

LIWS: [Redacted Box]
DIF/Mortgage Fraud

ENTERED
10/20/10

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement and Release Agreement ("Agreement"), made and entered into this 8 day of October, 2010, by and between the Federal Deposit Insurance Corporation, as Receiver of First Georgia Community Bank, their successors, assigns, and beneficiaries (hereinafter collectively referred to as the "FDIC"), and Joseph P. McClelland as an officer or director of First Georgia Community Bank (hereinafter referred to as "McClelland").

RECITALS

WHEREAS:

1. Prior to December 5, 2008, First Georgia Community Bank ("the Bank") was a depository institution organized and existing under the laws of Georgia;
2. On December 5, 2008, the Bank was closed by the Georgia Department of Banking and Finance and pursuant to 12 U.S.C. § 1821(c), the FDIC was appointed receiver. In accordance with 12 U.S.C. §1821(d), the FDIC as receiver succeeded to all rights, titles, powers and privileges of the Bank, its shareholders, and creditors, including right and title with respect to the Bank's assets. Among the assets to which the FDIC as receiver succeeded were any and all claims, demands, and causes of actions against the Bank's former directors, officers and employees arising from the performance, non-performance and manner of performance of their respective functions, duties, and acts as directors and/or officers of the Bank.

WHEREAS the FDIC and Charles W. Carter, Sr., Alfred D. Fears, Jr., Arthur Hammond, William B. Jones, Emory B. Lewis, Harold P. Lewis, Dr. Alexander L. Pollack, James H. Warren, George Weaver, Roger Botwin, Elaine Kendrick, Larry Morgan, Lauren Potts, Hudson Wade, any person that has previously served as an officer or director of First Georgia Community Bank, and First Georgia Community Corp. (its shareholders, employees, representatives, agents, successors and assigns), (hereinafter

collectively referred to as "Released Parties") have entered into a separate settlement agreement and release of all claims on October 5, 2010 (hereinafter referred to as the "Main Agreement");

WHEREAS, the FDIC has made a claim against McClelland and the Released Parties and has threatened legal action; and

WHEREAS, McClelland and the Released Parties have denied any and all liability to the FDIC in any amount whatsoever and have further denied any wrongdoing; and

WHEREAS, all parties are desirous of settling all disputes and claims without further legal action based upon the terms and conditions contained herein;

WHEREAS, both FDIC and McClelland, respectively, have two separate and independent civil actions pending: (1) *Federal Deposit Insurance Corporation, as Receiver for First Georgia Community Bank v. Joseph P. McClelland, III and Joseph P. McClelland, Jr.*, No: 1:09-CV-2352; and (2) *Joseph P. McClelland, Jr. v. First Georgia Community Bank; Federal Deposit Insurance Corporation, as Receiver for First Georgia Community Bank; and McIntosh State Bank*, No: 5:09-CV-256-CAR; and

WHEREAS, both the FDIC and McClelland do not intend for this Agreement or the Main Agreement to in any way affect said pending cases; and

NOW THEREFORE, for and in consideration of the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION I: Payment to FDIC

As an essential covenant and condition to this Agreement, McClelland agree to perform the following on or before October 8, 2010: (1) pay the FDIC the sum of \$896,996.00 ("the Settlement Funds") in a check made payable to the FDIC as Receiver for First Georgia Community Bank, delivered to Schulten Ward & Turner Attn: David Turner, Esq. (noting that the Settlement Funds are not additional consideration but a

mere restatement of Settlement Funds provided pursuant to the Main Agreement which serves as consideration for both this Agreement and the Main Agreement), and: (2) deliver to David Turner, Esq. originals, or electronically with originals to follow by regular mail, executed originals, or originals in counterpart, of this Agreement by each of the undersigned parties to this Agreement.

In the event that the Settlement Funds are not delivered by October 8, 2010, then the FDIC may at its option elect to declare this Agreement null and void. In the event that McClelland fails to deliver an executed Agreement by October 8, 2010, then the FDIC may at its option elect to declare this Agreement null and void as to McClelland.

SECTION II: Releases

A. Release of McClelland by FDIC.

Effective upon payment of the Settlement Funds, the FDIC hereby releases and discharges McClelland, his respective heirs, executors, administrators, insurers, successors and assigns from any and all claims, demands, obligations, losses, damages, suits, actions, and causes of action, direct or indirect, known or unknown, in law or in equity, belonging to the FDIC, that arise from or in any way related to the performance, nonperformance, negligence, gross negligence, misconduct, breach of fiduciary duty, or manner of performance of McClelland's respective functions, duties and actions as an officer, director, employee, stockholder, agent, representative, and/or insurer of the Bank.

B. Release of FDIC by McClelland.

Effective simultaneously with the release granted in PARAGRAPH II(A) above, McClelland and his respective heirs, executors, administrators, insurers, successors and assigns, hereby release and discharge the FDIC, and its employees, officers, directors, representatives, successors and assigns, from any and all claims, demands, obligations, losses, damages, suits, actions, and causes of action, direct or indirect, known or unknown, in law or in equity, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of McClelland's respective functions, duties

and actions as an officer, director, employee, stockholder, agent, representative, and/or insurer of the Bank.

C. Express Reservations From Releases By FDIC.

Notwithstanding any other provision, by this Agreement the FDIC does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed, any claims or causes of action:

(i) against McClelland or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to the FDIC, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC as successor in interest to the Bank or any person or entity other than the Bank, and including but not limited to the right to object to the discharge or dischargeability of any such indebtedness in any bankruptcy proceeding;

(ii) which have been raised or which may be raised by the FDIC against McClelland in the cases of *Joseph P. McClelland, Jr. v. First Georgia Community Bank; Federal Deposit Insurance Corporation; as Receiver for First Georgia Community Bank; and McIntosh State Bank*, No: 5:09-CV-256-CAR;

(iii) against any person or entity not expressly released in this Agreement; or

(iv) which are not expressly released in paragraph II(A) above.

D. Express Reservations From Releases By McClelland.

Notwithstanding any other provision, by this Agreement McClelland does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed, any claims or causes of action:

(i) against the FDIC or any other person or entity, for liability, if any, incurred as a result of the FDIC taking action against McClelland as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to the FDIC, the Bank, other financial institutions, or any other person or entity, including

without limitation any claims acquired by FDIC as successor in interest to the Bank or any person or entity other than the Bank;

(ii) which have been raised or which may be raised against the FDIC, its employees or agents in the case of *Joseph P. McClelland, Jr. v. First Georgia Community Bank; Federal Deposit Insurance Corporation; as Receiver for First Georgia Community Bank; and McIntosh State Bank*, No: 5:09-CV-256-CAR;

(iii) against any person or entity not expressly released in this Agreement; or

(iv) which are not expressly released in paragraph II(B) above.

SECTION III: Waiver of Dividends and Receivership Claims

To the extent, if any, that McClelland is or was a shareholder of the Bank, or its holding company, First Georgia Community Corp., and by virtue thereof is or may have been entitled to a dividend, payment, or other pro rata distribution upon resolution of the receivership of the Bank, he hereby knowingly assigns to the FDIC any and all rights, titles and interest in and to any and all such dividends, payments or other pro rata distributions. McClelland also waives any claim in the Bank's receivership, except to the extent such waiver affects in any way McClelland's cause of action in the case of *Joseph P. McClelland, Jr. v. First Georgia Community Bank; Federal Deposit Insurance Corporation; as Receiver for First Georgia Community Bank; and McIntosh State Bank*, No: 5:09-CV-256-CAR.

SECTION IV: Representations and Acknowledgements

A. No Admission of Liability. The undersigned parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims, and that this Agreement is not an admission or evidence of liability by any of them regarding any claim.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the parties named herein and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all parties hereto; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the party or parties subscribed thereto upon the execution by all parties to this Agreement.

C. Binding Effect. Each of the undersigned persons represents and warrants that they are a party hereto or are authorized to sign this Agreement on behalf of the respective party, and that they have the full power and authority to bind such party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned parties and their respective heirs, executors, administrators, representatives, successors and assigns.

D. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of Georgia.

E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned parties concerning the matters set forth herein. This Agreement may not be amended or modified except by another written instrument signed by the party or parties to be bound thereby, or by their respective authorized attorney(s) or other representative(s).

F. Reasonable Cooperation. The undersigned parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement. Further, the undersigned parties agree to cooperate fully with the FDIC in connection with any action required under this Agreement, except to the extent such cooperation affects in any way McClelland's cause of action in the case of *Joseph P. McClelland, Jr. v. First Georgia Community Bank; Federal Deposit Insurance Corporation; as Receiver for First Georgia Community Bank; and McIntosh State Bank*, No: 5:09-CV-256-CAR.

G. Advice of Counsel. Each party hereby acknowledges that it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that party by his or her counsel.

This 8 day of October, 2010.

RELEASOR:
Federal Deposit Insurance Corporation,
as Receiver of First Georgia
Community Bank

McCLELLAND:
Joseph P. McClelland

By: _____
(Signature)

By: _____
(Signature)

_____ (b)(6)

(Print Name & Title)

(b)
)
(6
)
Witness (/

(b)(6)

G. Advice of Counsel. Each party hereby acknowledges that it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that party by his or her counsel.

This _____ day of October, 2010.

RELEASOR:
Federal Deposit Insurance Corporation,
as Receiver of First Georgia
Community Bank

McCLELLAND:
Joseph P. McClelland

(b)(6)

By _____
(Signature)

By: _____
(Signature)

(b)(6)

(Print Name & Title) *Counsel*

Witness

*FDC Professional Liability
Group*