

SETTLEMENT AND ASSIGNMENT AGREEMENT

The Federal Deposit Insurance Company (the "FDIC"), Receiver for BankUnited, FSB, of Coral Gables, Florida ("BankUnited"), and Camner Lipsitz, P.A. and Alfred Camner individually (collectively, the "Defendants," and, together with the FDIC, the "Parties"), hereby enter into this Settlement and Assignment Agreement ("Agreement") on this 6th day of ~~February~~ ^{March} 2015.

WHEREAS, BankUnited was closed by the Office of Thrift Supervision on May 21, 2009, and the FDIC was appointed as its Receiver; and,

WHEREAS, the Defendant Camner Lipsitz, P.A. performed legal services for BankUnited from 2004 through 2009;

WHEREAS, the FDIC has the right pursuant to 12 U.S.C. § 1821 (d)(2)(A)(i) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") and other authority to assert claims against the Defendants and may proceed in various capacities (e.g., for the benefit of creditors and shareholders); and,

WHEREAS, by letter dated March 4, 2010, the FDIC sent a demand for payment of civil damages (the "Demand Letter") asserting certain claims (the "FDIC's Claims") against the Defendants based on the Defendants' alleged legal malpractice; and,

WHEREAS, the Defendants are insured under a professional liability insurance policy from Catlin Insurance Company ("Catlin"), Policy Number (the (b)(4) "Policy"), with a liability limit of \$5,000,000; and,

WHEREAS, the Policy had a policy period of March 7, 2009, through March 7, 2010; and,

WHEREAS, Catlin has been provided with all relevant information necessary to investigate, evaluate, and adjust the subject claims and otherwise perform its obligations under the Policy, but has failed to do so; and,

WHEREAS, the Parties engaged in mediation to facilitate arm's-length negotiations designed to avoid litigation, save litigation expense, including further depletion of the insurance policies, and to prevent on the part of the insured Defendants a potentially substantial liability; and,

WHEREAS, Catlin was provided with a mediation statement that included a liability and damages analysis regarding liability and recoverable damages of up to \$55.6 million associated with the Defendants' legal malpractice, professional negligence, and/or breaches of fiduciary duty alleged to have occurred during its Policy Period that likely exceed the Policy's limit; and,

WHEREAS, Catlin denied coverage for the FDIC's Claims, and refused to make any of its policy limits available to fund a settlement with the FDIC; and,

WHEREAS, Catlin has been provided with numerous opportunities to effectuate a settlement of the FDIC's Claims within the limits of the Policy, but has refused to even attempt to negotiate or to consider any such settlement; and,

WHEREAS, by refusing to even attempt a potential settlement of the FDIC's Claims, Catlin refused to protect the interests of the insured Defendants; and,

WHEREAS, the Parties do not intend to release or impact any claims against Catlin; and,

WHEREAS, the Parties have taken into consideration the factual allegations underlying the FDIC's Claims, any applicable defenses thereto, the amount of the FDIC's Claims, the evidence in the case, the potential verdict range represented by such suits, as well as the public interest and related factors; and,

WHEREAS, this Agreement is the product of arms-length negotiations between the Parties, each represented by counsel; and,

WHEREAS, the Defendants have agreed to settle the FDIC's Claims for the sum of \$6.36 million dollars, and have agreed to assign their rights under the Policy and any claims against Catlin to the FDIC; and,

NOW, THEREFORE, the undersigned Parties agree as follows:

1. SETTLEMENT AGREEMENT: In consideration of the promises, representations, and warranties set forth herein, and without admitting any liability in connection with the FDIC's Claims, Defendants agree to settle the FDIC's Claims for \$6.36 million dollars, and to assign the FDIC the Defendants' rights and claims against Catlin. The FDIC and the Defendants agree that this settlement is a compromise of disputed claims, and that such settlement is not to be construed as an admission on the part of the Defendants of any liability or responsibility at any time or for any purpose whatsoever. If the Defendants perform all duties and promises required by this Agreement and the FDIC resolves its claims against Catlin, as set forth in paragraph 5 below, the FDIC will grant the Defendants a covenant not to sue for the FDIC's Claims.

2. ASSIGNMENT OF RIGHTS AND CAUSES OF ACTION: The Defendants hereby assign to the FDIC their right, title, and interest in the Policy and any and all causes of action they may have against Catlin (including any and all damages related to those causes of action) pursuant to the Policy, common law of bad faith or similar law, and under Florida Statute § 624.155, as a result of Catlin's refusal to provide the Defendants with the full benefits due under the Policy or to consent to a settlement within the limits of the Policy, subject to the conditions of this Agreement. As further consideration for this Agreement, the Defendants also

specifically assign their entitlement to assert the attorney client privilege and/or work product immunity with respect to any attorney client communications or attorney work product made regarding the FDIC's Claims, or made regarding any cause of action the Defendants may have against Catlin.

3. CAUSES OF ACTION ON DEFENDANTS' BEHALF: The Parties agree that the FDIC may, at its sole discretion, prosecute causes of action seeking coverage under the Policy and/or bad faith on its own behalf, or as Assignee of any or all of the insured Defendants. Regardless of the style of the case, and even if not joined as party plaintiffs or party defendants, the Defendants agree to cooperate with the FDIC in the provision of information necessary to the lawsuit(s).

4. CONDITIONS OF ASSIGNMENT:

A. The Defendants, by this Agreement, assign one hundred percent (100%) of their interest to the FDIC in any damages recovered by the FDIC in any action brought pursuant to this Agreement against Catlin and/or any of its agents. The Defendants shall have no interest in or be responsible for any attorney's fees or costs awarded in connection with any such action.

B. The Defendants will cooperate fully with the FDIC and its counsel in the pursuit or defense of the contemplated lawsuits or bad faith claims involving Catlin, including: (1) providing any necessary documentation upon request, provided that the Defendants have possession or control of the requested documentation; (2) attending depositions and/or any reasonably necessary conferences or meetings called by the FDIC subject to reasonable notice and availability; and (3) otherwise providing truthful information which may be called for in the FDIC's discretion incident to the lawsuits or bad faith claims contemplated by this Agreement. The FDIC shall not be obligated to pay fees or costs incurred by counsel representing the

Defendants as personal counsel, should any choose to engage such counsel in responding to discovery requests or agreeing to depositions, mediations, or trial.

C. The FDIC and its counsel shall have the sole discretion on whether to pursue litigation against Catlin and the choice of any cause of action to be asserted against Catlin. The FDIC and its counsel shall further have sole authority to compromise, resolve, or try any action pursuant to this Agreement, as they deem appropriate. Similarly, the FDIC and its counsel may, in its sole discretion, determine whether or not to appeal an adverse decision, or to defend any appeal taken by Catlin.

5. NO RELEASE OF LIABILITY: The Parties have reviewed the Florida Supreme Court case of *Rosen v. FIGA*, 802 So. 2d 291 (Fla. 2001), and each agree that it is neither the intention of the Defendants nor the FDIC to release or discharge Catlin from any of its liability to the Defendants or the FDIC in connection with the Policy, or under the law. The Defendants are also not released or discharged from liability. The FDIC agrees to seek satisfaction of the settlement from Catlin first and the Parties agree to toll any limitations period related to the FDIC's Claims. Should the FDIC recover an amount equal to, or greater than, the amount agreed to in this Agreement (\$6.36 million dollars), plus interest and costs; prevail in whole or in part in any subsequent lawsuit or claim against Catlin ("Catlin Lawsuit"); lose, withdraw, dismiss or elect not to pursue the Catlin Lawsuit; and/or resolve its differences with Catlin; then the FDIC shall provide a covenant not to sue the Defendant for the FDIC's Claims, provided, that the Defendants have faithfully discharged the terms, conditions, and/or warranties contained in this Agreement and have fully cooperated with the FDIC as described herein.

6. ASSIGNMENT PRIOR TO DISCHARGE OF LIABILITY: This Assignment is given prior to the discharge of any liability for payment on the Agreement, and as a condition

precedent to the waiver of any deficiency action against the Defendants should the Agreement not be fully satisfied. In addition, this Assignment is given in consideration of the FDIC's: (i) subsequent agreement to forbear further proceedings asserting the FDIC's Claims against the Defendants; and (ii) granting a covenant not to sue the Defendants to recover the amount of the settlement of the FDIC's Claims from the personal assets of the Defendants. Furthermore, this Assignment is given in exchange for cooperation by the Defendants.

7. COSTS OF LITIGATION: Any action brought against Catlin and/or its agents pursuant to this Agreement shall be prosecuted or defended by the FDIC, and it will bear full financial responsibility for the prosecution and defense of its own fees and costs for such suits and actions.

8. SEVERABILITY OF RELEASE AND ASSIGNMENT: If for any reason this Agreement is rendered invalid or unenforceable as to any Defendant, the Agreement shall remain effective as to the others.

9. CONSTRUCTION OF AGREEMENT: This Agreement, its effect, and enforceability shall be construed under the laws of the State of Florida.

10. MERGER CLAUSE: This Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement and supersedes any prior and contemporaneous, oral or written agreement, negotiations and discussions with respect to the subject matter of this Agreement.

10. REPRESENTATION BY COUNSEL: The Parties have each reviewed this Agreement through counsel of their choosing or been afforded the opportunity before signing this Agreement.

11. EXECUTION OF AGREEMENT: The Parties have expressly agreed that this Agreement may be executed in counterparts.

[Redacted Signature]

9 (b)(6)

By:

Alfred Camner

(date)

STATE OF FLORIDA)
) SS.
COUNTY OF MIAMI DADE)

SWORN TO AND SUBSCRIBED before me this 6th day of March,

2015, by Alfred Camner, who DID/DID NOT take an oath and who:

is personally known to me; or

produced identification: _____

My Commission Expires:



[Redacted Signature]

(b)(6)

Notary Public

By: ^{(b)(6)}
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3/6/2015
Steven E. Smith, As Counsel (date)
For the Federal Deposit Insurance Corporation

STATE OF FLORIDA)
) SS.
COUNTY OF MIAMI DADE)

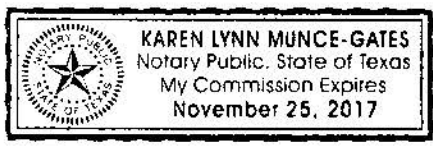
SWORN TO AND SUBSCRIBED before me this 10th day of MARCH,

2015, by **Steven E. Smith**, who DID/DID NOT take an oath and who:

X is personally known to me; or

___ produced identification: _____

My Commission Expires:



^{(b)(6)}
Notary Public