

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 26th day of June, 2011, by and between the following undersigned parties: The Federal Deposit Insurance Corporation as Receiver of Integrity Bank, Alpharetta, Georgia ("FDIC-R") and Cincinnati Insurance Company ("CIC"). The FDIC-R and CIC 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 August 29, 2008, Integrity Bank ("Integrity" or the "Bank") was a state chartered bank operating in the State of Georgia.
2. Integrity was closed on August 29, 2008 by the Georgia Department of Banking and Finance, which appointed the Federal Deposit Insurance Corporation as receiver pursuant to 12 U.S.C. § 1821(c). 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 which the FDIC-R succeeded were any and all of Integrity's rights and/or claims under any insurance policies or bonds issued to Integrity and any claims, demands, and causes of actions against CIC.
3. On February 5, 2007, CIC issued a Depository Institutions Blanket Bond bearing (b)(4) Bond Number (the "Bond"), with an effective date of August 28, 2006. The Bond was issued with Integrity Bancshares, Inc. as the first named insured.
4. In an Order dated December 17, 2010, the United States District Court for the Northern District of Georgia (No. 1:09-CV-2985-RWS) ordered that the Bond be reformed to

include the Bank as an additional named insured. The December 17, 2010 Order is currently on appeal before the Eleventh Circuit Court of Appeals.

5. On November 30, 2007, the Bank submitted a sworn Proof of Loss seeking coverage under the Bond.

6. On December 10, 2010, the FDIC-R filed a complaint against CIC in the United States District Court for the Northern District of Georgia, Case No. 10-cv-4022 (the "Lawsuit").

7. 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 settlement and release of all claims under the Bond now or hereafter held by the FDIC-R, including its agents, successors and assigns against CIC, including any claims asserted in the Lawsuit. The Parties further agree that this Agreement shall not release or otherwise affect any claims for directors and officers' liability or other coverages under Financial Institutions Blue Chip Policy No. [redacted] issued by CIC on [redacted] (b)(4) February 5, 2007, with an effective date of August 28, 2006. Nothing herein expands the FDIC-R's rights under Financial Institutions Blue Chip Policy No. [redacted] and CIC expressly (b)(4) reserves all rights and defenses with regard to Financial Institutions Blue Chip Policy No. [redacted] (b)(4)

(b)(4) [redacted]

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 by CIC to FDIC-R

A. As an essential covenant and condition to this Agreement, CIC shall pay to FDIC-R the

sum of NINE MILLION DOLLARS (\$9,000,000.00), by way of wire transfer to: "Federal Home Loan

(b)(4) Bank of New York, Routing No. [redacted] for credit to FDIC National Receivership Account,

(b)(4) Account No. [redacted] "OBF" Line: Receiver No. 10012; LIMS 100017297, Attr: [redacted] (b)(6)

(b)(6) [redacted] Professional Liability lawsuit (37100); DIF Fund; fidelity bond settlement." The settlement payment by CIC is referred to herein as the "Settlement Funds."

B. The Settlement Funds shall be delivered by direct wire transfer as described in Paragraph A within five (5) business days of CIC's receipt of this Agreement executed by the FDIC-R, ("the due date"). In the event that the Settlement Funds are not delivered by the due date, interest shall accrue on all unpaid amounts at the rate of 7% per annum from the due date until the date of payment, said date of payment shall in no event be later than July 31, 2011, as described more fully in paragraph I. C. below.

C. If all Settlement Funds and accrued interest are not received by July 31, 2011, this Agreement shall be deemed null and void, having no legal validity or binding affect whatsoever upon the Parties.

D. The Settlement Funds shall be repaid to CIC by FDIC-R if and only if Plaintiff-Appellant, Jordan E. Lubin, Chapter 7 Trustee for Integrity Bancshares, Inc., shall prevail in the matter of *Jordan E. Lubin v. Cincinnati Insurance Company*, Case No. 1:09-cv-2985-RWS, U.S. District Court for the Northern District of Georgia, currently pending before the United States Court of Appeals for the Eleventh Circuit, and it shall be determined in a final, unappealable judgment that Jordan E. Lubin, Chapter 7 Trustee for Integrity Bancshares, Inc., not the FDIC-R, is the owner of the claims under the Bond asserted in the Lawsuit. In the event that repayment of the Settlement Funds is required under this Agreement, the FDIC-R shall not owe any interest or other additional amounts in connection therewith, and this Agreement shall be null and void once the Settlement Funds are repaid to CIC. In the event that repayment of the Settlement Funds is required under this Agreement, the FDIC-R's repayment of the Settlement Funds shall occur within thirty (30) days of it being determined in a final,

(b)(6) _____ unappealable judgment that _____ Chapter 7 Trustee for Integrity Bancshares, Inc., not the FDIC-R, is the owner of the claims under the Bond asserted in the Lawsuit. The FDIC-R represents that it has the sole and absolute authority to exhaust the Bond's limit of liability with regard to the Proof of Loss and any loans issued by Integrity to _____ or to any _____ (b)(6)

(b)(6) _____ entities owned or otherwise affiliated with _____ CIC's payment of the Settlement Funds fully discharges and exhausts the Bond's limit of liability with regard to the Proof of Loss

(b)(6) _____ and any loans issued by Integrity to _____ or to any entities owned or otherwise

(b)(6) _____ affiliated with _____

Section II: Releases

A. Release of CIC by FDIC-R

Effective simultaneously with the releases granted in Paragraph B of this Section II, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges CIC, 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, direct or indirect, in law or in equity, that arise from or relate to any claim under the Bond asserted in or which could have been asserted in the Lawsuit. The FDIC-R agrees that any interest it may have under the Bond is extinguished.

B. Release of FDIC-R by CIC

Effective simultaneously with the release granted in Paragraph A of this Section II, CIC, 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, direct or indirect, in law or in equity, that arise from or relate to the Bond.

C. 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:

(b)(4) a. for directors and officers liability or other coverages under Financial Institutions Blue Chip Policy No. [REDACTED] issued by CIC on February 5, 2007, with an effective date of August 28, 2006.

b. against the former officers, directors and employees of Integrity 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, 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 the Bank; and

c. against any person or entity not expressly released in this Agreement.

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 which 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 which have been or could be brought by the United States through either the Department of Justice, the United States Attorney's Office for the Northern District of Georgia or any other federal judicial district. In addition, the right of the FDIC-R 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, also is not waived or released.

4. The FDIC-R represents and warrants that, as of 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 Subrogation/Assignment

IC hereby waives all rights of assignment and subrogation provided for in Conditions, Section E of the Bond or otherwise.

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.

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 which 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.

E. **Reasonable Cooperation.** The undersigned parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement.

F. **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.

G. **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).

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.

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 Northern District of Georgia, Atlanta Division. 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 on or before the due date.

SIGNATURE PAGES TO 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

(b)(6) Date: 6/28/11

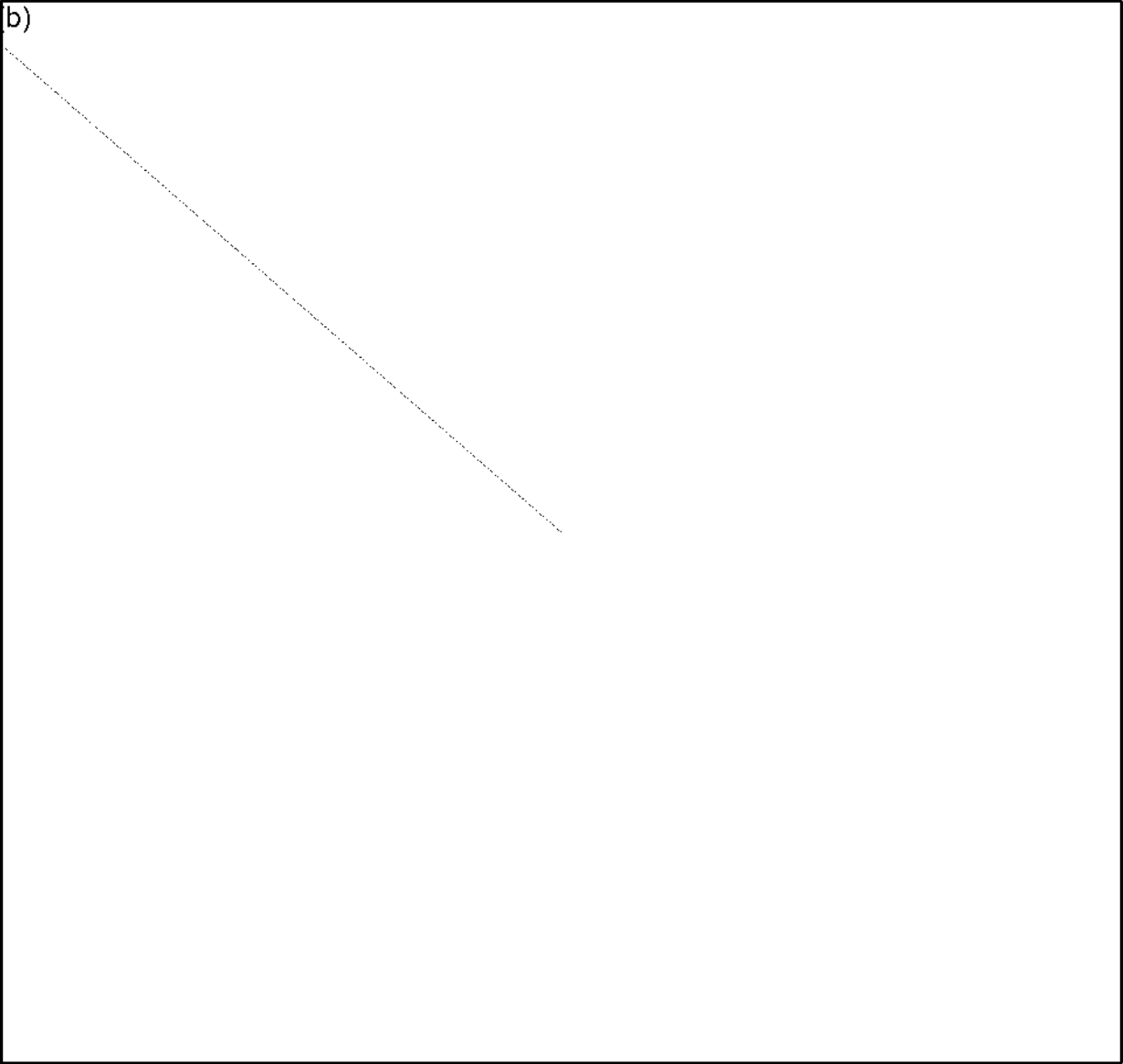
BY:
TITLE: Comptroller, FDIC
PRINT NAME: STEVEN C MOERISON

CINCINNATI INSURANCE COMPANY

(b)(6) Date: 6-29-11

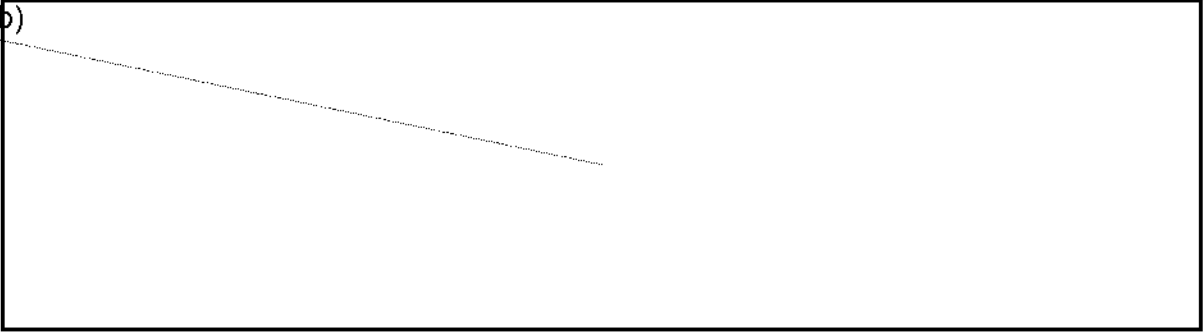
BY:
TITLE: Superintendent Bond Claims
PRINT NAME: Elizabeth Carley

(b)(4), (b)(6)



796104172 CINTI. INSURANCE CO. ATTN: ACCT. DE 06-29 8999975.00 RECVR 10012
REMARKS: PROF LIABILITY LAWSUIT 37100 DIF FUND FIDELITY BOND SETTLEME Integrity Bank (10012)
NT LIMS 100017297 RECVR 10012 BNY CUST RRN. ASGN [redacted] AlphaNet 6-A (Merrison) 10001 (b)(6)

(b)(4), (b)(6)



This notice was sent to:

(b)(6) [redacted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FEDERAL DEPOSIT INSURANCE
CORPORATION, as receiver for
Integrity Bank of Alpharetta,
Georgia,

Plaintiff,

v.

CINCINNATI INSURANCE COMPANY,

Defendant.

CIVIL ACTION

NO. 1:10-CV-4022-CAP

ORDER ADMINISTRATIVELY CLOSING CASE

The court having been advised by the parties that the above styled action has been settled, but the formal documentation of settlement has not been concluded. Therefore, it is not necessary that the action remain on the court's calendar.

IT IS HEREBY ORDERED that this action is DISMISSED WITHOUT PREJUDICE to the right of any party, within the next ninety (90) days, to reopen this action or vacate this order of dismissal.

If the action has not been reopened or the court has not received a motion to vacate on or before the time permitted by this Order, the action will be dismissed with prejudice.

SO ORDERED, this 20th day of June, 2011.

/s/Charles A. Pannell, Jr.
CHARLES A. PANNELL, JR.
United States District Judge