

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”), John Figlewski, Rick Gardner, George Hall, Rick Halloran, Shannon Maddox, Kenneth Pomeroy, C. Marvin Scott, James Kent, Jr., Peter Lowe, Dewey Mitchell, and Robert Parrish (collectively, the “Settling Defendants”), and Federal Insurance Company, Continental Casualty Company, and Catlin Insurance Company, Inc. (collectively, the “Insurers”) (individually, the FDIC-R, the Settling Defendants, and the Insurers 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 Defendants, each of whom served at various times as a director and/or officer 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-TGW (M.D. Fla.) (“D&O Action”). The Settling Defendants have denied liability in the D&O Action.

During the pendency of the D&O Action, Settling Defendant Kenneth Pomeroy filed for bankruptcy protection. The FDIC-R continued its pursuit of its claims against Mr. Pomeroy solely for the purpose of attempting to liquidate the claims for the purpose of seeking recovery from the Insurers. The FDIC-R did not seek to hold Mr. Pomeroy personally liable. Mr. Pomeroy is included in the Parties released herein.

Federal Insurance Company (“Federal”) issued Financial Institution Portfolio Policy No.

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_____ (“Federal Policy”), which insures the directors and officers of the Bank according to the terms, provisions and conditions of the Federal Policy; Continental Casualty Company

(“Continental”) issued an Excess Insurance Policy No. _____ (“Continental Policy”), which

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provides excess insurance coverage to the directors and officers of the Bank according to the terms, provisions and conditions of the Continental Policy; and Catlin Insurance Company, Inc.

(“Catlin”) issued an Excess Insurance Policy No. _____ (“Catlin Policy”), which

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provides excess insurance coverage to the directors and officers of the Bank according to the terms, provisions and conditions of the Catlin Policy (the Federal Policy, the Continental Policy and the Catlin Policy, collectively, the “Policies”). The Settling Defendants have made claims for coverage under the Federal Policy, the Continental Policy, and the Catlin Policy relating to the claims asserted in the D&O Action. Federal paid \$1 million for the defense of the D&O

Action and other claims by certain regulatory agencies, but denied coverage for additional amounts incurred in those claims. Continental and Catlin have denied coverage for the D&O Action.

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 FDIC-R

A. As an essential covenant and condition to this Agreement, on or before March 9, 2017, the Settling Defendants and the Insurers, collectively, agree to pay to the FDIC-R the sum of \$7,500,000.00 (the "Settlement Payment"). Federal agrees to pay to the FDIC-R \$2,830,000.00 from its insurance policy. Continental agrees to pay to the FDIC-R \$1,000,000.00 from its insurance policy. Catlin agrees to pay to the FDIC-R \$1,000,000.00 from its insurance policy. The Settling Defendants, jointly and severally, shall pay to the FDIC-R \$2,670,000.00. Each Insurer is obligated to pay only the amount designated for each Insurer above and is not obligated to pay any other portion of the Settlement Payment.

B. The Settlement Payment to the FDIC-R shall be made by direct wire transfer into an account designated by the FDIC-R by written notice to the attorneys for the Settling Defendants and the Insurers, such notice to be provided not less than 10 business days before payment is due. In the event that the FDIC-R does not receive the Settlement Payment by the date determined in Section I.A. above, the Party who failed to make its/their respective payment shall pay interest to the FDIC-R on all unpaid amounts at the rate of 5 percent per annum accruing from the date determined in Section I.A. above until the date of payment.

C. Subject to and without waiving the requirements set forth in Section I.A above, if the FDIC-R does not receive the Settlement Payment in full on or before the date 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 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 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 Party or Parties against which such enforcement action is brought agree 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, return all funds tendered pursuant to the Agreement, and request to reinstate the D&O Action to the court's trial calendar, to which the Settling Defendants and the Insurers agree. The Settling Defendants and the Insurers further agree to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims that did not exist or was otherwise unavailable as of the date this Agreement was fully executed, and waive all objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed, 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 in full (including all accrued interest).

SECTION II: Stipulation and Dismissal

Within ten (10) business days after receipt of the Settlement Payment in full (including all accrued interest) by the FDIC-R, the FDIC-R shall file a stipulation of dismissal with prejudice, executed by the attorneys for the Settling Defendants and the FDIC-R with each Party to bear his own attorneys' fees and costs, in the form attached hereto as Exhibit A, in the D&O Action.

SECTION III: Releases

A. The FDIC-R's Releases.

1. Upon receipt of the Settlement Payment in full as provided in Section I, and except as provided in Section III.D, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Settling 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 Bank or to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties, and actions as officers and/or directors of the Bank, including without limitation the causes of action alleged in the D&O Action.

2. Upon receipt of the Settlement Payment in full as provided in Section I, and except as provided in Section III.D, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Insurers, their respective parents, subsidiaries, affiliates, 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 Federal Policy, Continental Policy and/or Catlin Policy, including but not limited to any extra-contractual claims for bad faith or failure to settle and any other claims arising from or relating to the Insurers' handling of matters under those insurance policies. As part of this release of the Insurers, the FDIC-R agrees that any interest it may have under the Federal Policy, Continental Policy and Catlin Policy is extinguished, including but not limited to any rights or interests under the Policies assigned to the FDIC-R by C. Stanley Bailey or by any other person or entity.

3. Upon receipt of the Settlement Payment in full as provided in Section I, and except as provided in Section III.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges 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 D&O Action. 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 Settling Defendants' Release.

Effective simultaneously with the release granted in Section III.A above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, attorneys, successors and assigns, hereby release and discharge 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 Defendants' respective functions, duties, and actions as officers and/or directors of the Bank, including without limitation the causes of action alleged in the D&O Action.

C. The Insurers' Release.

Effective simultaneously with the release granted in Section III.A above, the Insurers, for themselves and their respective successors and assigns, and on behalf of each of their respective parents, subsidiaries, affiliates and reinsurers, and their respective 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 Federal Policy, Continental Policy and Catlin 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 the Settling 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 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 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.

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 IV: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that the Settling 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, the Settling Defendants hereby

knowingly assign to the FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, 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 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 its counsel.

C. Financial Disclosure Information. Each Settling Defendant expressly acknowledges that, in determining to settle the claims released herein, the FDIC-R asserts that it has reasonably and justifiably relied upon the accuracy of financial information, including, but not limited to, personal financial statements and related materials, submitted by each Settling Defendant to the FDIC-R ("Financial Information"). A settling Defendant may elect to submit updated Financial Information within two weeks of the date of this Agreement. Each Settling Defendant herein affirms that his Financial Information was true and accurate on the date such information was delivered to the FDIC-R. If a Settling Defendant does not elect to submit updated Financial Information, then that Settling Defendant herein affirms that there have been no material changes to his net worth as stated in the 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 the Financial Information. In addition to the above, if the FDIC-R

establishes via a final adjudication in an appropriate judicial forum that a Settling Defendant failed to disclose any material interest, legal, equitable, or beneficial, in any asset, that 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 the Settling Defendant's undisclosed material interest in such asset(s); or (ii) the amount of unpaid damages alleged against the Settling Defendant.

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 D&O Action, 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 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 Florida.

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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[Redacted]

and

Patrick J. Richard
Nossaman LLP
50 California Street, 34th Floor
San Francisco, California 94111

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[Redacted]

If to the Settling Defendants:

Messrs. Figlewski, Gardner, Hall, Halloran, Maddox, Pomeroy, and Scott

William C. Athanas, Esquire
Waller Lansden Dortch & Davis, LLP
1901 Sixth Avenue North, Suite 1400
Birmingham, AL 35203
(205) 226-5703

(b)(6)

[Redacted]

Messrs. Kent, Lowe, and Mitchell

John F. Lauro and Michael G. Califano
Lauro Law Firm
101 East Kennedy Boulevard, Suite 3100
Tampa, Florida 33602

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[Redacted]

Mr. Parrish

Daniel E. Manausa, Esquire
Manausa Law Firm, P.A.
1701 Hermitage Blvd, Suite 100
Tallahassee, FL 32308

If to the Insurers:

If to Federal Insurance Company:

Claims Department
150 Allen Road, Suite 101
Basking Ridge, NJ 070920

and

Deanna M. Beacham, Esq.
Vice President, North American
Financial Lines Claims
150 Allen Road, Suite 101
Basking Ridge, NJ 070920

with copies (that shall not constitute notice)
to:

David Newmann, Esq.
Hogan Lovells LLP
1835 Market Street, 29th Floor
Philadelphia, PA 19103
Fax: (267) 675-4601

Email: (b)(6)

If to Catlin Insurance Company, Inc.:

Matthew Abreu, Esq.
Senior Claims Specialist
Professional Lines Claims
XL Catlin
Brookfield Place
200 Liberty Street, 22nd Floor
New York, NY 10281

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with copies (that shall not constitute
notice) to:

Ivan J. Dolowich, Esq.
Kaufman Dolowich & Voluck, LLP
135 Crossways Park Drive, Suite 201
Woodbury, NY 11797

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If to Continental Casualty Company:

Jennifer B. Groszek
Claims Consultant
CNA Specialty Claim
333 S Wabash, 38th Floor
Chicago, Illinois 60604

with copies (that shall not constitute notice)
to:

John E. Howell and William E. Smith
Wiley Rein LLP
1776 K Street NW
Washington, D.C. 20006

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

(b)(6)

Date: 02-09-2017

BY:



TITLE: Counsel

PRINT NAME: Gregory K. Conway

Date: _____

JOHN FIGLEWSKI

Date: _____

RICK GARDNER

Date: _____

GEORGE HALL

Date: _____

RICK HALLORAN

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FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR SUPERIOR BANK

Date:

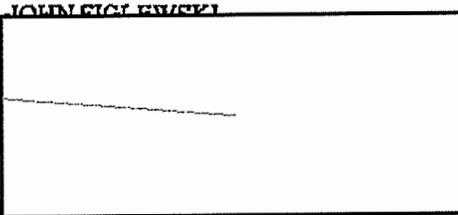
BY: _____

TITLE: Counsel

PRINT NAME: Gregory K. Conway

Date: 2/8/17

(b)(6)



Date: _____

RICK VARDNER

Date: _____

GEORGE HALL

Date: _____

RICK HALLORAN

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

Date: _____

BY: _____

TITLE: Counsel

PRINT NAME: Gregory K. Conway

Date: _____

JOHN FIGLEWSKI

Date: 2/9/17

RICK GARDNER

(b)(6)



Date: _____

GEORGE HALL

Date: _____

RICK HALLORAN

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

Date: _____ BY: _____

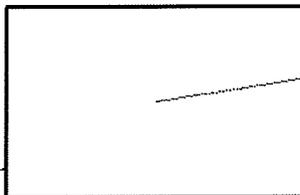
TITLE: Counsel

PRINT NAME: Gregory K. Conway

Date: _____ JOHN FIGLEWSKI

Date: _____ RICK GARDNER

Date: February 9, 2017 GEORGE HALL



(b)(6)

Date: _____ RICK HALLORAN

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

Date: _____

BY: _____

TITLE: Counsel

PRINT NAME: Gregory K. Conway

Date: _____

JOHN FIGLEWSKI

Date: _____

RICK GARDNER

Date: _____

GEORGE HALL

Date: 2/09/17

RICK HALLORAN



(b)(6)

Date: 2/9/17

SHANNON MADDOX

(b)(6)



Date:

KENNETH POMEROY

Date:

C. MARVIN SCOTT

Date:

JAMES KENT, JR.

Date:

PETER LOWE

Date:

DEWEY MITCHELL

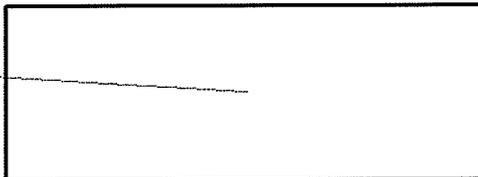
Date:

ROBERT PARRISH

Date: SHANNON MADDOX

Date: 2-4-17 KENNETH POMEROY

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Date: C. MARVIN SCOTT

Date: JAMES KENT, JR.

Date: PETER LOWE

Date: DEWEY MITCHELL

Date: ROBERT PARRISH

Date: _____

SHANNON MADDOX

Date: _____

KENNETH POMEROY

Date: 2/9/17

C. MARVIN SCOTT



Date: _____

JAMES KENT, JR.

Date: _____

PETER LOWE

Date: _____

DEWEY MITCHELL

Date: _____

ROBERT PARRISH

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Date: _____

SHANNON MADDOX

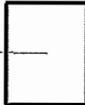
Date: _____

KENNETH POMEROY

Date: _____

C. MARVIN SCOTT

(b)(6)



Date: 2-9-2017

JAMES KENT, JR.

(b)(6)



Date: _____

PETER LOWE

Date: _____

DEWEY MITCHELL

Date: _____

ROBERT PARRISH

Date: _____

SHANNON MADDOX

Date: _____

KENNETH POMEROY

Date: _____

C. MARVIN SCOTT

Date: _____

JAMES KENT, JR.

Date: 2-9-17

PETER LOWE

(b)(6)



Date: _____

DEWEY MITCHELL

Date: _____

ROBERT PARRISH

Date: SHANNON MADDOX

Date: KENNETH POMEROY

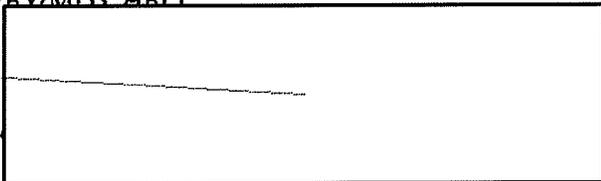
Date: C. MARVIN SCOTT

Date: JAMES KENT, JR.

Date: PETER LOWE

Date: 2-8-17 DEWEY MITCHELL

(b)(6)



Date: ROBERT PARRISH

Date: _____ SHANNON MADDOX

Date: _____ KENNETH POMEROY

Date: _____ C. MARVIN SCOTT

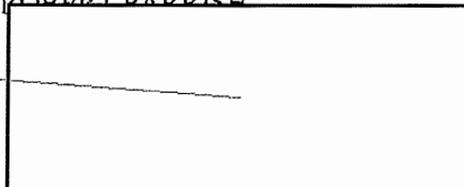
Date: _____ JAMES KENT, JR.

Date: _____ PETER LOWE

Date: _____ DEWEY MITCHELL

Date: 2/8/17 _____ ROBERT PARRISH

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FEDERAL INSURANCE COMPANY

(b)(6)

Date: *February 9, 2017*

BY



TITLE: *Assistant Vice President*

PRINT NAME: *HUGH D SPEARS*

CONTINENTAL CASUALTY COMPANY

Date:

BY:

TITLE:

PRINT NAME:

CATLIN INSURANCE COMPANY

Date: _____

BY:

TITLE:

PRINT NAME:

FEDERAL INSURANCE COMPANY

Date:

BY:

TITLE:

PRINT NAME:

CONTINENTAL CASUALTY COMPANY

Date:

BY:



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TITLE:

PRINT NAME:

CATLIN INSURANCE COMPANY

Date:

BY:

TITLE:

PRINT NAME:

FEDERAL INSURANCE COMPANY

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

CONTINENTAL CASUALTY COMPANY

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

CATLIN INSURANCE COMPANY

(b)(6)

Date: 2/9/17

BY:

TITLE: Senior Claims Specialist / XL CATUN

PRINT NAME: Matthew Abreu