

SETTLEMENT AND RELEASE AGREEMENT

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

The Federal Deposit Insurance Corporation as Receiver for The Buckhead Community Bank ("FDIC-R") and Jean Bowers Margeson as Executor of the Estate of John D. Margeson ("Defendant") (individually, the FDIC-R and Defendant may be referred to herein as "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

Prior to December 4, 2009, The Buckhead Community Bank ("Bank") was a depository institution organized and existing under the laws of Georgia;

On December 4, 2009, 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;

On November 30, 2012, the FDIC-R filed a complaint for money damages against John D. Margeson and others, each of whom served at various times as a director, officer, and/or a member of a committee of the Bank. Those claims for damages are now pending in the United States District Court for the Northern District of Georgia in *FDIC v. Loudermilk, et al.*, No. 1:12-cv-4156-TWT ("Action"). John D. Margeson and the other defendants denied liability in the Action;

On December 1, 2014, John D. Margeson passed away. His wife, Jean Bowers Margeson, is the executor of his estate;

On February 24, 2015, the Court substituted Jean Bowers Margeson as Executor for the Estate of John D. Margeson as a defendant in the Action;

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 July 1, 2016, Defendant agrees to pay the FDIC-R the sum of \$375,000 ("the Settlement Payment").

B. Defendant shall deliver the Settlement Payment to the FDIC-R by direct wire transfer into an account designated by FDIC-R by notice to the attorneys for Defendant or by certified or cashier's check drawn upon a depository institution acceptable to FDIC-R.

C. If the FDIC-R does not receive the Settlement Payment in full on or before July 1, 2016, then the FDIC-R, in its sole discretion, shall have the right at any time after July 1, 2016 and prior to receipt of the Settlement Payment in full to:

1. Extend the period of time for the Settlement Payment, including interest accruing from July 1, 2016, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(2);

2. Enforce this Agreement, in which event Defendant agrees to jurisdiction in United States District Court in 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. 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.3 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 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 Defendant and its respective heirs, beneficiaries, executors, trustees, administrators, representatives, agents, distributees, assigns, successors in interest, and other assets of the Estate, 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 John D. Margeson's functions, duties and actions as a director, officer, or member of any committee of the Bank, including without limitation the causes of action alleged in the Action.

B. Defendant's Release.

Effective simultaneously with the release granted in Section III.A. above, Defendant, on behalf of itself and its respective heirs, beneficiaries, executors, trustees, administrators, representatives, agents, distributees, assigns, and successors in interest, hereby releases and discharges the FDIC-R and its employees, officers, directors, 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 Bank or to the performance, nonperformance, or manner of performance of John D. Margeson's respective functions, duties and actions as a director, officer, or member of any committee of the Bank including without limitation the causes of action alleged in the 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 Defendant or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note 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 R. Charles Loudermilk, Sr., Hugh C. Aldredge, David B. Allman, Marvin Cosgray, Louis J. Douglass III, Gregory W. Holden, Larry P. Martindale, Darryl L. Overall, any other defendant in the Action, and any other 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 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, Defendant 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 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. Defendant has submitted financial information to the FDIC-R, including without limitation a list of the Defendant's assets and liabilities valued as of the date of death of Mr. John D. Margeson and provided to the FDIC-R on October 6, 2015, and herein affirms that such financial information was true and accurate when provided and has not materially changed since then except due to market fluctuations, transactions in the ordinary course of business, and the administration of the Estate of John D.

Margeson. 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 Defendant. The FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information. If the FDIC-R establishes via a final adjudication in an appropriate judicial forum that Defendant failed to disclose any material interest, legal, equitable, or beneficial, in any asset, Defendant agrees to cooperate fully with the FDIC-R to provide updated financial information and to pay to the FDIC-R the lesser of (1) the value of Defendant's undisclosed material interest in such asset(s); or (2) the amount of unpaid damages alleged against Defendant.

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 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.

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: Joyce Gist Lewis, Shingler Lewis LLC, 1230 Peachtree Street, Suite

(b)(6) 1075, Atlanta, Georgia 30309, [REDACTED]

If to Defendant: Richard H. Sinkfield, Rogers & Hardin LLP, 2700 International Tower,

229 Peachtree Street NE, Atlanta, Georgia 30303, [REDACTED] with a copy to (b)(6)

Christopher A. Rascoe, Hendrick, Rascoe, Zitron & Long, LLC, The Rinaldi, Suite 250, 3282

(b)(6) Northside Parkway Atlanta, GA 30327, [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 THE BUCKHEAD COMMUNITY
BANK

(b)(6)
Date: 6-29-16

BY:

TITLE: _____ Counsel

PRINT NAME: Stuart Tonkinson

Date: _____

JEAN BOWERS MARGESON AS EXECUTOR FOR
THE ESTATE OF JOHN D. MARGESON

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 THE BUCKHEAD COMMUNITY
BANK

Date: _____

BY: _____

TITLE: _____ Counsel

PRINT NAME: Stuart Tonkinson

(b)(6)

Date: 6/8/16

[Redacted Signature Box]

executor

JEAN BOWERS MARGESON AS EXECUTOR FOR
THE ESTATE OF JOHN D. MARGESON

EXHIBIT "A"

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FEDERAL DEPOSIT INSURANCE)	
CORPORATION as Receiver for)	
THE BUCKHEAD COMMUNITY)	CIVIL ACTION FILE NO.:
BANK,)	
)	
Plaintiff,)	
)	1:12-CV-04156-TWT
v.)	
)	
R. CHARLES LOUDERMILK, SR., et al.,)	
)	JURY TRIAL DEMANDED
Defendants.)	

**STIPULATION OF DISMISSAL OF JEAN BOWERS MARGESON,
EXECUTOR OF THE ESTATE OF JOHN D. MARGESON**

COME NOW the parties herein pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and stipulate and agree to dismiss Jean Bowers Margeson ("Margeson"), Executor of The Estate of John D. Margeson, from the above-captioned action with prejudice, and to amend the case caption to remove this Defendant.

Plaintiff and Defendant Margeson will bear their own costs as to the dismissed claims. This action remains pending as to all other parties named herein.

Defendants' stipulation and agreement to the dismissal of Defendant Margeson is expressly without waiver of their apportionment of fault arguments, if

any, under O.C.G.A. § 51-12-33, and applicable case law.

Respectfully submitted, this __ day of July, 2016.

Consented to and stipulated to by:

SHINGLER LEWIS LLC

/s/ _____

JOYCE GIST LEWIS

Georgia Bar No. 296261

GEORGE P. SHINGLER

Georgia Bar No. 642850

ASHLEY E. WILSON

Georgia Bar No. 771512

1230 Peachtree Street

Suite 1075

Atlanta, GA 30309

404-907-1999

(b)(6) 

Attorneys for Plaintiff Federal Deposit Insurance Corporation as Receiver for Buckhead Community Bank

ALSTON & BIRD

/s/ _____

ROBERT R. LONG

Georgia Bar No. 141546

THEODORE J. SAWICKI

Georgia Bar Number 627851

ELIZABETH GINGOLD CLARK

Georgia Bar No. 917979

LAUREN TAPSON

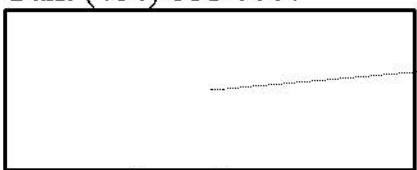
Georgia Bar No. 763604

1201 West Peachtree Street

Atlanta, Georgia 30309-3424

Phone: (404) 881-7000

Fax: (404) 881-7777



(b)(6)

Attorneys for Defendants

CERTIFICATE OF SERVICE

This is to certify that on this ___ day of July, 2016, a true and correct copy of the foregoing STIPULATION OF DISMISSAL OF JEAN BOWERS MARGESON, EXECUTOR OF THE ESTATE OF JOHN D. MARGESON was served upon all counsel and/or parties of record by electronic mail transmission as follows:

Robert R. Long
Theodore J. Sawicki
Elizabeth Gingold Clark
Lauren Tapson
Alston & Bird LLP
1201 West Peachtree Street
Atlanta, Georgia 30309-3424

(b)(6)



SHINGLER LEWIS LLC

/s/_____

JOYCE GIST LEWIS

1230 Peachtree Street
Suite 1075
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404-907-1999

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