

SETTLEMENT AND ASSIGNMENT AGREEMENT

This Settlement and Assignment Agreement ("Agreement") is entered into as of May 6, 2015, by the Federal Deposit Insurance Corporation ("FDIC"), in its capacity as Receiver of Omni National Bank ("FDIC-R"), on the one hand, and Constance E. Perrine ("Defendant Perrine") and Benjamin J. Cohen ("Defendant Cohen", and collectively with Defendant Perrine, "Defendants") on the other hand. FDIC-R and Defendants are sometimes collectively referred to herein as the "Parties" and singularly as a "Party." Capitalized terms shall have the meanings ascribed to them in this Agreement, or, when so identified, as defined and used in the "Lloyd's Policy" (which is defined below).

RECITALS

WHEREAS, prior to March 27, 2009, Omni National Bank ("Omni") was a depository institution organized and existing under the laws of the United States of America; and

WHEREAS, on March 27, 2009, Omni was closed by the Office of the Comptroller of the Currency and, pursuant to 12 U.S.C. § 1821(c), FDIC-R was appointed receiver. At that time, FDIC-R as receiver succeeded to all rights, titles, powers, and privileges of the Bank, its depositors, account holders and stockholders pursuant to 12 U.S.C. § 1821(d)(2)(A)(i), and, the FDIC-R acts on behalf of creditors; and

WHEREAS, Defendant Perrine is the former President of Omni; and

WHEREAS, Defendant Cohen is a former Omni officer and the former Head of Omni's Redevelopment Lending Division; and

WHEREAS, Omni purchased a policy of Directors' Officers' and Company Liability Insurance issued by Certain Underwriters at Lloyd's, London, including but not limited to Syndicates AFB 623/2623 ("Lloyd's"), Reference , for the (b)(4) period including June 9, 2008 to June 9, 2009, under which the Defendants are two of the "Assureds" ("Lloyd's Policy"), which, among other things, provides coverage for "Individual Acts" as defined in the Lloyd's Policy; and

WHEREAS, FDIC-R filed a lawsuit against Defendants in the United States District Court for the Northern District of Georgia, Atlanta Division, entitled "*Federal Deposit Insurance Corporation, as Receiver of Omni National Bank v. Stephen M. Klein, et. al.*," Civil Action No. 1:12-cv-00896-RLV (the "FDIC-R Action"); and

WHEREAS, FDIC-R has asserted claims against the Defendants in the FDIC-R Action relating to repairs and expenditures on other real estate owned ("OREO") property based on alleged "Individual Acts," as defined in the Lloyd's Policy, occurring after June 9, 2008 and as more fully set forth in Counts III (portion relating to OREO supervision only), IV and V of the FDIC-R Action Complaint (hereinafter referred to as the "FDIC-R Claims"). For purposes of this Agreement only, the term "FDIC-R Claims" excludes the entirety of Counts I and II of the FDIC-R Action Complaint, and that part of Count III that alleges claims relating to lending and oversight involving Omni's Community Development Lending Division ("CDLD") occurring before June 9, 2008 (hereinafter, "Excluded Claims"); and

WHEREAS, the Defendants filed an Answer denying wrongdoing and liability and asserting additional affirmative defenses;

WHEREAS, the FDIC-R Claims are "Individual Acts," as defined in the Lloyd's Policy, by Defendants covered under the Lloyd's Policy; and

WHEREAS, FDIC-R timely asserted claims against Defendants during the policy period for the Lloyd's Policy, and both FDIC-R and Defendants notified Lloyd's of the claims during the policy period, but, nevertheless, Lloyd's has denied Defendants' demands for coverage for the FDIC-R Claims and has refused to protect the interests of the insured Defendants, by refusing to pay for Defendants' defense costs or indemnity incurred in connection with the FDIC-R Claims, thereby exposing Defendants to great personal financial risk; and

WHEREAS, Defendants recognize that FDIC-R seeks substantial monetary damages in the FDIC-R Action, which exceed available insurance coverage, and that the FDIC-R Claims expose Defendants to a substantial risk of liability; and

WHEREAS, the Parties to this Agreement wish to resolve and settle their claims, conditioned upon the Court's entry of the Stipulated Judgment, set forth in paragraph 2, hereafter, to avoid further, costly litigation as to the settled claims; and

WHEREAS, Defendants represent and warrant that they have not transferred, assigned, or otherwise impaired their respective rights, title, or interests with respect to any claims, rights, and/or causes of action against Lloyd's for coverage relating to, or arising out of, the Lloyd's Policy, the FDIC-R Claims, the FDIC-R Action, and/or the lawsuit discussed more fully hereafter, entitled "*Certain Underwriters at Lloyd's, London v. Federal Deposit Insurance Corporation, as Receiver of Omni National Bank, et. al.*," Civil Action No. 1:12-cv-01740-RLV, United States District Court, Northern District of Georgia (the "Lloyd's Action");

WHEREAS, Defendants are entering into this Agreement in a good faith, informed, and reasonable effort to protect themselves from the substantial personal risk and exposure resulting from Lloyd's refusal to cover, indemnify or advance defense costs for their protection, and FDIC-R is willing to seek recovery only in the manner described in this Agreement, under the terms of this Agreement, in consideration of the

promises, undertakings, assignments, and other terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of and in reliance upon the recitals, mutual covenants, promises, obligations and understandings contained in this Agreement, and other good and valuable consideration, and intending to be legally bound thereby, Defendants and FDIC-R mutually agree as follows:

1. **Recitals.** The Recitals to this Agreement are incorporated into and made a part of this Agreement; titles of paragraphs are for convenience only and are not to be considered part of this Agreement.

2. **Stipulated Final Judgment.** Not later than five (5) court days after the execution of this Agreement by all Parties, FDIC-R shall submit to the District Court a Stipulated Final Judgment substantially in the form attached hereto as Exhibit A, disposing of the FDIC-R Claims against Defendants ("Stipulated Final Judgment").

3. **Agreement Conditioned Upon Entry of Stipulated Final Judgment.** This Agreement is conditioned upon the Court's entry of the Stipulated Final Judgment and becomes effective only upon entry of the Stipulated Final Judgment. If for any reason the Court refuses or fails to enter the Stipulated Final Judgment, this Agreement, including, but not limited to, the assignment of rights in paragraph 8, is null and void.

4. **Judgment Amount.** Defendants agree that the Stipulated Final Judgment shall be entered against them, jointly and severally, in the amount of Ten Million Dollars (\$10,000,000) (the "Judgment Amount"), and the FDIC-R agrees to accept this judgment in settlement of the FDIC-R Claims against Defendants. The Judgment Amount shall be coextensive with the Stipulated Final Judgment in the amount of Ten Million Dollars (\$10,000,000) against Stephen M. Klein dated December 17, 2013 in the FDIC-R Action, such that Defendant Perrine, Defendant Cohen, and Stephen M. Klein are each jointly and severally liable to FDIC-R in the amount of Ten Million Dollars (\$10,000,000). The Judgment Amount shall be payable solely from the Lloyd's Policy and/or Lloyd's, as provided in paragraph 5 below.

5. **Covenant To Satisfy Judgment Amount Solely From Insurance Proceeds or from Lloyd's.** FDIC-R agrees that, in exchange for Defendants' assignment of insurance rights and proceeds as described below, FDIC-R will pursue collection of the Judgment Amount solely from the Lloyd's Policy or Lloyd's, and not from any other assets of Defendants, or their respective heirs, executors, representatives, agents and successors, or the respective estates of Defendants.

6. **Covenant Not to Sue.** Except as provided in paragraph 13 below, FDIC-R, for itself, successors and assigns, hereby stipulates, promises and covenants, not to sue Defendants and/or their respective heirs, executors, representatives, agents and successors, or the respective estates of Defendants, to enforce or collect upon the Judgment Amount or otherwise, except to collect the Judgment Amount from the Lloyd's Policy. Defendant Cohen, for himself, and for his successors and assigns, hereby

stipulates, promises and covenants not to pursue any claims he may have against FDIC-R or FDIC and its representatives, agents, successors, and assigns. Defendant Perrine, for herself, and for her successors and assigns, hereby stipulates, promises and covenants not to pursue any claims she may have against FDIC-R or FDIC and its representatives, agents, successors, and assigns.

7. FDIC-R's Claims Against Third Parties. FDIC-R, for itself, successors and assigns, does hereby further stipulate, promise and covenant, as to Defendants in all capacities, that, in the event FDIC-R has brought or brings in the future any claim against a person or entity not a party to this Agreement (a "Third Party") in the FDIC-R Action or any other action, and, in that action, the Third Party obtains judgment, in whole or in part, against the Defendants for contribution or indemnity based upon any of the FDIC-R Claims, the FDIC-R shall reduce any judgment or portion thereof obtained against the Third Party by the proportionate amount attributable to the Defendants. In the event the judgment or portion thereof is not so reduced, the FDIC-R shall not attempt to collect from the Third Party such amount attributable to the Defendants. Further, in the event that FDIC-R resolves its claims against the Third Party pursuant to settlement, FDIC-R, for itself, successors and assigns, does hereby further stipulate, promise and covenant as to Defendants that FDIC-R will use its best efforts to secure a release of Defendants from the Third Party with respect to Defendants' proportionate share of liability, if any, for the claims that FDIC-R asserted against the Third Party, arising from the acts or omissions giving rise to the FDIC-R Claims.

8. Assignment of Rights. Defendants hereby agree to relinquish, surrender, transfer, convey, and assign to FDIC-R all rights, title, and interest that each Defendant has in the Lloyd's Policy and to the proceeds thereof, and Defendants' rights, claims, counterclaims, and defenses that Defendants have asserted, or might have eventually asserted, in any proceeding seeking a declaration of rights, or remedies or recoveries under the Lloyd's Policy or for the breach thereof to the fullest extent permitted by Georgia law, including, but not limited to the Lloyd's Action, including claims for declaratory relief, breach of contract, indemnity, failure to indemnify, bad faith, tortious bad faith, damages, and for the failure of Lloyd's to fund the Judgment Amount ("Defendants' Assigned Claims"). At the sole expense of FDIC-R, FDIC-R may prosecute, defend, control, settle or compromise any and all of Defendants' Assigned Claims, in the name of FDIC-R, as assignee of Defendants.

9. Covenant Not to Sue for Claims Not Assignable. Defendants hereby covenant not to sue Lloyd's or any other person or entity with respect to any rights or claims arising from or relating to the Lloyd's Policy that could be deemed legally non-assignable to FDIC-R including without limitation, under O.C.G.A. § 33-4-6 for statutory attorneys' fees and penalties, and for injury to person, feelings or reputation, the intent being that FDIC-R shall have exclusive control over all rights and claims of the Defendants arising from or relating to the Lloyd's Policy to the fullest extent permitted by Georgia law.

10. Assistance and Cooperation.

10.1. Defendants agree to assist and to cooperate reasonably with FDIC-R in and through the prosecution and/or defense of any claim, lawsuit or other proceeding against Lloyd's, including, but not limited to, the Lloyd's Action, or any similar action relating to Defendants' Assigned Claims. Defendants shall take no action to impede, prevent or otherwise impair the prosecution or defense of such claim, lawsuit or other proceeding. Defendants further agree to assist FDIC-R in identification of particular OREO properties on which expenditures were made after June 9, 2008.

10.2. Defendants agree to execute all papers reasonably required and to take all reasonable actions that may be necessary for FDIC-R to pursue Defendants' Assigned Claims and/or to prosecute or defend all rights, claims, counterclaims and defenses in the Lloyd's Action or other action relating to Defendants' Assigned Claims. Defendants' reasonable actions shall include preservation of any documents or information related to Omni or FDIC-R's claims until FDIC-R agrees in writing that the obligation to preserve is no longer required, voluntary attendance at witness interviews, preparation sessions, depositions, hearings, and trials without necessity of subpoena, and provision of complete and truthful testimony, including testimony as to the good faith and reasonableness of this Agreement and in support of Defendants' representations made in this Agreement, review, preparation and execution of written affidavits, voluntary production of all relevant non-privileged documents and records, securing and giving of evidence, cooperation and assistance in identifying and obtaining attendance of witnesses, and such other assistance and things as may be reasonably necessary to enable FDIC-R to prosecute effectively Defendants' Assigned Claims. Any such cooperation that involves out of pocket costs is subject to reasonable reimbursement by FDIC-R pursuant to its internal guidelines and policy for such reimbursement. FDIC-R, as assignee of Defendants, shall have the right to select counsel to prosecute and/or defend any action on Defendants' Assigned Claims, including, but not limited to, all rights, defenses, and/or claims in the Lloyd's Action.

10.3. Defendants make no representations or warranties with respect to the validity of Defendants' Assigned Claims or FDIC-R's ability to recover on Defendants' Assigned Claims.

10.4. Defendants hereby appoint Joseph Chancey of Drew Eckl Farnham as their representative and attorney-in-fact to communicate and coordinate with FDIC-R in connection with this Agreement, the FDIC-R Action, and the Lloyd's Action.

10.5. FDIC-R hereby appoints James A. Brown and Carey L. Menasco of Liskow & Lewis, APLC as its representatives and attorneys-in-fact to communicate and coordinate with Defendants in connection with this Agreement, the FDIC-R Action, and the Lloyd's Action.

10.6. Other than in the FDIC-R Action and the Lloyd's Action, the FDIC-R will not file or record the Stipulated Final Judgment in any court or public record, except as shall be legally required to pursue and recover from Lloyd's on Defendants' Assigned Claims. If it is determined that it is legally required to file or record the Stipulated Final Judgment, the FDIC-R shall take all actions legally required to discharge the Stipulated Final Judgment that attaches to any of the Defendant's property pursuant to O.C.G.A. Section 9-12-86 by specific release thereof within thirty (30) days after final resolution of the Lloyd's Action by settlement or final judgment, including all appeals, and satisfaction in full of the Stipulated Final Judgment. FDIC-R further agrees not to report the Stipulated Final Judgment to any credit reporting agency, and further agrees to reasonably cooperate with Defendants, in the event that the Stipulated Final Judgment is reported by any credit reporting agency to provide an explanation concerning the circumstances motivating Defendants to agree to the Stipulated Final Judgment, as set forth in the recitals to this Agreement, and to clarify that the Stipulated Final Judgment does not create personal liability for either Defendant or subject their respective assets, other than the Lloyd's Policy, to levy, attachment or collection processes.

10.7. The obligations set forth in the Agreement are material terms and in the event of a breach of these provisions by either party, the aggrieved party may recover from the breaching party all losses caused by the breach, including attorneys' fees and costs.

11. Specific Representations, Warranties, and Disclaimer.

11.1. Each Defendant has submitted to FDIC-R an affidavit of financial information or sworn/certified financial information. Each Defendant expressly acknowledges that, in determining to settle the claims herein, FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by that Defendant to FDIC-R. Each Defendant swears and affirms that all financial information in his or her respective affidavits provided to FDIC-R was true and accurate at the time of submission, and that no material change has occurred since the affidavit was provided to the FDIC-R up through the date of the execution of this Agreement. FDIC-R has no obligation to independently verify the completeness and accuracy of that financial information. Defendants expressly acknowledge that in determining to enter this Agreement, FDIC-R has reasonably and justifiably relied upon the accuracy of financial information in the affidavits submitted. If the FDIC-R establishes via a final adjudication in an appropriate judicial forum that a Defendant failed to disclose any material interest, legal, equitable or beneficial, in any asset, that Defendant agrees to cooperate fully with FDIC-R to provide updated financial information and to pay to the FDIC-R the lesser of: (a) the value of the Defendant's undisclosed material interest in such asset(s); or (b) the amount of unpaid damages alleged against that Defendant.

12. **Exceptions to Covenants.** FDIC-R expressly preserves fully and to the same extent as if this Agreement had not been executed 1) any claims or causes of action against 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, FDIC-R, Omni, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC-R as successor in interest to Omni or any person or entity other than Omni 2) FDIC's exercise of its supervisory or regulatory authority and its ability to institute administrative enforcement proceedings seeking removal, prohibition or any other administrative enforcement action; 3) any claims which could be brought by the United States through either the Department of Justice, the United States Attorney's Office for any federal judicial district, including 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; and 4) any claims, judgment, or order of restitution, penalty or fine entered in any criminal proceeding. FDIC-R further expressly reserves all rights and claims against Karim W. Lawrence arising from alleged Individual Acts occurring after June 9, 2008.

13. **Miscellaneous Provisions**

13.1. This Agreement is fully integrated and contains the entire agreement and understanding between the Parties concerning the subject matter hereof. It fully supersedes any prior oral or written negotiations, proposed agreements, agreements, or understandings between FDIC-R, on the one hand, and Defendants, on the other hand, concerning the subject matter hereof. No change or modification or termination of this Agreement shall be valid unless contained in writing and signed by FDIC-R and Defendants. All rights and obligations of the Parties under this Agreement survive closing.

13.2. Defendants' obligations under this Agreement shall continue until such time as a full and final adjudication of FDIC-R's claims, suits or other proceedings against Lloyd's has been achieved or upon receipt of written notice from FDIC-R that such claim, lawsuit or other proceeding has been resolved, including all appeals.

13.3. The Parties agree to execute mutual releases of the FDIC-R Claims and the FDIC-R and the FDIC only in the event the Lloyd's Action is resolved by settlement or the court in the Lloyd's Action, after exhaustion of all appeals, determines that the Lloyd's Policy provides coverage for the FDIC-R Claims and Lloyd's has satisfied the Stipulated Final Judgment in full. In the event the court in the Lloyd's Action, after exhaustion of all appeals, determines that the Lloyd's Policy does not provide coverage for the FDIC-R Claims, the FDIC-R shall take all steps legally required to release any attachments related to the Stipulated Final Judgment.

13.4. This Agreement shall be binding upon, and inure to the benefit of, the Parties, and each of them, and to each of his, her or its successors, assigns and legal representatives.

13.5. Each Party will bear its own fees and costs that have been incurred in the FDIC-R Action and the Lloyd's Action.

13.6. The terms and language of this Agreement are the result of negotiations between the Parties and his, her or its respective counsel, who have cooperated in its drafting and preparation. There shall be no presumption that any ambiguities in this Agreement should be resolved against any Party.

13.7. Each of the Parties represents and warrants that he or she enters into this Agreement with the benefit of the advice of his, her or its respective legal counsel. Each of the Parties has carefully read and fully understands all of the provisions of this Agreement, and each Party is entering into this Agreement voluntarily and without coercion.

13.8. Each of the Parties further represents and warrants that he or she is relying upon his or her own judgment, and that no promises or representations have been made to induce that Party's execution of this Agreement, other than those set forth expressly in this Agreement.

13.9. Each of the Parties represents and warrants that (i) the person signing this Agreement has full authority and representative capacity to execute this Agreement on behalf of himself/herself and on behalf of all other persons, estates, corporations, or entities for whom he/she purports to act as stated herein, and (ii) this Agreement has been duly executed and delivered and constitutes the valid and binding obligation of each person signing such Agreement on his/her own behalf and/or on behalf of any entity.

13.10. This Agreement may be executed in counterparts, all of which together shall constitute one agreement. Facsimile signatures shall be considered the same as originals.

13.11. This Agreement shall be interpreted, construed and enforced according to applicable federal law or, in its absence, the laws of the State of Georgia.

13.12. This Agreement shall not be merged into the Stipulated Final Judgment but shall survive the Stipulated Final Judgment and be binding on the Parties.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement effective as of the date set forth in the first sentence of this Agreement:

Federal Deposit Insurance Corporation
as Receiver of Omni National Bank

(b)(6)

By:

[Redacted Signature]

[Name] Mark A. Black

Title: Counsel - FDIC

Dated: 05/02/2015

Constance E. Perrine

Dated: _____

Benjamin J. Cohen

Dated: _____

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement effective as of the date set forth in the first sentence of this Agreement:

Federal Deposit Insurance Corporation
as Receiver of Omni National Bank

By:

[Name]

Title: _____

Dated: _____

(b)(6)

Constance E. Perrine

Dated: May 7, 2015

(b)(6)

Benjamin J. Cohen

Dated: May 7, 2015

EXHIBIT "A"

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER
OF OMNI NATIONAL BANK**

Plaintiff,

v.

**STEPHEN M. KLEIN, IRWN W.
BERMAN, BENJAMIN J. COHEN,
JULES N. GREENBLATT, KARIM
W. LAWRENCE, EUGENE F.
LAWSON, III, JEFFREY L.
LEVINE, SHANNON C.
LIVENGOOD, GREGORY W.
PATTEN, AND CONSTANCE E.
PERRINE**

Defendants

**CIVIL ACTION NO. 1:12-cv-00896-
RLV**

JURY TRIAL DEMANDED

STIPULATED FINAL JUDGMENT

Plaintiff Federal Deposit Insurance Corporation as Receiver of Omni National Bank ("FDIC-R"), has commenced this action by filing the complaint herein, alleging, among other claims, failure to supervise, negligence, gross negligence, and corporate waste, against defendants, including Constance E. Perrine and Benjamin J. Cohen ("Defendants")

relating to repair expenditures for Other Real Estate Owned (“OREO”) properties. Certain Underwriters at Lloyd’s, London, including but not limited to Syndicates AFB 623/2623, (“Lloyd’s”) sold directors and officers (“D&O”) liability insurance covering Defendants, but have denied coverage and refused to advance defense costs, to indemnify, or to settle the claims brought against Defendants in this action. The FDIC-R seeks substantial monetary damages that exceed available insurance coverage and the FDIC-R’s claims expose Defendants to a substantial risk of liability. The FDIC-R and Defendants have now stipulated to entry of this judgment in settlement of the FDIC-R’s claims against Defendants.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that

1. This Court has jurisdiction over Defendants and the subject matter of this action. Venue in this district is proper.
2. The Complaint states claims upon which relief may be granted against Defendants.
3. Even though in their answer Defendants denied any liability to the FDIC-R, Defendants, as part of the settlement, have consented to the entry of this judgment for the purpose of compromising disputed claims and to avoid further costly litigation in order to settle and resolve these disputes.
4. Judgment is entered in favor of Plaintiff, Federal Deposit Insurance

Corporation, as Receiver of Omni National Bank, and against Defendants, Constance E. Perrine and Benjamin J. Cohen, jointly and severally, in the amount of Ten Million Dollars (\$10,000,000) (the “Judgment Amount”), in full and final payment and satisfaction of FDIC-R’s claims against Defendants arising from failure to supervise, negligence, gross negligence, and corporate waste relating to repairs and expenditures on OREO property that occurred after June 9, 2008, and as more fully set forth in Counts III (portion relating to OREO supervision only), IV and V of the Complaint in this matter. The Judgment Amount shall be coextensive with the Stipulated Final Judgment against Stephen M. Klein entered December 17, 2013 in the above-captioned action, meaning that Constance E. Perrine, Benjamin J. Cohen, and Stephen M. Klein are jointly and severally liable to FDIC-R in the amount of Ten Million Dollars (\$10,000,000). Pursuant to the terms of the Settlement and Assignment Agreement, FDIC-R covenants not to seek to collect upon this judgment from the Defendants, his or her respective heirs, executors, representatives, agents, successors, or estate, and/or their assets, other than the D&O liability insurance policy issued by Lloyd’s, Reference (b)(4) that may cover FDIC-R’s claims against Defendants or from Lloyd’s.

5. FDIC-R and Defendants waive all rights to seek judicial review or

otherwise challenge or contest the validity of this Judgment.

6. Each party shall bear its own respective costs and attorneys' fees.
7. Pursuant to Federal Rule of Civil Procedure 54(b), the Court expressly determines that there is no just reason for delay and therefore directs the entry of this Final Judgment disposing of FDIC-R's claims against Defendants in Counts III, IV and V of the Complaint arising from acts or omissions after June 9, 2008.
8. This Final Judgment does not supersede or in any way affect the Stipulated Final Judgment against Stephen M. Klein entered December 17, 2013 in the above-captioned action.

DATED this ____ day of May, 2015.

United States District Judge,
Northern District of Georgia