

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 Colonial Bank (“FDIC-R”) and Crowe Horwath LLP (“Settling Defendant”) (individually, the FDIC-R and the Settling Defendant may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to August 14, 2009, Colonial Bank (“Bank”) was a depository institution organized and existing under the laws of the State of Alabama.

On August 14, 2009, the Alabama State Banking Department 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, among other things, 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 the Bank’s former professionals arising from the performance, nonperformance, and manner of performance of their respective functions, duties, and acts as professionals for the Bank.

On October 31, 2012, the FDIC-R filed a complaint for money damages against, among others, the Settling Defendant, who provided outsourced internal auditing services and documentation and testing services related to Sarbanes-Oxley Section 404 compliance, both pursuant to a series of engagement letters with the Bank’s holding company (the “Services”).

Those claims for damages are now pending in the United State District Court for the Middle District of Alabama in *Federal Deposit Insurance Corporation as Receiver for Colonial Bank v. PricewaterhouseCoopers LLP and Crowe Horwath LLP*, Case No. 2:12-cv-00957-BJR (“Action”). The Settling Defendant denies liability for the claims.

The undersigned Parties 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 FDIC-R

A. As an essential covenant and condition to this Agreement, the Settling Defendant shall pay the FDIC-R the sum of \$60,000,000.00 (“Settlement Payment”) on or before April 30, 2018.

B. The Settlement Payment to the FDIC-R shall be made by direct wire transfer into an account designated by the FDIC-R by written notice to the attorneys for the Settling Defendant. In the event that the FDIC-R does not receive the Settlement Payment by the date determined by Section I.A. above, interest shall accrue on the unpaid installments, from the date determined in Section I.A. above until the date of payment, at a rate equal to 1% over LIBOR (as determined on the date payment is due).

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by Section I.A. above, 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 date determined by Section I.A. above, through the date of payment at a rate calculated in accordance with Section I.B.; or

2. Enforce this Agreement, in which event the Settling Defendant agrees to jurisdiction in the United States District Court for the Middle District of Alabama and to pay all of the FDIC-R's reasonable attorneys' fees and costs expended in enforcing the terms of this Agreement; or

3. Terminate the Agreement, move to vacate any dismissal order, to which the Settling Defendant agrees to consent, and re-institute an action on the FDIC-R's claims. The Settling Defendant further agrees to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims, insofar as that defense is based, in whole or in part, on the passage of time between the dismissal of the Action and the reinstatement of an action on the FDIC-R's claims. The Settling Defendant further agrees (a) to waive all objections, defenses, claims or counterclaims, and (b) to covenant and agree not to assert any objections, defenses, claims or counterclaims, in both cases to the extent such objections, defenses, claims or counterclaims 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 the Settlement Payment in full (including all accrued interest).

SECTION II: Dismissal

Within ten (10) business days after the receipt of the Settlement Payment in full, plus any accrued interest, the FDIC-R shall move for entry of an order dismissing with prejudice all claims in the Action against the Settling Defendant, in the form attached hereto as Exhibit A.

SECTION III: Releases**A. The FDIC-R's Releases.**

Upon receipt of the Settlement Payment in full as provided in Section I, and except as provided in Section III.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Settling Defendant, and its heirs, parents, subsidiaries, affiliates, principals, employees, officers, directors, agents, executors, trustees, administrators, representatives, partners, 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 Bank or the Settling Defendant's performance, nonperformance, or manner of performance of the Services, including without limitation the causes of action alleged in the Action.

B. The Settling Defendant's Release.

Effective simultaneously with the release granted in Section III.A above, the Settling Defendant, on behalf of itself, and its respective heirs, parents, subsidiaries, affiliates, principals, employees, officers, directors, executors, trustees, administrators, agents, representatives, attorneys, partners, insurers, successors and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, representatives, attorneys, 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 the Settling Defendant's

performance, nonperformance, or manner of performance of the Services, including without limitation the causes of action alleged in the Action.

C. Exceptions from Releases by 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 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 the FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by 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. It is expressly and specifically understood and agreed between the Parties hereto that this is a pro tanto release of the Settling Defendant, and its heirs, parents, subsidiaries, affiliates, principals, employees, officers, directors, agents, executors, trustees, administrators, representatives, partners, insurers, successors and assigns and inures to their benefit only. This pro tanto release does not release any other individual or entity, including the remaining defendant PricewaterhouseCoopers, LLP in the Action, and the FDIC-R specifically reserves any and all causes of action which it may have against PricewaterhouseCoopers, LLP. Furthermore, the Parties expressly understand and agree that such pro tanto release and discharge is not an adjudication of any of the matters at issue in the Action.

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 diminishing 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 Defendant is or was a shareholder of the Bank or its holding company and by virtue thereof is 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 Defendant hereby knowingly assigns to the FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, 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 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 its counsel.

SECTION VI: Reasonable Cooperation

A. 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 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.

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 Alabama.

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:

(b)(6)

Gregory K. Conway
Counsel, Federal Deposit Insurance Corporation
3501 Fairfax Drive, VS-B-7046
Arlington, Virginia 22226



If to the Settling Defendant:

(b)(6)

Attn: Legal Department
Crowe Horwath LLP
One Mid America Plaza, Suite 700
Oak Brook, Illinois 60522-3697



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. Similarly, Crowe may disclose this Agreement as required by law or as it deems appropriate in its sole discretion.

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 COLONIAL BANK

Date: 04-03-2018

BY: _____

TITLE: Counsel

PRINT NAME: Gregory K. Conway

(b)(6)

(b)(6)

CROWE HORWATH LLP

Date: 4-2-2018

BY: _____

TITLE: Chief Risk Officer

PRINT NAME: Fred J. Batters

(b)(6)

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**THE COLONIAL BANCGROUP, INC.,
and KEVIN O'HALLORAN,**

Plaintiffs,

v.

**PRICEWATERHOUSECOOPERS LLP
and CROWE HORWATH LLP,**

Defendants.

Case No. 2:11-cv-00746-BJR

**FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
COLONIAL BANK,**

Plaintiff,

v.

**PRICEWATERHOUSECOOPERS, LLP
and CROWE HORWATH, LLP,**

Defendants.

Case No. 2:12-cv-00957-BJR

**[PROPOSED] ORDER OF DISMISSAL WITH PREJUDICE WITH
RESPECT TO CROWE HORWATH LLP**

Pursuant to the Agreed Motion for Entry of Order of Dismissal with Respect to Crowe Horwath, LLP ("Crowe"), the Court being fully advised, it is hereby ordered, pursuant to Fed. R. Civ. P. 41(a)(2), that:

1. This action is dismissed with prejudice as to Crowe.

2. This Order does not relate to, release, dismiss or impact the FDIC-R's claims and causes of action asserted against PricewaterhouseCoopers, LLP ("PwC") in this action and the FDIC-R's claims against PwC shall remain pending.

3. The FDIC-R and Crowe shall bear their own attorneys' fees and costs with respect to any claims, counterclaims and causes of action in this action between the FDIC-R and Crowe. Neither the FDIC-R nor Crowe shall have any liability to the other for fees and costs incurred in connection with any other aspect of this action.

Dated this ____ day of _____, 2018.

Barbara Jacobs Rothstein
U.S. District Court Judge