

**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 Superior Bank ("FDIC-R"), and Charles Stanley Bailey ("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 April 15, 2011, Superior Bank ("Bank") was a depository institution organized and existing under the laws of the United States.

On April 15, 2011, 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, 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 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 April 9, 2014, the FDIC-R filed a complaint for money damages against the Settling Defendant, who served at various times as a director and/or officer of the Bank, and other officers and directors of the Bank. Those claims for damages are now pending in the United States District Court for the Middle District of Florida in *FDIC as Receiver for Superior Bank. v. Hall, et al.*, Case No. 8:14-cv-00834-SCB-EAJ (M.D. Fla.) ("D&O Action"). In the D&O

Action, the FDIC-R seeks more than \$36 million in damages from the alleged wrongful acts of Settling Defendant, individually and jointly with the other defendant officers and directors.

In reaching this Agreement, the Parties have taken into consideration the factual allegations underlying the FDIC-R's claims in the D&O Action, the defenses asserted by the Settling Defendant, the amount of the FDIC-R's alleged damages in the D&O Action, the evidence in the case, the potential verdict range in the D&O Action, and the risks of going to trial.

This Agreement is the product of arms-length negotiations between the Parties, each represented by counsel.

Federal Insurance Company, a member insurer of the Chubb Group of Insurance Companies ("Chubb"), issued Financial Institution Portfolio Policy No. [redacted] ("Chubb Policy"), which insures the directors and officers of the Bank according to the terms, provisions and conditions of the Chubb Policy. Continental Casualty Company ("Continental") issued an Excess Insurance Policy No. [redacted] ("Continental Policy"), which provides excess insurance coverage to the directors and officers of the Bank according to the terms, provisions and conditions of the Continental Policy. Catlin Insurance Company, Inc. ("Catlin") issued an Excess Insurance Policy No. [redacted] ("Catlin Policy"), which provides excess insurance coverage to the directors and officers of the Bank according to the terms, provisions and conditions of the Catlin Policy. The Settling Defendant has made a claim under the Chubb Policy, the Continental Policy, and the Catlin Policy relating to the claims asserted in the D&O Action. Chubb paid \$1 million for the defense of the D&O Action, but has refused to continue to pay additional defense costs or any other sums under the Chubb Policy. Continental and Catlin

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have denied coverage for the D&O Action and refuse to pay any sums under their respective policies.

Chubb, Continental, and Catlin have been provided with numerous opportunities to effectuate a settlement of the FDIC-R's claims against the Settling Defendant, but they have refused to contribute to any settlement or otherwise protect the interests of the Settling Defendant.

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 other provisions 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 to the FDIC-R the sum of \$1,250,000.00 as follows: (i) the Settling Defendant shall pay to the FDIC-R the sum of \$1,000,000.00 upon execution of this Agreement, and shall pay to the FDIC-R that sum on or before February 1, 2017 (the "First Settlement Payment"); and (ii) on or before March 6, 2017, the Settling Defendant shall pay to the FDIC-R the sum of \$250,000.00 (the "Second Settlement Payment"). The First Settlement Payment and the Second Settlement Payment shall collectively be referred to as the "Settlement Payments."

B. The Settlement Payments to the FDIC-R shall be made by direct wire transfer into an account designated by the FDIC-R by written notice to the attorney for the Settling Defendant.

C. Subject to and without waiving the requirements set forth in Section I.A above, if the FDIC-R does not receive either of the Settlement Payments in full on or before the dates 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 either of the Settlement Payments to:

1. Extend the period of time for a 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 26 U.S.C. § 6621(a)(3); 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 Florida 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 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 a Settlement Payment or acceptance of a portion of a 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 either of the Settlement Payments (including all accrued interest) in full.

**SECTION II: Stipulated Judgment in Favor of the FDIC-R and Dismissal of D&O Action against Settling Defendant**

A. Unless the Settling Defendant has been fully released pursuant to paragraph IX, B., within 60 business days of the First Settlement Payment, the FDIC-R and the Settling Defendant will file a final and binding stipulated judgment in the D&O Action in favor of the FDIC-R and against the Settling Defendant in the form attached hereto as Exhibit A in the amount of \$12,077,000.00 ("Stipulated Judgment"). The Stipulated Judgment will dismiss the claims asserted in the D&O Action against the Settling Defendant. The Stipulated Judgment shall bear post-judgment interest (beginning from the date judgment is entered until payment) pursuant to 28 U.S.C. § 1961(a). Simultaneously with the filing of the Stipulated Judgment, the FDIC-R will file a motion to stay execution of the Stipulated Judgment pending resolution of the coverage issues in the form of Exhibit B hereto.

B. This Agreement is contingent upon the Court's entry of the Stipulated Judgment. If for any reason the Court refuses or fails to enter the Stipulated Judgment, this Agreement is null and void, and any sums paid by Settling Defendant shall be returned to him.

**SECTION III: Assignments by the Settling Defendant and Application of the Settlement Payments**

A. The Settling Defendant assigns to the FDIC-R all of his rights, claims, and causes of action against Chubb and its agents, brokers, employees, officers and all other persons or entities relating to or arising out of any applicable insurance policy or policies, the D&O Action, and the Stipulated Judgment including, but not limited to, all statutory rights, contractual rights, and rights arising in tort or otherwise, relating to Chubb's duties to the Settling Defendant with respect to the D&O Action, specifically including without limitation the duty to settle and pay for the settlement of the D&O Action on behalf of the Settling Defendant. The assignment in this Section III.A. will be effective immediately following the entry of the Stipulated Judgment.

B. The Settling Defendant assigns to the FDIC-R all of his rights, claims, and causes of action against Continental and its agents, brokers, employees, officers and all other persons or entities relating to or arising out of any applicable insurance policy or policies, the D&O Action, and the Stipulated Judgment including, but not limited to, all statutory rights, contractual rights, and rights arising in tort or otherwise, relating to Continental's duties to the Settling Defendant with respect to the D&O Action, specifically including without limitation the duty to settle and pay for the settlement of the D&O Action on behalf of the Settling Defendant. The assignment in Section III.B. will be effective immediately entry of the Stipulated Judgment.

C. The Settling Defendant assigns to the FDIC-R all of his rights, claims, and causes of action against Catlin and its agents, brokers, employees, officers and all other persons or entities relating to or arising out of any applicable insurance policy or policies, the D&O Action, and the Stipulated Judgment including, but not limited to, all statutory rights, contractual rights, and rights arising in tort or otherwise, relating to Catlin's duties to the Settling Defendant with respect to the D&O Action, specifically including without limitation the duty to settle and pay for the settlement of the D&O Action on behalf of the Settling Defendant. The assignment in Section III.C. will be effective immediately entry of the Stipulated Judgment.

D. The FDIC-R shall apply the Settlement Payments to the Stipulated Judgment and similarly apply all funds received by the FDIC-R as a result of the Settling Defendant's assignment of rights, claims, and causes of action, and the FDIC-R's efforts to collect upon the rights, claims, and causes of action of the Settling Defendant against Chubb, Continental, and/or Catlin. The FDIC-R may execute on the Stipulated Judgment to the extent necessary to realize the full value of the Settling Defendant's rights against Chubb, Continental, and/or Catlin assigned to the FDIC-R hereunder.

E. The FDIC-R and its counsel shall have the sole discretion on whether to pursue litigation against Chubb, Continental, and/or Catlin, and the choice of any cause of action to be asserted. The FDIC-R 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-R and its counsel may, in its sole discretion, determine whether or not to appeal an adverse decision, or to defend any appeal. By accepting the Settling Defendant's assignments, the FDIC-R agrees to bear one hundred percent (100%) of its own costs of litigation or settlement that the FDIC-R may elect pursuant to said assignments, including its own attorney fees and expenses; provided, however, that Settling Defendant shall bear all responsibility for costs associated with his compliance with Section VIII, including his own attorneys' fees and expenses.

F. The Settling Defendant, by this Agreement, assigns one hundred percent (100%) of his interest to the FDIC-R in any damages recovered by the FDIC-R in any action brought pursuant to this Agreement against Chubb, Continental, and/or Catlin.

#### **SECTION IV: No Release of Liability**

A. The Parties agree that it is neither the intention of the Settling Defendant nor the FDIC-R to release or discharge Chubb, Continental, and Catlin from any liability to the Settling Defendant or to impair or limit the FDIC-R's rights or claims in connection with the Chubb Policy, the Continental Policy, and the Catlin Policy.

B. The Settling Defendant is not released or discharged from liability. However, after application of the Settlement Payments, the FDIC-R agrees to first seek satisfaction of the Stipulated Judgment from Chubb, Continental, and/or Catlin. If the FDIC-R (i) recovers an amount equal to, or greater than, the remaining amount of the Stipulated Judgment, plus interest and costs, (ii) prevails in whole or in part in any subsequent lawsuit or claim against Chubb,

Continental, and/or Catlin, (iii) loses, withdraws, dismisses or elects not to pursue the litigation against Chubb, Continental, and/or Catlin, and/or (iv) resolves its differences with Chubb, Continental, and/or Catlin; and the Settling Defendant faithfully discharges the terms, conditions, and warranties contained in this Agreement and fully cooperates with the FDIC-R as described herein, then the FDIC-R and its successors, assignees, agents, and any other person or entity acting on the FDIC-R's behalf, will covenant and agree not to cause the filing of any lawsuit, process, petition, or other legal proceeding in execution upon the Stipulated Judgment from the Settling Defendant.

C. The FDIC-R 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.

D. 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.



E. 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 V: Release of the FDIC-R**

The Settling Defendant, individually, and on behalf of his respective heirs, executors, trustees, administrators, agents, representatives, attorneys, 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 to the performance, nonperformance, or manner of performance of the Settling Defendant's respective functions, duties, and actions as an officer and/or director of the Bank, including without limitation the causes of action alleged in the D&O Action.

**SECTION VI: 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 Office of Thrift Supervision (or its successors), the Office of the Comptroller of the

Currency, 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, and proceeds.

**SECTION VII: 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, her, or its counsel.

C. Financial Disclosure Information. The Settling Defendant expressly acknowledges that, in determining to settle the claims herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of financial information, including, but not limited to, personal financial statements and related materials, submitted by the Settling Defendant to the FDIC-R ("Financial Information"). The Settling Defendant affirms that his Financial Information was true and accurate on the date such information was delivered to the FDIC-R and there have been no material changes to the Settling Defendant's Financial Information since that date up until the date of this Agreement. The FDIC-R has no obligation to independently verify the completeness or accuracy of that Financial Information. If, in his Financial Information, the Settling Defendant has failed to disclose any material interest, legal, equitable, or beneficial, in

any asset, the FDIC-R in its sole discretion, may exercise one or more or all of the following remedies: (i) the FDIC-R may declare this Agreement null and void; (ii) the FDIC-R may retain the Settlement Payment(s); (iii) the FDIC may retain the Stipulated Judgment; and (iv) the FDIC-R may sue the Settling Defendant for damages, an injunction, and specific performance for the breach of this Agreement. In addition to the above, if the FDIC-R establishes via a final adjudication that Settling Defendant failed to disclose any material interest, legal, equitable, or beneficial, in any asset, Settling Defendant agrees to cooperate fully with the FDIC-R to provide updated financial information and to pay to the FDIC-R the lesser of (i) the value of Settling Defendant's undisclosed material interest in such asset(s); or (ii) the amount of unpaid damages alleged against Settling Defendant. The Settling Defendant also agrees that if, in his Financial Information, he has failed to disclose any material interest, legal, equitable, or beneficial, in any asset, then the Settling Defendant consents to the reinstatement of the FDIC-R's claims and waives any statute of limitations that would bar any of the FDIC-R's claims against him.

D. No Prior Transfer of Claims. The Settling Defendant warrants and represents that he has not assigned, sold, or otherwise transferred or disposed of, and will not assign, sell, or otherwise transfer or dispose of, any interest in the Chubb Policy, the Continental Policy and the Catlin Policy, or the Settling Defendant's respective rights, claims, and causes of action against Chubb, Continental, and Catlin and their agents, brokers, employees, officers and all other persons or entities relating to or arising out of any applicable insurance policy or policies, the D&O Action or the Stipulated Judgment, including, but not limited to, all statutory rights, contractual rights, and rights arising in tort or otherwise, relating to Chubb's, Continental's and/or Catlin's duties to the Settling Defendants with respect to the D&O Action, specifically including without limitation the duty to settle and pay for the settlement of the D&O Action on

behalf of the Settling Defendant. The FDIC-R warrants and represents that it (i) owns 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 Settling Defendant's conduct as an officer and/or director of the Bank, and (ii) has not assigned, sold, or otherwise transferred or disposed of, and other than as contemplated by this Agreement, will not assign, sell, or otherwise transfer or dispose of, any of such claims, demands, obligations, damages, actions, and causes of action.

**SECTION VIII: 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 conclude the D&O Action, and to otherwise perform the terms of this Agreement.

B. The Settling Defendant agrees to cooperate fully with the FDIC-R in connection with any action required under this Agreement. Such cooperation shall consist of:

1. producing all documents requested by the FDIC-R, without the necessity of a subpoena, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank;

2. 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;

3. 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 in its sole discretion; and

4. signing truthful affidavits regarding any matter, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank.

C. The Settling Defendant will, upon request of the FDIC-R or its attorneys, provide reasonable assistance in all efforts to collect the Stipulated Judgment and any other amounts based on the assigned rights, claims, and causes of action, including, but not limited to, responding to discovery requests, providing access to relevant non-privileged documents, giving truthful affidavits and deposition testimony at reasonable times and places, and testifying truthfully at trial. This Agreement shall not limit or affect the testimony which the Settling Defendant gives in any proceeding and it is understood and agreed that the Settling Defendant will also refrain from taking any actions that will prejudice the FDIC-R's ability to collect the Stipulated Judgment from any responsible party, provided however, that the Settling Defendant will give truthful testimony.

D. The FDIC-R shall not be obligated to pay fees or costs incurred by counsel representing the Settling Defendant, as personal counsel, should he choose to engage such counsel in responding to discovery requests or agreeing to depositions, mediations, or trial.

**SECTION IX: Terms in the event of Global Settlement of the D&O Action**

A. On January 26, 2017, all Defendants in the D&O Action placed on the record with Court, Judge Amanda Sansone presiding, the material terms of a settlement agreement ("On-Record Settlement"). The On-Record Settlement terms included agreeing to execute a written settlement agreement by noon on February 6, 2017.

B. In the event that the terms of the On-Record Settlement are fully performed, including the execution of a written settlement and including the payments required therein, the following term shall be deemed to be part of this Agreement: Effective as of the date that (i) all terms of the On-Record Settlement have been performed and (ii) all terms of this Agreement

have been performed by the Settling Defendant, including the payments and cooperation required under this Agreement by the Settling Defendant, the Settling Defendant will be released and discharged 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 Settling Defendant's respective functions, duties, and actions as an officer and/or director of the Bank, including without limitation the causes of action alleged in the D&O Action.

C. In the event that any of the terms of the On-Record Settlement are not performed, this Section IX shall automatically be null and void as if it were not and never was part of this Agreement, and such event shall not be construed as an amendment, modification, or waiver of the Agreement under Section X. D. requiring a writing signed the Parties or by their respective authorized attorney(s).

#### **SECTION X: Other Matters**

A. Compromise of Claims. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed Claims.

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:

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

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and

Patrick J. Richard  
Nössaman LLP  
50 California Street, 34<sup>th</sup> Floor  
San Francisco, California 94111

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If to the Settling Defendant:

C. Stanley Bailey  
P.O. Box 465  
Baileyton, AL 35019

and

G. Douglas Jones  
Jones & Hawley, PC  
2001 Park Place North, Suite 830  
Birmingham, AL 35203

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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 SUPERIOR BANK, N.A.

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Date: 02/01/2017

BY:

[Redacted Signature]

TITLE: Counsel

PRINT NAME: Gregory K. Conway, Esq.

Date: 1/31/17

(b)(6)

CHARLES STANLEY BAILEY

[Redacted Signature]