

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 Habersham Bank (“FDIC-R”), and David D. Stovall, Edward D. Ariail, Bonnie C. Bowling, Michael C. Martin, Michael L. Owen, M. Edward Hoyle, Frank E. Felker and Andrew Coker (collectively the “Settling Individuals”); and OneBeacon Midwest Insurance Company (“OneBeacon” or the “Insurer”). Individually, the FDIC-R, the Settling Individuals, and the Insurer may be referred to herein as “Party” and collectively as “Parties”.

RECITALS

WHEREAS:

Prior to February 18, 2011, Habersham Bank (“Bank”) was a depository institution organized and existing under the laws of Georgia;

On February 18, 2011, 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 its 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 employees of the Bank;

On February 14, 2014, the FDIC-R filed a complaint for money damages against the Settling Individuals, each of whom served at various times as a director and/or officer of the Bank. Those claims for damages are now pending in the United States District Court for the Northern District of Georgia, Gainesville Division, in *Federal Deposit Insurance Corporation as Receiver for Habersham Bank v. David D. Stovall, Edward D. Ariail, Bonnie C. Bowling, Michael C. Martin, Michael L. Owen, M. Edward Hoyle, Frank E. Felker, and Andrew Coker*,

Civil Action No. 2:14-CV-00029-WCO (“D&O Action”). The Settling Individuals have denied liability in the D&O Action.

Insurer issued Management and Professional Liability Policy No. for the (b)(4)
policy period August 31, 2007 to August 31, 2010, with an extended reporting period of 12 months (“Policy”). The Settling Individuals asserted claims for coverage under the Policy. The Insurer has reserved its rights under the Policy for claims asserted by the FDIC-R against the Settling Individuals.

The undersigned Parties acknowledge this is a settlement of disputed claims and defenses and 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 the FDIC-R

A. As an essential covenant and condition to this Agreement, the Insurer, on behalf of the Settling Individuals, agrees to pay the FDIC-R the sum of Three Million Five Hundred Thousand and 00/100 dollars (\$3,500,000.00) (“the Settlement Payment”) in a single payment. The Settlement Payment shall be received by the FDIC-R no later than 30 calendar days following the FDIC-R’s delivery to counsel for the Settling Individuals and the Insurer of: (i) the FDIC-R’s executed signature page, whether an original or counterpart, of this Agreement; and (ii) the FDIC-R’s wire transfer instructions (“the Due Date”). The Settlement Payment shall be delivered to the FDIC-R by direct wire transfer into an account designated by the FDIC-R.

B. In the event that the Settlement Payment is not delivered to the FDIC-R (or its counsel) by the Due Date, interest shall accrue on all unpaid amounts at the rate calculated in accordance with 26 U.S.C. § 6621(a)(2) from the Due Date until the date of payment.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the Due Date, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt

of the Settlement Payment in full (including all accrued interest) to:

1. Extend the period of time for the Settlement Payment, including interest accruing from the Due Date through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(2); or

2. Enforce this Agreement, in which event the Settling Individuals and the Insurer agree to jurisdiction in the United States District Court for the Northern District of Georgia and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or

3. Return any partial payment of the Settlement Payment plus any interest paid, terminate the Agreement, move to vacate any dismissal order, to which the Settling Individuals agree to consent, and re-institute an action on the FDIC-R's claims. The Settling Individuals further agree to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims and waive all objections, defenses, claims or counterclaims, and covenant and agree not to assert any objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; 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 Settlement Payment (including all accrued interest) in full.

SECTION II: Stipulation and Dismissal

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

SECTION III: Releases

A. The FDIC-R's Releases.

Upon receipt of the Settlement Payment in full, effective simultaneously with the releases granted in Sections III. B. and III. C. below, and except as provided in Section III.D. below, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges:

1. The Settling Individuals, 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 Individuals' respective functions, duties and actions as officers, directors, and/or employees of the Bank, including without limitation the causes of action alleged in the D&O Action.
2. Insurer, its parents, subsidiaries, affiliates, and reinsurers, and its respective employees, officers, directors, agents, and 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 Policy. As part of the release of the Insurers, the FDIC-R agrees that any interest that it may have under the Policy is extinguished.
3. All other former directors, officers, and employees of the Bank (collectively, the "Covered Persons") 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 Covered Persons' respective functions, duties and actions as directors, officers and/or employees of the Bank. This release shall be null and void as to any Covered Person if such Covered Person asserts any claim against the FDIC-R.

B. The Settling Individuals' Releases.

Effective simultaneously with the releases granted in Section III.A., above and Section III.C. below, the Settling Individuals, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, attorneys, successors, and assigns, hereby release and discharge:

1. The FDIC-R, 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 Individuals' respective functions, duties and actions as officers, directors, and/or employees of the Bank, including without limitation the causes of action alleged in the D&O Action.
2. Insurer, its parents, subsidiaries, affiliates, and reinsurers, and its respective employees, officers, directors, agents, and 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 (i) the D&O Action; and (ii) the allegations in the D&O Action, including but not limited to any action, proceeding or claim arising from the Insurer's investigation, evaluation, or handling of the D&O Action or alleging any "bad faith" or breach of any promise, oral or written, or breach of any duty grounded in law or in contract relating thereto, however, subject to the Policy's remaining Limits of Liability, Insurer agrees to pay reasonable and necessary Defense Costs (as defined in the Policy) through completion and consummation of the Settlement.

C. The Insurer's Releases.

Effective simultaneously with the releases granted in Section III. A. and III. B. above, Insurer, for itself and its successors and assigns, and on behalf of its parents, affiliates, subsidiaries, and reinsurers, and their successors and assigns, hereby releases and discharges:

1. The FDIC-R, and its employees, officers, directors, agents, 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 Policy.
2. Each of the Settling Individuals and their respective heirs, executors, trustees, administrators, representatives, insurers, 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 Policy.

D. Exceptions from Releases by the 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 Individuals 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 the 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 to diminish 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 the Settling Individuals are or were shareholders of the Bank or its holding company 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, the Settling Individuals 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 distributions, or 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.

C. Financial Disclosure Representation. Each Settling Individual has submitted financial information to the FDIC-R and each herein affirms that his or her financial information was true and accurate as of the date submitted to the FDIC-R. Each Settling Individual expressly acknowledges that, in determining to settle the claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by the Settling Individuals. The FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information.

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 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. The Settling Individuals expressly deny any liability in the D&O Action.

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 applicable federal law, or in its absence, 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 Fairfax Drive, Room B-7057
Arlington, VA 22226
Telephone: (516-1267703)

(b)(6)

And

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

(b)(6)

If to Settling Individuals:

David D. Stovall
Edward D. Ariail
Bonnie C. Bowling
Michael C. Martin
Michael L. Owen
M. Edward Hoyle
Frank E. Felker

Robert R. Long
Alston & Bird LLP
1201 West Peachtree Street, NW
Atlanta, Georgia 30309

(b)(6)

If to Settling Individual:
Andrew Coker

W. Scott Sorrels
Yvonne M. Williams-Wass
SUTHERLAND ASBILL & BRENNAN LLP
999 Peachtree Street, N.E.
Suite 2300
Atlanta, GA 30309-3996

(b)(6)

If to OneBeacon:

Daniel J. Ryan
OneBeacon Financial Services
605 Highway 169
Suite 800
Plymouth, MN 55441

(b)(6)

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 will be disclosed pursuant to the Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirements.

###SIGNATURE PAGE FOLLOWS###

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 HABERSHAM BANK,

Date: 9/14/2015

By: (b)(6)

Stephen J. Kott
TITLE: Counsel for Plaintiff
PRINT NAME: Stephen J. Kott

Date: _____

SETTLING INDIVIDUAL:
By: _____
David D. Stovall
TITLE: _____
PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:
By: _____
Edward D. Ariail
TITLE: _____
PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:
By: _____
Bonnie C. Bowling
TITLE: _____
PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:
By: _____
Michael C. Martin
TITLE: _____
PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:

By: _____

Michael L. Owen

TITLE: _____

PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:

By: _____

M. Edward Hoyle

TITLE: _____

PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:

By: _____

Frank E. Felker

TITLE: _____

PRINT NAME: _____

Date: 9/14/15

SETTLING INDIVIDUAL:

By: _____

(b)(6)

Andrew Coker

TITLE: _____

PRINT NAME: Andrew Coker

Date: _____

ONEBEACON MIDWEST INSURANCE
COMPANY:

By: _____

Daniel J. Ryan

TITLE: _____

PRINT NAME: _____

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 HABERSHAM BANK

Date: _____

By: _____
Steven J. Kott
TITLE: Counsel for Plaintiff
PRINT NAME: _____

Date: 09/11/15

SETTLING INDIVIDUAL: _____
By: (b)(6)
David D. Stovall
TITLE: _____
PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL: _____
By: _____
Edward D. Ariail
TITLE: _____
PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL: _____
By: _____
Bonnie C. Bowling
TITLE: _____
PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL: _____
By: _____
Michael C. Martin
TITLE: _____
PRINT NAME: _____

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 HABERSHAM BANK

Date: _____

By: _____
Steven J. Kott
TITLE: Counsel for Plaintiff
PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:
By: _____
David D. Stovall
TITLE: _____
PRINT NAME: _____

Date: Sept. 4, 2015

SETTLING INDIVIDUAL: A
By: (b)(6)
Edward D. Ariail
TITLE: _____
PRINT NAME: Edward D. Ariail

Date: _____

SETTLING INDIVIDUAL:
By: _____
Bonnie C. Bowling
TITLE: _____
PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:
By: _____
Michael C. Martin
TITLE: _____
PRINT NAME: _____

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 HABERSHAM BANK

Date: _____

By: _____
Steven J. Kott
TITLE: Counsel for Plaintiff
PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:
By: _____
David D. Stovall
TITLE: _____
PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:
By: _____
Edward D. Ariail
TITLE: _____
PRINT NAME: _____

Date: 9/13/15

SETTLING INDIVIDUAL:
By: (b)(6)
Bonnie C. Bowling
TITLE: _____
PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:
By: _____
Michael C. Martin
TITLE: _____
PRINT NAME: _____

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 HABERSHAM BANK

Date: _____

By: _____

Steven J. Kott

TITLE: Counsel for Plaintiff

PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:

By: _____

David D. Stovall

TITLE: _____

PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:

By: _____

Edward D. Ariail

TITLE: _____

PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:

By: _____

Bonnie C. Bowling

TITLE: _____

PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:

By: (b)(6)

Michael C. Martin

TITLE: _____

PRINT NAME: SEPT. 14, 2015

Date: _____

SETTLING INDIVIDUAL:

By: (b)(6)

Michael L. Owen

TITLE: _____

PRINT NAME: Michael L Owen

Date: _____

SETTLING INDIVIDUAL:

By: _____

M. Edward Hoyle

TITLE: _____

PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:

By: _____

Frank E. Felker

TITLE: _____

PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:

By: _____

Andrew Coker

TITLE: _____

PRINT NAME: _____

Date: _____

ONEBEACON MIDWEST INSURANCE
COMPANY:

By: _____

Daniel J. Ryan

TITLE: _____

PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:

By: _____

Michael L. Owen

TITLE: _____

PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:

By: _____

(b)(6)

M. Edward Hoyle

TITLE: _____

PRINT NAME: m. Edward Hoyle

Date: _____

SETTLING INDIVIDUAL:

By: _____

Frank E. Felker

TITLE: _____

PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:

By: _____

Andrew Coker

TITLE: _____

PRINT NAME: _____

Date: _____

ONEBEACON MIDWEST INSURANCE
COMPANY:

By: _____

Daniel J. Ryan

TITLE: _____

PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:

By: _____

Michael L. Owen

TITLE: _____

PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:

By: _____

M. Edward Hoyle

TITLE: _____

PRINT NAME: _____

Date: 9-14-15

SETTLING INDIVIDUAL: ~~_____~~

By:

(b)(6)

Frank E. Felker

TITLE: _____

PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:

By: _____

Andrew Coker

TITLE: _____

PRINT NAME: _____

Date: _____

ONEBEACON MIDWEST INSURANCE
COMPANY:

By: _____

Daniel J. Ryan

TITLE: _____

PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:

By: _____

Michael L. Owen

TITLE: _____

PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:

By: _____

M. Edward Hoyle

TITLE: _____

PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:

By: _____

Frank E. Felker

TITLE: _____

PRINT NAME: _____

Date: _____

SETTLING INDIVIDUAL:

By: _____

Andrew Coker

TITLE: _____

PRINT NAME: _____

Date: 9/24/2015

ONEBEACON MIDWEST INSURANCE
COMPANY: _____

By: _____ (b)(6)

Daniel J. Ryan

TITLE: VP- Claims

PRINT NAME: DANIEL J. RYAN