

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation as Receiver for Darby Bank & Trust Company (“FDIC-R”), and Defendants Walter B. Bowden, William E. Bedingfield, William Emory Davis, Donald H. Estroff, J. Edward Tyson, Connie Darby Williams, Richard D. Williams, Richard A. Williams, Donald R. Coomer, ~~Wayne D. Hartley~~, S. Wayne Smith, Michael Zoller, J. Christopher Banks, ~~Stephen D. Coomer~~, Donald M. Thompson, and Stanley F. Harp, Jr. (collectively the “Settling Defendants”) (the FDIC-R and the Settling Defendants may be referred to herein individually as “Party” and collectively as the “Parties”).

(b)(6)

RECITALS

WHEREAS:

Prior to November 12, 2010, Darby Bank & Trust Company (“Bank”) was a depository institution organized and existing under the laws of the state of Georgia.

The Bank was a wholly-owned subsidiary of DBT Holding Company (“DBT”).

On November 12, 2010, the Georgia Department of Banking and Finance closed the Bank and, pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R 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-R succeeded were all of the Bank’s claims, demands, and causes of action against the Bank’s former directors, officers, and employees arising from the performance, nonperformance, and manner of performance of their respective functions, duties, and acts as directors, officers, and/or employees of the Bank.

On November 8, 2013, the FDIC-R filed a complaint for money damages against the Settling Defendants, each of whom served at various times as a director, officer, and/or employee of the Bank. Those claims for damages are now pending in the United States District Court for the Southern District of Georgia in *FDIC as Receiver for Darby Bank & Trust Co. v.*

Bowden, et al., Case 4:13-cv-00245-LGW-GRS (“D&O Action”).

On March 24, 2014, certain shareholders of DBT (“Shareholder-Plaintiffs”) asserted claims against 14 of the 16 Settling Defendants in a lawsuit captioned *O’Neal Holdings, LP, et al. v. Walter B. Bowden, et al.*, 4:15-cv-00084-LGW-GRS (“*O’Neal* Derivative Action”).

The FDIC-R intervened in the *O’Neal* Derivative Action, removed it to federal court, and filed a motion to be substituted for the Shareholder-Plaintiffs as the real party in interest. The FDIC-R also moved to dismiss the Shareholder-Plaintiffs from the action based on lack of standing.

On September 22, 2015, the court granted the FDIC-R’s motion for substitution and dismissed the Shareholder-Plaintiffs from the *O’Neal* Derivative Action.

The Settling Defendants deny all liability in the D&O Action.

The defendants named in the *O’Neal* Derivative Action deny all liability in that case.

The Bank carried a directors’ and officers’ liability policy for the period June 6, 2007, to June 6, 2010. The Settling Defendants asserted claims for coverage under the policy.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of further 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-R

A. As an essential covenant and condition to this Agreement, on or before ten (10) business days following the date on which both (i) all Parties have executed this Agreement and exchanged a fully executed copy of this Agreement with each other, and (ii) the FDIC-R has provided to the Settling Defendants and their insurer all necessary payment instructions and a completed Form W-9, the Settling Defendants shall cause their insurer to pay the FDIC-R the sum of \$ 3,142,884.62 (“the Settlement Payment”).

B. The Settlement Payment to the FDIC-R shall be made by direct wire transfer into an account designated by the FDIC-R by notice to the Settling Defendants and their insurer. The FDIC-R shall provide all necessary payment instructions no later than five days after full execution of this Agreement by all Parties.

C. Subject to and without waiving the requirements set forth in Section I.A above, if the FDIC-R does not receive the Settlement Payment on or before the date determined by Section I.A above, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment to:

1. Extend the period of time for the Settlement Payment; or
2. Enforce this Agreement, in which event the Settling Defendants agree to jurisdiction in the United States District Court for the Southern District of Georgia; or
3. Terminate the Agreement, return any settlement funds paid pursuant to this Agreement, and proceed with the D&O Action; and/or
4. Seek any other relief available to it in law or equity.

Any extension of time under Section I.C.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.C.2 through I.C.4 at any time prior to receipt of the Settlement Payment in full.

SECTION II: Stipulation and Dismissal

A. Within ten business days after the latter of (1) full execution of this Agreement by all of the Parties, and (2) receipt of the Settlement Payment, the FDIC-R shall file a stipulation of dismissal with prejudice, executed by the attorneys for all Parties hereto, in the form attached hereto as Exhibit A, in the D&O Action.

B. Within five business days after the FDIC files a stipulation of dismissal with prejudice in connection with the D&O Action, the FDIC shall file a stipulation of dismissal with prejudice in the *O'Neal* Derivative Action.

SECTION III: Releases

A. The FDIC-R's Releases.

Upon receipt of the Settlement Payment in full as provided in Section I, and except as provided in Section III.C, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Settling Defendants and their respective heirs, executors, trustees, 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-R that arise from or relate to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties, and actions as employees, officers and/or directors of the Bank, including without limitation the D&O Action, the *O'Neal* Derivative Action, and all matters alleged or asserted in those Actions.

B. The Settling Defendants' Releases.

Effective simultaneously with the release granted in Section III.A above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, successors, and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, representatives, attorneys, 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 employees, officers and/or directors of the Bank, including without limitation the D&O Action, the *O'Neal* Derivative Action, and all matters alleged or asserted in those Actions.

C. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if this 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 the FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank; and

b. Against any person or entity not expressly released by the FDIC-R in this Agreement.

2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or diminishing its ability to institute administrative enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

3. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. § 6. In addition, the FDIC-R specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 et seq., if appropriate.

SECTION IV: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that Settling Defendants are or were shareholders of the Bank or DBT and by virtue thereof are or may be entitled to a dividend, payment, or other distribution upon resolution of the receivership of the Bank or proceeds in any litigation that has been or could be brought against the Federal Deposit Insurance Corporation in any capacity or 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 Federal Deposit Insurance Corporation in any capacity, the United States government, or any agency or department of the United States government in

connection with the Bank, its conservatorship, or receivership, Settling Defendants hereby knowingly assign to the FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, other distributions, and proceeds.

SECTION V: Representations and Acknowledgements

A. Authorized Signatories. All of the undersigned persons represent and warrant that they are Parties 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, trustees, administrators, representatives, successors, and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that he, she, or 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, her or its counsel.

SECTION VI: Reasonable Cooperation

The 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 conclude the D&O Action and the *O'Neal* Derivative Action and to otherwise perform the terms of this Agreement.

SECTION VII: Other Matters

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 defenses, that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party except to enforce its terms.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute

the final Agreement, as if one document had been signed by all Parties; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Parties subscribed thereto upon the execution by all Parties to this Agreement.

C. Choice of Law. This Agreement shall be interpreted, construed, and enforced according to the laws of the State of Georgia.

D. Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and by email, to the following:

If to the FDIC-R:

Stephen J. Kott
Counsel, Federal Deposit Insurance Corporation
3501 N. Fairfax Drive
Room B-7057
Arlington VA 22226

(b)(6)

and

George P. Shingler
Joyce Gist Lewis
SHINGLER LEWIS LLC
1230 Peachtree Street, NE,
Suite 1075
Atlanta, GA 30309

(b)(6)

If to Settling Defendants Bedingfield, Davis, Estroff, Tyson, C. Williams, R. D. Williams, R. A. Williams, D. Coomer, Hartley, Smith, Zoller, S. Coomer and Thompson:

Barry D. Hovis
MUSICK, PEELER & GARRETT LLP
601 California Street, Suite 1250
San Francisco, CA 94108

(b)(6)

If to Settling Defendant Bowden:

Ryan T. Scarborough
WILLIAMS & CONNOLLY LLP
725 Twelfth St., NW
Washington, D.C. 20005

(b)(6) _____ [Redacted]

If to Settling Defendant Banks:

Robert R. Long
ALSTON & BIRD LLP
1201 West Peachtree Street
Atlanta, GA 30309

(b)(6) _____ [Redacted]

If to Settling Defendant Harp:

James E. Connelly
Womble Carlyle Sandridge & Rice, LLP
271 17th Street, NW, Suite 2400
Atlanta, GA 30363

(b)(6) _____ [Redacted]

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 and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s) or other representative(s).

F. Titles and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

G. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential, and nothing in this Agreement prohibits the FDIC-R or the Settling Defendants from disclosing its terms.

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.

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR DARBY BANK & TRUST COMPANY

Date: 11/09/2015

BY: (b)(6)
TITLE: Counsel
PRINT NAME: Stephen J. Kott

Date: _____

Walter B. Bowden

Date: _____

William E. Bedingfield

Date: _____

William Emory Davis

Date: _____

Donald H. Estroff

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.

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR DARBY BANK & TRUST COMPANY

Date: _____

BY: _____
TITLE: Counsel
PRINT NAME: _____

Date: 11/9/15

Walter B. Bowden

(b)(6)



Date: _____

William E. Bedingfield

Date: _____

William Emory Davis

Date: _____

Donald H. Estroff

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.

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR DARBY BANK & TRUST COMPANY

Date: _____

BY: _____
TITLE: Counsel
PRINT NAME: _____

Date: _____

Walter B. Bowden

Date: 11/18/15

William E. Bedingfield

(b)(6)

[Redacted Signature]

Date: 11/18/15

William Emory Davis

(b)(6)

[Redacted Signature]

Date: 11/18/15

Donald H. Estroff

(b)(6)

[Redacted Signature]

Date: 11-19-15

J. Edward Tyson

(b)(6)



Date: _____

Connie Darby Williams

Date: _____

Richard D. Williams

Date: _____

Richard A. Williams

Date: _____

Donald R. Coomer

Date: _____

Wayne D. Hartley

Date: _____

S. Wayne Smith

Date: _____

J. Edward Tyson

Date: 11/17/15

Connie Darby Williams

(b)(6)



Date: _____

Richard D. Williams

Date: _____

Richard A. Williams

Date: _____

Donald R. Coomer

Date: _____

Wayne D. Hartley

Date: _____

S. Wayne Smith

11-18-2015

(b)(6)



11-18-2015

11-18-2015

11-18-2015

Date: _____

J. Edward Tyson

Date: _____

Connie Darby Williams

Date: _____

Richard D. Williams

Date: 11/18/2015

Richard A. Williams

(b)(6)



Date: _____

Donald R. Coomer

Date: _____

Wayne D. Hartley

Date: _____

S. Wayne Smith

Date: _____

J. Edward Tyson

Date: _____

Connie Darby Williams

Date: _____

Richard D. Williams

Date: _____

Richard A. Williams

Date: 11-13-15

Donald R. Coomer

(b)(6)



Date: _____

Wayne D. Hartley

Date: _____

S. Wayne Smith

Date: _____ J. Edward Tyson

Date: _____ Connie Darby Williams

Date: _____ Richard D. Williams

Date: _____ Richard A. Williams

Date: _____ Donald R. Coomer

Date: 11/13/15 _____ Wayne D. Hartley

(b)(6)



Date: _____ S. Wayne Smith

Date: _____

J. Edward Tyson

Date: _____

Connie Darby Williams

Date: _____

Richard D. Williams

Date: _____

Richard A. Williams

Date: _____

Donald R. Coomer

Date: _____

Wayne D. Hartley

Date: 11/16/15

S. Wayne Smith

(b)(6)



Date: 11/20/15

Michael Zoller

(b)(6)



Date: _____

J. Christopher Banks

Date: _____

Stephen D. Coomer

Date: _____

Donald M. Thompson

Date: _____

Stanley E. Harp, Jr.

Date: _____

Michael Zoller

Date: 11-10-2015

J. Christopher Banks

(b)(6)



Date: _____

Stephen D. Coomer

Date: _____

Donald M. Thompson

Date: _____

Stanley E. Harp, Jr.

Date: _____

Michael Zoller

Date: _____

J. Christopher Banks

Date: 11/17/15

Stephen ~~B~~, Coomer

(b)(6)



Date: _____

Donald M. Thompson

Date: _____

Stanley E. Harp, Jr.

Date: _____

Michael Zoller

Date: _____

J. Christopher Banks

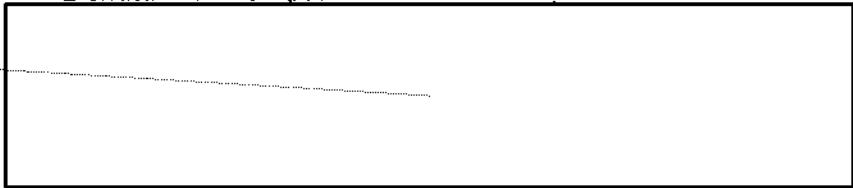
Date: _____

Stephen D. Coomer

Date: 11/12/2015

Donald M. Thompson

(b)(6)



Date: _____

Stanley E. Harp, Jr.

Date: _____

Michael Zoller

Date: _____

J. Christopher Banks

Date: _____

Stephen D. Coomer

Date: _____

Donald M. Thompson

Date: 11/10/15

Stanley E. Harp, Jr.

(b)(6)

