPPI Transaction Escrow Agent are less than \$17,300,000, and (iii) upon Menasha's being notified by WPPI that all WPPI Transaction Contingencies (other than the Order Condition and Appeal Condition as defined in the WPPI Escrow Agreement) have been satisfied (or waived by WPPI), and in connection therewith shall provide Class Counsel with a copy of such notice from WPPI. Plaintiffs, on their own behalf and on behalf of each Member of the Settlement Class, expressly acknowledge that the foregoing conditions set forth in (i) to (v) are express conditions precedent

to this Agreement becoming Effective, the Settlement, and any obligation of Menasha to pay the Settlement Amount.

36. The Settlement, and any obligation of the Releasors to give and the effectiveness of the Release, are expressly contingent and conditioned upon (i) closing of the WPPI Transaction no later than May 6, 2011, or such other extended date as may be agreed upon by the Parties, (ii) the sum of not less than \$17,450,000 being deposited with the WPPI Transaction Escrow Agent in connection with the closing of the WPPI Transaction, (iii) Menasha providing notice to Class Counsel, as required in paragraph 35, of its receipt of notification from WPPI that the WPPI Transaction Contingencies (other than the Order Condition and Appeal Condition as defined in the WPPI Escrow Agreement) have been satisfied (or waived by WPPI), within 60 days of the Execution Date, or such other extended date as may be agreed upon by the Parties, and (iv) the WPPI Transaction Escrow Agent's irrevocable transfer of the full Settlement Amount (less the sum advanced by Menasha pursuant to paragraph 42) to the Settlement Escrow Agent for deposit into the Settlement Fund. For the foregoing purposes, Menasha anticipates that the WPPI Transaction Contingencies (other than the Order Condition and Appeal Condition as defined in the WPPI Escrow Agreement) will be satisfied (or waived by WPPI) within approximately 60 days of the Execution Date; however, no assurance, representation or warranty can be or is being given that the WPPI Transaction Contingencies will be satisfied (or waived by WPPI) within such time. Also for the foregoing purposes, Plaintiffs acknowledge that they have been provided a copy of, and Class Counsel has reviewed, the WPPI Transaction Agreement and a draft of the WPPI Transaction Escrow Agreement (and as to the latter Plaintiffs have also been provided a copy of, and Class Counsel has reviewed, relevant sections of a draft Closing Agreement between WPPI and Menasha that define the conditions to release of the Settlement

Amount by the WPPI Transaction Escrow Agent set forth in the WPPI Transaction Escrow Agreement, WPPI's rights to terminate the WPPI Transaction Escrow Agreement, and applicable deadlines with respect to both), and that such agreements set forth the WPPI Transaction Contingencies. Menasha shall provide Class Counsel with an executed copy of the WPPI Transaction Escrow Agreement (and a final version of the sections of the Closing Agreement referenced above) upon execution, and in the event WPPI and Menasha amend or modify the WPPI Transaction Escrow Agreement, Menasha shall promptly provide Class Counsel with a copy of same; provided, however, that nothing herein shall be deemed a waiver of Plaintiffs' right to assert that any material changes to the terms of the WPPI Escrow Agreement reflected in such executed, amended or modified versions thereof constitute a breach of one or more terms of this Agreement.

**D. The Settlement**

37. Subject to the WPPI Transaction closing, and the WPPI Transaction Net Proceeds being transferred to the WPPI Transaction Escrow Agent in the sum of at least \$17,300,000, Menasha shall, at the closing of the WPPI Transaction, ensure that sufficient additional funds are deposited with the WPPI Transaction Escrow Agent so that the sum of such additional funds and the WPPI Transaction Net Proceeds total at least \$17,450,000, representing the Settlement Amount of \$17,500,000 less \$50,000 to be advanced by Menasha pursuant to paragraph 42 for the payment of interim expenses of administration of the Settlement. Upon Menasha receiving notice from WPPI that the WPPI Transaction Contingencies (other than the Order Condition and Appeal Condition as defined in the WPPI Escrow Agreement) have been satisfied (or waived by WPPI), and subject to any other conditions set forth in paragraph 35, and Class Members' rights under paragraph 52, Menasha shall notify Class Counsel, and the Parties shall thereupon proceed

to seek entry of the Order and Final Judgment. Upon entry of the Order and Final Judgment, Menasha shall provide written notification of same to WPPI. Upon the Order and Final Judgment becoming Final, Menasha shall, pursuant to the terms of the WPPI Transaction Escrow Agreement, provide written notification to WPPI and the WPPI Transaction Escrow Agent that the Order and Final Judgment has become Final, and direct the WPPI Transaction Escrow Agent, in accordance with the terms of the WPPI Transaction Escrow Agreement, to transfer the \$17,450,000 to the Settlement Escrow Agent for deposit into the Settlement Fund. The Settlement Escrow Agent shall thereupon administer the Settlement Fund for the sole purpose of paying the Settlement Amount, less any Approved Disbursements, to the Settlement Class pursuant to the terms and conditions herein, the Order and Final Judgment, and any further direction of the Court. In the event WPPI does not, in accordance with the terms of the WPPI Transaction Escrow Agreement, provide written confirmation to the WPPI Transaction Escrow Agent that all WPPI Transaction Contingencies have been satisfied, thereby authorizing the WPPI Transaction Escrow Agent to transfer the Settlement Amount to the Settlement Escrow Agent, Menasha shall make demand upon WPPI to comply with its obligation to authorize such transfer. For the foregoing purposes, Plaintiffs, on their own behalf and on behalf of the Settlement Class, expressly acknowledge that the Settlement Amount shall not be deposited into the Settlement Fund, and full payment of the Settlement Amount (less the sum referred to in paragraph 42) shall not be made until after the Order and Final Judgment has been entered in the Action and becomes Final.

**E. Notice and Court Approval**

38. Within a reasonable period of time, but not more than thirty (30) days after the execution of this Agreement, Class Counsel shall apply to the Court by motion for an order,

substantially in the form of Exhibit A hereto (“Preliminary Approval Order”), that (i) certifies the Settlement Class, approves the appointment of Ice Miller LLP as Class Counsel, and preliminarily approves the Settlement as set forth in this Agreement, (ii) approves the retention of the Settlement Escrow Agent, (iii) approves the mailing of notice of the terms and conditions of the Settlement to Settlement Class Members, substantially in the form of Exhibit B hereto (“Class Notice”), and publication of summary notice, substantially in the form of Exhibit C hereto (“Publication Notice”), (iv) sets forth dates by which the Class Notice and Publication Notice shall be mailed and published, respectively, as well as dates by which Settlement Class Members must either file any objections to, or exercise any right to exclude themselves (opt-out) from the Settlement; provided, however, that Plaintiffs shall not be required to mail the Class Notice or publish the Publication Notice prior to the time Menasha notifies Class Counsel, as required in paragraph 35, of Menasha’s receipt of notification from WPPI that the WPPI Transaction Contingencies (other than the Order Condition and Appeal Condition as defined in the WPPI Escrow Agreement) have been satisfied (or waived), and (v) schedule a final fairness hearing for purposes of approving the Settlement and entering an Order and Final Judgment, substantially in the form of Exhibit D herein. Publication Notice shall be published twice in The Bond Buyer with an interval of two weeks between each publication. Defendants shall support the motion, and shall cooperate with Class Counsel in seeking Court approval of, and in implementing the Settlement. Subject to the Parties’ rights under paragraph 55, the Parties waive any appeal from the Order and Final Judgment.

39. Within ten (10) days of the filing of the motion referenced above, Menasha shall provide notice of the Settlement, the motion and other court papers to federal and state government officials as required by 28 U.S.C. § 1715. The notice to be provided by Menasha

shall be substantially in the form of Exhibit E hereto, inclusive of the attachments thereto. Pursuant to 28 U.S.C. § 1715(d), Menasha shall notify the Court upon expiration of ninety (90) days after the later of the dates on which the appropriate federal official and the appropriate state official are served with the notice required under 28 U.S.C. § 1715(b).

40. Immediately following execution of this Agreement, Class Counsel shall notify the Court overseeing the Action and request, with the support of Defendants and on behalf of all Parties, that the Court stay the Action and hold all proceedings (other than those connected to the Settlement) in abeyance pending final disposition of the Settlement process. Immediately following execution of this Agreement, Plaintiff American Bank shall notify and request the applicable Court to hold in abeyance, pending final disposition of this Action, the proceeding entitled *American Bank v. City of Menasha, Wisconsin, Debbie Galeazzi and Menasha Utilities*, Case No. 10-cv-0077-BR4, pending in the Winnebago County, Wisconsin Circuit Court, Branch 4. Upon the Effective Date, American Bank shall move the same Court to dismiss the foregoing matter, with prejudice, and without any award of damages, attorneys' fees, or costs.

**F. Administration of the Settlement Fund and Claims Process**

41. The Settlement Fund and the Claims Process shall be administered by Class Counsel in conjunction with the Settlement Escrow Agent, and any claims administrator appointed by Class Counsel and approved by the Court, pursuant to the terms of this Agreement, and any formula for distribution of the Settlement Amount approved by the Court, subject to the direction and jurisdiction of the Court. Within a reasonable period of time following the Execution Date, Defendants shall supply the Settlement Escrow Agent and Class Counsel information to the best of their knowledge, which information may be obtained through third parties, regarding the identities and addresses of each purchaser, or current record holder, owner

or beneficial owner, of the 2005 BANs and 2006 BANs. Following the Effective Date, but within the time prescribed by the Court, the Settlement Fund, less any disbursements for Approved Disbursements, shall be distributed by the Settlement Escrow Agent to Members of the Settlement Class pursuant to any Claims Process and plan of distribution approved by the Court and administered by Class Counsel and any claims administrator.

42. Before the Court enters the Order and Final Judgment approving this Agreement, disbursements for Plaintiffs' and Class Members' reasonable expenses actually and necessarily incurred (not including attorneys' fees) and associated with the following may be made from the Settlement Fund as directed by Class Counsel, for which purpose only the sum of \$50,000, advanced against and deductible from the Settlement Amount, shall be deposited by Menasha with the Settlement Escrow Agent within sixty (60) days after the Execution Date: providing and publishing notice of the Settlement to the Settlement Class, administering the settlement and any claims process, and any payments and expenses incurred in connection with taxation matters relating to the Settlement and this Agreement as addressed by paragraph 30 of this Agreement. Sums actually disbursed for such reasonable expenses shall not be refundable to Menasha in the event the Agreement is later disapproved, terminated, or otherwise fails to become effective. Under no circumstances shall the \$50,000 sum be considered a limitation on the administrative expenses that may be incurred; provided, however, that in no event shall Defendants have any responsibility, financial obligation, or liability whatsoever with respect to any of the foregoing expenses, all of which shall be payable or paid solely from the Settlement Fund.

43. After the Effective Date, Plaintiffs and Class Counsel shall have the right to seek, and Defendants shall not oppose, Court approval of payments from the Settlement Fund for distribution to Settlement Class Members or to reimburse Class Counsel for Approved

Disbursements. In no event shall Defendants have any responsibility, financial obligation, or liability whatsoever with respect to the foregoing expenses, or the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution and administration, or any fees or expenses of the Settlement Escrow Agent, or any other Approved Disbursements, all of which shall be payable or paid solely from the Settlement Fund.

44. Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all fees, costs and expenses incurred in this Action including, but not limited to, attorneys' fees, costs and expenses. Pursuant to Federal Rules of Civil Procedure 23(h) and 54(d)(2), Plaintiffs and Class Counsel shall move for, and Defendants shall not oppose, the Court's approval of the payment of attorneys' fees, costs and expenses in the aggregate amount of \$1,238,149, to be paid from the Settlement Fund. Plaintiffs' and Class Counsel's motion for an award of attorneys' fees and costs shall be filed, and posted on the Settlement website, no later than 14 days prior to the final fairness hearing. No attorneys' fees, costs or expenses, other than the reimbursement of any costs or expenses advanced by Class Counsel associated with providing notice of the Settlement to the Settlement Class, administering the Settlement, or in connection with taxation matters relating to the Settlement and this Agreement as addressed by paragraph 57 of this Agreement, if any, shall be paid to Class Counsel prior to the Effective Date. In no event shall Defendants have any responsibility, financial obligation, or liability whatsoever for any costs, fees or expenses of Class Counsel, or any other of Plaintiffs' or the Settlement Class's respective attorneys, experts, advisors, agents, or representatives, or any other Approved Disbursements, all of which shall be payable or paid solely from the Settlement Fund.

**G. Releases**

45. Upon the Effective Date, in consideration of delivery of the Settlement Amount to the Settlement Escrow Agent, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Releasees, and each of them, shall be completely released, acquitted, and forever discharged from any and all of the Released Claims, including the Unknown Claims, whether known or unknown, whether fraudulently concealed or otherwise concealed, or whether the damages or injury have fully accrued or will accrue in the future, whether class, individual or otherwise in nature, that Releasors, or any of them, ever had, now has, or hereafter can, shall, or may have on account of, or in any way related to the 2005 BANs or 2006 BANs, or arising out of or resulting from conduct, including but not limited to any conduct or action or inaction related to or arising out of any alleged wrongdoing associated with the 2005 BANs or the 2006 BANs from 2005 through the end of the Class Period, including but not limited to any conduct alleged, and causes of action asserted, or that could have been alleged or asserted, in the Action.

46. The Releasors shall not, after the Effective Date of this Agreement, seek to recover against any of the Releasees for any of the Released Claims. In accordance with and to the extent required by 15 U.S.C. § 78u-4(f)(7)(A), upon the Effective Date the Releasees shall be released from all claims for contribution and indemnification brought by other persons. The Releasors and Releasees shall jointly request that the Order and Final Judgment bar any and all future claims for contribution or indemnification arising out of any Released Claim belonging to the Class, including, but not limited to, any claim that is based upon, arises out of or relates to this Action or the transactions and occurrences referred to in the First Amended Complaint, (i) by any person or entity against any Releasee and (ii) by any Releasee against any person or

entity other than as set out in 15 U.S.C. § 78u-4(f)(7)(A)(ii), and providing that such claims for contribution and indemnification are permanently barred, extinguished, discharged, satisfied, and unenforceable.

47. Upon the Effective Date, for good and valuable consideration, the Releasees shall be completely released, acquitted, and forever discharged from any and all Released Claims by Releasors against any and all of the Releasees. The failure of any member of the Settlement Class to exclude themselves from the Settlement by the Exclusion Date set by the Court, or to obtain any payment from the Settlement Fund, whether by any action or failure to act of the Settlement Escrow Agent or Class Counsel, or for any other reason, shall not affect the releases herein. Nor shall the releases be affected in any way by any subsequent determination that the allocation of any payment to the Settlement Class from the Settlement Fund was unfair. Upon the Effective Date, for good and valuable consideration, any claims against Releasors arising out of, relating to or in connection with the Action as against the Defendants are hereby released by the Releasees and their counsel, and they are permanently enjoined and barred from instituting, asserting or prosecuting any and all claims which the Releasees or their counsel or any of them, had, have or may in the future have against Releasors, arising out of relating to or in connection with the Action as against the Defendants. Class Counsel shall include in any notices and payments of Settlement Funds to Class Members contemplated by this Agreement a description of the claims being released, including the "Released Claims", and a copy of the Release provisions of this Agreement.

**H. Class Members' Option to Exclude Themselves from the Settlement**

48. Class Members shall be afforded the opportunity to exclude themselves from the Settlement by timely submitting an Exclusion Request. Each Class Member submitting an

Exclusion Request shall be categorized as either a Class Member Holder Opt-out or Class Member Purchaser Opt-out.

49. For each Class Member Holder Opt-out submitting an Exclusion Request, Class Counsel shall, with notice to Defendants' counsel, calculate, or otherwise determine in conjunction with the claims administrator or Defendants, the outstanding principal balance on the 2005 BAN or 2006 BAN held, owned, or beneficially owned by such Class Member Holder Opt-out. The aggregate amount of such outstanding principal balances for all Class Member Holder Opt-outs shall be defined as the "Holder Opt-out Amount."

50. Class Member Purchaser Opt-outs shall be required to certify in their Exclusion Request, subject to verification through any records or information reasonably available to the Parties, (i) the amount paid for the BAN purchased by them, together with the date of such purchase, and (ii) the amount received by them upon the subsequent sale of the BAN, together with the date of such sale and the identity of the purchaser. No Exclusion Request submitted by a Class Member Purchaser Opt-out shall be valid or effective for the purpose of excluding him, her or itself from the Settlement and the Release herein, if it does not contain the foregoing certification. For each such Exclusion Request, Class Counsel shall, with notice to Defendants' counsel, calculate the amount reflecting the difference between the purchase price and sale price of the BAN, as certified by the Class Member Purchaser Opt-out, and shall calculate the aggregate amount of such differences for all Class Member Purchaser Opt-outs who submit completed Exclusion Requests, which aggregate amount shall be defined as the "Purchaser Opt-out Amount."

51. The Parties represent that they have not encouraged, directly or indirectly, and agree that they will not encourage, directly or indirectly, any potential Class Member to exercise

any right to exclude him, her or itself from the Settlement, and Defendants each further represent that they have not provided, and agree that, except with the prior consent of Class Counsel, they will not provide, assistance, advice, counsel or information to any potential Class Member related to that potential Class Member's right to request exclusion from the Settlement.

**I. Termination Events and Effect of Termination**

52. In the event, for whatever reason, any one or more of the conditions precedent described in paragraph 35 above is not satisfied (or waived), then, at Menasha's sole option and discretion, with notice to Class Counsel, this Agreement shall terminate and no longer be of any force or effect, and the Order and Final Judgment, if it has been entered, shall be vacated upon joint application of the Parties; provided, however, that in the event, for whatever reason, the WPPI Transaction Net Proceeds transferred by the WPPI Transaction Escrow to the Settlement Escrow Agent for deposit into the Settlement Fund are less than \$17,300,000, then, at Plaintiffs' sole option and discretion, on their own behalf and on behalf of the Settlement Class, the Settlement may proceed pursuant to the existing terms and conditions in this Agreement, except that the Settlement Amount shall be reduced dollar for dollar by the amount of such net proceeds below \$17,300,000; provided, further, however, that the \$200,000 contribution by Menasha shall remain part of the Settlement Amount.

53. In the event the Holder Opt-out Amount or the Purchaser Opt-out amount, either separately or in combination, represents five percent (5%) or more of the BANs' Outstanding Principal Balance, then, at Menasha's sole option and discretion, with notice to Class Counsel, this Agreement shall terminate and no longer be of any force or effect. In the event and to the extent Class Members exclude themselves from the Settlement, but the Agreement is not terminated, then the Settlement Amount shall be reduced by a percentage equal to: the combined

total of the Holder Opt-out Amount and the Purchaser Opt-out Amount *divided by* the BANs' Outstanding Principal Balance. The amount reflecting such percentage shall be retained in full by the WPPI Transaction Escrow Agent and, pursuant to the terms of the WPPI Transaction Escrow Agreement, shall be paid to Menasha.

54. In the event, for whatever reason, any one or more of the conditions precedent described in paragraph 36 above is not satisfied (or waived), then, at Plaintiffs' sole option and discretion, with notice to Defendants' counsel, and subject to Plaintiffs' rights under paragraph 52, this Agreement shall terminate and no longer be of any force or effect, and the Order and Final Judgment, if it has been entered, shall be vacated upon joint application of the Parties.

55. In the event the Court refuses to approve this Agreement or any material part hereof, or if such approval is reversed, modified in a material way or set aside on appeal, or if the Court does not approve an Order and Final Judgment substantially and materially in the form attached as Exhibit D hereto, or if the Court enters the Order and Final Judgment and appellate review is sought and, on such review, some material provision thereof is vacated, then each of Menasha and the Plaintiffs shall, at its or their sole option and discretion, and without incurring any liability to each other or to any other party to this Agreement, have the option to terminate this Agreement in its entirety. A modification or reversal on appeal of any amount of Class Counsel's attorneys' fees and expenses awarded by the Court from the Settlement Fund or any plan of allocation of the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment sufficient to trigger any right of termination of the Agreement.

56. In the event the Agreement does not become Final and Effective or is terminated, the Parties will return in all respects to the status quo ante. Defendants each enter this

Agreement without in any way acknowledging any fault, liability or wrongdoing of any kind. Nothing contained in this Agreement or any notice or other exhibit to this Agreement, including the Class definition and any reference to wrongdoing in this Agreement or in any notice or other exhibit to this Agreement, shall be construed in any way as an admission or evidence of any illegal conduct, fault, liability or wrongdoing of any kind by Defendants. Further, Plaintiffs and Defendants agree that this Agreement, whether or not it is finally approved and whether or not terminated or rescinded, and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by any defendant, or of the truth of any of the claims or allegations contained in the First Amended Complaint or any other pleading filed by Plaintiffs in the Action, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Action or in any other action, proceeding or context.

**J. Taxes**

57. The Settlement Fund shall be established and maintained at all times as a Qualified Settlement Fund within the meaning of Treasury Regulation Section 1.468B-1, as amended. Class Counsel shall be solely responsible for filing all informational and other tax returns necessary to report any net taxable income earned by the Settlement Fund and shall file all informational and other tax returns necessary to report any income earned by the Settlement Fund and shall be solely responsible for taking out of the Settlement Fund, as and when legally required, any tax payments, including interest and penalties due on income earned by the Settlement Fund. All taxes (including any interest and penalties) due with respect to the income earned by the Settlement Fund shall be paid from the Settlement Fund. Defendants shall have no responsibility to make any filings relating to the Settlement Fund and will have no responsibility

to pay tax on any income earned by the Settlement Fund or pay any taxes on Settlement Fund, unless the Settlement is not consummated. In the event the Settlement is not consummated, Menasha shall be responsible for the payment of all taxes on said income that have not already been paid out of the Settlement Fund as provided in this Agreement. However, Defendants shall not be responsible for paying any interest or penalties relating to tax filings made by Class Counsel or tax payments owed as a result of those filings or the lack of timely filing thereof.

**K. Miscellaneous**

58. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any dispute arising out of or relating to this Agreement, or the interpretation, applicability, or specific enforcement of its terms, which cannot be resolved by negotiation and agreement by Plaintiffs and Defendants.

59. This Agreement constitutes the entire agreement between Plaintiffs and Defendants pertaining to the Settlement of the Action and supersedes any and all prior and contemporaneous undertakings in connection therewith. This Agreement may be modified or amended only by a writing executed by Plaintiffs and Defendants, and approved by the Court.

60. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Releasers and Releasees. Without limiting the generality of the foregoing and subject to the Effective Date occurring: (a) each and every covenant and agreement made herein by Plaintiffs or Class Counsel shall be binding upon all Class Members and Releasers, and (b) each and every covenant and agreement made herein by a Defendant shall be binding upon that Defendant's Releasees.

61. This Agreement may be executed in counterparts by Plaintiffs and Defendants, and a digital or facsimile signature shall be deemed an original for purposes of this Agreement.

62. Neither Defendants, Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions 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 of an Agreement.

63. Nothing expressed or implied in this Agreement is intended to, shall, or shall be construed to, confer upon or give any person or entity other than Plaintiffs, Settlement Class Members, Class Counsel, Releasors, Releasees any right or remedy under or by reason of this Agreement.

64. Where this Agreement requires any party to provide notice to any other party, such notice, communication, or document shall be provided by letter sent by same day facsimile transmission or electronic mail transmission with confirmation by overnight delivery or hand delivery.

65. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.

66. This Agreement shall be interpreted and construed in accordance with the substantive laws of the State of Wisconsin, and any dispute or claims arising under or related to the terms or provisions of this Agreement, whether styled in contract, tort or otherwise, shall be governed by the substantive laws of the State of Wisconsin without reference to choice of law or conflict of law principles.

**Remainder of Page Intentionally Left Blank**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Execution

Date set forth above.

**THE LAFAYETTE LIFE INSURANCE COMPANY**

By: [Signature] Jerry B. Stillwell  
Its: President + CEO  
Date: March 25, 2011

By: [Signature] William F. Olds  
Its: Sr VP - Projects + Planning  
Date: March 25, 2011

Attested By: Kimberly Meyer Kimberly Meyer  
Title: V.P. - Human Resources + Ass't Secy  
Date: March 25, 2011

**MERCY RIDGE, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**AMERICAN BANK, A NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ICE MILLER LLP**

\_\_\_\_\_  
Michael A. Wukmer  
One American Square  
Suite 2900  
Indianapolis, IN 46282-0200

*Counsel for Plaintiffs and Class Counsel*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Execution

Date set forth above.

**THE LAFAYETTE LIFE INSURANCE COMPANY**

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

Attested By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**MERCY RIDGE, INC.**

By: John S. Froppe  
Name: John S. Froppe  
Title: Treasurer  
Date: 3/25/11

**AMERICAN BANK, A NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ICE MILLER LLP**

\_\_\_\_\_  
Michael A. Wukmer  
One American Square  
Suite 2900  
Indianapolis, IN 46282-0200

*Counsel for Plaintiffs and Class Counsel*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Execution

Date set forth above.

**THE LAFAYETTE LIFE INSURANCE COMPANY**

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

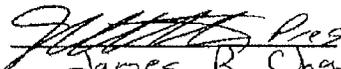
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

Attested By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**MERCY RIDGE, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**AMERICAN BANK, A NATIONAL ASSOCIATION**

By:   
Name: James R. Chatterton  
Title: President  
Date: 3-25-2011

**ICE MILLER LLP**

\_\_\_\_\_  
Michael A. Wukmer  
One American Square  
Suite 2900  
Indianapolis, IN 46282-0200

*Counsel for Plaintiffs and Class Counsel*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Execution

Date set forth above.

**THE LAFAYETTE LIFE INSURANCE COMPANY**

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

Attested By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

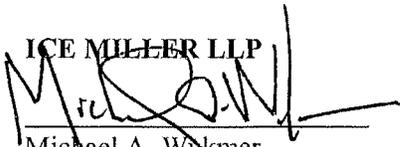
**MERCY RIDGE, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**AMERICAN BANK, A NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ICE MILLER LLP**



Michael A. Wukmer  
One American Square  
Suite 2000  
Indianapolis, IN 46282-0200

*Counsel for Plaintiffs and Class Counsel*

CITY OF MENASHA, WISCONSIN

By: [Signature]  
Name: Donald Merkes  
Title: Mayor  
Date: 25 MARCH 2011

By: Deborah A. Galeazzi  
Name: Deborah A. Galeazzi  
Title: City Clerk  
Date: 3-25-11

HUNTON & WILLIAMS LLP

[Signature]  
Edward J. Fuhr  
Joseph J. Saltarelli  
951 E. Byrd Street  
Riverfront Plaza, East Tower  
Richmond, Virginia 23219

BARNES & THORNBURG LLP

Brian E. Casey  
Alice J. Springer  
600 1st Source Bank Center  
Riverfront Plaza, East Tower

*Counsel for City of Menasha, Wisconsin*

RBC CAPITAL MARKETS, LLC (f/k/a RBC Capital Markets Corp.)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

KATTEN MUCHIN ROSENMAN LLP

\_\_\_\_\_  
Christian T. Kemnitz  
Brian J. Poronsky  
525 West Monroe St.  
Chicago, IL 60661-3693

*Counsel for RBC Capital Markets, LLC (f/k/a RBC Capital Markets Corp.)*

**CITY OF MENASHA, WISCONSIN**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Mayor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Clerk

**HUNTON & WILLIAMS LLP**

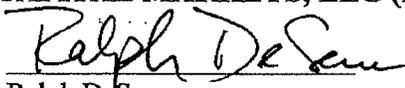
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951 E. Byrd Street  
Riverfront Plaza, East Tower  
Richmond, Virginia 23219

**BARNES & THORNBURG LLP**

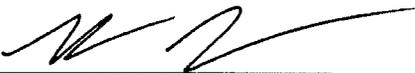
Brian E. Casey  
Alice J. Springer  
600 1st Source Bank Center  
Riverfront Plaza, East Tower

*Counsel for City of Menasha, Wisconsin*

**RBC CAPITAL MARKETS, LLC (f/k/a RBC Capital Markets Corp.)**

By:   
Name: Ralph DeSena  
Title: Director & Senior Counsel

**KATTEN MUCHIN ROSENMAN LLP**

  
\_\_\_\_\_  
Christian T. Kemnitz  
Brian J. Poronsky  
525 West Monroe St.  
Chicago, IL 60661-3693

*Counsel for RBC Capital Markets, LLC (f/k/a RBC Capital Markets Corp.)*

# Exhibit "A"

Exhibit "A"

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION (LAFAYETTE)

-----X	
THE LAFAYETTE LIFE INSURANCE COMPANY,	:
MERCY RIDGE, INC., AMERICAN BANK, and all	:
others similarly situated,	:
	:
Plaintiffs,	:
	:
- against -	: Cause No. 4:09-CV-64-TLS-APR
	:
CITY OF MENASHA, WISCONSIN, a municipal	:
corporation, MENASHA UTILITIES, MENASHA	:
STEAM UTILITY, and RBC CAPITAL MARKETS	:
CORP. f/k/a RBC DAIN RAUSCHER, INC.,	:
	:
Defendants.	:
-----X	

**[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT**

WHEREAS, Plaintiffs, The Lafayette Life Insurance Company, Mercy Ridge, Inc., and American Bank (“Plaintiffs”), on their own behalf and on behalf of each Member of the Settlement Class, as defined herein, and Defendants, City of Menasha, Wisconsin, a municipal corporation (“Menasha”), sued herein as City of Menasha, Menasha Utilities, and Menasha Steam Utility, and RBC Capital Markets, LLC (f/k/a RBC Capital Markets Corp.) (“RBC”) (Menasha and RBC referred to collectively as “Defendants”), have submitted to the Court a Settlement Agreement, with Exhibits, dated March [ ], 2011 (the “Agreement”), reflecting the terms of a proposed Settlement of this putative class action, and applied to the Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an order that (i) certifies the Settlement Class, approves the appointment of Ice Miller LLP as Class Counsel, and preliminarily approves

the Settlement, as set forth in the Agreement, (ii) approves the retention of the Settlement Escrow Agent, (iii) approves the mailing of notice of the terms and conditions of the Settlement to Settlement Class Members (“Class Notice”), and publication of summary notice (“Publication Notice”), (iv) sets forth dates by which the Class Notice and Publication Notice shall be mailed and published, respectively, as well as dates by which Settlement Class Members must file claims and/or any objections to, or exercise any right to exclude themselves (opt-out) from the Settlement, and (v) schedules a hearing (the “Fairness Hearing”) to finally approve the Settlement as fair, reasonable, and adequate to the Settlement Class, approve the Settlement, and enter an Order and Final Judgment; and

WHEREAS, the Court has given due consideration to the Settlement, the Agreement, the Exhibits to the Agreement, the submissions of the Parties in support of preliminary approval of the Settlement, and the record of proceedings herein, and finds that the Settlement should be preliminarily approved pending notice to Settlement Class Members and the Fairness Hearing;

**ACCORDINGLY, IT IS HEREBY ORDERED:**

1. This Order incorporates by reference the definitions in the Agreement, and any terms capitalized herein and not otherwise defined shall have the meanings ascribed to them in the Agreement.
2. This Court has jurisdiction of the subject matter of the Action and over all Parties, including all Members of the Settlement Class.
3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court certifies, for the purpose of effectuating the Settlement, a Settlement Class of all persons or entities who purchased or held 2005 BANs or 2006 BANs during the Class Period. Excluded from the Settlement Class are Defendants and their respective parents, subsidiaries, and affiliates, and

persons or entities who timely excluded themselves from the Settlement Class in accordance with the procedures described in the Agreement and the exhibits thereto.

4. Pursuant to Federal Rule of Civil Procedure 23, the Court preliminarily finds, for the purpose of effectuating the Settlement, that: (a) Members of the Settlement Class are so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are questions of law and fact common to the Settlement Class that predominate over any individual questions relating to Settlement Class Members; (c) the claims of Plaintiffs are typical of, and Plaintiffs have no interests that conflict with the interests of, other Members of the Settlement Class; (d) Plaintiffs and Class Counsel have fairly and adequately represented and protected the interests of all Members of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy herein.

5. The Court appoints Plaintiffs The Lafayette Life Insurance Co., Mercy Ridge, Inc. and American Bank as Settlement Class Representatives, and Ice Miller LLP as Class Counsel. The Court approves the retention of The Bank of New York Mellon Trust Company, N.A. as the Settlement Escrow Agent as selected by Settlement Class Counsel.

6. The Court finds that the terms of the Settlement, as set forth in the Agreement, are within the range of a fair, reasonable, and adequate settlement between the Settlement Class and the Defendants under the circumstances of this case. The Court therefore preliminarily approves the Settlement, and directs the Parties to effectuate the Settlement pursuant to the terms and conditions set forth in the Agreement.

7. The Court approves the notice provided by Defendants within ten (10) days of the filing of Plaintiffs' application for this Order, to federal and state government officials, pursuant

to 28 U.S.C. § 1715, in the form attached to the Agreement as Exhibit “E”, inclusive of the attachments thereto.

8. The Court approves the proposed Notice of Class Action Settlement and Hearing in the forms attached to the Agreement as Exhibit "B" (for mailed notice, the “Class Notice”) and Exhibit "C" (for publication notice, the “Publication Notice”), and the manner of mailing, distribution and publication of such Notice, as set forth in Paragraph 9 below, are hereby approved as the best notice practicable to the Settlement Class. The form, content and method of notifying the Settlement Class of the settlement of the Action as a class action and of the terms and conditions of the proposed Settlement meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act (PSLRA) of 1995, due process and any other applicable law. Such notice constitutes the best notice practicable under the circumstances and constitutes due and sufficient notice to all persons and entities entitled thereto.

9. Class Counsel shall: (a) mail or cause to be mailed to each Settlement Class Member for whom an address is available, or by means of the Depository Trust Company<sup>1</sup>, as soon as practicable but no later than \_\_\_\_\_ days from the date of this Order, a copy of the Class Notice substantially in the form attached to the Agreement as Exhibit "B"; provided, however, that the Class Notice shall not be required to be mailed prior to the time Class Counsel receives the notification related to the satisfaction or waiver of the WPPI Transaction Contingencies as described in paragraph 35 of the Agreement, in which event Class Notice shall be mailed within ten (10) days of receipt thereof; and (b) cause the Publication Notice, substantially in the form

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<sup>1</sup> Class Notice may be mailed to Settlement Class Members by means of the Depository Trust Company, which shall forward the Class Notice to Settlement Class Members.

attached to the Agreement as Exhibit "C", to be published twice in The Bond Buyer with an interval of two weeks between each publication, beginning no later than \_\_\_\_ days from the date of this Order; provided, however, that the Publication Notice shall not be required to be published prior to the time Class Counsel receives the notification related to the satisfaction or waiver of the WPPI Transaction Contingencies as described in paragraph 35 of the Agreement, in which event Publication Notice shall be requested to be published beginning within ten (10) days of receipt thereof. Not later than fourteen (14) days prior to the Fairness Hearing, Class Counsel shall serve on Defendants' counsel and file with the Court proof, by affidavit or declaration, of such mailing and publication.

10. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Fairness Hearing shall be held before the undersigned at \_\_\_\_\_ o'clock, on \_\_\_\_\_, at the United States Courthouse, 230 North Fourth Street, Lafayette, Indiana, for the purpose of: (a) determining whether the Settlement is fair, reasonable, and adequate and should be finally approved; (b) determining whether an Order and Final Judgment should be entered dismissing with prejudice the claims of the Settlement Class Members against the Defendants and the Action; (c) considering the plan of distribution of the Settlement Amount proposed by Class Counsel; and (d) considering Class Counsel's motion for an award of attorneys' fees, costs and expenses pursuant to Rule 23(h), which motion shall be filed with the Court and posted on the Settlement website [insert address] no later than fourteen (14) days prior to the Fairness Hearing. The Court may adjourn, continue, and reconvene the Fairness Hearing pursuant to oral announcement without further notice to the Settlement Class, and may consider and grant final approval of the Settlement without further notice to the Settlement Class.

11. Any Settlement Class Member requesting to share in the distribution of the Settlement Amount shall complete and submit a claim form in the manner and within the time set forth in the Class Notice. Such claim forms must be submitted no later than sixty (60) days from the mailing of, and in the manner prescribed in, the Class Notice (the "Claim Deadline"). Any Settlement Class Member who does not submit a valid claim form, by the Claim Deadline and in the manner set forth in the Class Notice, shall be barred from sharing in the distribution of the Settlement Amount.

12. Any person or entity requesting exclusion from the Settlement Class shall do so by submitting a duly completed Exclusion Request in the manner and within the time set forth in the Class Notice. All such Exclusion Requests must be submitted no later than sixty (60) days from the mailing of the Class Notice (the "Exclusion Deadline"). Any Settlement Class Member who does not submit a valid Exclusion Request, by the Exclusion Deadline and in the manner set forth in the Class Notice, shall be included within the Settlement Class. All persons or entities submitting valid and timely Exclusion Requests shall have no rights under the Agreement, shall not share in the distribution of the Settlement Amount, and shall not be bound by the Agreement, Settlement, or Order and Final Judgment to be entered in the Action.

13. Settlement Class Members who have not excluded themselves shall be afforded an opportunity to object to the terms of the Settlement. Any objection must: (i) contain the full name and current address of the person objecting; (ii) contain the title and a statement of authority of any person objecting on behalf of an entity other than a person; (iii) contain the title of the Lawsuit: "The Lafayette Life Insurance Company, et al, v. City of Menasha, Wisconsin et al;" (iv) state the reasons for the Class Member's objection; (v) be accompanied by any evidence, legal briefs, motions or other materials the Settlement Class Member intends to offer in support

of the objection; (vi) be signed by or on behalf of the Settlement Class Member; and (vii) be filed with the Clerk of the Court [add details], and served upon Class Counsel [add details] and Defendants' counsel [add details] by U.S. mail, first class and postage prepaid, with a postmark no later than sixty (60) days from the mailing of the Class Notice (the "Objection Deadline").

14. Any Member of the Settlement Class who does not mail his, her, or its objection by the Objection Deadline and in the manner provided in the Class Notice shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement. Settlement Class Members shall be bound by all determinations and orders regarding the Settlement, including the Order and Final Judgment, whether favorable or unfavorable to the Settlement Class.

15. Settlement Class Members may appear at the Fairness Hearing in connection with an objection, individually or through counsel of their choice, at their own expense. If they do not appear, they will be represented by Class Counsel at the Fairness Hearing. Any attorney (other than Class Counsel) intending to appear at the Fairness Hearing must be authorized to represent a Settlement Class Member, must be duly admitted to practice law before the United States District Court for the Northern District of Indiana, and must file a written appearance not later than seven (7) days prior to the date of the Fairness Hearing. Copies of the appearance must be served on Class Counsel and Defendants' counsel in accordance with the Federal Rules of Civil Procedure.

16. Not later than ten (10) days after the Exclusion Deadline, Class Counsel shall serve Defendants' counsel and file with the Court a Notice of Settlement Class Exclusions, listing the names and addresses of all persons or entities who or which have timely and validly

excluded themselves from the Settlement Class; provided, however, that such filing and notice shall be in addition to the requirements set forth in paragraphs 49 and 50 of the Agreement.

17. At the Fairness Hearing, the Court shall determine whether the plan of distribution of the Settlement Amount proposed by Settlement Class Counsel shall be approved.

18. Not later than fourteen (14) days prior to the Fairness Hearing, Plaintiffs and Class Counsel shall file a motion for and Defendants shall not oppose, the Court's approval of the payment of attorneys' fees, costs and expenses in the aggregate amount of \$1,238,149, to be paid from the Settlement Fund under the terms of the Settlement, along with any supporting materials. No attorneys' fees, costs or expenses, other than the reimbursement of any costs or expenses advanced by Class Counsel associated with providing notice of the Settlement to the Settlement Class, administering the Settlement, or in connection with taxation matters relating to the Settlement and the Agreement as addressed by paragraph 57 of the Agreement, if any, shall be paid to Class Counsel prior to the Effective Date. Any decision by Class Counsel to defer seeking an award of attorneys' fees or reimbursement of expenses prior to or at the time of the Fairness Hearing on the Settlement shall not be deemed a waiver of the right of Class Counsel, under the Settlement or otherwise, to seek an award of attorneys' fees or reimbursement of expenses from the Settlement Fund at another time.

19. The Court may adjourn the Fairness Hearing without further notice to Settlement Class Members, and retains jurisdiction to consider all further applications arising out of or made in connection with the proposed Settlement.

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Theresa L. Springmann, Judge

United States District Court,  
Northern District of Indiana



Settlement, for attorneys' fees and administrative costs. These disbursements are described in paragraph 3 below.<sup>2</sup>

2. The settling parties agree that if plaintiffs prevailed on each claim alleged under the Securities Exchange Act, plaintiffs would recover an average amount of potential damages of \$4,713.92 per share, plus interest.<sup>3</sup>

3. Plaintiffs, through lead counsel, Michael A. Wukmer, Ice Miller LLP, intend to apply to the Court for an award of attorneys' fees and costs in the aggregate amount of \$1,238,149 which equals \$272 on an average per share basis. The sum available for distribution to Class Members will be lessened by this amount, subject to Court approval. Such an award is supported by the outcome achieved, counsel's experience in securities, class and other complex litigation, the stakes involved and the vigorous defense presented by defendants in this matter.

4. Lead counsel for the plaintiff class is Michael A. Wukmer, Ice Miller LLP, One American Square, Suite 2900, Indianapolis, IN 46282. Phone No. (317) 236-2100. Counsel is reasonably available to answer questions from class members concerning any matter contained in this notice.

5. The parties have proposed to settle this matter on the following basis due to the inherent risks of litigation to both parties, the burden and expense of complex litigation, the inherent uncertainty of the litigation's outcome, the risk posed to plaintiffs by defendants' dispositive motions and a potentially adverse trial verdict and the defendants' potential exposure for greater loss. There is a risk that, if the litigation proceeds, Class Members could receive no recovery.

**[end cover page]**

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<sup>2</sup> A share is defined as a \$5,000.00 note, which was the denomination in which each note at issue was issued. The PSLRA requires disclosure of certain financial information in per share amounts. The bond anticipation notes at issue in the Action were not issued in "shares" as such, as is the case with other types of securities, such as stock. For purposes of complying with the PSLRA disclosure requirements, Class Counsel have therefore assumed a \$5,000 face value "share" because this is the lowest denomination in which the bond anticipation notes were sold. Class Counsel have sought and obtained the Court's approval for this treatment of the PSLRA "share" definition. At the maturity date of September 1, 2009, there was approximately \$22.7 million in principal outstanding, after the partial principal payment of \$1,382,834.01 mentioned above (footnote 1). The per share figure of \$3,841.50 is derived by dividing the settlement amount of \$17.5 million by the outstanding principal balance on the notes, multiplied by \$5,000.

<sup>3</sup> This figure reflects the partial payment described in footnote 1 above.

Exhibit "B"

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA

**NOTICE OF CLASS ACTION SETTLEMENT AND HEARING**

**If you are a person or entity who purchased or hold Taxable Steam Utility Revenue Bond Anticipation Notes, CUSIP #586499AA3, issued by the City of Menasha, Wisconsin on or about February 1, 2005, with a stated maturity date of September 1, 2009 (the "2005 BANs") or Taxable Steam Utility Revenue Bond Anticipation Notes, CUSIP #586499AB1, issued by the City of Menasha, Wisconsin on or about December 1, 2006, with a stated maturity date of September 1, 2009 (the "2006 BANs"), you may be entitled to receive a payment as part of the proposed settlement of a class action lawsuit brought on your behalf.**

***The United States District Court for the Northern District of Indiana has authorized this notice. This is not a solicitation. This is not a lawsuit against you and you are not being sued.***

You received this Notice because you have been identified as a person or entity who purchased or holds Taxable Steam Utility Revenue Bond Anticipation Notes, CUSIP #586499AA3, issued by Defendant City of Menasha, Wisconsin on or about February 1, 2005, with a stated maturity date of September 1, 2009 (the "2005 BANs") or Taxable Steam Utility Revenue Bond Anticipation Notes, CUSIP #586499AB1, issued by Defendant City of Menasha, Wisconsin on or about December 1, 2006, with a stated maturity date of September 1, 2009 (the "2006 BANs") (the proposed "Settlement Class", a member of which is a "Class Member").

A Settlement has been reached between the Plaintiffs and Defendants in *The Lafayette Life Insurance Company, et al, v. City of Menasha, Wisconsin et al*, Cause No. 4:09-cv-0064-TLS-APR (the "Lawsuit"), and the proposed Settlement Class has been certified by the United States District Court for the Northern District of Indiana (the "Court"). The Plaintiffs in the Lawsuit are The Lafayette Life Insurance Company, Mercy Ridge, Inc., and American Bank. The Defendants in the Lawsuit are the City of Menasha and RBC Capital Markets, LLC (f/k/a RBC Capital Markets Corp.), and they are not members of the Settlement Class. The Court has appointed the Plaintiffs to represent the Settlement Class and appointed Ice Miller LLP as counsel to the Settlement Class.

The purpose of this Notice is to advise members of the Settlement Class defined above of the proposed Settlement of claims being asserted against the Defendants, and how to assert any rights you may have under the Settlement. It is also intended to advise you of a hearing to consider the proposed settlement on \_\_\_\_\_. The Court must decide whether to approve the Settlement as fair, just and reasonable.

The Lawsuit asserts that the Defendants sold or participated in the sale of the 2005 BANs and the 2006 BANs in violation of Federal and State securities laws and in violation of certain other statutory and common law duties, and that Menasha is in payment default with regard to the BANs. The Defendants have denied and raised various defenses to these claims, which if sustained by the Court following a trial would minimize or defeat any recovery for the Class. There is a risk that, if the litigation proceeds, Class Members could receive no recovery.

If you are a member of the Settlement Class, your legal rights are affected whether you act or choose not to act. PLEASE READ THIS NOTICE CAREFULLY.

<b>YOUR LEGAL RIGHTS AND OPTIONS: (YOU MUST CHOOSE ONE OF THESE OPTIONS BY THE DEADLINE)</b>		<b>DEADLINE</b>
<b>EXCLUDE YOURSELF</b>	You may exclude yourself from the Settlement, in which case you will not be considered a Class Member of the Settlement Class and will not be eligible to receive any payments from the Settlement Fund approved by the Court, or to comment on the Settlement. If you exclude yourself from the Settlement and wish to pursue legal claims against the Defendants with respect to the 2005 or 2006 BANs, you will have to do so at your own expense and any claims will be subject to applicable statutes of limitation.	M/D/Y
<b>SUBMIT A CLAIM</b>	If you qualify as a Class Member, as defined above, and wish to receive a distribution from the Settlement Fund, you must complete and submit the Claim Form enclosed with this Notice within 60 days of the mailing of this Notice, or on or before _____, 2011. The completed Claim Form must be sent to Class Counsel. If you do not timely submit a properly-completed Claim Form, you will not receive any payment from the Settlement Fund, and any claim you have to a distribution from the Settlement Fund will be barred. The Claim Form requires each Class Member to certify the amount of the Class Member's claimed loss and submit reasonably available documentation. Subject to verification by Class Counsel and the Court of the accuracy of each Class Member's claimed loss, Class Counsel anticipates that it will seek Court approval for a distribution of the Settlement Fund, less Approved Disbursements, based on the total amount of verified claims. The approximate amount of compensation available from the Settlement Fund on a per share basis is described at the beginning of this Notice, but this is only an estimate and the actual distribution will depend on the total amount of verified claims submitted and the plan of distribution of the Settlement Amount ultimately approved by the Court. All Class Members of the Settlement Class, regardless of whether they submit a claim or receive	M/D/Y

	any distribution from the Settlement Fund, will forever release and discharge any claim they might have against the Defendants.	
<b>OBJECT</b>	Write to the Court if you do not wish to exclude yourself from the Settlement but do not think the Settlement is fair. If you exclude yourself from the Settlement you may not object.	M/D/Y
<b>GO TO A HEARING</b>	If you object, you may also ask to speak in Court about the fairness of the Settlement.	M/D/Y

*These rights and options - and the deadlines to exercise them - are explained in this Notice.*

#### BASIC INFORMATION

##### **Why did I get this Notice?**

This Notice has been sent to you because you have been identified as a person or entity who purchased or holds the 2005 BANs or 2006 BANs issued by the City of Menasha in 2005 or 2006. You have the right to know about a proposed settlement of a class action lawsuit that may affect your rights.

This Notice explains the Lawsuit, the terms of the Settlement, your legal rights, what benefits may be available, who may be eligible for them, and what you will be giving the Defendants in this Settlement.

The Court in charge of the case is the United States District Court for the Northern District of Indiana. The case is known as *The Lafayette Life Insurance Company, et al, v. City of Menasha, Wisconsin et al*, Cause No. 4:09-cv-0064-TLS-APR. The entities who sued are called the Plaintiffs. The municipal entities or companies the Plaintiffs sued are called the Defendants. The Defendants participated in the issuance and/or sale of the BANs in the period from 2005 to 2006. That is the focus of the Lawsuit.

##### **What is the Lawsuit about?**

In the Lawsuit, the Plaintiffs claim that in 2005 and 2006, the Defendants sold or participated in the issuance and/or sale of the BANs in violation of Federal and State securities laws and in violation of certain statutory and common law duties arising under State law, and that Menasha is in payment default with regard to the BANs. The Plaintiffs claim that the Defendants made false and misleading statements, and omitted to state certain material facts, in connection with their issuance and/or sale of the BANs. Plaintiffs are seeking money damages and other relief on behalf of themselves and other persons and entities who purchased or hold the BANs. The Defendants have denied all of Plaintiffs' claims, and have filed dispositive motions to dismiss the Plaintiffs' claims. There is a risk that, if the litigation proceeds, Class Members could receive no recovery. The Court has not made any determination of the Defendants' liability for the claims alleged by Plaintiffs, nor has the Court made any determination on Defendants' dispositive motions.

### **What is a class action?**

A class action is a lawsuit in which one or more persons called class representatives sue on behalf of other persons who have similar claims. Together all these persons are a Class or individually, Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. For this reason, the judge must find that the Settlement of this class action is fair, reasonable and adequate before the Settlement can receive final court approval.

### **Why is there a settlement?**

The Lawsuit has not gone to a trial. Instead, the Plaintiffs and the Defendants agreed to settle to avoid the costs and risks of trial, including the risk that Class Members could receive no recovery if the litigation proceeds. The Settlement provides the opportunity for payments or other benefits to be made available to Class Members. Under this Settlement, Class Members give the Defendants a release of any right they may have to pursue the same legal claims brought, or which could have been brought, in this case against the Defendants.

### **WHO IS IN THE SETTLEMENT?**

#### **How do I know if I am part of the settlement?**

You are a member of the Proposed Settlement Class if you purchased or hold the BANs.

#### **Are there exceptions to being included?**

You are not a Settlement Class Member if you are one of the Defendants, or their respective parents, subsidiaries, or affiliates.

### **THE SETTLEMENT TERMS**

#### **What does the settlement provide?**

The Defendants have agreed to pay the cash amount of \$17,500,000 ("Settlement Amount") subject to the terms and conditions of the Settlement. On an average per share basis, this means payment of \$3,841.50 per share, but less Approved Disbursements, as defined in the Settlement, for attorneys' fees and administrative costs, as described herein<sup>4</sup>. The settling parties agree that if Plaintiffs prevailed on each claim alleged under the Securities Exchange Act, Plaintiffs would recover an average amount of potential damages of \$4,713.92 per share, plus interest.<sup>5</sup> At the maturity date of September 1, 2009, there was approximately \$22.7 million in principal outstanding, after a partial principal payment of \$1,382,834.01. The per share figure is derived

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<sup>4</sup> The \$17.5 million is in addition to the earlier partial payment, on the maturity date of September 1, 2009, of \$1,382,834.01 in principal out of a total principal obligation of \$24,160,000. Combined with such partial payment amount, on an average per share basis, this means a payment of \$3,907.87 per share. Unpaid interest is not taken into consideration in this or any other calculation herein.

<sup>5</sup> This figure reflects the partial payment described in footnotes 1 and 4 above.

by dividing the settlement amount of \$17.5 million by the outstanding principal balance on the notes, multiplied by \$5,000. This Settlement was achieved after more than eighteen months of litigation and numerous negotiating sessions between Class Counsel and the lawyers for the Defendants. The Defendants deny any liability and the Court has not made any liability determination. Because of the inherent risks of litigation Plaintiffs believe that the Settlement provides a fair and efficient resolution of the Plaintiffs' and Class Members' claims against the Defendants. The parties have proposed to settle this matter on this basis due to the inherent risks of litigation to both parties, the burden and expense of complex litigation, the inherent uncertainty of litigation's outcome, the risk posed to Plaintiffs by Defendants' dispositive motions and a potentially adverse trial verdict and the Defendants' potential exposure for greater loss.

Under the terms of the Settlement, Class Members receive at least \$17,450,000, representing the Settlement Amount of \$17,500,000 less \$50,000 to be advanced by Menasha for the payment of interim expenses of administration of the Settlement, and also less attorneys' fees, costs and expenses approved by the Court. Class Counsel will seek Court permission to distribute the Settlement Fund to Class Members and to pay amounts approved by the Court for Class Counsel's attorneys' fees and reasonable expenses, reasonable future expenditures made or to be made by Class Counsel on behalf of Class Members and notices to Class Members.

No dismissal with prejudice of the Lawsuit will occur until the Effective Date of the Settlement, at which time the judgment entered in the case approving the Settlement becomes final and non-appealable, the Settlement Amount is paid to an escrow agent selected by Class Counsel and approved by the Court, and the Plaintiffs release Defendants for any and all claims related to the Lawsuit.

It is anticipated that the proposed distribution of amounts from the Settlement Fund to Class Members will be in approximate proportion to a Class Member's claimed loss associated with the BANs held or purchased by the Class Member, and subject to verification by Class Counsel and the Court. Once the Court has approved a plan of distribution of the Settlement Fund, more detailed information about the proposed distribution will be provided to Class Members. Generally speaking, and subject to any qualifications or exceptions required by the Court in the interest of fairness to the Class as a whole, the loss of Class Member Holders (as defined below) will be defined by reference to the face value of the BANs held by the Class Member Holder. The loss of Class Member Purchasers (as defined below) will be defined as the difference between the Class Member Purchaser's purchase price and re-sale price, if reflective of a loss. Class Counsel, with the assistance of a claims administrator hired by Class Counsel, anticipate seeking the Court's approval for a distribution of the Settlement Fund, less Approved Disbursements, with respect to both Class Member Holders and Class Member Purchasers in accordance with a plan of distribution approved by the Court, although the amount of such distribution as a percentage of a Class Member's claimed and verified loss will depend upon the total amount of claims submitted by all Class Members.

### **When will the Settlement be final?**

The Court will hold a hearing on [**Month, Day, Year**] to decide whether to give final approval to the Settlement. If the Court approves the Settlement and there are no appeals, the Settlement will become final thirty (30) days after the Court's approval.

### **PARTICIPATING IN THE SETTLEMENT**

#### **How do I participate in the Settlement?**

If you believe you are a member of the Settlement Class and wish to receive a distribution as part of the Settlement, you must timely submit a Claim Form, as described above. Once the Court approves a method of distributing the Settlement Fund, more detailed information about the distribution of settlement funds will be provided to Class Members.

#### **Do I have to give anything up to participate?**

If you are a member of the Settlement Class and do not exclude yourself, you will be bound by the terms of the Settlement and any orders of the Court related to the Settlement, and you agree to and will release any right you may have to pursue the same legal claims brought, or which could have been brought, in this case against the Defendants in the Lawsuit.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

#### **How do I get out of the Settlement Class?**

You may request to be excluded from, or to "opt-out" of, the Settlement Class. If you elect to be excluded from the Class, you will not be bound by any of the terms of the Settlement or any judgment entered pursuant to the Settlement, nor will you be eligible to receive any of the benefits of the Settlement. You will retain and be free to pursue any claims that you may have against the Defendants on your own behalf and at your own cost.

If you wish to exclude yourself from the Settlement Class, you must mail a written request for exclusion, no later than \_\_\_\_\_, to the following:

<p><b>Settlement Class Counsel:</b>  <b>Michael A. Wukmer</b>  Ice Miller LLP  One American Square, Suite 2900  Indianapolis, IN 46282</p>
<p><b>Counsel for the Defendants:</b>  <b>Edward J. Fuhr</b>  HUNTON &amp; WILLIAMS, LLP  951 East Bird Street  Riverfront Plaza, East Tower  Richmond, VA 23219</p> <p><b>Christian T. Kemnitz</b>  KATTEN MUCHIN ROSENMAN LLP  525 West Monroe Street  Chicago, IL 60661-3693</p>

A "Class Member Holder" means a Class Member who holds, owns or beneficially owns a 2005 BAN or 2006 BAN. A "Class Member Purchaser" means a Class Member who purchased, but does not currently hold, own or beneficially own, a 2005 BAN or 2006 BAN.

Requests for exclusion do not need to be in any particular format, except that the request by a Class Member Holder must:

- State that you intend to "opt-out" or request "exclusion" from the Settlement Class against the Defendants;
- Contain the full name and current address of the person or entity requesting exclusion;
- Contain the title and a statement of authority of any person requesting exclusion from the Settlement Class on behalf of an entity other than a person;
- Contain the title of the Lawsuit: "*The Lafayette Life Insurance Company, et al, v. City of Menasha, Wisconsin et al*";
- Be signed by you;
- Be sent by U.S. mail, first class and postage prepaid, with a postmark on or before \_\_\_\_\_; and
- State the face amount of the BAN purchased by you, the amount paid by you for the BAN, and the date of such purchase.

Requests for exclusion do not need to be in any particular format, except that the request by a Class Member Purchaser must:

- State that you intend to "opt-out" or request "exclusion" from the Settlement Class against the Defendants;
- Contain the full name and current address of the person or entity requesting exclusion;
- Contain the title and a statement of authority of any person requesting exclusion from the Settlement Class on behalf of an entity other than a person;

Contain the title of the Lawsuit: "*The Lafayette Life Insurance Company, et al, v. City of Menasha, Wisconsin et al*";

Be signed by you;

Be sent by U.S. mail, first class and postage prepaid, with a postmark on or before \_\_\_\_\_;

State the face amount of the BAN purchased by you, the amount paid by you for the BAN, and the date of such purchase; and

State the amount received by you upon the subsequent sale of the BAN, together with the date of such sale and the identity of the purchaser (if known).

You cannot exclude yourself by phone or email.

**If I do not exclude myself, can I sue the Defendants later?**

Unless you exclude yourself, you cannot sue the Defendants for the claims resolved by this Settlement, which include any and all claims which have been, might have been, or might be asserted against the Defendants related in any way to the 2005 BANs or 2006 BANs. If you exclude yourself from the Settlement, you cannot participate in or object to the Settlement, and any claims you may have against the Defendants will be subject to applicable statutes of limitation.

**COMMENTING ON THE SETTLEMENT**

**How do I tell the Court if I do not think the Settlement is fair?**

If you are a Settlement Class Member and have not excluded yourself, you can object to the Settlement or any part of the Settlement. The Court will consider your views. Your objection must be in writing, and must be mailed, no later than \_\_\_\_\_, to the following:

<b>Class Counsel:</b> Michael A. Wukmer Ice Miller LLP One American Square, Suite 2900 Indianapolis, IN 46282	<b>Counsel for the Defendants:</b> Edward J. Fuhr Hunton & Williams LLP 951 East Bird Street Riverfront Plaza, East Tower Richmond, VA 23219  Christian T. Kemnitz Katten Muchin Rosenman LLP 525 West Monroe Street Chicago, IL 60661-3693
<b>The Court:</b> The Honorable Theresa L. Springmann, Judge United States District Court, Northern District of Indiana United States Courthouse	

230 North Fourth Street Lafayette, IN 47901	
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An objection does not need to be in any particular format, except that the objection must:

- Contain the full name and current address of the person objecting;
- Contain the title and a statement of authority of any person objecting on behalf of an entity other than a person;
- Contain the title of the Lawsuit: "*The Lafayette Life Insurance Company, et al, v. City of Menasha, Wisconsin et al*";
- State the reasons for your objection;
- Be accompanied by any evidence, legal briefs, motions or other materials you intend to offer in support of your objection;
- Be signed by you;
- Be sent by U.S. mail, first class and postage prepaid, with a postmark on or before \_\_\_\_\_; and
- State the face amount of the BAN purchased by you, the amount paid by you for the BAN, the date of such purchase, and (if applicable) the amount received by you upon the subsequent sale of the BAN, together with the date of such sale and the identity of the purchaser (if known).

You cannot object to the Settlement by phone or email.

**What's the difference between excluding myself and objecting?**

If you exclude yourself, you are no longer a member of the Settlement Class and you keep your right to file your own lawsuit against the Defendants at your own expense. If you exclude yourself, you may not object to the Settlement and you cannot receive any payments or credits from the Settlement. If you remain a Settlement Class Member, you may object but still seek a distribution from the Settlement Fund on your claim.

**Can I have a lawyer represent me?**

The law firm of Ice Miller LLP has been appointed by the Court and represents you and other Settlement Class Members. These lawyers are called Class Counsel. Lead counsel for the Plaintiff Class is Michael A. Wukmer, Ice Miller LLP, One American Square, Suite 2900, Indianapolis, IN 46282, Telephone No. (317) 236-2100. Counsel is reasonably available to answer questions from Class Members concerning any matter contained in this Notice. If you want to be represented by your own lawyer, you may hire one at your own expense. However, any lawyer intending to appear at the Fairness Hearing must be duly admitted to practice law before the United States District Court for the Northern District of Indiana and must file a written appearance no later than \_\_\_\_\_. Copies of the appearance must be served on Class Counsel and counsel for the Defendants at the addresses included in this Notice in accordance with the Federal Rules of Civil Procedure.

## SUBMITTING A CLAIM

### How do I submit a claim?

Follow the instructions and fully complete the Claim Form enclosed together with this Notice and then submit the Claim Form, along with any required documentation, to Class Counsel on or before \_\_\_, 2011. The information you provide will be subject to verification and will be used by Class Counsel and a claims administrator hired by Class Counsel to disburse the Settlement Fund in accordance with a plan of distribution approved by the Court.

## THE LAWYERS REPRESENTING YOU

### How will the lawyers and costs be paid?

Plaintiffs, through lead counsel, Michael A. Wukmer, Ice Miller LLP, intend to move the Court for an award of attorneys' fees and costs in the aggregate amount of \$1,238,149 which equals \$272 on an average per share basis. If approved, this amount would be deducted from the Settlement Amount otherwise available for distribution to Class Members. Class Counsel believes such an award is supported by the outcome achieved, counsel's experience in securities, class and other complex litigation, the stakes involved and the vigorous defense presented by the defendants in this matter. Class Counsel's fee/costs motion pursuant to Federal Rules of Civil Procedure 23(h) and 54(d)(2) will be available on the settlement website and filed by Class Counsel no later than 14 days prior to the Fairness Hearing. The Court may consider whether to approve the payment of attorneys' fees and costs in this amount during the Fairness Hearing, or at a later time determined by the Court.

The Defendants have agreed not to oppose a request by Class Counsel for a payment of attorneys' fees and the reimbursement of reasonable expenses in the amount of \$1,238,149, to be paid from the Settlement Fund. If the Court approves these fees and expenses, they will be paid from the Settlement Fund. These fees and expenses, however, will not be paid until time for appeal and/or any appeal of this Settlement has been exhausted. The costs of providing this Notice and published notice of the Settlement, and the costs of settlement administration, will be paid from the Settlement Fund.

## THE COURT'S FAIRNESS HEARING

### When and where will the Court decide whether to approve the Settlement?

The Court will hold a hearing — which is called the Fairness Hearing — at the United States Courthouse, 230 North Fourth Street, Lafayette, Indiana, at \_\_\_\_ o'clock on \_\_\_\_\_. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will consider any objections, and listen to people who have made written objections and timely asked to speak at the hearing. After the Fairness Hearing, the Court will decide whether to approve the Settlement.

### **Do I have to come to the hearing?**

You do not need to attend the Fairness Hearing, but you are welcome to come at your own expense. If you have sent a written objection, you do not need to be present for the Court to consider it.

### **May I show up and speak at the hearing?**

If you have submitted a timely written objection to the Settlement and requested to be heard, the Court may allow you to speak at the Fairness Hearing. If you wish for your lawyer to speak for you, he or she must have submitted a timely appearance as provided above.

**Reminder:** If you have excluded yourself from the Settlement Class, you may not object to the Settlement and you may not speak at the Fairness Hearing.

## **GETTING MORE INFORMATION**

### **How can I get more information?**

The description in this Notice is general and does not cover all of the issues and the proceedings thus far. More details about the Lawsuit and the Settlement, including a detailed definition of terms, are in the Settlement Agreement. You may review the Settlement Agreement and the court file during business hours at the Office of the Clerk of the United States District Court, United States Courthouse, 230 North Fourth Street, Lafayette, Indiana, or on the following internet website: [insert address]. You may also direct questions concerning the Settlement to Class Counsel at the address above. **Please do not contact the Court directly with any questions.**

Additional information about the Lawsuit and the Settlement, including a copy of Class Counsel's motion for award of attorneys' fees and costs, may be obtained from the following Internet website: [insert address].

/s/ Hon. Theresa L. Springmann, Judge  
United States District Court,  
Northern District of Indiana

# Exhibit "C"

[PSLRA Statement]

**STATEMENT REQUIRED BY SECTION 21D(a)(7) OF THE SECURITIES  
EXCHANGE ACT OF 1934, 15 U.S.C. § 78u-4(a)(7) AS AMENDED BY  
THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995**

Pursuant to Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act (PSLRA) of 1995, the parties state:

1. The amount of the settlement proposed to be distributed to members of the settlement class is, in the aggregate, \$17.5 million in cash.<sup>1</sup> On an average per share basis, this means a payment of \$3,841.50 per share, but less Approved Disbursements, as defined in the Settlement, for attorneys' fees and administrative costs. These disbursements are described in paragraph 3 below.<sup>2</sup>

2. The settling parties agree that if plaintiffs prevailed on each claim alleged under the Securities Exchange Act, plaintiffs would recover an average amount of potential damages of \$4,713.92 per share, plus interest.<sup>3</sup>

3. Plaintiffs, through lead counsel, Michael A. Wukmer, Ice Miller LLP, intend to apply to the Court for an award of attorneys' fees and costs in the aggregate amount of \$1,238,149 which equals \$272 on an average per share basis. The sum available for distribution to class members will be lessened by this amount, subject to Court approval. Such an award is

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<sup>1</sup> The \$17.5 million is in addition to the earlier partial payment, on the maturity date of September 1, 2009, of \$1,382,834.01 in principal out of a total principal obligation of \$24,160,000. Combined with such partial payment amount, on an average per share basis, this means a payment of \$3,907.87 per share. Unpaid interest is not taken into consideration in this or any other calculation herein.

<sup>2</sup> A share is defined as a \$5,000.00 note, which was the denomination in which each note at issue was issued. The PSLRA requires disclosure of certain financial information in per share amounts. The bond anticipation notes at issue in the Action were not issued in "shares" as such, as is the case with other types of securities, such as stock. For purposes of complying with the PSLRA disclosure requirements, Class Counsel have therefore assumed a \$5,000 face value "share" because this is the lowest denomination in which the bond anticipation notes were sold. Class Counsel have sought and obtained the Court's approval for this treatment of the PSLRA "share" definition. At the maturity date of September 1, 2009, there was approximately \$22.7 million in principal outstanding, after the partial principal payment of \$1,382,834.01 mentioned above (footnote 1). The per share figure of \$3,841.50 is derived by dividing the settlement amount of \$17.5 million by the outstanding principal balance on the notes, multiplied by \$5,000.

<sup>3</sup> This figure reflects the partial payment described in footnote 1 above.

supported by the outcome achieved, counsel's experience in securities, class and other complex litigation, the stakes involved and the vigorous defense presented by defendants in this matter.

4. Lead counsel for the plaintiff class is Michael A. Wukmer, Ice Miller LLP, One American Square, Suite 2900, Indianapolis, IN 46282. Phone No. (317) 236-2100. Counsel is reasonably available to answer questions from class members concerning any matter contained in this notice.

5. The parties have proposed to settle this matter on the following basis due to the inherent risks of litigation to both parties, the burden and expense of complex litigation, the inherent uncertainty of the litigation's outcome, the risk posed to plaintiffs by defendants' dispositive motions and a potentially adverse trial verdict and the defendants' potential exposure for greater loss. There is a risk that, if the litigation proceeds, Class Members could receive no recovery.

**[end cover page]**

**Exhibit "C"**

**\*\*\*ATTENTION PURCHASERS AND/OR HOLDERS OF MENASHA, WISCONSIN  
2005 AND 2006 TAXABLE STEAM UTILITY REVENUE BOND ANTICIPATION  
NOTES\*\*\***

**NOTICE OF CLASS ACTION SETTLEMENT**

**If you are or were a person or entity who purchased or hold Taxable Steam Utility Revenue Bond Anticipation Notes, CUSIP #586499AA3, issued by Defendant City of Menasha, Wisconsin on or about February 1, 2005, with a stated maturity date of September 1, 2009 (the "2005 BANS") or Taxable Steam Utility Revenue Bond Anticipation Notes, CUSIP #586499AB1, issued by Defendant City of Menasha, Wisconsin on or about December 1, 2006, with a stated maturity date of September 1, 2009 (the "2006 BANS"), you may be entitled to receive a payment as part of the proposed settlement of a class action lawsuit brought on your behalf.**

*PLEASE READ THIS NOTICE CAREFULLY.*

A Settlement has been reached between the Plaintiffs and the Defendants in *The Lafayette Life Insurance Company, et al, v. City of Menasha, Wisconsin et al*, Cause No. 4:09-cv-0064-TLS-APR (the "Lawsuit") and the proposed Settlement Class has been certified by the United States District Court for the Northern District of Indiana (the "Court").

**WHAT THIS LAWSUIT IS ABOUT:** The Lawsuit asserts that the Defendants sold or participated in the sale of Taxable Steam Utility Revenue Bond Anticipation Notes, CUSIP No. 586499AA3 ("2005 BANS") and Taxable Steam Utility Revenue Bond Anticipation Notes, CUSIP No. 586499AAB1 ("2006 BANS") in violation of Federal and State securities laws and in violation of certain other statutory and common law duties, and that Menasha is in payment default with regard to the BANS. The Defendants have denied and raised various defenses to these claims, which if sustained by the Court following a trial would minimize or defeat any recovery for the Class. There is a risk that, if the litigation proceeds, Class Members could receive no recovery.

**WHO IS IN THE CLASS:** You are a member of the proposed Settlement Class if you are a person or entity who purchased or holds 2005 BANS or 2006 BANS, but excluding the Defendants and their parents, subsidiaries or affiliates.

**THE PROPOSED SETTLEMENT.** The Defendants have agreed to pay the cash amount of \$17,500,000 ("Settlement Amount") subject to the terms of the Settlement. On an average per share basis, this means payment of \$3,841.50 per share, but less Approved Disbursements, as defined in the Settlement, for attorneys' fees and administrative costs, as described herein.<sup>4</sup>

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<sup>4</sup> The \$17.5 million is in addition to the earlier partial payment, on the maturity date of September 1, 2009, of \$1,382,834.01 in principal out of a total principal obligation of \$24,160,000. Combined with such partial

The settling parties agree that if Plaintiffs prevailed on each claim alleged under the Securities Exchange Act, Plaintiffs would recover an average amount of potential damages of \$4,713.92 per share, plus interest.<sup>5</sup> At the maturity date of September 1, 2009, there was approximately \$22.7 million in principal outstanding, after a partial principal payment of \$1,382,834.01. The per share figure is derived by dividing the settlement amount of \$17.5 million by the outstanding principal balance on the notes, multiplied by \$5,000. This Settlement was achieved after more than eighteen months of litigation and numerous negotiating sessions between Class Counsel and the lawyers for the Defendants. The Defendants deny any liability and the Court has not made any liability determination. Because of the inherent risks of litigation Plaintiffs believe that the Settlement provides a fair and efficient resolution of the Plaintiffs' and Class Members' claims against the Defendants. The parties have proposed to settle this matter on this basis due to the inherent risks of litigation to both parties, the burden and expense of complex litigation, the inherent uncertainty of litigation's outcome, the risk posed to Plaintiffs by Defendants' dispositive motions and a potentially adverse trial verdict and the Defendants' potential exposure for greater loss.

Under the terms of the Settlement, Class Members receive at least \$17,450,000, representing the Settlement Amount of \$17,500,000 less \$50,000 to be advanced by Menasha for the payment of interim expenses of administration of the Settlement, and also less attorneys' fees, costs and expenses approved by the Court. Class Counsel will seek Court permission to distribute the Settlement Fund to Class Members and to pay amounts approved by the Court for Class Counsel's attorneys' fees and reasonable expenses, reasonable future expenditures made or to be made by Class Counsel on behalf of Class Members and notices to Class Members.

No dismissal with prejudice of the Lawsuit will occur until the Effective Date of the Settlement, at which time the judgment entered in the case approving the Settlement becomes final and non-appealable, the Settlement Amount is paid to an escrow agent selected by Class Counsel and approved by the Court, and the Plaintiffs release Defendants for any and all claims related to the Lawsuit.

It is anticipated that the proposed distribution of amounts from the Settlement Fund to Class Members will be in approximate proportion to a Class Member's claimed loss associated with the BANs held or purchased by the Class Member, and subject to verification by Class Counsel and the Court. Once the Court has approved a plan of distribution of the Settlement Fund, more detailed information about the proposed distribution will be provided to Class Members. Generally speaking, and subject to any qualifications or exceptions required by the Court in the interest of fairness to the Class as a whole, the loss of Class Member Holders (as defined below) will be defined by reference to the face value of the BANs held by the Class Member Holder. The loss of Class Member Purchasers (as defined below) will be defined as the difference between the Class Member Purchaser's purchase price and re-sale price, if reflective of a loss. Class Counsel, with the assistance of a claims administrator hired by Class Counsel, anticipate seeking the Court's approval for a distribution of the Settlement Fund, less Approved

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payment amount, on an average per share basis, this means a payment of \$3,907.87 per share. Unpaid interest is not taken into consideration in this or any other calculation herein.

<sup>5</sup> This figure reflects the partial payment described in footnotes 1 and 4 above.

Disbursements, with respect to both Class Member Holders and Class Member Purchasers in accordance with a plan of distribution approved by the Court, although the amount of such distribution as a percentage of a Class Member’s claimed and verified loss will depend upon the total amount of claims submitted by all Class Members.

**PAYMENT OF ATTORNEYS' FEES AND COSTS:** Plaintiffs, through lead counsel, Michael A. Wukmer, Ice Miller LLP, intend to move the Court for an award of attorneys' fees and costs in the aggregate amount of \$1,238,149 which equals \$272 on an average per share basis. The sum available for distribution to Class Members will be lessened by this amount, subject to Court approval. Such an award is supported by the outcome achieved, counsel's experience in securities, class and other complex litigation, the stakes involved and the vigorous defense presented by Defendants in this matter. A copy of Class Counsel's fee/cost motion will be available on the settlement website and filed no later than 14 days prior to the Fairness Hearing. The Court may consider whether to approve the payment of attorneys' fees and expenses in this amount during the Fairness Hearing or at a later time determined by the Court, and the Defendants will not oppose the request for approval. These fees and expenses, however, will not be paid until time for appeal and/or appeal of this Settlement has been exhausted.

<b>YOUR LEGAL RIGHTS AND OPTIONS IF YOU ARE A CLASS MEMBER: (YOU MUST CHOOSE ONE OF THESE OPTIONS BY THE DEADLINE)</b>		<b>DEADLINE</b>
<b>EXCLUDE YOURSELF</b>	<p>You may exclude yourself from the Settlement, in which case you will not be considered a Class Member of the Settlement Class and will not be eligible to receive any payments from the Settlement Fund approved by the Court, or to comment on the Settlement. If you exclude yourself from the Settlement and wish to pursue legal claims against the Defendants with respect to the 2005 or 2006 BANs, you will have to do so at your own expense and any claims will be subject to applicable statutes of limitation.</p> <p>A “Class Member Holder” means a Class Member who holds, owns or beneficially owns a 2005 BAN or 2006 BAN..</p> <p>A “Class Member Purchaser” means a Class Member who purchased, but does not currently hold, own or beneficially own, a 2005 BAN or 2006 BAN.</p> <p>Requests for exclusion do not need to be in any particular format, except that the request by a Class Member Holder must:</p> <p style="padding-left: 40px;">State that you intend to "opt-out" or request "exclusion" from the Settlement Class against the Defendants; Contain the full name and current address of the person</p>	M/D/Y

	<p>or entity requesting exclusion;          Contain the title and a statement of authority of any person requesting exclusion from the Settlement Class on behalf of an entity other than a person;          Contain the title of the Lawsuit: "<i>The Lafayette Life Insurance Company, et al, v. City of Menasha, Wisconsin et al</i>";          Be signed by you;          Be sent by U.S. mail, first class and postage prepaid, with a postmark on or before _____; and          State the face amount of the BAN purchased by you, the amount paid by you for the BAN, and the date of such purchase.</p> <p>Requests for exclusion do not need to be in any particular format, except that the request by a Class Member Purchaser must:</p> <p>State that you intend to "opt-out" or request "exclusion" from the Settlement Class against the Defendants;          Contain the full name and current address of the person or entity requesting exclusion;          Contain the title and a statement of authority of any person requesting exclusion from the Settlement Class on behalf of an entity other than a person;          Contain the title of the Lawsuit: "<i>The Lafayette Life Insurance Company, et al, v. City of Menasha, Wisconsin et al</i>";          Be signed by you;          Be sent by U.S. mail, first class and postage prepaid, with a postmark on or before _____;          State the face amount of the BAN purchased by you, the amount paid by you for the BAN, and the date of such purchase; and          State the amount received by you upon the subsequent sale of the BAN, together with the date of such sale and the identity of the purchaser (if known).</p>	
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<p><b>SUBMIT A CLAIM</b></p>	<p>If you qualify as a Class Member, as defined above, and wish to receive a distribution from the Settlement Fund, you must complete and submit the Claim Form enclosed with this Notice within 60 days of the mailing of this Notice, or on or before _____, 2011. The completed Claim Form must be sent to Class Counsel. The information you provide will be subject to verification and will be used by Class Counsel and a claims administrator hired by Class Counsel to disburse the Settlement Fund in accordance with a plan of distribution approved by the Court. If you do not timely submit a properly-completed Claim Form, you will not receive any payment from the Settlement Fund, and any claim you have to a distribution from the Settlement Fund will be barred. The Claim Form requires each Class Member to certify the amount of the Class Member's claimed loss and submit reasonably available documentation. Subject to verification by Class Counsel and the Court of the accuracy of each Class Member's claimed loss, Class Counsel anticipates that it will seek Court approval for a distribution of the Settlement Fund, less Approved Disbursements, based on the total amount of verified claims. The approximate amount of compensation available from the Settlement Fund on a per share basis is described at the beginning of this Notice, but this is only an estimate and the actual distribution will depend on the total amount of verified claims submitted and the plan of distribution of the Settlement Amount ultimately approved by the Court. All Class Members of the Settlement Class, regardless of whether they submit a claim or receive any distribution from the Settlement Fund, will forever release and discharge any claim they might have against the Defendants.</p>	<p>M/D/Y</p>
<p><b>OBJECT</b></p>	<p>You may write to the Court if you do not wish to exclude yourself from the Settlement but do not think the Settlement is fair. If you exclude yourself from the Settlement you may not object. An objection does not need to be in any particular format, except that the objection must:</p> <ul style="list-style-type: none"> <li>Contain the full name and current address of the person objecting;</li> <li>Contain the title and a statement of authority of any person objecting on behalf of an entity other than a person;</li> <li>Contain the title of the Lawsuit: "<i>The Lafayette Life Insurance Company, et al, v. City of Menasha, Wisconsin et al</i>";</li> </ul>	<p>M/D/Y</p>

	<p>State the reasons for your objection;          Be accompanied by any evidence, legal briefs, motions or other materials you intend to offer in support of your objection;          Be signed by you;          Be sent by U.S. mail, first class and postage prepaid, with a postmark on or before _____; and          State the face amount of the BAN purchased by you, the amount paid by you for the BAN, the date of such purchase, and (if applicable) the amount received by you upon the subsequent sale of the BAN, together with the date of such sale and the identity of the purchaser (if known).</p>	
<b>GO TO A HEARING</b>	If you object, you may also ask to speak in Court about the fairness of the Settlement.	<b>M/D/Y</b>

**FAIRNESS HEARING:** The Court will hold a hearing – which is called the Fairness Hearing – at the United States Courthouse, 230 North Fourth Street, Lafayette, Indiana, at \_\_\_\_\_ o'clock on \_\_\_\_\_. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. After the Fairness Hearing, the Court will decide whether to approve the Settlement. If you have submitted a timely written objection to the Settlement, you (or your lawyer) may be permitted to speak at the Fairness Hearing; however, you do not need to be present for the Court to consider your objection.

**APPEAR BY COUNSEL:** The law firm of Ice Miller LLP has been appointed by the Court and represents you and other Settlement Class Members. Those lawyers are called Class Counsel. Lead counsel for the plaintiff class is Michael A. Wukmer, Ice Miller LLP, One American Square, Suite 2900, Indianapolis, IN 46282, Telephone No. (317) 236-2100. Counsel is reasonably available to answer questions from Class Members concerning any matter contained in this notice. If you want to be represented by your own lawyer, you may hire one at your own expense. However, any lawyer intending to appear at the Farness Hearing must be duly admitted to practice law before the United States District Court for the Northern District of Indiana and must file a written appearance no later than \_\_\_\_\_. Copies of the appearance must be served on Class Counsel and counsel for the Defendants at the addresses included in this Notice in accordance with the Federal Rules of Civil Procedure.

**CONTACT INFORMATION:**

<b>Class Counsel:</b>	<b>Defendants' Counsel:</b>	<b>The Court:</b>
Michael A. Wukmer Ice Miller LLP One American Square Suite 2900 Indianapolis, IN 46282 (317) 236-2100	Edward J. Fuhr Hunton & Williams LLP 951 East Bird Street Riverfront Plaza, East Tower Richmond, VA 23219  Christian T. Kemnitz Katten Muchin Rosenman LLP 525 West Monroe Street Chicago, IL 60661-3693	The Honorable Theresa L. Springmann, Judge United States District Court Northern District of Indiana United States Courthouse 230 North Fourth Street Lafayette, IN 47901

**ADDITIONAL INFORMATION:** The description in this Notice is general and does not cover all of the issues and the proceedings thus far. More details about the Lawsuit and the Settlement, including a detailed definition of terms, are in the Settlement Agreement. You may review the Settlement Agreement and the court file during business hours at the Office of the Clerk of the United States District Court, United States Courthouse, 230 North Fourth Street, Lafayette, Indiana, or on the following internet website: [insert address]. You may also direct questions concerning the Settlement to Class Counsel at the address above. **Please do not contact the Court directly with any questions.**

Additional information about the Lawsuit and the Settlement, including a copy of Class Counsel's motion for an award of attorneys' fees and costs may be obtained from the following Internet website:  
[insert address]

/s/ Hon. Theresa L. Springmann  
United States District Court,  
Northern District of Indiana

# Exhibit "D"



the Court having heard the statements of counsel for the Plaintiffs and the Defendants, and of such persons as chose to appear at the hearing, and having considered all of the files, records and proceedings in the Action, the benefits to the Settlement Class under the Settlement and the risks, complexity, expense and probable duration of further litigation; and being fully advised in the premises;

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:**

1. This Order and Final Judgment incorporates by reference the definitions in the Agreement, and any terms capitalized herein and not otherwise defined shall have the meanings ascribed to them in the Agreement.

2. This Court has jurisdiction of the subject matter of the Action and over all Parties, including all Members of the Settlement Class.

3. The Court hereby adopts and reaffirms the findings and conclusions set forth in the Preliminary Approval Order.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court finds that the Settlement is in all respects fair, reasonable, and adequate to, and in the best interests of, the Plaintiffs, and each Member of the Settlement Class. The Court finds that the Settlement is the product of good faith, arm's-length negotiations between the Plaintiffs and Class Counsel, and the Defendants and their counsel, and the Settlement Class and the Defendants were represented by capable and experienced counsel. Accordingly, the Settlement is approved in all respects, and the Parties are directed to consummate the Settlement in accordance with the terms and conditions of the Agreement.

5. Pursuant to Federal Rule of Civil Procedure 23, the Court confirms, for the purpose of effectuating the Settlement, that: (a) Members of the Settlement Class are so

numerous that joinder of all Settlement Class Members would be impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions relating to Settlement Class Members; (c) the claims of Plaintiffs are typical of, and Plaintiffs have no interests that conflict with the interests of, other Members of the Settlement Class; (d) Plaintiffs and Class Counsel have fairly and adequately represented and protected the interests of all Members of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy herein.

6. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby confirms, for the purpose of effectuating the Settlement, a Settlement Class of all persons or entities who purchased or held 2005 BANs or 2006 BANs during the Class Period. Excluded from the Settlement Class are Defendants and their respective parents, subsidiaries, and affiliates, and all persons or entities (identified in Exhibit A) who timely requested exclusion from the Settlement Class pursuant to the notice provided to Settlement Class Members.

7. Notice of the proposed Settlement was mailed by means of the Depository Trust Company to all Settlement Class Members who could be identified with reasonable effort. Additionally, summary notice of the Settlement was published. The form, content, and method of notifying Settlement Class Members of the Settlement of the Action as a class action and of the terms and conditions of the Settlement (including without limitation Class Counsel's motion for an award of attorneys' fees and costs) met the requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995, due process and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

8. The notice provided by the Defendants to federal and state government officials, in the form attached to the Agreement as Exhibit "E," inclusive of the attachments thereto, satisfied 28 U.S.C. § 1715, and not less than ninety (90) days have passed since the later of the dates on which the appropriate federal official and the appropriate state official were served with the notice, as required under 28 U.S.C. § 1715(b).

9. Upon this Order and Final Judgment becoming Final, the Settlement Amount shall be delivered irrevocably to the Settlement Escrow Agent for deposit into the Settlement Fund, in accordance with the terms of the Agreement. The Settlement Escrow Agent shall thereupon administer the Settlement Fund for the sole purpose of paying the Settlement Amount, less any Approved Disbursements, to the Settlement Class pursuant to this Order and Final Judgment, and the plan of distribution approved (or to be approved) by the Court. The Court shall have continuing jurisdiction over the Settlement Fund, including the investment, distribution and administration of the Settlement Fund, which shall at all times be maintained as a Qualified Settlement Fund within the meaning of Treasury Regulation 1.468B-1, as amended.

10. Upon the Effective Date, the Releasees, and each of them, shall be deemed to, and by operation of this Order and Final Judgment shall be, completely released, acquitted, and forever discharged from any and all Released Claims, including the Unknown Claims, whether known or unknown, whether fraudulently concealed or otherwise concealed, or whether the damages or injury have fully accrued or will accrue in the future, whether class, individual or otherwise in nature, that Releasers, or any of them, ever had, now has, or hereafter can, shall, or may have on account of, or in any way related to the 2005 BANs or 2006 BANs, or arising out of or resulting from conduct, including but not limited to any conduct or action or inaction related to or arising out of any alleged wrongdoing associated with the 2005 BANs or the 2006 BANs

from 2005 through the end of the Class Period, including but not limited to any conduct alleged, and causes of action asserted, or that could have been alleged or asserted, in the Action, and Releasors are permanently enjoined and barred from instituting, asserting or prosecuting any Released Claim against the Releasees.

11. Upon the Effective Date, and in accordance with and to the extent required by 15 U.S.C. § 78u-4(f)(7)(A), the Releasees shall be deemed to, and by operation of this Order and Final Judgment shall be, released from all claims for contribution and indemnification brought by other persons, and any and all future claims for contribution or indemnification arising out of any Released Claim belonging to the Class, including, but not limited to, any claim that is based upon, arises out of or relates to this Action or the transactions and occurrences referred to in the First Amended Complaint, (i) by any person or entity against any Releasee and (ii) by any Releasee against any person or entity other than as set out in 15 U.S.C. § 78u-4(f)(7)(A)(ii), and all such claims for contribution and indemnification are permanently barred, extinguished, discharged, satisfied, and unenforceable.

12. Upon the Effective Date, the Releasees shall be deemed to, and by operation of this Order and Final Judgment shall be, completely released, acquitted, and forever discharged from any and all Released Claims by Releasors against any and all of the Releasees, and the failure of any Member of the Settlement Class to exclude themselves from the Settlement by the Exclusion Date set by the Court, or to obtain any payment from the Settlement Fund, whether by any action or failure to act of the Settlement Escrow Agent or Class Counsel, or for any other reason, shall not affect the releases herein. Nor shall the releases be affected in any way by any subsequent determination that the allocation of any payment to the Settlement Class from the Settlement Fund was unfair.

13. Upon the Effective Date, any claims against Releasors arising out of, relating to or in connection with the Action as against the Defendants shall be deemed to, and by operation of this Order and Final Judgment shall be, completely released by the Releasees and their counsel, and they are permanently enjoined and barred from instituting, asserting or prosecuting any and all claims which the Releasees or their counsel or any of them, had, have or may in the future have against Releasors, arising out of relating to or in connection with the Action as against the Defendants.

14. Upon the Effective Date, the Action shall be deemed to, and by operation of this Order and Final Judgment shall be, dismissed with prejudice and without assessment of costs or attorneys' fees against the Defendants.

15. Any plan of distribution of the Settlement Amount, or any order entered regarding the payment of expenses of administration of the Settlement, or attorneys' fees and expenses of Class Counsel, shall in no way disturb or affect this Order and Final Judgment, and shall be considered separate and apart from it.

16. Neither the Agreement, the Settlement or this Order and Final Judgment, nor any act performed pursuant to or in furtherance thereof: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Defendants; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Defendants in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Defendants may file the Agreement and/or this Order and Final Judgment in any other action that may be brought against them in order to support a defense or counterclaim based on principles of

res judicata, collateral estoppel, judgment release and bar, settlement, reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

17. The Court hereby reserves its exclusive, general, and continuing jurisdiction over the Plaintiffs, the Settlement Class, Class Counsel, the Defendants, the Defendants' counsel, Releasers, Releasees, the Settlement Escrow Agent, and the Settlement Fund as needed or appropriate in order to administer, supervise, implement, interpret, or specifically to enforce the Settlement in accordance with its terms, including (without limitation) the investment, conservation, protection of the Settlement Fund prior to distribution, and distribution of the Settlement Fund.

18. This Order and Final Judgment shall become final and binding on the Parties on the Effective Date, and this Order and Final Judgment shall not become final and binding on the Parties until the Effective Date. In the event the Settlement does not become Effective in accordance with the terms of the Agreement or for any reason the Effective Date does not occur, then this Order and Final Judgment shall be rendered null and void and, in accordance with the Agreement, shall be vacated, and in such event all orders entered in connection herewith shall be null and void and no longer of any force or effect.

**THERE BEING NO JUST REASON FOR DELAY, LET JUDGMENT BE ENTERED ACCORDINGLY.**

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Theresa L. Springmann, Judge  
United States District Court,  
Northern District of Indiana



(1) A copy of Plaintiffs' original Complaint, with exhibits annexed thereto (Dkt. No. []), and First Amended Complaint, with exhibits annexed thereto (Dkt. No. []), may be accessed at the U.S. District Court's electronic case filing system ("ECF System") for the United States District Court for the Northern District of Indiana, <http://www.innd.uscourts.gov>.

(2) On [date], class counsel filed a motion seeking entry of an order that, among other things, preliminarily approves settlement of the Action and certifies a class for settlement purposes only, approves the form of notice to be sent to prospective class members describing the background and nature of the Action, terms of the proposed settlement, and class members' right to exclude themselves from the class, or object to the settlement ("Class Notice"), and the form of summary notice to be published ("Publication Notice"). A copy of the motion (Dkt. No. []) may be accessed at <http://www.innd.uscourts.gov>. No judicial hearing has yet been scheduled with respect to the motion or final approval of the settlement.

(3) Copies of the Class Notice and Publication Notice are attached as Exhibits A and B, respectively.

(4) A copy of the parties' Settlement Agreement, with exhibits annexed thereto, dated March [ ], 2011, is attached as Exhibit C.

(5) *See* item 4. There is no other agreement contemporaneously made between class counsel and counsel for the Defendants.

(6) The Settlement Agreement contemplates entry of a final judgment dismissing the Action, with prejudice, in accordance with the terms of the Settlement Agreement. However, no final judgment or notice of dismissal has been filed as of this time.

(7) It is not feasible for the Defendants to provide the number or names of class members as class members have not yet been identified. Under the Settlement Agreement, the

settlement class is defined as “All persons or entities who purchased or held [the bond anticipation notes at issue in the Action] during the Class Period, but excluding (i) persons or entities who or which have timely excluded themselves from the Class in accordance with the procedures described in this Agreement and the exhibits thereto; and (ii) Defendants and their respective parents, subsidiaries, and affiliates.” Settlement Agreement ¶¶ 6, 34. It is estimated that approximately [ %] of class members reside in the States of \_\_\_\_\_, and that the estimated proportionate share of the claims of such class members to the entire amount of the settlement is approximately [ %], subject to class members excluding themselves from the settlement and any distribution of the settlement amount, the specific plan of distribution of the settlement amount proposed by class counsel and approved by the Court, and deductions from the settlement amount for class counsel fees, costs, and expenses, all as provided for in the Settlement Agreement and to be approved by the Court.

(8) There are no judicial opinions relating to the materials described in paragraphs (3) to (6) above (corresponding to 28 U.S.C. § 1715(b)(3) - (6)).

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

HUNTON & WILLIAMS LLP

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Riverfront Plaza, East Tower  
Richmond, Virginia 23219  
(804) 788-8200

*Counsel for Defendant City of Menasha*

KATTEN MUCHIN ROSENMAN LLP

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*Counsel for Defendant RBC Capital  
Markets, LLC*