

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 18th day of May, 2011, by and between the following undersigned parties: The Federal Deposit Insurance Corporation as Receiver of FirstCity Bank, Stockbridge, GA ("FDIC-R") and St. Paul Mercury Insurance Co. ("Travelers"). The FDIC-R and Travelers 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 March 20, 2009, FirstCity Bank ("FirstCity" or the "Bank") was a state chartered bank operating in the State of Georgia.

2. FirstCity was closed on March 20, 2009 by the Georgia Department of Banking and Finance, which appointed the Federal Deposit Insurance Corporation (FDIC) 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 FirstCity's rights and/or claims under any insurance policies or bonds issued to FirstCity and any claims, demands, and causes of actions against Travelers.

3. On July 1, 2008, Travelers issued a Financial Institution Bond bearing Policy Number (the "Bond"), within an effective date of July 1, 2008 with FirstCity as a named insured under the Bond.

4. On October 20, 2009, the FDIC-R filed a sworn Proof of Loss seeking coverage under the Bond.

5. On March 17, 2011, the FDIC-R filed a complaint against Travelers in the United States District Court for the Northern District of Georgia, Case No. 1:11-CV-0838 (the "Lawsuit").

6. 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 held by the FDIC-R, including its agents, successors and assigns, for all claims now or hereafter held by the FDIC-R against Travelers, including any claims asserted in the Lawsuit.

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 to FDIC-R

A. As an essential covenant and condition to this Agreement, Travelers shall pay to the FDIC-R the sum of ONE MILLION DOLLARS (\$1,000,000.00), by way of wire transfer to Bank:

(b)(4) Federal Home Loan Bank of New York, Routing No. [REDACTED] Account No. [REDACTED] for credit to (b)(4)

"FDIC National Liquidation Account, FIN 10047; FirstCity Bank, Stockbridge, GA; Contact: Steven C. Morrison; 904-256-3854; Professional Liability lawsuit (37100); DIF Fund; fidelity bond settlement."

The settlement payment by Travelers is referred to herein as the "Settlement Funds."

B. The Settlement Funds shall be delivered to FDIC-R by direct wire transfer as described in Paragraph A. above on or before ten (10) days following execution of this Agreement ("the due date"). In the event that the Settlement Funds are not delivered to FDIC-R by the due date, interest shall accrue on all unpaid amounts at the rate of 6% per annum from the due date until the date of payment, said date of payment shall in no event be later than May 31,

2011 as described more fully in paragraph I. C. below.

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

Section II: Releases

A. Release of Travelers by FDIC-R

Effective simultaneously with the releases granted in Paragraphs A of this Section II, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Travelers, 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 the Bond any claim 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 Travelers

Effective simultaneously with the release granted in Paragraph A of this Section II, Travelers, 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:

a. against the former officers, directors and employees of FirstCity 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, FirstCity, 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 Bank; and

b. 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

Travelers hereby waives all rights of assignment and subrogation provided for in

Conditions and Limitations, Section 7 of the Bond or otherwise.

Section IV: Dismissal of Lawsuit

Upon execution of this Agreement and the payment of the Settlement Funds, the FDIC-R will dismiss the Lawsuit with prejudice, each party to bear its own costs and attorneys' fees.

Section V: 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.**

1. 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 to FDIC-R 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: 5/23/11

BY:
TITLE: Counsel
PRINT NAME: STEVEN E MORRISON

TRAVELERS INSURANCE COMPANY

(b)(6) Date: 5/19/2011

BY:
TITLE: Claim Executive
PRINT NAME: C. Michael Caldwell