

SETTLEMENT AND ASSIGNMENT AGREEMENT

~~December~~ This Settlement and Assignment Agreement ("Agreement") is entered into as of ~~October 2~~, 2013, by the Federal Deposit Insurance Corporation ("FDIC"), in its capacity as Receiver of Omni National Bank ("FDIC-R"), on the one hand, and Stephen M. Klein ("Defendant") on the other hand. FDIC-R and Defendant 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, and 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 is the former Chief Executive Officer and Chairman of the Board of Directors of Omni; 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 [REDACTED] ("Lloyd's"), Reference [REDACTED] for the period including June 9, 2008 to June 9, 2009, under which the Defendant is one 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 Defendant 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 Defendant 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 Defendant has 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 Defendant covered under the Lloyd's Policy; and

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

WHEREAS, Defendant 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 Defendant 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 10, hereafter, to avoid further, costly litigation as to the settled claims; and

WHEREAS, Defendant represents and warrants that he has not transferred, assigned, or otherwise impaired his 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, Defendant is entering into this Agreement in a good faith, informed, and reasonable effort to protect himself from the substantial personal risk and exposure resulting from Lloyd's refusal to cover, indemnify or advance defense costs for his 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, Defendant 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 Defendant ("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.** Defendant agrees that the Stipulated Final Judgment shall be entered against him 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 Defendant. 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 Defendant's 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 Defendant, or his heirs, executors, representatives, agents and successors, or the estate of Defendant.

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 Defendant and/or his heirs, executors, representatives, agents and successors, or the estate of Defendant, to enforce or collect upon the Judgment Amount or otherwise, except to collect the Judgment Amount from the Lloyd's Policy. Defendant, 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.

7. **FDIC-R's Claims Against Third Parties.** FDIC-R, for itself, successors and assigns, does hereby further stipulate, promise and covenant, as to Defendant 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 Defendant 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 Defendant. 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 Defendant.

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 Defendant that FDIC-R will use its best efforts to secure a release of Defendant from the Third Party with respect to Defendant's 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. Defendant hereby agrees to relinquish, surrender, transfer, convey, and assign to FDIC-R all rights, title, and interest that Defendant has in the Lloyd's Policy and to the proceeds thereof, and Defendant's rights, claims, counterclaims, and defenses that Defendant 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 lawsuit entitled "*Klein v. Alwen Hough Johnson Ltd.*," No. 1:12-cv-01877-RLV, United States District Court, Northern District of Georgia (the "Klein Action"), and 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 ("Defendant's Assigned Claims"). At the sole expense of FDIC-R, FDIC-R may prosecute, defend, control, settle or compromise any and all of Defendant's Assigned Claims, in the name of FDIC-R, as assignee of Defendant.

9. Dismissal of the Klein Action and Counterclaim in Lloyd's Action.

- a) Not later than five (5) court days after the execution of this Agreement by all Parties, Defendant hereby covenants to move to dismiss without prejudice the Klein Action and the counterclaim in the Lloyd's Action, substantially in the form attached hereto as Exhibits B and C, and agrees not to further pursue those claims.
- b) In consideration of those covenants, FDIC-R agrees to reimburse Defendant up to a maximum of \$50,000 for actually incurred and documented attorneys' fees and costs incurred by Defendant for counsel through the effective date of this Agreement in connection with the Klein Action and/or the Lloyd's Action that Defendant has paid and not been reimbursed by insurance, from any settlement or judgment amount actually recovered by FDIC-R on Defendant's Assigned Claims, subject to the following limitations, conditions and reimbursement schedule. If FDIC-R recovers less than \$250,000 from any settlement or judgment on Defendant's Assigned Claims, FDIC-R shall not owe any reimbursement to Defendant. If FDIC-R recovers \$250,000 or more but less than \$500,000 from any settlement or judgment on Defendant's Assigned Claims, FDIC-R shall reimburse Defendant up to \$25,000. If FDIC-R recovers \$500,000 or more from any settlement or judgment on Defendant's Assigned Claims, FDIC-R shall reimburse Defendant up to \$50,000. This reimbursement obligation shall be limited to actually incurred and documented attorneys' fees and costs incurred by Defendant for legal representation prior to the effective date of this

Agreement in connection with the Klein Action and/or the Lloyd's Action which Defendant has paid and not been reimbursed by insurance.

10. Covenant Not to Sue for Claims Not Assignable. Defendant hereby covenants 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 Defendant arising from or relating to the Lloyd's Policy to the fullest extent permitted by Georgia law.

11. Assistance and Cooperation.

11.1. Defendant agrees 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 Klein Action and the Lloyd's Action, or any similar action relating to Defendant's Assigned Claims. Defendant shall take no action to impede, prevent or otherwise impair the prosecution or defense of such claim, lawsuit or other proceeding. Defendant further agrees to assist FDIC-R in identification of particular OREO properties on which expenditures were made after June 9, 2008.

11.2. Defendant agrees to execute all papers reasonably required and to take all reasonable actions that may be necessary for FDIC-R to pursue Defendant's Assigned Claims and/or to prosecute or defend all rights, claims, counterclaims and defenses in the Klein Action and the Lloyd's Action or other action relating to Defendant's Assigned Claims. Defendant's 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 Defendant's 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 Defendant's 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 Defendant, shall have the right to select counsel to prosecute and/or defend any action on Defendant's Assigned Claims, including, but not limited to, all rights, defenses, claims, and/or counterclaims in the Klein Action and the Lloyd's Action.

11.3. Defendant makes no representations or warranties with respect to the validity of Defendant's Assigned Claims or FDIC-R's ability to recover on Defendant's Assigned Claims.

11.4. Defendant hereby appoints Theodore J. Sawicki of Alston & Bird, LLP as his representative and attorney-in-fact to communicate and coordinate with FDIC-R in connection with this Agreement, the FDIC-R Action, the Klein Action, and the Lloyd's Action.

11.5. FDIC-R hereby appoints Andrew M. Reidy of Dickstein Shapiro LLP as its representative and attorney-in-fact to communicate and coordinate with Defendant in connection with this Agreement, the FDIC-R Action, the Klein Action, and the Lloyd's Action.

11.6. Other than in the FDIC-R Action and the Lloyd's Action, the FDIC-R will not file the Stipulated Final Judgment in any court, except as shall be legally required to pursue and recover from Lloyd's on Defendant's Assigned Claims. If it is determined that it is legally required to file 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 of final resolution of the Lloyd's Action by settlement or final judgment, including all appeals.

11.7. 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.

12. Specific Representations, Warranties, and Disclaimer.

12.1. 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. Defendant swears and affirms that all financial information in his 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. Defendant expressly acknowledges that in determining to enter this Agreement, FDIC-R has reasonably and justifiably relied upon the accuracy of financial information in the affidavits submitted.

12.2. If, in his affidavit or sworn/certified financial information, Defendant has failed to disclose any material interest, legal, equitable, or beneficial, in any

asset, that Defendant agrees to cooperate fully with the FDIC-R to transfer his interest in the asset(s) to the FDIC-R and to sign any and all documents necessary to transfer that interest in the asset to the FDIC-R.

13. **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 Defendant 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 Benjamin J. Cohen, Karim W. Lawrence, and Constance E. Perrine arising from alleged Individual Acts occurring after June 9, 2008.

14. Miscellaneous Provisions

14.1. 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 Defendant, 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 Defendant. All rights and obligations of the Parties under this Agreement survive closing.

14.2. Defendant's 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.

14.3. 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. 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.

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

14.5. Each Party will bear its own fees and costs that have been incurred in the FDIC-R Action and the Lloyd's Action, except as otherwise provided in this Agreement.

14.6. The terms and language of this Agreement are the result of negotiations between the Parties and his 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.

14.7. 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.

14.8. 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.

14.9. 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.

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

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

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

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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:

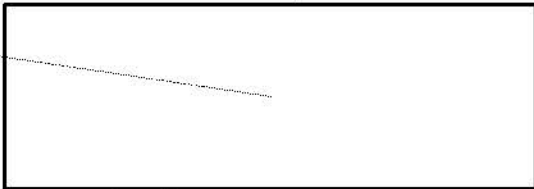


[Name] Mark A. Etlak

Title: Counsel - FDIC

Dated: 12/06/2013

(b)(6)



Stephen M. Klein

Dated: 10/17/2013