

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the Federal Deposit Insurance Corporation as Receiver for First National Bank of Davis (“FDIC-R”) and Everest National Insurance Company (“Everest” or “Bond Insurer”) (individually, the FDIC-R and Everest may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to March 11, 2011, First National Bank of Davis (“FNB” or “Bank”) was a federally chartered depository institution headquartered in Davis, Oklahoma.

Everest issued to the Bank a Financial Institution Bond, Policy Number [REDACTED] (b)(4) (the “Policy”).

On March 10, 2011, FNB provided Everest with a Notice of Loss seeking coverage under the bond for losses incurred by the Bank that were caused by the dishonest acts of certain FNB employees. This claim was designated by Everest as Claim No. ABA [REDACTED] (b)(4)

On March 11, 2011, the Office of the Comptroller of the Currency 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 FNB, including those with respect to its assets. Among the assets to which the FDIC-R succeeded were any and all claims, demands, and causes of action under

(b)(4) Financial Institution Bond, Policy Number [REDACTED] or with respect to Claim No.

(b)(4) [REDACTED]

On March 6, 2017, the FDIC-R filed a complaint for money damages against Everest. The complaint is now pending in the United States District Court for the Eastern District of

Oklahoma, *FDIC as Receiver for First National Bank of Davis, Oklahoma v. Everest National Insurance Company*, Civil Action No. 17-CV-82-JHP (E.D.Okla.) (“Lawsuit”).

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

SECTION I: Payment to the FDIC-R

A. As an essential covenant and condition to this Agreement and in consideration for the Releases set forth below, Everest agrees to pay to the FDIC-R \$1,350,000 (the “Settlement Payment”). The Settlement Payment shall be made to the FDIC-R as soon as possible after both Parties sign the Agreement, but no later than June 14, 2017. The Parties agree that time is of the essence with respect to the obligation to make the Settlement Payment.

B. Everest shall deliver the Settlement Payment by direct wire transfer into an account designated by the FDIC-R. The FDIC-R shall provide to Everest the instructions for this direct wire transfer.

C. 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 its receipt of the Settlement Payment in full to:

1. Extend the period for the Settlement Payment;
2. Enforce this Agreement, in which event Everest agrees to the jurisdiction in the United States District Court for the Eastern District of Oklahoma and to pay all of the FDIC-R’s reasonable attorneys’ fees and costs expended in enforcing the terms of this Agreement;
3. Terminate the Agreement; 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.

SECTION II: Releases

A. Release of Everest by the FDIC-R.

Effective upon its receipt of the Settlement Payment in full, as described in Section I, and except as provided in Section II.C, the FDIC-R, for itself and its representatives, successors and assigns, hereby releases and discharges Everest and its 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 Lawsuit, Financial Institution Bond

(b)(4) Policy Number [redacted] and/or Claim No. [redacted] including but not limited to (b)(4) Everest's handling, investigation, and adjustment of same.

B. Release of the FDIC-R by Everest.

Effective simultaneously with the release granted in Paragraph II.A. above, Everest, for itself and its representatives, successors, and assigns, hereby releases and discharges the FDIC-R and its 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 Lawsuit, Financial Institution Bond Policy Number [redacted] and/or Claim

(b)(4) No. [redacted] (b)(4)

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 Everest (except with respect to the Policy, the Lawsuit or (b)(4) Claim No. [redacted]) 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 the Bank; and

b. against any person or entity not expressly released by the FDIC-R in this Agreement; and

c. which are not expressly released in Paragraph 11.A.

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 III: Stipulation and Dismissal

Within seven days after the later of (1) full execution of this Agreement by all of the Parties, and (2) receipt of the Settlement Payment, the FDIC-R shall file in the Lawsuit a stipulation of dismissal with prejudice, with each Party to bear its own costs.

SECTION IV: Subrogation

In further consideration of the releases in Section II, Everest releases and assigns any and all subrogation rights that may have arisen, whether by virtue of the Settlement Payment or by operation of law, contract, or equity with respect to the Financial Institution Bond Policy

~~(b)(4) Number [] and/or Claim No. []~~

SECTION V: Representations and Acknowledgements

A. Authorized Signatories. All of the undersigned persons represent and warrant that they 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, administrators, representatives, successors, and assigns.

B. 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 by any of them regarding any claim. The undersigned Parties acknowledge that they may not base any claim of waiver or estoppel in any other matter upon the execution of this Agreement or payment of consideration described herein.

C. 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. This Agreement may be executed by facsimile signatures, which shall be treated as originals for all purposes.

D. 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 Oklahoma.

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 except by another written instrument signed by the Parties, or by their respective authorized attorney(s) or other representative(s).

F. 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.

G. Advice of Counsel. Each Party hereby acknowledges that 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 its counsel.

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

If to FDIC-R:

Dawn Estes, Esq.
Estes Thorne Carr
3811 Turtle Creek Blvd, Suite 200
Dallas, TX 75219

(b)(6) EMAIL: [Redacted]

If to Everest:

Kevin M. Mattessich, Esq.
Kaufman Dolowich Voluck
60 Broad Street, 36th Floor
New York, NY 10004 06183

(b)(6) EMAIL: [Redacted]

I. 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.

J. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential, and nothing in this Agreement prohibits the FDIC-R or Everest from disclosing its terms.

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

FEDERAL DEPOSIT INSURANCE CORPORATION
As Receiver for First National Bank of Davis

(b)(6) By: [Redacted]

PRINT NAME: [Handwritten Name]
TITLE: [Handwritten Title]
Date: June 12, 2017

EVEREST NATIONAL INSURANCE COMPANY

(b)(6) By: [Redacted]

PRINT NAME: JAMES MANDALINO
TITLE: V.P. ESU CLAIMS
Date: June 12, 2017