

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made by, between, and among the following undersigned parties:

The Federal Deposit Insurance Corporation as Receiver for Montgomery Bank & Trust, Ailey, Georgia ("FDIC-R"), Thigpen Jones Seaton & Co., P.C. ("Thigpen"), and Liberty Insurance Underwriters, Inc. ("Insurer") (individually, the FDIC-R, Thigpen and the Insurer may be referred to herein as "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

Prior to July 6, 2012, Montgomery Bank & Trust, Ailey, Georgia ("Bank") was a depository institution organized and existing under the laws of Georgia;

On July 6, 2012, the Georgia Department of Banking 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 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 its former accountants and auditors arising from the performance, nonperformance, and manner of performance of their respective functions, duties and acts as accountants and/or auditors of the Bank;

The FDIC-R has asserted claims against Thigpen which served at various times as an independent auditor of the Bank. Thigpen denies liability for the claims.

Insurer issued an Accountants Professional Liability Insurance Policy numbered (b)(4) (b)(4) for the period September 1, 2011 to September 1, 2012 ("Policy"), which insured Thigpen according to the terms, provisions, and conditions of the Policy. Thigpen asserted claims for coverage under the Policy. Insurer has reserved its rights to deny coverage under the Policy for claims asserted by FDIC-R against Thigpen.

The undersigned Parties deem it in their best interests to enter into this Agreement to

avoid the uncertainty and expense of 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, on or before February 22, 2017, Thigpen and Insurer, jointly and severally, agree to pay the FDIC-R the sum of TWO MILLION FIFTY THOUSAND AND 00/100 DOLLARS (\$2,050,000.00) ("the Settlement Payment").

B. Thigpen and Insurer shall deliver the Settlement Payment to the FDIC-R by direct wire transfer into the following account:

BANK: Federal Home Loan Bank of New York

ROUTING #: [REDACTED]

FOR CREDIT TO: FDIC National Liquidation Account

ACCOUNT #: [REDACTED]

New York Main Office

101 Park Avenue

New York, NY 10178-0599

212-681-6000

212-441-6890 Fax

OTHER BENEFICIARY INFORMATION (OBI):

1. Fund code: 10448 - Asset No. [REDACTED]

2. Notify: [REDACTED] DRR Investigations (972) 761-8112

3. Montgomery Bank & Trust, Thigpen Settlement

In the event that the Settlement Payment is not delivered to the FDIC-R (or its counsel) by February 22, 2017, interest shall accrue on all unpaid amounts at the rate of 5% per annum from until the date of payment. However, if said Settlement Funds are not delivered to the FDIC-R by February 22, 2017 as a result of the FDIC-R's failure to execute this Agreement, no interest shall accrue until five days after the FDIC-R executes the Agreement.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the

date determined by subsection 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 subsection A above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(2); or

2. Enforce this Agreement, in which event Thigpen, its successors and assigns, and Insurer agree to jurisdiction in United States District Court in Southern District of Georgia and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or

3. Terminate the Agreement and institute an action on the FDIC-R's claims. Thigpen, its successors and assigns, and Insurer agree to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims and waive all objections, defenses, claims or counterclaims, and covenant and agree not to assert any objections, defenses, claims or counterclaims that 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 Settlement Payment (including all accrued interest) in full.

SECTION II: Releases

A. The FDIC-R's Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section II.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges:

1. Thigpen and its members, 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, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of Thigpen's functions, duties and actions as an independent auditor of the Bank.

2. Insurer, 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 Policy. As part of this release of the Insurer, the FDIC-R agrees that any interest it may have under the Policy is extinguished.

B. Thigpen's Release.

Effective simultaneously with the release granted in Section II.A. above, Thigpen, on behalf of itself and its members, employees, officers, directors, agents, representatives, attorneys, successors and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, agents, 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 to the performance, nonperformance, or manner of performance of Thigpen's functions, duties and actions as an independent auditor of the Bank.

C. The Insurer's Release.

Effective simultaneously with the releases granted in Section II.A. above, Insurer, 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 the FDIC-R, and its employees, officers, directors, agents, 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 Policy.

D. 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 Thigpen, its successors and assigns, 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-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.

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 to diminish 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 III: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that Thigpen, its successors and assigns, 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, Thigpen, its successors and assigns, hereby knowingly assign to the FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, or other distributions, or proceeds.

SECTION IV: 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 representatives, successors and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that he, she, or 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.

SECTION V: 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 effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to perform the terms of this Agreement.

B. Thigpen, its successors and assigns, agree to cooperate fully with the FDIC-R in connection with any action required under this Agreement. Such cooperation shall consist of:

1. Appearing as requested by the FDIC-R at reasonable times and places for interviews regarding facts, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank;
2. Testifying as requested by the FDIC-R, without the necessity of a subpoena, in any matter relevant to the Bank, as determined by the FDIC-R;
3. Signing truthful affidavits, regarding any matter, as determined by the

FDIC-R in its sole discretion, to be relevant to the Bank.

SECTION VI: 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 Georgia.

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:

Barbara Slott Pegg
Counsel, Federal Deposit Insurance Corporation
3501 Fairfax Dr., # B-7062
Arlington, VA 22226

(b)(6)

[Redacted]

and

Cynthia H. Hyndman
Robinson Curley & Clayton, P.C.
300 South Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 663-3100

(b)(6)

[Redacted]

If to Thigpen:

Johannes S. Kingma
Carlock, Copeland & Stair, LLP
191 Peachtree Street N.E.
Suite 3600
Atlanta, Georgia 30303
(404) 221-2278

(b)(6) [Redacted]

and

Tracy G. Sharkey
1004 Hillcrest Parkway
Dublin, Georgia 31021
(478) 272-2030

(b)(6) [Redacted]

If to Insurer:

Johannes S. Kingma
Carlock, Copeland & Stair, LLP
191 Peachtree Street N.E.
Suite 3600
Atlanta, Georgia 30303
(404) 221-2278

(b)(6) [Redacted]

and

Raymond Mercado
Liberty International Underwriters
55 Water Street, 23rd Floor
New York, New York 10041
(212) 898-4383

(b)(6) [Redacted]

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.

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 MONTGOMERY BANK &
TRUST**

(b)(6)

Date: 1/23/17

BY: 

TITLE: Counsel

PRINT NAME: B. Slott Peag

Date: 1/24/17

(b)(6)

THIGPEN, JONES, SEATON & CO., P.C.

BY: 

TITLE: CEO

PRINT NAME: Tracy G. Sharkey

LIBERTY INSURANCE UNDERWRITERS, INC.

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

representative(s).

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FEDERAL DEPOSIT INSURANCE CORPORATION
AS RECEIVER FOR MONTGOMERY BANK &
TRUST

(b)(6)

Date: 1/23/17

BY: 

TITLE: Counsel

PRINT NAME: B. Slott Pegg

Date: _____

THIGPEN, JONES, SEATON & CO., P.C.

BY: _____

TITLE: _____

PRINT NAME: _____

LIBERTY INSURANCE UNDERWRITERS, INC.

Date: 1/23/17

BY: [Signature]

TITLE: [Title]

PRINT NAME: [Print Name]