

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is entered into by and among the following parties: (I) Plaintiff-Relator Anthony S. Manganiello (“Relator”); (II) Defendants International Fidelity Insurance Company (“IFIC”) and I.A.T. Insurance Group (“IAT,” and together with IFIC, “Defendants”); (III) the United States of America (the “United States”); and (IV) the State of New Jersey, acting through the New Jersey Attorney General’s Office, Division of Law (the “State,” and together with the United States, the “Government”). Relator, Defendants, the United States, and the State are, collectively, the “Parties.”

### **RECITALS**

A. Defendants are, and at all times relevant to this Agreement have been, engaged in the business of producing or underwriting construction surety bonds, commercial surety bonds, subdivision bonds and various other bonds. To ensure the performance of a contract, governments and/or other private parties may require a builder, developer or other counterparty to a contract to produce a bond to guarantee their performance. In exchange for issuing a bond on behalf of a party (the “Principal”), Defendants may require, among other things, the posting of collateral by the Principal. Following, among other things, the performance of a bonded contract and discharge of the bond, Defendants are obliged to return all unused and returnable collateral funds to the Principal, as required by the applicable contract and/or law.

B. On January 7, 2022, Relator, a former IFIC employee, filed a *qui tam* complaint under seal captioned *United States and the State of New Jersey ex rel. Anthony S. Manganiello v. International Fidelity Insurance Company, et al.*, in the United States District Court, District of New Jersey, Docket No. 2:22-cv-00102 (hereinafter, the “Civil Action”).

C. The Civil Action alleges that between 2015 and 2021, Defendants improperly retained certain collateral instead of remitting the funds to the New Jersey Unclaimed Property Administration (“UPA”), in violation of the New Jersey Uniform Unclaimed Property Act, N.J.S.A. 46:30B-1 to -109, (“UUPA”), the New Jersey False Claims Act, N.J.S.A. 2A:32C-1 to 17, (“NJFCA”), and several common-law claims (the “Covered Conduct”). The complaint also alleges violations of the federal False Claims Act, 31 U.S.C. §§ 3729 to 3733, the Financial Institutions Reform Recovery and Enforcement Act of 1989, and the Financial Institutions Anti-Fraud Enforcement Act of 1990 (the “Federal Conduct”).

D. After receiving the complaint, the Government commenced an investigation in connection with all allegations asserted in the Civil Action.

E. After concluding its investigation, the State contends that it has certain civil claims against Defendants arising from the Covered Conduct.

F. The United States does not contend that it has any claims against Defendants arising from the Federal Conduct.

G. Defendants deny any and all allegations contained in the Civil Action, including the allegation that the at-issue collateral is subject to remittance under the UUPA and the State’s contention that it has certain civil claims against Defendants arising from the Covered Conduct.

H. This Settlement Agreement is neither an admission of any liability by Defendants, nor a concession by the State or the Relator that their claims are not well-founded.

I. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation, and in consideration of the mutual promises and obligations set forth in this Settlement Agreement, the Parties agree and covenant as follows.

### **TERMS AND CONDITIONS**

1. This Agreement is effective on the date of signature of the last signatory to the agreement (“Effective Date”).

2. Defendants shall pay the State one lump sum amount of \$575,964 (the “Settlement Amount”) to resolve the Civil Action, but shall receive a credit in the amount of \$185,113 against the Settlement Amount for monies previously remitted to the UPA by IFIC under a reservation of rights.

3. Of the remaining \$390,851,

- a. Defendants shall pay \$198,863 to the UPA (the “UPA Payment”), in one lump sum and with all appropriate reporting forms, under a reservation of rights, within seven (7) calendar days of the Effective Date, via certified bank check or wire transfer pursuant to written instructions provided by the UPA.
- b. Defendants shall pay \$191,988 to the State (the “State Payment,” together with the UPA Payment, shall be collectively referred to herein as the “Settlement Payment”), in one lump sum, within seven (7) calendar days of the Effective Date by electronic funds transfer pursuant to written instructions provided by the Attorney General.
- c. The State Payment shall be allocated by the Attorney General as follows:
  - i. \$57,596.40 to the False Claims Prosecution Fund pursuant to N.J.S.A. § 2A:32C- 7(c).
  - ii. \$115,193 to Relator in satisfaction of his relator share (“Relator’s Share”) pursuant to N.J.S.A. § 2A:32C-7(a), which the State shall distribute to Relator’s counsel Michael Fitzgerald of the Law Office of Michael D. Fitzgerald, in trust for Relator, by way of electronic funds transfer pursuant to written instructions provided by Relator’s counsel within thirty (30) days after receipt of the Settlement Payment from Defendants. Relator expressly understands and agrees that, pursuant to N.J.S.A. § 2A:32C-7(f), the State is only liable to the Relator for a share of the funds actually received or collected by the State that are being used to satisfy Defendants’ obligations under this Settlement Agreement.
  - iii. \$19,198.60 to the State’s General Fund.

4. In the event of the failure by Defendants to pay any portion of the Settlement Payment when due, the State shall provide written notice of the non-payment to Defendants by (a) delivery in person, (b) a national recognized next-day courier service, or (c) first class, registered

or certified mail, postage prepaid. Notice so given shall be effective upon (a) receipt, or (b) on the tenth day following mailing, whichever occurs first. Defendants shall have the opportunity to pay the amount due within thirty (30) calendar days from the date of notice. If Defendants fail to pay the amount due under this Agreement within thirty (30) calendar days from the date of notice of non-payment, then Defendants shall be in default (“Default”). In the event of Default, within five (5) business days of such Default, the State, in its sole discretion which must be exercised reasonably, may declare or do any of the following:

- a. Demand the Settlement Payment, less any payments already made, immediately due and payable, with unpaid amounts bearing the rate of interest set forth in the New Jersey Court Rules beginning as of the date of Default until payment of the Settlement Amount is made, and/or
- b. If Defendants fail to make the Settlement Payment within ninety (90) days of the Default, the State and Relator may then file an action against Defendants for the Settlement Payment, plus interest accrued, via summary proceedings under the New Jersey Rules of Court, R. 4:67-1 *et seq.*

5. In the event of a Default, as described in Paragraph 4, Defendants agree not to contest any action to enforce this Agreement or any other collection action undertaken by the State pursuant to this Paragraph, and Defendants agree to pay the State all reasonable costs of collection and enforcement of this Agreement, including attorneys’ fees and expenses, to the extent that such amounts would be recoverable by existing law.

6. In addition to the Settlement Payment, Defendants shall promptly implement the following procedures:

- a. The company shall identify a Collateral Supervisor charged with overseeing the collateral.
- b. On at least an annual basis, the Collateral Supervisor shall run a collateral report.
- c. The Collateral Supervisor shall share the report with appropriate responsible personnel (i.e., each regional manager whose responsibilities include monitoring collateral).
- d. Each collateral account shall be reviewed to assess whether the company still has a need to hold the collateral.
- e. If the collateral is still needed, the responsible personnel shall ensure that the amount of collateral held is still appropriate and confirm and document the determination.
- f. If the amount is no longer appropriate, the responsible personnel shall request a change within 30 days.
- g. If the change is a decrease, the responsible personnel shall ensure the return of funds within 30 days absent unusual extenuating circumstances.

- h. If an available grantor to which the funds will be returned is identified, such grantor shall be contacted by the responsible personnel, and the grantor has to request the funds. The funds shall then be returned to the grantor and grantor must cash the check.
- i. If an available grantor is not identifiable, the appropriate personnel shall escheat the funds to the state within the time required by applicable law.

7. Upon receipt by the State of the Settlement Payment and by Relator of the Relator's Share, the Government, Relator, and Defendants shall promptly sign—and the Government will file in the Civil Action—a Joint Stipulation of Dismissal, with Prejudice as to the State and Relator and without prejudice as to the United States, of the Civil Action. Such dismissal, however, shall expressly preserve the Court's jurisdiction over the parties' obligations to comply with the terms of this Agreement.

8. Subject to and conditioned upon Defendants' full payment of the Settlement Payment, the State agrees to release the Defendants and their parent corporations, subsidiaries, brother or sister corporations, divisions, officers and employees, current or former owners, affiliates, agents, directors, and the successors and assigns of any of them, from any claim the State has or may have brought against Defendants for the Covered Conduct.

9. Subject to and conditioned upon Defendants' full payment of the Settlement Payment, the Relator does hereby release and forever discharge Defendants and their past, present and future officers, members, agents, directors, stockholders, owners, partners, employees, contractors, attorneys, lenders, insurers, financiers, predecessors, successors, assigns, and any parent, subsidiary and affiliated entities, and each and all of them collectively, from any and all manner of claims, actions, controversies, disputes, suits, liens, losses, debts, dues, interest, damages, liabilities, obligations, guarantees, costs, expenses, attorneys' fees, penalties, causes of action, judgments, guaranties, bonds, executions, and demands of every nature, kind, character and description whatsoever, whether they arise by contract, at law, at equity or otherwise, whether asserted or unasserted, whether known or unknown and whether suspected, disclosed or undisclosed, which the Relator had, now has, or hereafter can, shall, or may have that arise out of or relate to all claims asserted or that may have been asserted in the Civil Action and/or any interaction whatsoever by and/or between Relator and Defendants from the beginning of time up until the date of this Agreement. For the avoidance of any doubt, the claims released in this Paragraph 9, include any claims that were or may have been asserted by Relator in any jurisdiction within the United States of America.

10. Notwithstanding any term of this Agreement, the State specifically reserves and does not release the following claims:

- a. Any civil, criminal, or administrative liability arising under state or municipal tax laws;
- b. Any criminal liability, including but not limited to the criminal liability of individuals (including current or former directors, officers, employees, agents or shareholders);
- c. Any administrative liability other than liability arising from the Covered Conduct;

- d. Any civil liability that Defendants have or may have under any state or local statute, regulation, or rule for conduct other than the Covered Conduct;
- e. Any liability that Defendants have or may have to the State (or its agencies) for any conduct other than the Covered Conduct;
- f. Any liability to any local government (or agency thereof) for any conduct other than the Covered Conduct;
- g. Any liability based upon such obligations as are created by this Agreement;
- h. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services not arising from the Covered Conduct;
- i. Any liability for failure to deliver goods or services due that are not arising from the Covered Conduct;
- j. Any liability for personal injury or property damage resulting from the Covered Conduct; and
- k. Any liability of individuals not released by the terms of this Agreement.

11. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the State concerning the characterization of the Settlement Payment for purposes of the Internal Revenue laws, Title 26 of the United States Code, or New Jersey's revenue codes.

12. No portion of the Settlement Payment shall be dischargeable in bankruptcy. Defendants warrant that they have reviewed their financial situation and that they are currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the State of the Settlement Payment. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Defendants within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Defendants were or became indebted to on or after the date of the required transfers, within the meaning of 11 U.S.C. § 548(a)(1).

13. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances. Conditioned upon Relator's receipt of Relator's Share in accordance with Paragraph 3(c)(ii) above, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases and forever discharges the Government, its agencies, departments, officers, agents, and employees, from any claims arising from the filing of the Civil Action in connection with the Covered Conduct, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action or any future proceeds (other than those referenced in Paragraph 3(c)(ii) above).

14. In consideration of the releases provided for herein, Defendants, on their own behalf and on behalf of their current and former parent corporations, direct and indirect

subsidiaries, brother or sister corporations, current or former owners, affiliates, agents, servants, employees, officers, directors, and the successors and assigns of any of them, release and forever discharge the Relator and any and all of his heirs, successors, attorneys, agents, and assigns, from any claims (including attorney's fees, costs and expenses of every kind and however denominated) that the Defendants, together with their parent corporations, subsidiaries, affiliates, agents, servants, employees, officers, directors, and the successors and assigns of any of them have asserted, could have asserted, or may assert in the future against the Relator or his heirs, successors, attorneys, agents, and assigns related to the Covered Conduct and/or the Civil Action.

15. In consideration of the releases provided for herein, the Defendants, on their own behalf and on behalf of their current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, current or former owners, affiliates, agents, servants, employees, officers, directors, and the successors and assigns of any of them, release and forever discharge the Government, its agencies, departments, officers, agents, and employees, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) which the Defendants asserted, could have asserted, or may assert in the future against the Government, its agencies, departments, officers, agents, and employees, related to the Covered Conduct, and the Government's investigation and prosecution thereof.

16. The Defendants agree to the following:

a. Unallowable Costs Defined: All costs incurred by or on behalf of Defendants, their present or former officers, directors, employees, shareholders, and agents in connection with:

1. The Civil Action;
2. The State's civil investigation(s) of the matters included in the Covered Conduct;
3. Defendants' investigation, defense, and corrective actions undertaken in response to the State's civil investigation in connection with the Civil Action (including attorneys' fees);
4. The negotiation and performance of this Agreement;
5. The Settlement Amount paid by Defendants to the State pursuant to this Agreement;

are unallowable costs for government contracting purposes (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Defendants shall not charge such Unallowable Costs directly or indirectly to any contract with the State of New Jersey, and shall not cite such Unallowable Costs as the basis for any request for a price increase under any contract with the State of New Jersey or in which the State of New Jersey participates.

17. All communications and notices to be provided under this Agreement may be provided by electronic transmission, United States mail or overnight delivery service. Notices made under this Agreement shall be directed as follows:

As to Relator:

Michael D. Fitzgerald, Esq.  
Law Offices of Michael D. Fitzgerald  
1701 Pennsylvania Avenue NW, Suite 200  
Washington, D.C. 20006  
mdfitz@briellelaw.com

As to Defendants:

International Fidelity Surety Company  
One Newark Center, 20<sup>th</sup> Floor  
Newark, NJ 07102  
Attn: Frank Tanzola, Esq.

With a copy to:

Sills, Cummis & Gross, P.C.  
The Legal Center  
One Riverfront Plaza  
Newark, NJ 07102  
Attn: Keith R. Hemming, Esq.  
khemming@sillscummis.com

Greenbaum, Rowe, Smith & Davis LLP  
75 Livingston Avenue  
Roseland, NJ 07068  
Attn: Mary E. Toscano, Esq.  
mtoscano@greenbaumlaw.com

As to the United States:

David E. Dauenhimer, Esq.  
Assistant United States Attorney  
U.S. Department of Justice  
District of New Jersey  
970 Broad Street, Suite 700  
Newark, New Jersey 07102  
david.dauenhimer2@usdoj.gov

As to the State of New Jersey:

Lara J. Fogel, Esq.  
Assistant Attorney General  
Division of Law  
P.O. Box 45029-5029  
124 Halsey Street, 5th Floor  
Newark, New Jersey 07101  
Lara.Fogel@law.njoag.gov

18. The Parties warrant and represent that each person whose name appears below has the authority to enter into this Agreement on behalf of the party for whom they are designated signers, and that the Agreement as to all of its provisions is made freely, voluntarily, without any degree of duress or compulsion whatsoever and with full knowledge of its contents and consequences.

19. Except as expressly provided for in this Agreement, each Party to this Agreement will bear its own legal and other costs incurred in connection with the Civil Action, including the preparation and performance of this Agreement.

20. This Agreement shall be binding upon Defendants' successors, transferees, heirs, and assigns. For the avoidance of doubt, this Paragraph covers, but is not limited to, any entity that merges with, purchases, or otherwise acquires any of the Defendants, in whole or in part.

21. This Agreement shall be binding on Relator's successors, transferees, heirs, and assigns.

22. This Agreement is governed by the laws of the State of New Jersey. The exclusive jurisdiction and venue for any dispute relating to this Agreement will be the United States District Court for the District of New Jersey.

23. The Parties hereto acknowledge that this Agreement was the result of negotiation and discussion among the Parties. The Parties further acknowledge that this Agreement shall be deemed to have been jointly prepared and that no particular party is to be deemed the drafter or preparer of this Agreement. Accordingly, to the extent there should later prove to be ambiguities in the Agreement, the Parties agree that such ambiguity shall not be construed in favor of or against any particular Party to this Agreement.

24. This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior or contemporaneous agreements between the Parties. This Agreement may not be amended or modified in any respect except in writing and executed by the Parties.

25. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

26. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

IN WITNESS, ACCEPTANCE AND AGREEMENT WHEREOF, the Agreement is executed by the parties hereto.



**FOR THE STATE OF NEW JERSEY**

MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY

DATED: 6/6/2024

BY: /s/ Lara J. Fogel  
Lara J. Fogel  
Assistant Attorney General  
Affirmative Civil Enforcement  
New Jersey Division of Law  
Department of Law & Public Safety  
124 Halsey Street, 5th Floor  
P.O. Box 45029  
Newark, New Jersey 07101

*Attorneys for the State of New Jersey*

**FOR THE UNITED STATES OF AMERICA**

DATED: \_\_\_\_\_

BY: DAVID DAUENHEIMER  
David E. Dauenheimer  
Assistant United States Attorney  
Deputy Chief, Health Care Fraud Unit  
United States Attorney's Office  
District of New Jersey  
970 Broad Street, Suite 700  
Newark, New Jersey 07102

Digitally signed by DAVID  
DAUENHEIMER  
Date: 2024.06.06  
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*Attorneys for the United States of America*

**FOR INTERNATIONAL FIDELITY INSURANCE COMPANY**

INTERNATIONAL FIDELITY INSURANCE  
COMPANY

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

NAME:

TITLE:

**FOR I.A.T. INSURANCE GROUP**

I.A.T. INSURANCE GROUP

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

NAME:

TITLE:

**FOR RELATOR**

DATED: \_\_\_\_\_

\_\_\_\_\_  
Anthony S. Manganiello

Law Office of Michael D. Fitzgerald

DATED: \_\_\_\_\_

\_\_\_\_\_  
Michael D. Fitzgerald, Esq.

**FOR INTERNATIONAL FIDELITY INSURANCE COMPANY**

INTERNATIONAL FIDELITY INSURANCE  
COMPANY

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
NAME:  
TITLE:

**FOR I.A.T. INSURANCE GROUP**

I.A.T. INSURANCE GROUP

DATED: \_\_\_\_\_

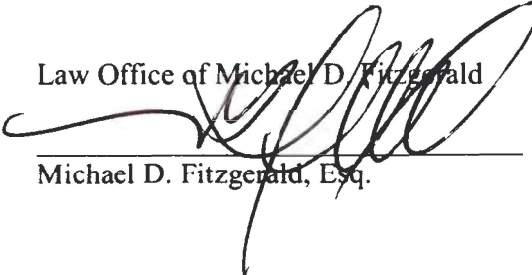
BY: \_\_\_\_\_  
NAME:  
TITLE:

**FOR RELATOR**

DATED: **6/8/2024**

  
\_\_\_\_\_  
Anthony S. Manganiello

DATED: **6/10/24**

Law Office of Michael D. Fitzgerald  
  
\_\_\_\_\_  
Michael D. Fitzgerald, Esq.

**FOR INTERNATIONAL FIDELITY INSURANCE COMPANY**

DATED: 6/10/2024

INTERNATIONAL FIDELITY INSURANCE  
COMPANY

BY: [Signature]  
NAME: Frank J. Tanzola  
TITLE: Senior VP

**FOR I.A.T. INSURANCE GROUP**

DATED: 6/10/2024

I.A.T. INSURANCE GROUP

BY: [Signature]  
NAME: Frank J. Tanzola  
TITLE: Senior VP

**FOR RELATOR**

DATED: \_\_\_\_\_

\_\_\_\_\_  
Anthony S. Manganiello

Law Office of Michael D. Fitzgerald

DATED: \_\_\_\_\_

\_\_\_\_\_  
Michael D. Fitzgerald, Esq.