

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 Bartow County Bank (“FDIC-R”), and Defendants William Morgan Akin, Gary L. Fox, Barry S. Justus, Jimmy L. Nelson, L. Lehmann Smith, and Harry B. White (collectively the “Defendants”); (individually, the FDIC-R and the Defendants may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to April 15, 2011, Bartow County Bank (“Bank”) was a depository institution organized and existing under the laws of Georgia;

On April 15, 2011, 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 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;

The FDIC-R has brought the suit styled *Federal Deposit Insurance Corporation as Receiver for Bartow County Bank v. William Morgan Akin, Gary L. Fox, Barry S. Justus, Jimmy L. Nelson, L. Lehmann Smith, and Harry B. White*, Civil Action No. 4:14-cv-0083-HLM, now pending in the United States District Court for the Northern District of Georgia, Rome Division (the “D&O Action”). On June 20, 2011, December 19, 2013, and April 28, 2014 (which demand was extended by letter dated June 26, 2014) the FDIC-R sent demand letters to the Defendants and to Catlin Specialty Insurance Company, which issued Director and Officer and Corporate

(b)(4) Securities Liability Insurance Policy No. [REDACTED], and Westchester Fire Insurance Company, which issued CODA Premier Directors and Officers Liability Excess DIC Policy No.

(b)(4) [REDACTED], (collectively the "Insurers") for the policy period from July 1, 2010 to June 30, 2011 (the "Policies"). The Defendants deny liability for the claims.

On October 16, 2014, the FDIC-R sent a letter to Westchester clarifying the identity of the subjects of its claims against the former directors and officers of the Bank.

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 thirty (30) calendar days following the date the FDIC-R executes this Agreement, the Defendants will pay or cause the Insurers to pay to the FDIC-R the sum of \$2,300,000 ("the Settlement Payment").

B. The Defendants shall cause the Settlement Payment to be delivered to the FDIC-R by check payable to the Federal Deposit Insurance Corporation as Receiver for Bartow County Bank and sent by statutory overnight delivery to the attention of Robert DeHenzel, FDIC, Legal Division/PLU, 3501 Fairfax Drive, Room VS-B-7002, Arlington, Virginia 22226. Simultaneous with its execution of this Agreement, the FDIC-R will provide to Defendants a W-9 form and taxpayer identification number.

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 to:

1. Extend the period of time for the Settlement Payment; or
2. Enforce this Agreement, in which event the Defendants and Insurers agree to jurisdiction in the United States District Court in the Northern 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 institute an action on the FDIC-R's claims. The 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 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 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 arise from or relate to the performance, nonperformance, or manner of performance of the Defendants' respective functions, duties and actions as officers and/or directors of the Bank.

B. The Defendants' Release.

Effective simultancously with the release granted in Section III.A., above, the Defendants, 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 the Defendants' respective functions, duties and actions as officers and/or directors of the Bank.

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 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 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, the 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.

C. Financial Disclosure Representation. Each Defendant has submitted personal financial statements to the FDIC-R and each herein affirms that his financial information was true and accurate as of the date of submission. Each 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 the Defendants. The FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information.

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 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.

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:

Robert DeHenzel
FDIC, Legal Division/PLU
3501 Fairfax Drive
Room VS-B-7002
Arlington, Virginia 22226

and to:

George P. Shingler
Joyce Gist Lewis
SHINGLER LEWIS I.L.C.
1230 Peachtree Street, NE,
Suite 1075
Atlanta, Georgia 30309

If to the Defendants:

Alston & Bird LLP
1201 West Peachtree Street, NW
Atlanta, Georgia 30309
Attn: Robert R. Long

E. Entire Agreement and Amendments. The terms of this Agreement and the Recitals are contractual and not mere recitals. This Agreement including the Recitals 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 BARTOW COUNTY BANK

(b)(6) _____
By: _____
Name: Robert J. Dallenwitz, Jr.
Title: Counsel
Date: October 16, 2014

WILLIAM MORGAN AKIN *WA*

(b)(6)
Date: 17 Nov. 2014

GARY L. FOX *GF*

(b)(6)
Date: 11-17-14

BARRY S. JUSTUS

(b)(6)
Date: 11/17/14

(b)(6) _____
JIMMY ^{R.} NELSON

Date: 11-17-14

L. LEHMAN SMITH *LS*

(b)(6)
Date: 11.17.2014

HARRY B. WHITE *HW*

(b)(6)
Date: 11-18-14