

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made July 7, 2015 by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation as Receiver for Orion Bank ("FDIC-R"), and Crowe Horwath LLP ("Crowe") (individually, the FDIC-R and Crowe may be referred to herein as "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

Prior to November 13, 2009, Orion Bank ("Bank") was a depository institution organized and existing under the laws of Florida;

On November 13, 2009, the Florida Office of Financial Regulation 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 professionals retained by the Bank arising from the alleged performance, nonperformance, and manner of performance of their respective functions, duties and acts as professionals related to the Bank;

On October 15, 2012, the FDIC-R entered into a tolling agreement with Crowe to extend the time to file litigation to assert claims against Crowe. Crowe denies any liability to the FDIC-R;

The Parties engaged in a settlement discussion and mediation process and agreed to a resolution of the disputed claims; and

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 ten (10) business days following the date the Agreement is executed by all Parties, Crowe shall pay the FDIC-R the sum of \$2 million (“the Settlement Payment”).

B. Crowe shall deliver the Settlement Payment to the FDIC-R by direct wire transfer into an account designated by FDIC-R by written notice to Crowe.

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 Crowe agrees to jurisdiction in United States District Court in Middle District of Florida and Crowe agrees 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 proceed to prosecute the FDIC-R’s claim.

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.3 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

SECTION II: Releases

A. The FDIC-R's Release.

Upon receipt of the Settlement Payment in full and except as provided in Section II.C, the FDIC-R, for itself and for the Bank, and for its and their successors and assigns, hereby releases and discharges Crowe and its respective heirs, parents, subsidiaries, affiliates, partners, principals, employees, officers, directors, agents, attorneys, 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 arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of any and/or all of Crowe's services, functions, duties and actions for the Bank.

B. Crowe's Release.

Effective simultaneously with the release granted in Section II.A. above, Crowe, on behalf of itself, and its respective heirs, parents, subsidiaries, affiliates, partners, principals, employees, officers, directors, agents, attorneys, executors, trustees, administrators, agents, representatives, attorneys, successors, and assigns, hereby releases and discharges 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 any and/or all of Crowe's services, functions, duties and actions for the Bank.

C. Exceptions from Release 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 Crowe for liability, if any, for claims asserted by the Federal Deposit Insurance Corporation as Receiver for any bank other than the Bank and/or 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.

SECTION III: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that Crowe 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, Crowe hereby knowingly assigns 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, parents, subsidiaries, affiliates, partners, principals, employees, officers, directors, agents, attorneys, 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 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, and execution, of any documents necessary to perform the terms of this Agreement, including termination of mediation number 32-20-1300-0244 pending with the American Arbitration Association.

SECTION VI: Other Matters

A. No Admission of Liability. The 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 Florida.

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

If to the FDIC-R:

Steven E. Smith
Federal Deposit Insurance Corporation
1601 Bryan Street, #35020
Dallas, TX 75201

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If to Crowe:

Attn: Legal Department
Crowe Horwath LLP
One Mid America Plaza, Suite 700
Oak Brook, Illinois 60522-3697
(630) 574-7878

(b)(6)

E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the 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 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. Similarly, Crowe

may disclose its investigation and/or this Agreement as required by law or as it deems appropriate in its sole discretion.

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 ORION BANK

(b)(6)
Date: 7/7/15

BY: 
TITLE:
PRINT NAME:

CROWE HORWATH LLP

Date: July 7, 2015

BY: 
TITLE: Chief Risk Officer
PRINT NAME: Fred J. Bauters

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