

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the Plaintiff Federal Deposit Insurance Corporation as Receiver for First Bank of Idaho, FSB (“FDIC-R”); and Richard J. Coleman, Shannon B. Conklin, Glenn J. Jansen, and Ronald J. Kaye, Jr. (collectively the “Defendants”); and Federal Insurance Company (“Insurer”) (individually, the FDIC-R, each Defendant, and the Insurer may be referred to herein as a “Party” and collectively as the “Parties”).

### RECITALS

#### WHEREAS:

Prior to April 24, 2009, First Bank of Idaho, FSB (“Bank”) was a depository institution organized and existing under the laws of the United States.

On April 24, 2009, the Office of Thrift Supervision 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 directors, officers, and employees arising from the performance, nonperformance, and manner of performance of their respective functions, duties, and acts as directors, officers, and employees of the Bank.

On July 29, 2014, the FDIC-R filed a complaint for money damages against the Defendants, each of whom served at various times as officers of the Bank. Those claims for damages are now pending in the United States District Court for the District of Idaho in *Federal Deposit Insurance Corporation as Receiver for First Bank of Idaho, FSB v. Coleman, et al.*, No. 1:14-cv-00310-CWD (“Lawsuit”). The Defendants have denied liability in the Lawsuit.

Insurer issued ForeFront Portfolio for Community Banks Policy number  with (b)(4) a Policy Period effective from April 24, 2008 to April 24, 2011 (“Policy”), which includes Directors and Officers Liability Coverage and which insured the directors and officers of the

Bank according to the terms, provisions, and conditions of the Policy. The Defendants sought coverage under the Policy for the claims asserted by the FDIC-R, including but not limited to the Lawsuit. Insurer has provided the Defendants with a defense to the FDIC-R's claims, including but not limited to the Lawsuit, subject to an Interim Funding Agreement and its reservation of rights.

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 the FDIC-R**

A. As an essential covenant and condition to this Agreement, Insurer agrees to pay the FDIC-R the sum of Two Million and Five Hundred Thousand Dollars (\$2,500,000.00) (the "Settlement Payment").

B. Within ten business days after the full execution of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement, and upon receipt of a W-9 which is required before any funding may occur, the Settlement Payment shall be delivered to the FDIC-R by check made out to "FDIC-R First Bank of Idaho, FSB (10055)" and delivered to the FDIC-R's address listed in Section VII.D, below.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection B 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 the Insurer agrees to jurisdiction

in the United States District Court for the District of Idaho 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, move to vacate any dismissal order, to which the Defendants and Insurer agree to consent, and re-institute an action on the FDIC-R's claims. The Defendants and Insurer further 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 the Settlement Payment (including all accrued interest) in full.

### **SECTION II: Stipulation and Dismissal**

Within ten business days after the latter of (1) full execution of this Agreement by all of the Parties and (2) receipt of the Settlement Payment, plus any accrued interest, the FDIC-R shall file in the Lawsuit a stipulation of dismissal with prejudice executed by the attorneys for the FDIC-R and the Defendants 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 and except as provided in Section III.D, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges:

1. The Defendants and their respective heirs, executors, trustees, administrators, 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 the Defendants' respective functions, duties, and actions as officers and/or employees of the Bank including without limitation the causes of action alleged in the Lawsuit.

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.

3. All other former directors, officers, and employees of the Bank (collectively the "Covered Persons"), and their respective heirs, executors, trustees, administrators, 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 the Covered Persons' respective functions, duties, and actions as directors, officers, and/or employees of the Bank including without limitation the causes of action alleged in the Lawsuit. This release shall be null and void as to any Covered Person if such Covered Person asserts any claim against the FDIC-R.

**B. The Defendants' Release.**

Effective simultaneously with the releases granted in Section III.A above, each of the Defendants, on behalf of themselves individually and their respective heirs, executors, trustees, administrators, agents, representatives, attorneys, successors, and assigns hereby release and discharge:

1. 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 to the performance, nonperformance, or manner of performance of the Defendants' respective functions, duties, and actions as officers and/or employees of the Bank including

without limitation the causes of action alleged in the Lawsuit.

2. The 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.

C. The Insurer's Release.

Effective simultaneously with the releases granted in Section III.A and III.B 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:

1. 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.

2. Each of the Defendants, and their respective heirs, executors, administrators, 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.

D. Exceptions from Releases by the 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 Defendants 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 the FDIC-R as successor in interest to the Bank or any person or entity other than the 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.

E. California Civil Code Section 1542.

The Parties agree that the releases provided in this Agreement include and encompass a release and waiver of any and all rights or benefits conferred by the provisions of Section 1542 of the California Civil Code and/or any other federal statute or common law principle of similar effect. The Parties acknowledge that they have been advised by legal counsel and are familiar with the provisions of Section 1542 of the California Civil Code, which provides as follows:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him must have materially affected his or her settlement with the debtor.**

In connection with this waiver, the Parties hereby acknowledge that they are aware that they may hereafter discover claims or facts in addition to, or different from, those which they now know or believe to exist with respect to the subject matter of this Agreement.

#### **SECTION IV: Waiver of Dividends and Proceeds from Litigation**

To the extent, if any, that Defendants are or were shareholders of the Bank or its holding company and by virtue thereof are 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, Defendants 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 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 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 VI: Reasonable Cooperation**

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 conclude the Lawsuit and to otherwise 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, wrongdoing or infirmity by any of them regarding any claim or defense, such liability being expressly denied, and that the Agreement shall not be offered or received in evidence in any lawsuit or administrative proceeding 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 California.

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:

Brian Marshall Simmonds  
Federal Deposit Insurance Corporation  
3501 Fairfax Drive  
Room VS-B-7072  
Arlington, VA 22226-3500  
703-516-5048

(b)(6)





With a copy to:

Steven K. Blackhurst  
Ater Wynne LLP  
Lovejoy Building  
1331 NW Lovejoy St, Ste. 900  
Portland, OR 97209-3280  
503-226-8439

(b)(6)

If to the Defendants:

Edward A. Lawson  
Lawson Laski Clark & Pogue, PLLC  
675 Sun Valley Road, Suite A  
P.O. Box 3310  
Ketchum, ID 83340  
208-725-0055

(b)(6)

If to Insurer:

Allison Rose, Esq.  
Federal Insurance Company  
555 South Flower Street, 4<sup>th</sup> Floor  
Los Angeles, CA 90071  
213-833-5209

(b)(6)

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. Upon FDIC-R's receipt of the Settlement Payment in full, the Tolling Agreement between the FDIC-R and the Defendants dated March 13, 2012, and its amendments, is terminated and superseded by this Agreement. 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 FIRST BANK OF IDAHO, FSB

(b)(6)

Date: 6/18/15

BY

[Redacted Signature Box]

TITLE: Counsel

PRINT NAME: Brian Marshall Simmonds

RICHARD J. COLEMAN

Date: \_\_\_\_\_

SIGNED:

PRINT NAME:

SHANNON B. CONKLIN

Date: \_\_\_\_\_

SIGNED:

PRINT NAME:

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FEDERAL DEPOSIT INSURANCE CORPORATION AS  
RECEIVER FOR FIRST BANK OF IDAHO, FSB

Date: \_\_\_\_\_

BY:

TITLE: Counsel

PRINT NAME: Brian Marshall Simmonds

RICHARD J. COLEMAN

(b)(6)  
Date: 6/5/2015

SIGNED

PRINT NAME: RICHARD J. COLEMAN

SHANNON B. CONKLIN

Date: \_\_\_\_\_

SIGNED:

PRINT NAME:

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FEDERAL DEPOSIT INSURANCE CORPORATION AS  
RECEIVER FOR FIRST BANK OF IDAHO, FSB

Date: \_\_\_\_\_

BY:

TITLE: Counsel

PRINT NAME: Brian Marshall Simmonds

RICHARD J. COLEMAN

Date: \_\_\_\_\_

SIGNED:

PRINT NAME:

SHANNON B. CONKLIN

(b)(6) \_\_\_\_\_  
Date: 6/16/2015

SIGNED

[Redacted Signature]

PRINT NAME: Shannon B. Conklin

GLENN J. JANSEN

Date: 6-4-2015

SIGNED:

[Redacted Signature]

(b)(6)

PRINT NAME: *Glenn J. Jansen*

RONALD J. KAYE, JR.

Date: \_\_\_\_\_

SIGNED:

PRINT NAME:

Chubb & Son, a division of  
FEDERAL INSURANCE COMPANY

Date: \_\_\_\_\_

BY:

TITLE: Assistant Vice President

PRINT NAME: Allison Rose

GLENN J. JANSEN

Date: \_\_\_\_\_

SIGNED:

PRINT NAME:

RONALD J. KAYE, JR.

(b)(6) Date: 6/17/2015

SIGNED:



PRINT NAME: Ronald J. Kaye, Jr.

Chubb & Son, a division of  
FEDERAL INSURANCE COMPANY

Date: \_\_\_\_\_

BY:

TITLE: Assistant Vice President

PRINT NAME: Allison Rose

GLENN J. JANSEN

Date: \_\_\_\_\_

SIGNED:

PRINT NAME: \_\_\_\_\_

RONALD J. KAYE, JR.

Date: \_\_\_\_\_

SIGNED:

PRINT NAME:

Chubb & Son, a division of  
FEDERAL INSURANCE COMPANY

(b)(6) \_\_\_\_\_ Date: \_\_\_\_\_

BY:

TITLE: Assistant Vice President

PRINT NAME: Allison Rose

EXHIBIT A

**STEVEN K. BLACKHURST**, *admitted pro hac vice*

(b)(6) E-mail: [REDACTED]

**LORI IRISH BAUMAN**, *admitted pro hac vice*

(b)(6) E-mail: [REDACTED]

**LORIANNE G. HANSON**, *admitted pro hac vice*

(b)(6) E-mail: [REDACTED]

**ATER WYNNE LLP**

1331 NW Lovejoy Street, Suite 900

Portland, OR 97209-3280

Telephone: (503) 226-1191

Facsimile: (503) 226-0079

**JOSHUA S. EVETT**, ISB #5587

(b)(6) E-mail: [REDACTED]

**ELAM & BURKE, P.A.**

251 East Front Street, Suite 300

PO Box 1539

Boise, ID 83701

Telephone: (208) 343-5454

Facsimile: (208) 384-5844

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF IDAHO**

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
FIRST BANK OF IDAHO,

Plaintiff,

v.

RICHARD J. COLEMAN, SHANNON B.  
CONKLIN, GLENN J. JANSEN and  
RONALD J. KAYE, JR.,

Defendants.

Case No. 1:14-cv-00310-cwd

**STIPULATION OF DIMISSAL WITH  
PREJUDICE**

STIPULATION OF DISMISSAL WITH PREJUDICE - Page 1



EXHIBIT A

STIPULATION

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Plaintiff, Federal Deposit Insurance Corporation as Receiver for First Bank of Idaho, Ketchum, Idaho, and Defendants, Richard J. Coleman, Shannon B. Conklin, Glenn J. Jansen, and Ronald J. Kaye, Jr., by and through their undersigned attorneys, hereby stipulate to the dismissal of this action and all claims asserted in it, with prejudice and without costs or fees to any party.

Respectfully submitted this \_\_\_ day of June, 2015.

**ATER WYNNE LLP**

s/ Steven K. Blackhurst  
Steven K. Blackhurst, OSB No. 730320  
Admitted Pro Hac Vice  
1331 NW Lovejoy Street, Suite 900  
Portland, OR 97209-3280  
Tel: (503) 226-1191  
Fax: (503) 226-0079

(b)(6) 

**ELAM & BURKE, P.A.**


s/ Joshua S. Evett  
Joshua S. Evett, ISB #5587  
251 East Front Street, Suite 300  
PO Box 1539  
Boise, ID 83701  
Telephone: (208) 343-5454  
Facsimile: (208) 384-5844

(b)(6) 

*Attorneys for Plaintiff Federal Deposit  
Insurance Corporation as Receiver for  
First Bank of Idaho*

**LAWSON LASKI CLARK & POGUE, PLLC**

s/ Edward Lawson  
Edward Lawson  
Erin F. Clark  
Heather O'Leary  
675 Sun Valley Road  
Suite A  
PO Box 3310  
Ketchum, ID 83340  
Tel: (208) 725-0055

 (b)(6)

*Attorneys for Defendants  
Richard J. Coleman, Shannon Bakker,  
Conklin, Glenn Jansen and Ronald J. Kaye,  
Jr.*

EXHIBIT A

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following persons:

(b)(6) \_\_\_\_\_ Edward Lawson  
\_\_\_\_\_

(b)(6) \_\_\_\_\_ Erin Clark  
\_\_\_\_\_

(b)(6) \_\_\_\_\_ Heather O'Leary  
\_\_\_\_\_

Lawson Laski Clark & Pogue, PLLC  
675 Sun Valley Road, Suite A  
PO Box 3310  
Ketchum, ID 83340

Attorneys for Defendants

DATED: May \_\_\_\_, 2015

*s/ Steven K. Blackhurst*  
Steven K. Blackhurst, admitted *pro hac vice*  
Attorney for Plaintiff  
Federal Deposit Insurance Corporation as Receiver  
for First Bank of Idaho

CERTIFICATE OF SERVICE