

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 Integrity Bank, Alpharetta, Georgia (“FDIC-R”), and Steven M. Skow, Alan K. Arnold, Douglas G. Ballard, Clinton M. Day, Joseph J. Ernest, Donald C. Hartsfield, Jack S. Murphy, and Gerald O. Reynolds (collectively the “Settling Defendants”), (individually, the FDIC-R and the Settling Defendants may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to August 29, 2008, Integrity Bank (“Bank”) was a depository institution organized and existing under the laws of Georgia.

On August 29, 2008, the Georgia Department of Banking and Finance 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 January 14, 2011, 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 Northern District of Georgia in *FDIC-R v. Skow, et al.*, Case Number 1:11-cv-00111-SCJ (“D&O Action”). The Settling Defendants have denied liability in the D&O Action.

The Settling Defendants were issued a director and officer liability policy (“Policy”), which insured the directors and officers of the Bank according to the terms, provisions, and conditions of the Policy. The Settling Defendants asserted claims for coverage under the Policy.

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 thirty (30) calendar days following the date all Parties execute this Agreement, the sum of three million seven hundred thousand dollars (\$3.7 million) (“the Settlement Payment”) shall be paid by or on behalf of the Settling Defendants to the FDIC-R.

B. The Settling Defendants or their insurer shall deliver the Settlement Payment to the FDIC-R by direct wire transfer or check.

If by direct wire transfer, into the account below:

“Federal Home Loan Bank of New York, Routing No. 026-009-739, for credit to FDIC National Receivership Account, Account No. 1076010, “OBI” Line: Receiver No. 10012; ALIS 100021096, Attn: Steven C Morrison; 703-516-5029; Professional Liability lawsuit (37100); DIF Fund; D&O lawsuit settlement.”

If by check, via overnight delivery to:

Steven C. Morrison, Counsel
Professional Liability Unit, FDIC
3501 N. Fairfax Drive, Suite B7024
Arlington, Virginia 22226

FDIC-R's Tax ID number is 58-2505656.

In the event that the Settlement Payment is not delivered to the FDIC-R by the due date, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the due date until the date of payment.

C. If the FDIC-R does not receive the Settlement Payment 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 (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)(3); or
2. Enforce this Agreement, in which event the Settling Defendants agree to jurisdiction in United States District Court in the Northern 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, move to vacate any dismissal order, to which the Settling Defendants agree to consent, and continue the D&O Action. The Settling Defendants further agree to waive any defense based on any statute of limitations defense that would bar any of the FDIC-R's claims and waive all objections, defenses, claims or counterclaims based on or arising out of this Agreement, 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).

SECTION II: Stipulation and Dismissal

Within ten (10) business days after the latter of (i) full execution of this Agreement by all of the Parties, and (ii) receipt of the Settlement Payment, plus any accrued interest, the FDIC-R shall file a stipulation of dismissal with prejudice, executed by the attorneys for all Parties hereto, in the form attached hereto as Exhibit A, in the D&O Action.

SECTION III: Releases

A. The FDIC-R's Releases.

Upon receipt of the Settlement Payment and except as provided in Section III.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Settling Defendants and their respective heirs, executors, trustees, insurers, administrators, 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, belonging to the FDIC-R, that arise from, or relate 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.

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, insurers, 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. 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 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 IV: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that Settling Defendants are or were shareholders of the Bank's 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, 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, 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, insurers, 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.

C. Financial Disclosure Representation. Each Settling Defendant that submitted financial information to the FDIC herein affirms that his/her financial information was true and accurate as of the date of its submission to the FDIC. Each Settling Defendant expressly acknowledges that, in determining to settle the claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by the Settling Defendants. The FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information.

SECTION VI: 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 and conclude the D&O Action.

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 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:

Steven C. Morrison
Counsel
Federal Deposit Insurance Corporation
3501 Fairfax Dr.
Arlington VA 22226
Phone: (703) 516-5029
stemorrison@fdic.gov

Kyle Keegan
Keegan, DeNicola, Kiesel, Bagwell
Juban & Lowe, LLC
5555 Hilton Avenue, Suite 205
Baton Rouge, Louisiana 70808
Phone: (225) 364-3600

kmk@keegandenicola.com

If to the Settling Defendants:

Robert R. Ambler, Jr.
Womble Carlyle Sandridge & Rice, LLP
271 17th Street, NW, Suite 2400
Atlanta, Georgia 30363-1017
Phone: (404) 872-7000
rambler@wcsr.com
Attorney for Alan K. Arnold

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1180 Peachtree Street, N.E.
Atlanta, GA 30309-3521
Phone: (404) 572-2804
tklingler@kslaw.com
Attorney Jack S. Murphy

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McKenna Long & Aldridge
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One Peachtree Center, Suite 5300
Atlanta, Georgia 30308
Phone: (404) 527-4912
jmanley@mckennalong.com
Attorney for Joseph J. Ernest, Donald C. Hartsfield, and Gerald O. Reynolds

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Atlanta, GA 30363
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Attorney for Steven M. Skow

Frank M. Young, III

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Red Mountain Law Group
2100 First Avenue North, Suite 600
Birmingham, AL 35203-4272
Phone: (205) 254-1423
frank@younglawllc.com
Attorney for Clinton M. Day

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 herein subscribed.

FEDERAL DEPOSIT INSURANCE CORPORATION
AS RECEIVER FOR INTEGRITY BANK

Date: 6/26/15

By: 

Title: Counsel - Professional Liability Unit

Print Name: Steven C. Morrison

Date: 6-30-15

STEVEN M. SKOW



Date: _____

ALAN K. ARNOLD

Date: _____

DOUGLAS G. BALLARD

Date: _____

CLINTON M. DAY

Date: _____

JOSEPH J. ERNEST

Date: _____

DONALD C. HARTSFIELD

Date: _____

JACK S. MURPHY

Date: _____

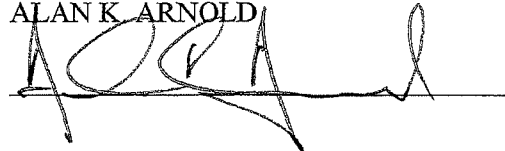
GERALD O. REYNOLDS

Date: _____

STEVEN M. SKOW

Date: 7/8/15

ALAN K. ARNOLD



Date: _____

DOUGLAS G. BALLARD

Date: _____

CLINTON M. DAY

Date: _____

JOSEPH J. ERNEST

Date: _____

DONALD C. HARTSFIELD

Date: _____

JACK S. MURPHY

Date: _____

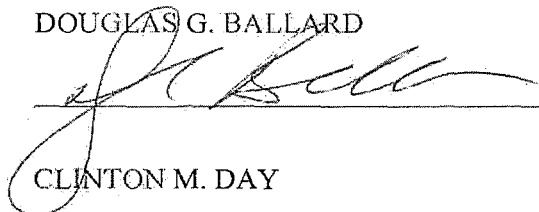
GERALD O. REYNOLDS

Date: _____

ALAN K. ARNOLD

Date: 7-27-15

DOUGLAS G. BALLARD



Date: _____

CLINTON M. DAY

Date: _____

JOSEPH J. ERNEST

Date: _____

DONALD C. HARTSFIELD

Date: _____

JACK S. MURPHY

Date: _____

GERALD O. REYNOLDS

Date: _____

STEVEN M. SKOW

Date: _____

ALAN K. ARNOLD

Date: _____

DOUGLAS G. BALLARD

Date: 7/19/15

CLINTON M. DAY



Date: _____

JOSEPH J. ERNEST

Date: _____

DONALD C. HARTSFIELD

Date: _____

JACK S. MURPHY

Date: _____

GERALD O. REYNOLDS

Date: _____

STEVEN M. SKOW

Date: _____

ALAN K. ARNOLD

Date: _____

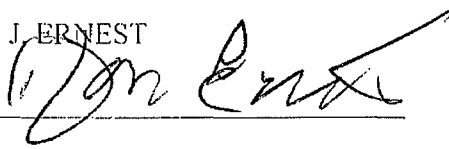
DOUGLAS G. BALLARD

Date: _____

CLINTON M. DAY

Date: _____

JOSEPH J. ERNEST



Date: _____

DONALD C. HARTSFIELD

Date: _____

JACK S. MURPHY

Date: _____

GERALD O. REYNOLDS

Date: _____

STEVEN M. SKOW

Date: _____

ALAN K. ARNOLD

Date: _____

DOUGLAS G. BALLARD

Date: _____

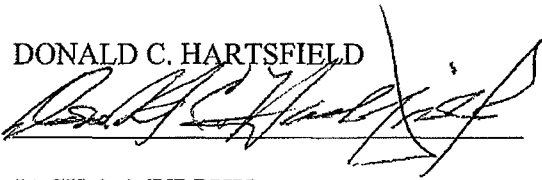
CLINTON M. DAY

Date: _____

JOSEPH J. ERNEST

Date: 6/30/15

DONALD C. HARTSFIELD



Date: _____

JACK S. MURPHY

Date: _____

GERALD O. REYNOLDS

Date: _____

STEVEN M. SKOW

Date: _____

ALAN K. ARNOLD

Date: _____

DOUGLAS G. BALLARD

Date: _____

CLINTON M. DAY

Date: _____

JOSEPH J. ERNEST

Date: _____

DONALD C. HARTSFIELD

Date: 7/22/15

JACK S. MURPHY

GERALD O. REYNOLDS

Date: _____

STEVEN M. SKOW

Date: _____

ALAN K. ARNOLD

Date: _____

DOUGLAS G. BALLARD

Date: _____

CLINTON M. DAY

Date: _____

JOSEPH J. ERNEST

Date: _____

DONALD C. HARTSFIELD

Date: _____

JACK S. MURPHY

Date: 6/30/2015

GERALD O. REYNOLDS

Gerald O. Reynolds

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Federal Deposit Insurance Corporation,)
in its Capacity as Receiver of Integrity)
Bank of Alpharetta, Georgia,)
)
Plaintiff,) Civil Action No.: 1:11-CV-0111-SCJ
)
v.)
)
Steven M. Skow, Alan K. Arnold,)
Douglas G. Ballard, Clinton M. Day,)
Joseph J. Ernest, Donald C. Hartsfield)
Jack S. Murphy, and Gerald O. Reynolds)
)
Defendants.)

NOTICE OF VOLUNTARILY DISMISSAL

Plaintiff, Federal Deposit Insurance Corporation as Receiver For Integrity Bank (“FDIC-R”), by and through its undersigned attorneys, pursuant to FCRP 41(a)(1) and agreement with counsel for Steven M. Skow, Alan K. Arnold, Douglas G. Ballard, Clinton M. Day, Joseph J. Ernest, Donald C. Hartsfield, Jack S. Murphy, and Gerald O. Reynolds (“Defendants”), voluntarily dismisses its Complaint in the matter, ECF Doc. No. 1, with prejudice and without costs.

Respectfully submitted,

/s/ Dustin R. Bagwell
Kyle M. Keegan (LA Bar #19942)

Dustin R. Bagwell (LA Bar #27366)
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Juban & Lowe, LLC**
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Baton Rouge, Louisiana 70808
Phone: (225) 364-3600
Fax: (225) 364-3608

Jeanne Simkins Hollis (GA Bar # 646890)
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Atlanta, Georgia 30306
Phone: (404) 474-2328
Fax: (770) 587-0726

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Integrity Bank of Alpharetta, Georgia*

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/s/ Tracy Klingler
David L. Balsler
Tracy Klingler
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Atlanta, GA 30309-3521

Attorneys for Jack S. Murphy

/s/ Jim Manley
James B. Manley
McKenna Long & Aldridge
303 Peachtree Street, N.E.

One Peachtree Center, Suite 5300
Atlanta, Georgia 30308

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Attorney for Steven M. Skow

/s/ Frank M. Young
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Attorney for Clinton M. Day