

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 22nd day of September 2011, by, between, and among the following undersigned parties:

The Federal Deposit Insurance Corporation, as receiver of ANB Financial National Association of Bentonville, Arkansas, ("FDIC"), and Dan Dykema ("Dykema"), Harry L. Brown ("H. Brown"), Victor Evans ("V. Evans"), Debra Jackson ("Jackson"), Charles Brannan ("Brannan"), Eric C. Brown ("E. Brown"), Blake Evans ("B. Evans"), Camille Phillips ("C. Phillips"), James S. Smith, Jr. ("Smith"), Samuel Harris III ("Harris"), and Joseph Renner ("Renner") (collectively the "Settling Defendants")(individually, the FDIC and the Settling Defendants may be referred to herein as "Party" and collectively as the "Parties").

### RECITALS

#### WHEREAS:

Prior to May 9, 2008, ANB Financial, N.A. ("Bank") was a depository institution organized and existing under the laws of the United States.

On May 9, 2008, the Bank was closed by the Office of the Comptroller of the Currency 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, including those with respect to its assets.

Among the assets to which the FDIC as receiver succeeded were any and all of the Bank's claims, demands, and causes of actions against its former directors, officers and employees arising from the performance, nonperformance and manner of performance of their respective functions, duties and acts as directors and/or officers of the Bank.

The FDIC has asserted claims against the Settling Defendants, who had each served at various times as directors and/or officers of the Bank for acts taken as directors and/or officers, including without limitation those set forth in the FDIC Notice/Demand Letters dated December 17, 2008, and March 7, 2011 (the "Claims"). The Settling Defendants have denied liability for the FDIC's Claims and contend that the Bank was wrongfully closed.

St. Paul Mercury Insurance Company ("St. Paul") issued directors' and officers' liability policy number EC00300442 (the "Policy"), which insured the directors and officers of the Bank according to the terms, provisions and conditions of the Policy. The Settling Defendants have made claims under the Policy. St. Paul reserved its rights to deny coverage under the Policy for Claims asserted by FDIC against the Settling Defendants, but has agreed to pay Five Million Dollars (\$5,000,000.00) toward the settlement of the Claims.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned parties agree, each with the other, as follows:

**SECTION I: Payment to FDIC**

A. As an essential covenant and condition to this Agreement, the Settling Defendants agree to pay, or cause to be paid to the FDIC the sum of Five Million One Hundred Thousand Dollars (\$5,100,000.00) ("the Settlement Funds").

B. This Agreement shall be executed by each Party, and a fully executed copy provided to St. Paul by the Settling Defendants, no later than September 26, 2011. Within fifteen (15) business days after receipt by St. Paul of a fully executed copy of this Agreement ("Settlement Payment Date"), the Settlement Funds shall be delivered to FDIC by direct wire transfer into an account designated by FDIC, or by check made payable to FDIC. If the Settlement Funds are delivered by direct wire transfer, the transfer should be made to:

**BANK:** Federal Home Loan Bank of New York

(b)(4) **ROUTING #:**

**FOR CREDIT TO:** FDIC National Liquidation Account

(b)(4) **ACCOUNT #:**

**OTHER BENEFICIARY INFORMATION (OBI):**

(b)(4) **I. Fund code(s):**

- (b)(4)
2. Asset number:
  3. Account officer to be notified and phone number: **Bill Smith, 972.761.2659**
  4. Description of the Transaction: **ANB Financial, N.A., Bentonville, AR -Director & Officer Liability Claim Settlement w/ St. Paul Insurance**

If the Settlement Funds are delivered by check, the check should be mailed by overnight mail addressed as follows:

Federal Deposit Insurance Corporation  
Attn: Cashier Unit  
1601 Bryan Street - 17<sup>th</sup> Floor  
Dallas, Texas 75201 - 3430

In the event that the Settlement Funds are not delivered to the FDIC by the Settlement Payment Date, interest shall accrue on all unpaid amounts at the rate of five (5) percent per annum from the Settlement Payment Date until the date of payment. However, if said Settlement Funds are not delivered to the FDIC by the Settlement Payment Date, as a result of the FDIC's failure to execute this Agreement, no interest shall accrue until the day after the FDIC executes the Agreement.

C. In addition, and without waiving any other rights that the FDIC may have, in the event that all Settlement Funds are not received by the FDIC on or before the Settlement Payment Date, then the FDIC, in its sole discretion, shall have the right at any time prior to receipt of all Settlement Funds (including all accrued interest) to declare this Agreement null and void, and to file suit against the Settling Defendants. Alternatively, FDIC shall have the right to extend this Agreement for any period of time until it receives all Settlement Funds (including all accrued interest). Any decision by the FDIC to extend this Agreement shall not prejudice its rights to declare this Agreement null and void at any time prior to receipt of all Settlement Funds (including all accrued interest) and to file suit against the Settling Defendants; provided however, that in the event the FDIC declares this Agreement null and void pursuant to this provision I.C., the FDIC will return all amounts paid to it under this Agreement to the person(s) or entity who paid such amounts to the FDIC within fifteen (15) business days after such declaration voiding the Agreement is made.

## SECTION II: Stipulation

Upon execution of this Agreement by each of the undersigned Parties, and timely receipt by the FDIC in full of the Settlement Funds, the FDIC shall not file any action against the Bank's former directors and officers on the Claims. The Parties further agree that the terms of the Second Amended and Restated Tolling Agreement dated July 27, 2011, shall be further restated and incorporated herein, and that the Tolling Period defined therein, and as further extended by consent of the Parties and St. Paul, shall be further extended from 11:59 p.m. on September 19, 2011, until September 29, 2011, or such later time as this Agreement is fully executed by all Parties and thereafter, until such time as the Settlement Funds, (including all accrued interest), are received in full by the FDIC.

## SECTION III: Releases

### A. Release of Individual Settling Defendants by FDIC.

Effective upon receipt in full of the Settlement Funds plus any accrued interest described in SECTION(S) I above, and except as provided in PARAGRAPH(S) III.D. and III.E. below, the FDIC, for itself and its successors and assigns, hereby releases and discharges each of the Settling Defendants and their respective heirs, executors, administrators, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC, that arise from or relate to, the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers and/or directors of the Bank.

### B. Release of FDIC by the Settling Defendants.

Effective simultaneously with the release granted in PARAGRAPH III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge FDIC, and its employees, officers, directors, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in

law or in equity, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers and/or directors of the Bank, and from any and all other claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to any of the Settling Defendants, including without limitation, any set forth in the Settling Defendant's confidential mediation submissions.

C. Release by Settling Defendants of Each Other.

Effective simultaneously with the releases granted in Paragraph III.B. above, the Settling Defendants, and their respective heirs, executors, administrators, representatives, successors and assigns, hereby release and discharge each other from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the performance, nonperformance, or manner of performance of their respective functions, duties and actions as officers and/or directors of the Bank.

D. Express Reservations From Releases By FDIC

I. 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:

a. against the Settling Defendants 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 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 Bank;

b. against St. Paul Mercury Insurance Company related to Bond No.

(b)(4)  including without limitation the claims asserted in the FDIC's Complaint filed against St. Paul Mercury Insurance Company in the United States District Court for the Western District of Arkansas, Case No. 5-11-cv-05133-PKH;

- c. against any person or entity not expressly released in this Agreement; and
- d. which are not expressly released in Paragraphs III.A. above.

2. Notwithstanding any other provision, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction and authority of the FDIC in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition or any other administrative enforcement action which may arise by operation of law, rule or regulation.

3. Notwithstanding any other provision, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice, the United States Attorney's Office for the Western District of Arkansas or any other federal judicial district. In addition, the FDIC specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, et seq., if appropriate.

E. Express Reservation of Rights of Bond Carrier.

1. Notwithstanding any other provision, nothing in this Agreement shall release or prejudice the rights of St. Paul Mercury Insurance Company or any other underwriter of any financial institution bond, fidelity bond, or banker's blanket bond on which the Bank is an insured, to bring any claims by way of subrogation to the claims of the FDIC, against a) any directors, officers, or employees of the Bank, including but not limited to the Settling Defendants, in their capacity as directors, officers, or employees of the Bank or in any other capacity or b) any other individual or entity, for dishonest or fraudulent conduct that directly caused any losses to the Bank.

2. Nothing herein shall be construed to admit the existence of, or to establish, any claim or cause of action on the part of St. Paul Mercury Insurance Company or any other bond underwriter by way of subrogation to claims of the FDIC, that would not exist had this Agreement not been executed.

#### **SECTION IV: Waiver of Dividends and Proceeds from Litigation**

To the extent, if any, that Settling Defendants are or were shareholders of the Bank and/or ANB Bancshares, Inc. and by virtue thereof are, may have been, or may be entitled to a dividend, payment, or other distribution upon resolution of the receivership of the Bank and/or ANB Bancshares, Inc. or proceeds in any litigation that has been or could be brought against the United States based on or arising out of, in whole or in part, the closing of the Bank, or any alleged acts or omissions by the FHLBB, OCC, OTS, RTC, FDIC, the FSLIC Resolution Fund or the United States government in connection with ANB, its conservatorship or receivership; they hereby knowingly assign to the FDIC any and all rights, titles and interest in and to any and all such dividends, payments or other distributions, or such proceeds.

#### **SECTION V: 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 Arkansas.

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. Specific Representations Warranties and Disclaimer. The Settling Defendants expressly acknowledge that in determining to settle the claims released here, the FDIC has reasonably and justifiably relied upon the accuracy of financial information submitted by the Settling Defendants in their signed personal financial statements, or otherwise. If, in their signed personal financial statements, or other financial information they provided to FDIC, any of the Settling Defendants have failed to disclose any material interest, legal, equitable, or beneficial, in any asset, such Settling Defendant(s) agree to cooperate fully with the FDIC to transfer their interest in the asset to the FDIC, and to sign any and all documents necessary to transfer their interest in the asset to the FDIC. Moreover, if, in their signed personal financial statements or other financial information they provided to FDIC, any of the Settling Defendants have failed to disclose any material interest, legal, equitable, or beneficial, in any asset, the FDIC in its sole discretion, may exercise one or more or all of the following remedies: (a) the FDIC may return all Settlement Funds to the person(s) or entity from which FDIC received the payment(s) and declare the releases granted to all Settling Defendants and this Agreement as null and void; (b) the FDIC may return all Settlement Funds to the person(s) or entity from which FDIC received the payment(s) and sue the Settling Defendants for damages, an injunction, and specific performance for the breach of this Agreement; (c) the FDIC may return all Settlement Funds to the person(s) or entity from which FDIC received the payment(s) and sue the Settling Defendants



on any claims the FDIC may have against them. In the event FDIC exercises any of these remedies, the Settling Defendants consent to the reinstatement of all of the FDIC's claims against them and waive any statute of limitations that would bar any of the FDIC's claims against them.

G. Reasonable Cooperation and Notice.

1. The undersigned Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing or causing their agents and attorneys to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to perform the terms of this Agreement.

2. Further, the Settling Defendants agree to cooperate fully with the FDIC in connection with any action required under this Agreement. Any such cooperation that involves any out of pocket costs is subject to reasonable reimbursement by the FDIC pursuant to its internal guidelines and policy for such reimbursement. Such cooperation shall consist of:

a. producing all documents requested by the FDIC, without the necessity of subpoena, as determined by the FDIC, in its sole discretion, to be relevant to the Bank;

b. making themselves available upon request by the FDIC at reasonable times and places for interviews regarding facts, as determined by the FDIC in its sole discretion, to be relevant to the Bank;

c. appearing to testify, upon request by the FDIC, in any matter determined by the FDIC in its sole discretion, to be related to the Bank, without the necessity of subpoena;

d. signing truthful affidavits upon request by the FDIC, regarding any matter, as determined by the FDIC in its sole discretion, to be relevant to the Bank.

3. The Parties further agree that other than terms and conditions regarding receipt of the full Settlement Payment, in the event any issue arises related to effectuating other terms and conditions of this Agreement, including a request for good faith cooperation, a Party's counsel will first give written notice to undersigned counsel for the other Party or Parties whose

performance or cooperation is required. In the event counsel for the respective Parties, acting in good faith, cannot resolve the issue or obtain the requested performance or cooperation within a reasonable period, not to exceed thirty days after notice is given, then the Party or Parties may proceed with all available remedies at law or in equity.

H. 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.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

SIGNATURES ON NEXT PAGE

**FEDERAL DEPOSIT INSURANCE CORPORATION**

(b)(6)

Date: 9/22/11

BY:   
TITLE: Counsel  
PRINT NAME: B. Slott Kegg  
**LINDQUIST & VENNUM PLLP**

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

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

**MILLER KEFFER BULLOCK PEDIGO, LLC**

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

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
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Dan Dykema  
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James S. Smith, Jr.  
Date: \_\_\_\_\_

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Samuel Harris III  
Date: 9/23/2011

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Joseph Renner  
Date: \_\_\_\_\_

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Camille Phillips  
Date: \_\_\_\_\_

FEDERAL DEPOSIT INSURANCE CORPORATION

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Date: 9/11/11

BY:

TITLE: Counsel

PRINT NAME: B. Scott Key

LINDQUIST & VENNUM PLLP

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

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

TITLE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

MILLER KEFFER BULLOCK PEDIGO, LLC

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Joseph Renner

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(b)(6)

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Carmie Phillips

Date: 24 Sept 2011

FEDERAL DEPOSIT INSURANCE CORPORATION

(b)(6)

Date: 9/22/11

BY:

TITLE: Counsel

PRINT NAME: B. Slatt Pegg

LINDQUIST & VENNUM PLLP

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

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

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James S. Smith, Jr.  
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Camille Phillips  
Date: \_\_\_\_\_

FEDERAL DEPOSIT INSURANCE CORPORATION

(b)(6)

Date: 9/20/11

BY:

TITLE: Counsel

PRINT NAME: B. Slott Peag

(b)(6)

Date: 9/29/11

LINDA BY:

TITLE: partner

PRINT NAME: Kim Ruckdashel-Haley

MILLER KEFFER BULLOCK PEDIGO, LLC

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

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

TITLE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

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James S. Smith, Jr.  
Date: 9/24/11

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Samuel Harris III  
Date: \_\_\_\_\_

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C. Kenner  
Date: 9-24-11

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Camille Phillips  
Date: \_\_\_\_\_

