

## 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 Colonial Bank (“FDIC-R”) and PricewaterhouseCoopers LLP (“Settling Defendant” or “PwC”) (individually, the FDIC-R and the Settling Defendant may be referred to herein as “Party” and collectively as the “Parties”).

### RECITALS

#### WHEREAS:

Prior to August 14, 2009, Colonial Bank (“Bank”) was a depository institution organized and existing under the laws of the State of Alabama.

On August 14, 2009, the Alabama State Banking Department 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 accountants arising from the performance, nonperformance, and manner of performance of their respective functions, duties, and acts as accountants for the Bank.

On October 31, 2012, the FDIC-R filed a complaint for money damages against, among others, the Settling Defendant, which served as the independent public accountant of the Bank’s parent. Those claims for damages are now pending in the United States District Court for the Middle District of Alabama in *Federal Deposit Insurance Corporation as Receiver for Colonial*

*Bank v. PricewaterhouseCoopers LLP and Crowe Horwath LLP*, Case No. 2:12-cv-00957-BJR (“Action”). PwC has defended against the Action.

On December 28, 2017, the United States District Court for the Middle District of Alabama issued an Order on the Liability Phase of the PwC Bench Trial, holding PwC liable for the reasons set forth in that order.

On July 2, 2018, the United States District Court for the Middle District of Alabama issued an Order on the Damages Phase of the PwC Bench Trial and awarded the FDIC-R \$625,309,085 in damages from PwC.

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, the Settling Defendant shall pay the FDIC-R the sum of \$335,000,000.00 (“Settlement Payment”) on or before April 11, 2019.

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 Defendant. Such written notice shall be provided by the FDIC-R to the attorneys for the Settling Defendant by no later than five (5) days after the FDIC-R signs the Agreement. In the event that the FDIC-R does not receive the Settlement Payment by the date determined by Section I.A. above, interest shall accrue on the unpaid installments at the rate of 5 percent per annum from the date determined in Section I.A. above until the date of payment.

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 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 Settling Defendant agrees to jurisdiction in the United States District Court for the Middle District of Alabama 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 already-pleaded claims 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 covenants and agrees 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 of Dismissal**

Within seven (7) business days after the receipt of the Settlement Payment in full, 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 Action, which stipulation shall be substantially in the form attached hereto as Exhibit A.

## **SECTION III: Releases**

### **A. The FDIC-R's Releases.**

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 Defendant, and its current or former partners, principals, employees, directors, officers, parents, subsidiaries, affiliates, heirs, executors, trustees, administrators, representatives, insurers, attorneys, agents, successors and assigns solely in their capacities as such, 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, whether known or unknown, whether asserted or unasserted, whether disclosed or undisclosed, whether accrued or unaccrued, that arise from or relate to the Bank or the performance, nonperformance, or manner of performance of the Settling Defendant's functions, duties, and actions as independent public accountant of the Bank's parent, including without limitation the causes of action alleged in the Action. Nothing herein shall be construed to create a general release.

### **B. The Settling Defendant's Release.**

Effective simultaneously with the release granted in Section III.A above, the Settling Defendant, on behalf of itself, and its current or former partners, principals, employees, directors, officers, parents, subsidiaries, affiliates, heirs, executors, trustees, administrators, representatives,

insurers, attorneys, agents, 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, whether known or unknown, whether asserted or unasserted, whether disclosed or undisclosed, whether accrued or unaccrued, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of the Settling Defendant's functions, duties, and actions as independent public accountant of the Bank's parent, including without limitation the causes of action alleged in the Action.

C. Release of Unknown Claims.

The FDIC-R and the Settling Defendant each acknowledge that they have been advised by their attorneys concerning, and are familiar with, California Civil Code Section 1542 and expressly waive any and all provisions, rights, and benefits conferred by California Civil Code Section 1542 or any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to the provisions of the California Civil Code Section 1542. Nothing herein shall be construed to create a general release. California Civil Code Section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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 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.

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.*

**SECTION IV: 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 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, 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 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.

## **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 perform the terms of this Agreement.

## **SECTION VII: Other Matters**

A. Public Statements. PwC—through itself and its attorneys, representatives, agents or any other person authorized to speak for it—shall not in any press releases or other voluntary public statement deny liability relating to its audits of the consolidated financial statements of the Bank’s parent, including its subsidiary Colonial Bank. If the FDIC-R issues a press release announcing the settlement of the Action, the press release will state substantially as follows: “The Federal Deposit Insurance Corporation as Receiver for Colonial Bank (“FDIC”) has announced a \$335 million settlement with PricewaterhouseCoopers LLP (“PwC”) related to professional negligence claims brought by the FDIC against PwC arising out of the audits of the failed Colonial Bank. On December 28, 2017, the United States District Court for the Middle District of Alabama held PwC liable for professional negligence in its audit of Colonial Bank and, on July 2, 2018, the district court awarded damages to the FDIC on its claims. Previously, on April 3, 2018, the FDIC settled professional negligence claims against Crowe Horwath LLP arising out of its internal audits of Colonial Bank for \$60 million. Colonial Bank of Montgomery, Alabama failed on August 14, 2009, with \$25.5 billion in assets and a loss to the Deposit Insurance Fund estimated at \$2.958 billion as of December 31, 2017.” PwC further agrees that any statement to the press relating to the announcement of the settlement of the Action will state substantially as follows: “PricewaterhouseCoopers LLP and the Federal Deposit Insurance Corporation as Receiver for Colonial Bank have settled professional negligence claims brought by the FDIC-R against PwC to their mutual satisfaction.” Nothing in this provision



affects the Parties' testimonial obligations or right to take legal or factual positions in litigation or other legal, regulatory, legislative or administrative matters.

B. Court Orders and Rulings. The Parties agree that they shall not move to vacate any orders or rulings made by the United States District Court for the Middle District of Alabama in this Action, including, but not limited to, the Order on the Liability Phase of the PwC Bench Trial, dated December 28, 2017 (Document 798), the Order on the Damages Phase of the PwC Bench Trial, dated July 2, 2018 (Document 875), and the Order Granting in Part and Denying in Part FDIC's Motion for Partial Summary Judgment on Defendants' Affirmative Defenses, dated August 18, 2017 (Document 720).

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.

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 Alabama.

E. 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

(b)(6)

If to the Settling Defendant:

Zachary D. Stern  
Deputy General Counsel  
PricewaterhouseCoopers LLP  
300 Madison Avenue  
New York, NY 10017

(b)(6)

[Redacted]

with a copy to:

Philip S. Beck, Esq.  
Bartlit Beck LLP  
Courthouse Place, Suite 300  
54 West Hubbard Street  
Chicago, IL 60654

(b)(6)

[Redacted]

F. 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).

G. 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.

H. 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.

Date: 03/11/2019

FEDERAL DEPOSIT INSURANCE CORPORATION AS  
RECEIVER FOR COLONIAL BANK

BY: \_\_\_\_\_

TITLE: Counsel

PRINT NAME: Gregory K. Conway

(b)(6)

Date: 3/12/2019

PRICEWATERHOUSECOOPERS LLP

BY: \_\_\_\_\_

TITLE: Deputy General Counsel

PRINT NAME: Zachary D. Stern

(b)(6)

Exhibit A

**IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**THE COLONIAL BANCGROUP, INC.  
and KEVIN O'HALLORAN,**

**Plaintiffs,**

**v.**

**PRICEWATERHOUSECOOPERS LLP  
and CROWE HORWATH LLP,**

**Defendants.**

**Case No. 2:11-cv-00746-BJR  
LEAD CASE**

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**FEDERAL DEPOSIT INSURANCE  
CORPORATION, AS RECEIVER FOR  
COLONIAL BANK,**

**Plaintiff,**

**v.**

**PRICEWATERHOUSECOOPERS LLP  
and CROWE HORWATH LLP,**

**Defendants.**

**Case No. 2:12-cv-00957-BJR**

**STIPULATION OF DISMISSAL WITH PREJUDICE**

Plaintiff the Federal Deposit Insurance Corporation as Receiver for Colonial Bank and Defendant PricewaterhouseCoopers LLP stipulate, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, to the dismissal with prejudice of all claims in the above-captioned action (2:12-cv-00957-BJR) against PricewaterhouseCoopers LLP. The Federal Deposit Insurance

Corporation as Receiver for Colonial Bank and PricewaterhouseCoopers LLP shall bear their own attorneys' fees and costs in the above-captioned action.

Dated: \_\_\_\_\_, 2019

/s/ \_\_\_\_\_

David Mullin  
(TX Bar No. 14651600) *pro hac vice*  
John G. Turner, III  
(TX Bar No. 20320550) *pro hac vice*  
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Mary G. Menge (MEN 014)  
**SPOTSWOOD SANSOM & SANSBURY LLC**  
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Birmingham, Alabama 35203  
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Dennis Bailey (ASB-4845-171D)  
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*Attorneys for Plaintiff Federal Deposit Insurance Corporation as Receiver for Colonial Bank*

/s/

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Tabor Robert Novak, Jr.

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