

GANOS COMPANY, INC. v. CITY OF MILWAUKEE, et al.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Agreement”) is made and entered into for and in consideration of the commitments set forth herein on this _____ day of _____, 2007, by and between Ganos Company, Inc. (hereafter referred to as “Plaintiff”), the City of Milwaukee (hereafter referred to as “Defendant” or “Third-Party Plaintiff, or “City”), Fidelity and Deposit Company of Maryland (hereafter referred to as “Third-Party Defendant,” or “Fidelity”) and Assurance Company of America (hereafter referred to as “Third-Party Defendant,” or “Assurance,”) collectively, the “Parties;”

WHEREAS, Plaintiff filed a Complaint in Milwaukee County Circuit Court, Case Number 06-CV-9572, alleging (among other things) that the City had wrongfully withheld certain sums due Plaintiff under demolition contracts, and

WHEREAS, the City answered, denying all liability, and counterclaimed against Plaintiff, alleging breach of contract and negligence; and further alleging third-party claims against Fidelity and Assurance; and

WHEREAS, Plaintiff and Third-Party Defendants answered denying all liability to the City, and Plaintiff amended its complaint to allege constitutional violations actionable under 42 U.S.C. § 1983, which the City removed to the United States District Court for the Eastern District of Wisconsin, Case Number 07-CV-00686, and which the City further denied; and

WHEREAS, the Parties wish to resolve the litigation between them by entering into this full and final settlement.

NOW, THEREFORE, in consideration of their mutual promises as set forth herein with their intention to be mutually and legally bound hereby, the Parties covenant and agree as follows:

1. Approval. This Agreement is subject to approval in its entirety by the Common Council of the City of Milwaukee. It shall be deemed null and void, and have no force, effect, or admissibility in the event it is not so approved in its entirety.

2. Payment. The City of Milwaukee shall pay to the Ganos Company the total sum of Twenty Thousand and 00/100 Dollars (\$20,000.00). A check in payment of said amount shall be made payable to "Ganos Company, Inc." and shall be transmitted to Andrew S. Oettinger, Godfrey & Kahn, S.C., 780 North Water Street, Milwaukee, WI 53202, within fifteen (15) business days of the expiration of the mayoral veto period after approval of this settlement by the Common Council of the City of Milwaukee.

3. Dismissal of the Litigation. Upon the Ganos Company, Inc.'s receipt of the payment provided for above, the Ganos Company, Inc., the City of Milwaukee, Assurance Company of America, and Fidelity and Deposit Company of Maryland, and each of them, agree to dismiss the action entitled *Ganos v. City of Milwaukee*, U.S.D.C. Case Number 07-CV-00686 (the "Litigation"), with prejudice, each party to bear its own costs and attorneys' fees.

4. Mutual Releases. In exchange for the payment and dismissals contemplated by this Agreement, the Ganos Company, Inc., the City of Milwaukee, Assurance Company of America, and Fidelity and Deposit Company of Maryland, and each of them, hereby mutually release each other, their past, present and future agents, insurers, representatives, shareholders, principals, attorneys, affiliates, departments, employees and their successors and heirs, executors and assigns, from any and all legal, equitable or other claims, counterclaims, demands, setoffs,

defenses, contracts, accounts, suits, debts, agreements, actions, causes of action, sums of money, bonds, bills, specialties, covenants, promises, variances, damages, executions, judgments, findings, controversies and disputes, and any past, present or future duties, responsibilities or obligations, known or unknown, arising out of the facts, issues, or allegations made or referred to in the Litigation, as well as any state court complaint containing related facts or claims.

5. Full Release. The Parties to this release and settlement agreement understand that it represents a complete release of any and all claims, that it is intended further to be mutual, and that none of the Parties to this release may make further claims against the others concerning the claims, contracts, events, transactions or facts referred to in the Litigation, or any state court complaint concerning related facts or claims.

6. Future Contracts. The Parties to this release and settlement agreement understand that it shall not act as a release of future claims which may arise out of future conduct unrelated to the claims, contracts, events, transactions or facts referred to in the Litigation, or any state court complaint concerning related facts or claims.

7. Compromise. It is expressly understood and agreed between the Parties that by entering into this Agreement, the Parties, and each of them, in no way admit to liability for any claim brought in the Litigation. Liability for any and all claims for relief is expressly denied by each of the Parties.

8. Drafting. The drafting and negotiation of this Agreement have been participated in by each of the parties, and for all purposes this Agreement shall be deemed to have been drafted jointly by the Parties.

9. Governing Law. This Agreement shall in all respects be interpreted, enforced and governed under the laws of the State of Wisconsin.

10. Severability. Should any provision of this Agreement be declared or be determined by any court to be illegal, invalid, and/or against public policy, the validity of the remaining parts, terms or provisions shall not be affected thereby, and said illegal and invalid provision or term shall be deemed not to be part of the Agreement.

11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all counterparts so executed shall constitute one agreement binding on all of the Parties hereto, notwithstanding that all of the Parties may not be a signatory to the same counterpart. This Agreement may be executed by facsimile or Portable Data Format (PDF) and such signatures shall be binding and deemed original for purposes of enforcing this Agreement.

12. Integrated Agreement. This Settlement Agreement and General Release sets forth the entire Agreement between the Parties hereto, and fully supersedes any and all prior agreements or understandings between the Parties hereto pertaining to the subject matter hereof.

13. Warranty. The Parties each warrant that no other person or other legal entity has any interest in any claims, demands, causes of action, obligations, damages or liabilities covered by this Agreement, and has not sold, assigned, transferred, conveyed or otherwise disposed of any claim, demand, cause of action, obligation, damage, or liability covered by this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties (through their attorneys) have executed the foregoing Settlement Agreement and General Release.

GANOS COMPANY, INC.

Dated: _____

Christ Ganos, President

CITY OF MILWAUKEE

Dated: _____

Grant F. Langley, City Attorney
Miriam R. Horwitz, Assistant City Attorney
Attorneys for Defendants and Third-Party Plaintiffs

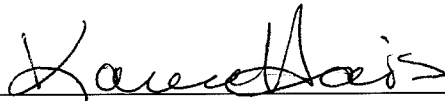
FIDELITY AND DEPOSIT COMPANY OF
MARYLAND

Dated: _____

[Authorized Signatory]

ASSURANCE COMPANY OF AMERICA

Dated: 11/20/07


[Authorized Signatory]

1053-2006-2851.001:126072

GANOS COMPANY, INC.

Dated: Nov. 29, 2007

Christ Ganos Pres
Christ Ganos, President

CITY OF MILWAUKEE

Dated: _____

Grant F. Langley, City Attorney
Miriam R. Horwitz, Assistant City Attorney
Attorneys for Defendants and Third-Party Plaintiffs

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Dated: _____

[Authorized Signatory]

ASSURANCE COMPANY OF AMERICA

Dated: 11/20/07

Karen Davis
[Authorized Signatory]

1053-2006-2851.001:126072

GANOS COMPANY, INC.

Dated: _____

Christ Ganos, President

CITY OF MILWAUKEE

Dated: _____

Grant F. Langley, City Attorney
Miriam R. Horwitz, Assistant City Attorney
Attorneys for Defendants and Third-Party Plaintiffs

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND

Dated: 11-29-2007



[Authorized Signatory]

ASSURANCE COMPANY OF AMERICA

Dated: _____

[Authorized Signatory]

1053-2006-2851.001:126072