

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this _____ day of December, 2012, by, between, and among the following undersigned parties: The Federal Deposit Insurance Corporation as Receiver of First National Bank ("FDIC-R"), the former officers and directors of First National Bank ("the Bank"), including but not limited to, Irwin Leon Aronson ("Aronson"), Malcolm L. Butler ("Butler"), Stephen B. Croy ("Croy"), Randy Dolyniuk ("Dolyniuk"), Jeff A. Farrell ("Farrell"), Alan Robert Fleming ("Fleming"), Jay P. Gardner ("Gardner"), Heys E. McMath III ("McMath"), Connie Farmer Ray ("Ray"), Joseph "Rusty" Ross ("Ross"), W. Brooks Stillwell ("Stillwell"), and Marion J. Wainright ("Wainright"), (collectively, the "Settling Defendants"), and St. Paul Mercury Insurance Co. ("Travelers"). The FDIC-R, the Settling Defendants and Travelers may be referred to herein, individually, as a "Party," and, collectively, as the "Parties."

RECITALS

This Agreement is entered into in reference to the following:

1. Prior to June 25, 2010, the Bank was an FDIC-insured federally chartered bank with its principal office located in Savannah, Georgia.
2. On June 25, 2010, the Office of the Comptroller of the Currency ("OCC") closed the Bank and pursuant to 12 U.S.C. § 1821(c), the FDIC-R was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R, as receiver, succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets. Among the assets to that the FDIC-R 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/or manner of performance of their respective functions, duties and acts as directors, officers and/or employees of the Bank.
3. Travelers issued Policy No. (b)(4) (the "Policy") to the Bank. The

Settling Defendants sought coverage under the Policy in response to claims asserted by the FDIC-R. Travelers reserved its rights to deny coverage under the Policy for claims asserted by the FDIC-R against the Settling Defendants.

4. The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of further litigation. Among other things, the Parties have agreed that the Agreement shall be a "global" settlement and release of all claims held by the FDIC-R, including its agents, successors and assigns, for all claims now or hereafter held by the FDIC-R against all former officers, directors and employees of the Bank (collectively, the "Covered Persons") that arise from or relate to the performance, non-performance or manner of performance of the Covered Persons' respective functions, duties and/or actions as employees, officers and/or directors of the Bank.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency and receipt of which consideration is hereby acknowledged, the Parties agree as follows:

Section I: Payment to FDIC-R

A. As an essential covenant and condition to this Agreement, Travelers, on behalf of the Settling Defendants and Covered Persons, shall pay to the FDIC-R the sum of TWO MILLION, ONE HUNDRED THOUSAND DOLLARS (\$2,100,000.00) (the "Settlement Funds") by way of wire transfer to Federal Home Loan Bank of New York, Routing No. [REDACTED] (b)(4) Account No. [REDACTED] (b)(4) for the credit to "FDIC National Liquidation Account" (OBI: FIN 10251; First National Bank, Savannah, GA; contact: John Letteri, 703-562-6297; Professional Liability (37100); DIF Fund; Asset No. 10251000548). Payment shall be made solely by Travelers and shall be made in accordance with the instructions received.

B. Within thirty days following the execution of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement ("the due date"), the Settlement Funds shall be delivered to FDIC-R by direct wire transfer as described in Paragraph A. above. In the event that the Settlement Funds are not delivered to FDIC-R by the due date, interest shall accrue on all unpaid amounts at the rate of 6% per annum from the due date until the date of payment.

Section II: Releases

A. Release of Individual Settling Defendants and Covered Persons by FDIC.

Effective upon payment of the Settlement Funds pursuant to Section I above, the FDIC-R, for itself and its agents, successors and assigns, hereby releases and discharges each of the Settling Defendants and all Covered Persons from any and all claims, demands, obligations, damages, actions, and causes of action, whether accrued, inchoate, liquidated, contingent, actual or asserted, direct or indirect, in law or in equity, known or unknown, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the former employees', officers', and/or directors' respective functions, duties and actions as employees, officers and/or directors of the Bank. For purposes of clarification and certainty, this release is applicable to, and includes each of the Settling Defendants and each and every Covered Person who is not a Settling Defendant, as well as each and every one of their respective heirs, executors, administrators, representatives, successors and assigns.

B. Release of FDIC-R by the Settling Defendants.

Effective simultaneously with the release granted in Paragraph A of this Section II, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge FDIC-R, and its employees, officers, directors, attorneys, agents, representatives, successors and

assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, whether accrued, inchoate, liquidated, contingent, actual or asserted, 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 or that arise from or relate to FDIC-R claims under the Policy.

C. Release of Travelers by FDIC-R.

Effective simultaneously with the releases granted in Paragraphs A and B of this Section II, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Travelers, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of action, whether accrued, inchoate, liquidated, contingent, actual or asserted, direct or indirect, in law or in equity, that arise from or relate to the Policy. The FDIC-R agrees that any interest it may have under the Policy is extinguished.

D. Release of Travelers by Settling Defendants.

Effective simultaneously with the releases granted in Paragraphs A and B of this Section II, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge Travelers, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of action, whether accrued, inchoate, liquidated, contingent, actual or asserted, direct or indirect, in law or in equity, that solely arise

from or relate to the claims released by the FDIC-R pursuant to Section II.A. of this Agreement. For purposes of clarification and certainty, this release is applicable only to claims released by the FDIC-R pursuant to Section II.A., and does not affect the ability of any Settling Defendant or Covered Person to claim coverage, as applicable, under the Policy for any matter or issue expressly reserved and excluded from this Agreement by Section II. G or otherwise not released by the FDIC-R pursuant to this Agreement.

E. Release of FDIC-R by Travelers.

Effective simultaneously with the release granted in Paragraph C and D of this Section II, Travelers, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby releases and discharges FDIC-R, and its employees, officers, directors, agents, attorneys, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, whether accrued, inchoate, liquidated, contingent, actual or asserted, direct or indirect, in law or in equity, that arise from or relate to the Policy.

F. Release of Settling Defendants by Travelers.

Effective simultaneously with the releases granted in Paragraph C, D and E of this Section II, Travelers, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates, and reinsurers, and their successors and assigns, hereby releases and discharges each of the Settling Defendants, and their respective heirs, executors, administrators, agents, attorneys, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, whether accrued, inchoate, liquidated, contingent, actual or asserted, direct or indirect, in law or in equity, that arise from or relate to the claims released by the FDIC-R pursuant to this Agreement.

G. Express Reservations From Releases By FDIC-R.

1. Notwithstanding any other provision contained in this Agreement, the FDIC-R 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 other evidence of indebtedness payable or owed by them or any of them to FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by Federal Deposit Insurance Corporation in its corporate capacity ("FDIC-C") or as successor in interest to the Bank or any person or entity other than Bank;

b. against any person or entity not expressly released in this Agreement; and

c. that are not expressly released in Paragraphs A and C of this Section II.

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-C 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 that may arise by operation of law, rule or regulation.

3. Notwithstanding any other provision hereof, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through either the Department of Justice, the United States Attorney's Office for the Southern District of Georgia or any other federal judicial district, or in addition, the

right of the United States 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.

4. The FDIC-R represents and warrants that as the date of this Agreement, it has not transferred any claim, cause of action or other right that would be released hereunder if such claim, cause or action or right had not been previously transferred by the FDIC-R prior to the date of this Agreement, and to that end the Parties agree that the release by the FDIC-R set forth in Paragraph A of Section II is a full and complete release of all such claims, causes of action and rights.

Section III: Waiver of Dividends

To the extent, if any, that Settling Defendants are or were depositors, creditors and/or shareholders of the Bank and by virtue thereof are or may have been entitled to a dividend, payment, or other pro-rata distribution upon resolution of the receivership of the Bank, they hereby knowingly assign to the FDIC-R any and all rights, titles and interest in and to any and all such dividends, payments or other pro rata distributions.

Section IV: Representations and Acknowledgements

A. **No Admission of Liability.** Each of the Parties 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 or of coverage by any of them regarding any claim, and the Settling Defendants expressly deny any liability regarding the FDIC's claims.

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 for whom they are signing, 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. **Jointly Drafted.** All of the Parties and their respective counsel mutually contributed to the preparation of, and have had the opportunity to review and revise this Agreement. Accordingly, no provision of this Agreement shall be construed against any Party because that Party, or its counsel, drafted the provision. This Agreement and all of its terms shall be construed equally as to all persons or entities.

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.

H. Notices. Any notices relating to or arising out of this Agreement shall be in writing sent by email and registered or certified mail, return receipt requested, shall be considered delivered when received by the Party to whom it was sent, and shall be addressed to the following recipients:

To the FDIC:

John B. Gibbons, Esq.
Saxon, Gilmore, Carraway & Gibbons, P.A.
201 E. Kennedy Boulevard
Tampa, FL 33602
E-Mail:

(b)(6)

and

Federal Deposit Insurance Corporation
3501 North Fairfax Drive
Arlington, Virginia 22226
Attn: John C. Letteri, Esq.
Email:

(b)(6)

To Irwin Leon Aronson, Malcolm L. Butler, Stephen B. Croy, Randy Dolyniuk, Jeff A. Farrell, Jay P. Gardner, Connie Farmer Ray, Joseph "Rusty" Ross, W. Brooks Stillwell, and Marion J. Wainright:

Robert Long, Esq.
Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424
E-Mail:

(b)(6)

To Alan Robert Fleming:

David Hungeling, Esq.
Peachtree 25th, Suite 599

1718 Peachtree Street, NW
Atlanta, GA 30309

E-Mail: [REDACTED]

(b)(6)

To Heys E. McMath, III:

W. Scott Sorrels, Esq.
Sutherland, Asbill & Brennan LLP
999 Peachtree Street, NE
Atlanta, Georgia 30309

E-Mail: [REDACTED]

(b)(6)

To Jay Gardner:

Donnie Dixon, Esq.
24 Drayton Street
Suite 100
Savannah, Georgia 31401

E-Mail: [REDACTED]

(b)(6)

To Travelers:

Thomas J. Judge, Esq.
Thompson, Loss & Judge, LLP
Two Lafayette Centre
1133 21st Street, NW
Suite 450
Washington, DC 20036

E-Mail: [REDACTED]

(b)(6)

-and-

Mark A. Gwin
385 Washington Street
St. Paul, Minnesota 55102

I. Enforcement of Agreement. In the event that any Party brings suit to enforce the terms of this Agreement, or based on the alleged breach of the terms hereof, the Parties agree to exclusive venue in the United States District Court for the Southern District of Georgia, or in the event that the said federal court does not have jurisdiction, the Superior Court of Chatham

County, Georgia. In such event, the prevailing Party or Parties shall be entitled to recover all costs incurred from the non-prevailing party or parties, including reasonable attorneys' fees.

J. Time is of the Essence. Time is of the essence in this Agreement, including specifically, payment of the Settlement Funds to FDIC-R on or before the due date.

[SIGNATURE PAGES FOLLOW]

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 of First National Bank**

(b)(6)

By

Name: JOHN LENEKI

Title: COUNSEL

Date: Dec. 28, 2012

St. Paul Mercury Insurance Co.

By: _____

Name: _____

Title: _____

Date: _____

Irwin Leon Aronson

Date: _____

Malcolm L. Butler

Date: _____

Stephen B. Croy

Date: _____

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**FEDERAL DEPOSIT INSURANCE CORPORATION
as Receiver of First National Bank**

By: _____

Name: _____

Title: _____

Date: _____

St. Paul Mercury Insurance Co.

(b)(6)

By:

Name: MARK A. GAVIN

Title: Criminal Counsel

Date: 1/2/13

Irwin Leon Aronson

Date: _____

Malcolm L. Butler

Date: _____

Stephen B. Croy

Date: _____

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 of First National Bank**

By: _____

Name: _____

Title: _____

Date: _____

St. Paul Mercury Insurance Co.

By: _____

Name: _____

Title: _____

Date: _____

(b)(6)



Irwin Leon Aronson

Date: 12-17-12

Malcolm L. Butler

Date: _____

Stephen B. Croy

Date: _____

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 of First National Bank**

By: _____

Name: _____

Title: _____

Date: _____

St. Paul Mercury Insurance Co.

By: _____


Name: _____

Title: _____

Date: _____

Irwin Leon Aronson

Date: _____

(b)(6) _____


/Malcolm L. Butler

Date: 12/11/12

Stephen B. Croy

Date: _____

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 of First National Bank**

By: _____

Name: _____

Title: _____

Date: _____

St. Paul Mercury Insurance Co.

By: _____

Name: _____

Title: _____

Date: _____

Irwin Leon Aronson

Date: _____

Malcolm L. Butler

Date: _____

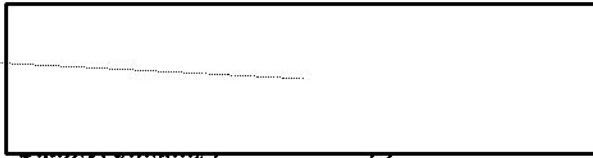
Stephen B. Cross

Date: 12/27/12



(b)(6)

(b)(6)



Kandy Doryniuk

Date: 12/11/2012

Jeff A. Farrell

Date: _____

Alan Robert Fleming

Date: _____

Jay P. Gardner

Date: _____

Heys E. McMath III

Date: _____

Connie Farmer Ray

Date: _____

Joseph "Rusty" Ross

Date: _____

Randy Dolyniuk

Date: _____

Jeff A. Farrell

Date: _____

b)(6)



Date: 12-12-12

Jay P. Gardner

Date: _____

Heys E. McMath III

Date: _____

Connie Farmer Ray

Date: _____

Joseph "Rusty" Ross

Date: _____

Randy Dolyniuk

Date: _____

Jeff A. Farrell

Date: _____

Alan Robert Fleming

Date: _____

(b)(6)



Jay F. Gardner

Date: 12-14-12

Heys E. McMath III

Date: _____

Connie Farmer Ray

Date: _____

Joseph "Rusty" Ross

Date: _____