COVINGTON & BURLING LLP

1201 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004-2401
TEL 202.662.6000
FAX 202.662.6291
WWW.COV.COM

BEIJING
BRUSSELS
LONDON
NEW YORK
SAN DIEGO
SAN FRANCISCO
SILICON VALLEY
WASHINGTON

FOR IMMEDIATE RELEASE

Contact: Rebecca Carr
+1.202.662.5110
rcarr@cov.com

Former IndyMac CEO Resolves FDIC Claims

WASHINGTON, DC, December 14, 2012 — Former IndyMac CEO Michael W. Perry is settling the FDIC's claims against him stemming from the financial crisis that toppled IndyMac Bank.

Under the terms of the settlement, the FDIC is dropping its $600-million lawsuit against Mr. Perry in exchange for the right to seek $11 million from IndyMac's insurance carriers and a $1 million cash payment.

The FDIC sued Mr. Perry in July 2011, alleging that he was negligent in not reducing the bank's core loan volume further and faster than the bank was doing. Mr. Perry has steadfastly denied the allegation and continues to deny liability as part of the settlement. Notably, the FDIC expressly acknowledged in its legal filings that it was not alleging that Mr. Perry caused the bank to fail or that he caused a loss to the FDIC insurance fund.

"The FDIC's lawsuit did not include these more serious allegations because they knew they were patently false," said D. Jean Veta, a Covington partner who leads Mr. Perry's defense. "Nevertheless, the FDIC insisted on pursuing an equally baseless simple negligence claim, alleging that Mr. Perry should have had a crystal ball, seen the financial crisis coming and stopped making loans sooner than IndyMac did." Because California does not apply the common law Business Judgment Rule to corporate officers, it is one of the only, if not the only, state in which the FDIC could bring a lawsuit based on simple negligence.

"The irony is that Mr. Perry was at the forefront in responding to the financial crisis," Ms. Veta said. "Indeed, the FDIC portrayed Mr. Perry as the prudent CEO in their recent lawsuit against other IndyMac officers." For example, in the Second Quarter of 2007, IndyMac cut its volume of second lien loans and lines of credit by 53 percent from the prior year, as compared to other major financial institutions that actually increased their second-lien loan volume during the same period. "Mr. Perry's actions were the exact opposite of negligence," Ms. Veta said. "They were sound fiscal actions taken to save the bank he spent his career building."

Mr. Perry decided to settle the FDIC's lawsuit in large part because the insurance funds available to fund his defense had been exhausted by all the various lawsuits brought against former IndyMac officers and directors. Before those insurance funds ran out, Mr. Perry won the dismissal of all but one of the SEC's claims in its once wide-ranging civil

fraud case. He settled the last remaining claim, without admitting or denying liability, for a single negligence-based claim in which he agreed to pay $80,000 and comply with the securities laws going forward.

As part of the settlement of the FDIC's civil lawsuit, the FDIC, in its role as regulator, forced Mr. Perry to agree to an order that precludes him from participating in the banking industry.

"The FDIC extracted this condition at the 11th hour because they could," Ms. Veta said. "The FDIC knew Mr. Perry was out of insurance funds, and they took advantage of the situation. The FDIC apparently views this order as having great importance. In fact, it is almost meaningless because Mr. Perry is so disillusioned by the FDIC's conduct in this case that he wants nothing to do with them, even as a back-up regulator."

Mr. Perry is now one step closer to moving beyond the financial crisis litigation, with just a couple of private plaintiff lawsuits still pending. "It remains true that no court has issued a single adverse ruling on the merits against Mr. Perry," Ms. Veta said. "And that is how it should be, because Mike Perry was a smart, honest, and highly capable CEO who did all he could to save IndyMac Bank."

The Covington team representing Mr. Perry was led by Ms. Veta and included Benjamin Razi and Dennis Auerbach.

Covington & Burling LLP, an international law firm, provides corporate, litigation, and regulatory expertise to enable clients to achieve their goals. Founded in 1919, the firm has more than 800 lawyers and offices in Beijing, Brussels, London, New York, San Diego, San Francisco, Seoul, Silicon Valley, and Washington, DC.