

SETTLEMENT AND RELEASE AGREEMENT

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

The Federal Deposit Insurance Corporation as Receiver for Montgomery Bank & Trust, Ailey, Georgia (“FDIC-R”), Justin Zegalia (“Zegalia”), Kathryn Giardina (“Giardina”) and Evanston Insurance Company (“Evanston”) (individually, the FDIC-R, Zegalia, Giardina and Evanston be referred to herein as “Party” and collectively as the Parties”).

RECITALS

WHEREAS:

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

On July 6, 2012, the Georgia Department of Banking 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, among others, its former financial advisors, arising from the performance, nonperformance, and manner of performance of their respective functions, duties and acts as financial advisors for the Bank.

The FDIC-R has asserted claims, among others, against Zegalia and Giardina, each of whom served as a financial advisor of the Bank. Zegalia and Giardina deny liability for the claims.

Evanston issued a Financial Advisors Professional Liability Policy numbered (b)(4) for the period January 6, 2012 to January 6, 2013 (“Policy”) to Montgomery Asset Management, LLC (“MAM”). The Policy was cancelled for non-payment of premium effective August 2, 2012. Zegalia and Giardina sought coverage from Evanston as financial advisors employed by MAM for the Bank, according to the terms, provisions, and conditions of the Policy. Evanston

has reserved its rights to deny coverage under the Policy for claims asserted by FDIC-R against Zegalia and Giardina.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned Parties agree, each with the other, as follows:

SECTION I: Payment to FDIC-R

A. As an essential covenant and condition to this Agreement, on or before seven (7) calendar days following the date the FDIC-R executes this Agreement, Evanston, Zegalia and Giardina, jointly and severally, agree to pay the FDIC-R the sum of ONE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$150,000.00) (“the Settlement Payment”) from the Policy.

B. Evanston shall deliver the Settlement Payment to the FDIC-R by check payable to the Federal Deposit Insurance Corporation as Receiver for Montgomery Bank and Trust, Ailey, Georgia, for credit to FDIC National Liquidation Account Montgomery Bank & Trust, Ailey,

(b)(5) Georgia (FIN 10448) Professional Liability () DIF Fund Asset Number () (b)(5)

(b)(6) Contact () DRR Investigations, (972) 761- 8112. The Settlement Payment shall be delivered via Overnight Delivery to:

JPMorgan Chase () (b)(4)
Attn: FDIC Receivership Lock Box # () (b)(4)
14800 Frye Road 2nd Floor
Fort Worth, TX 76155

In the event that the Settlement Payment is not delivered to the FDIC-R by the date determined in subsection A above, interest shall accrue on all unpaid amounts at the rate of 5% per annum from that date until the date of payment. However, if said Settlement Funds are not delivered to the FDIC-R by the date determined in subsection A above, as a result of the FDIC-R’s failure to execute this Agreement, no interest shall accrue until five days after the FDIC-R

executes the Agreement.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection A above, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:

1. Extend the period of time for the Settlement Payment, including interest accruing from the date determined by subsection A above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(2); or

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

3. Terminate the Agreement and move to institute an action on the FDIC-R's claims. Zegalia, Giardina, and Evanston 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 Settlement Payment (including all accrued interest) in full.

SECTION II: Releases

A. The FDIC-R's Releases.

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

1. Zegalia, Giardina, 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 Zegalia and Giardina's respective functions, duties and actions as financial advisors for the Bank.

2. Evanston, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Policy. As part of this release of the Insurer, the FDIC-R agrees that any interest it may have under the Policy is extinguished.

B. Zegalia and Giardina's Releases.

Effective simultaneously with the release granted in Section II.A. above, Zegalia and Giardina, 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 Zegalia and Giardina's respective functions, duties and actions as financial advisors for the Bank.

Zegalia and Giardina further agree, simultaneously with their execution of this Agreement, to release Evanston, its parents, claim service managers, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, successors and assigns, from any and all claims, rights and demands that they have, had, or may claim to have in the future, whether known or unknown, against the Policy that arise from or relate in any way to (1) the FDIC-R's or Bank's claims, demands or coverage requests; and/or (2) any contention that Evanston breached any contract, statute, duty of good faith or fair dealing, ethical or fiduciary

duty in connection with the Policy and/or the investigation and request for coverage.

C. The Insurer's Release.

Effective simultaneously with the releases granted in Section II.A. above, Evanston, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, agents, representatives, attorneys, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Policy.

D. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action:

a. Against Zegalia and Giardina 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.

E. Express Reservation of Rights of Bond Carrier.

1. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall release or prejudice the rights of St. Paul Mercury Insurance Company or any other underwriter of any financial institution bond, fidelity bond, or banker's blanket bond on which the Bank is an insured, to bring any claims by way of subrogation to the claims of the FDIC-R, against (a) any financial advisors for the Bank, including but not limited to the Settling Defendants, in their capacities as financial advisors for the Bank or in any other capacity, or (b) any other individual or entity.

2. Nothing herein shall be construed to admit the existence of, or to establish, any claim or cause of action on the part of St. Paul Mercury Insurance Company or any other bond underwriter by way of subrogation to claims of the FDIC-R, that would not exist had this Agreement not been executed.

SECTION III: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that Zegalia and Giardina 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, Zegalia and Giardina hereby knowingly assign to the FDIC-R any and all rights, titles, and interest in and to any and all such

dividends, payments, or other distributions, or proceeds.

SECTION IV: Representations and Acknowledgements

A. Authorized Signatories. All of the undersigned persons represent and warrant that they are Parties hereto or are authorized to sign this Agreement on behalf of the respective Party, and that they have the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective 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.

C. Financial Disclosure Representation. Zegalia and Giardina have each submitted financial information to the FDIC-R including sworn Personal Financial Statements, dated May 24, 2015 from Zegalia and February 23, 2016 from Giardina and herein affirms that his/her financial information is true and accurate as of the date of this agreement. 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 Zegalia and Giardina. The FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information. If the FDIC-R establishes via a final adjudication in an appropriate judicial forum that Zegalia or Giardina failed to disclose any material interest, legal, equitable, or beneficial, in any asset, then Zegalia or Giardina, as appropriate, agrees to cooperate fully with the FDIC-R to provide updated financial information and to pay to the FDIC-R the lesser of (1) the value of Zegalia or Giardina's undisclosed material interest in such asset(s); or (2) the amount of unpaid damages alleged against Zegalia or Giardina.

SECTION V: 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 perform the terms of this Agreement.

SECTION VI: Other Matters

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims and defenses, that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party except to enforce its terms.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Parties subscribed thereto upon the execution by all Parties to this Agreement.

C. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of Georgia.

D. Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and by email, to the following:

If to the FDIC-R:

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

(b)(6)

Alan Curley
Robinson Curley & Clayton, P.C.
300 South Wacker Drive, Suite 1700

Chicago, Illinois 60606

(b)(6)

If to Zegalia:

James M. Johnson
Knight Johnson LLC
1360 Peachtree Street, NE
Suite 1201
Atlanta, Georgia 30309
404-228-4822

(b)(6)

and

Henry D. ("Hank") Fellows, Jr., Esq.
Fellows LaBriola LLP
Suite 2300 South Tower Peachtree Center
225 Peachtree Street, N.E.
Atlanta, GA 30303
(404) 586-9200
(404) 586-2050 (Direct Dial)
(404) 273-0537 (Cell)

(b)(6)

If to Giardina:

Jo Lanier Meeks
James Bates Brannan Groover LLP
3399 Peachtree Rd NE, Suite 1700
Atlanta, GA 30326
404-844-2755

(b)(6)

If to Evanston:

Michael Athans
Gilson Athans PC
980 Hammond Drive
Suite 800
Atlanta, GA 30328
678-514-1576

(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. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s), or other representative(s).

F. Titles and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

G. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirements.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

**FEDERAL DEPOSIT INSURANCE CORPORATION
AS RECEIVER FOR MONTGOMERY BANK &
TRUST, AILEY, GEORGIA**

(b)(6)

Date: 4/25/2016

BY:

TITLE: Counsel

PRINT NAME: B. Stett Legg

Date: 5/9/2016

JUSTIN ZEGALIA

(b)(6)

PRINT NAME: JUSTIN ZEGALIA

Date: 4-30-16

(b)(6)

KATHRYN GIARDINA



PRINT NAME: Kathryn Giardina

EVANSTON INSURANCE COMPANY, by its Claim
Service Manager, Markel Service, Incorporated

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

Date: _____

KATHRYN GIARDINA

PRINT NAME: _____

EVANSTON INSURANCE COMPANY, by its Claim
Service Manager, Markel Service, Incorporated

(b)(6) Date: 5/6/16

BY: 

TITLE: MANAGER, CLAIMS

PRINT NAME: STEFAN FISCHER