

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 Hillcrest Bank Florida, Naples, Florida, (“FDIC-R”), and Joel L. Bayer (“Bayer”), Irwin J. Blitt (“Blitt”), Jack N. Fingersh (“Fingersh”), and Ronald L. Rucker (“Rucker”) (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 October 23, 2009, Hillcrest Bank Florida, Naples, Florida (“Bank”) was a depository institution organized and existing under the laws of Florida;

On October 23, 2009, the Florida Office of Financial Regulation (“FOFR”) 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 actions 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 October 22, 2013, 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 *Federal Deposit Insurance Corporation, as Receiver for Hillcrest Bank Florida v. Joel S. Bayer, et al.*, Case No. 2:13-cv-752-Ft M-29MRM (“D&O Action”). The Settling Defendants have denied and continue to deny liability in the D&O Action.

Hillcrest Bank Florida, Naples, FL
Settlement Agreement Director & Officer Claims

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 after all parties have executed this Agreement and exchanged a fully executed copy of this Agreement with each other (the "Settlement Payment Date"), the Settling Defendants, jointly and severally, will pay to the FDIC-R the sum of Three Million Seven Hundred Fifty Thousand and 00/100 dollars (\$3,750,000.00) ("the Settlement Payment").

B. The Settlement Payment shall be delivered to the FDIC-R by direct wire transfer into the following account: Federal Home Loan Bank of New York, New York Main Office, 101 Park Avenue, New York, NY 10178-0599, Routing No. [REDACTED] Account No. [REDACTED] for (b)(4) credit to FDIC National Liquidation Account OBI Hillcrest Bank Florida, Naples, FL (FIN

(b)(5) 10131) Professional Liability [REDACTED] DIF Fund. Asset Number [REDACTED] Contact - (b)(5) Michael Duncan, DRR Investigations, (972) 761-2662. In the event that the Settlement Payment is not delivered to the FDIC-R pursuant to Section I.A. of this Agreement, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the date delivery of the Settlement Payment was due under Section I.A. until the date of payment.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the Settlement Payment Date, 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)(3); or

2. Enforce this Agreement, in which event the Settling Defendants agree to jurisdiction in the United States District Court in Florida 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, return any settlement funds paid pursuant to this Agreement, move to vacate any dismissal order, to which the Settling Defendants agree to consent, and re-institute an action on the FDIC-R's claims. The Settling Defendants 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: Stipulation and Dismissal

Within ten business days after the latter of (1) full execution of this Agreement by all of the Parties, and (2) 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 in full 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, administrators, representatives, insurers, 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

Hillcrest Bank Florida, Naples, FL
Settlement Agreement Director & Officer Claims

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, administrators, agents, representatives, attorneys, insurers, 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 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, 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, 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.

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. The Settling Defendants deny liability in the D&O Action.

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:

Hillcrest Bank Florida, Naples, FL
Settlement Agreement Director & Officer Claims

If to the FDIC-R:

Barbara Slott Pegg, Counsel
Federal Deposit Insurance Corporation
3501 N. Fairfax Dr. B7062
Arlington, VA 22226
(703) 516-5273

(b)(6)



and

Kyle M. Keegan, Counsel
Keegan, DeNicola, Kiesel,
Bagwell, Juban & Lowe, LLC
5555 Hilton Avenue, Suite 205
Baton Rouge, LA 70808
(225) 364-3600

(b)(6)



If to the Settling Defendants
Joel L. Bayer, Irwin J. Blitt,
Jack N. Fingersh:

F. Ryan Van Pelt, Counsel
Charles W. German, Counsel
Jason M. Hans, Counsel
Rouse, Hendricks, German & May, PC
1200 Walnut, Suite 2000
Kansas City, MO 64106
(816) 471-2221

(b)(6)



If to the Settling Defendant
Ronald L. Rucker:

Ryan T. Scarborough, Counsel
Williams & Connolly, LLP
725 Twelfth St., N.W.
Washington, D.C. 20005
(202) 434-5173

(b)(6)



and

Charles J. Bartlett, Counsel
Icard, Merrill, Cullis, Timm, Furen &
Ginsburg, PA
2033 Main St., Suite 500
Sarasota, FL 34237

Hillcrest Bank Florida, Naples, FL
Settlement Agreement Director & Officer Claims

(941) 366-8100

(b)(6)

[Redacted]

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
HILLCREST BANK FLORIDA

(b)(6)

Date: 9/9/2015

By: [Redacted]

Barbara Slott Pegg/
TITLE: Counsel for Plaintiff

PRINT NAME: B. Slott Pegg

Hillcrest Bank Florida, Naples, FL
Settlement Agreement Director & Officer Claims

Date: 9/21/2015

SETTLING DEFENDANT:

BY:
Joel L. Bayer

(b)(6)

PRINT NAME: _____

Date: _____

SETTLING DEFENDANT:

BY: _____
Irwin J. Blitt

PRINT NAME: _____

Date: _____

SETTLING DEFENDANT:

BY: _____
Jack N. Fingersh

PRINT NAME: _____

Date: _____

SETTLING DEFENDANT:

BY: _____
Ronald L. Rucker

PRINT NAME: _____

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Settlement Agreement Director & Officer Claims

Date: _____

SETTLING DEFENDANT:

BY: _____
Joel L. Bayer

PRINT NAME: _____

Date: 9-20-15

(b)(6)

SETTLING DEFENDANT:

BY: _____
Irwin J. Blitt

PRINT NAME: IRWIN J BLITT

Date: _____

SETTLING DEFENDANT:

BY: _____
Jack N. Fingersh

PRINT NAME: _____

Date: _____

SETTLING DEFENDANT:

BY: _____
Ronald L. Rucker

PRINT NAME: _____

Hillcrest Bank Florida, Naples, FL
Settlement Agreement Director & Officer Claims

Date: _____

SETTLING DEFENDANT:

BY: _____
Joel L. Bayer

PRINT NAME: _____

Date: _____

SETTLING DEFENDANT:

BY: _____
Irwin J. Blitt

PRINT NAME: _____

Date: 9/07/15

SETTLING DEFENDANT:

BY: _____
Jack N. Fingersh

PRINT NAME: _____

Date: _____

SETTLING DEFENDANT:

BY: _____
Ronald L. Rucker

PRINT NAME: _____

(b)(6)

Hillcrest Bank Florida, Naples, FL
Settlement Agreement Director & Officer Claims

Date: _____

SETTLING DEFENDANT:

BY: _____
Joel L. Bayer

PRINT NAME: _____

Date: _____

SETTLING DEFENDANT:

BY: _____
Irwin J. Blitt

PRINT NAME: _____

Date: _____

SETTLING DEFENDANT:

BY: _____
Jack N. Fingersh

PRINT NAME: _____

Date: 9-17-2015

SETTLING DEFENDANT:

BY:
Ronald L. Rucker

PRINT NAME: RONALD L. RUCKER

(b)(6)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Case No. 13-cv-00752-FtM-29MRM

FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver for
HILLCREST BANK FLORDIA,

Plaintiff,

vs.

JOEL S. BAYER, *et al.*,

Defendants.

STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff Federal Deposit Insurance Corporation, as Receiver for Hillcrest Bank Florida, Naples, Florida ("FDIC-R"), and Defendants, Joel S. Bayer, Irwin J. Blitt, Jack N. Fingersh, and Ronald R. Rucker, (collectively with FDIC-R, the "Parties"), by and through their respective undersigned attorneys, and pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) hereby stipulate to the dismissal of this action with prejudice, with the Parties to each bear their own attorney's fees, costs, and expenses incurred in this action.

Dated this _____ day of September, 2015.

EXHIBIT A

WILLIAMS & CONNOLLY LLP

/s/ Ryan T. Scarborough
Ryan T. Scarborough (*pro hac vice*)
Adrienne E. Van Winkle (*pro hac vice*)
Cassandra B. Fields (*pro hac vice*)
725 Twelfth Street, N.W.
Washington, DC 20005
Telephone: (202) 434-5000
Facsimile: (202) 434-5029

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ICARD MERRILL
Charles J. Bartlett
Anthony J. Manganiello III
2033 Main Street, Suites 500 and 600
Sarasota, FL 34237
Telephone: (941) 366-8100
Facsimile: (941) 366-6384

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Attorneys for Defendant Rucker

KEEGAN, DeNICOLA, KIESEL, BAGWELL, JUBAN & LOWE

/s/ Dustin R. Bagwell
Kyle M. Keegan (*admitted pro hac vice*)
Dustin R. Bagwell (*admitted pro hac vice*)
5555 Hilton Avenue, Suite 205
Baton Rouge, LA 70808
Tel: (225) 364-3600
Fax: (225) 364-3608

Attorneys for Plaintiff, FDIC-R

ROUSE HENDRICKS GERMAN MAY PAC

/s/ F. Ryan Van Pelt
Jason M. Hans (*pro hac vice*)
F. Ryan Van Pelt (*pro hac vice*)
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Telephone: (816) 471-7700
Facsimile: (816) 741-2221

Attorneys for Defendants Bayer, Blitt, and Fingersh