

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement ("Agreement") is made as of this \_\_\_\_ day of November, 2010, by, between, and among the following undersigned parties:

The Federal Deposit Insurance Corporation, as Receiver of FirstBank Financial Services ("the FDIC"), Larry D. Adams, Wiley Arch Brown, Don H. Cagle, Luther M. Denney, III, Richard A. Grimes, Larry M. Phillips, William M. Waller, and Thaddeus M. Williams (collectively the "Settling Individuals"), Progressive Casualty Insurance Company ("Progressive"), and RSUI Indemnity Company ("RSUI"). The FDIC, the Settling Individuals, Progressive, and RSUI may be referred to herein individually as a "Party" and collectively as the "Parties".

**RECITALS**

**WHEREAS:**

1. Prior to February 6, 2009, FirstBank Financial Services ("the Bank") was a depository institution organized and existing under the laws of Georgia;
2. On February 6, 2009, the Bank was closed by the Georgia Department of Banking and Finance and, pursuant to 12 U.S.C. § 1821(c), the FDIC was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC as receiver succeeded to all rights, titles, powers and privileges of the Bank, its shareholders, and creditors, including right and title with respect to the Bank's assets.
3. Among the assets to which the FDIC as receiver succeeded were any and all claims, demands, and causes of action against the Bank's former directors, officers, and employees arising from the performance, nonperformance, and manner of performance of their respective functions, duties, and acts as directors and/or officers of the Bank;

4. The FDIC has asserted claims against the Settling Individuals and threatened to assert claims against others who had each served at various times as directors and/or officers of the Bank (the "FDIC Claims"). The Settling Individuals have denied any and all liability for the FDIC Claims.

5. Progressive issued directors' and officers' liability policy number [redacted] (the "Progressive Policy"), which insured the directors and officers of the Bank according to the terms, provisions and conditions of the Progressive Policy. The Settling Individuals have requested coverage under the Progressive Policy in connection with the FDIC Claims. Progressive has reserved its rights under the Progressive Policy for claims asserted by the FDIC against the Settling Individuals.

(b)(4),  
(b)(6)

6. RSUI issued directors' and officers' liability policy number [redacted] (the "RSUI Policy"), which insured the directors and officers of the Bank according to the terms, provisions and conditions of the Policy. The Settling Individuals have requested coverage under the RSUI Policy in connection with the FDIC Claims. RSUI has reserved its rights under the RSUI Policy for claims asserted by the FDIC against the Settling Individuals.

(b)(4),  
(b)(6)

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, 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**

A. As an essential covenant and condition to this Agreement, the Parties agree to pay the FDIC the sums in the following amounts (in the aggregate "the Settlement Funds"): On

behalf of the Settling Individuals, Progressive shall pay \$1,500,000.00, and not more, of the Settlement Funds; RSUI shall pay \$150,000.00, and not more, of the Settlement Funds; and the Settling Individuals shall pay or cause to be paid \$75,000.00, and not more, of the Settlement Funds. The payment obligations of Progressive, RSUI and the Settling Individuals under this Agreement are several and not joint. Progressive will continue to reimburse reasonable and necessary defense costs incurred by the Settling Individuals in connection with the FDIC Claims subject to the terms and conditions of the Progressive Policy and nothing in this Agreement relieves Progressive from the obligation to pay such defense costs. Within ten (10) business days following the execution of an original, or originals in counterparts, of this Agreement by each of the undersigned Parties to this Agreement, and receipt of full payment instructions and a completed Form W-9 from the FDIC (the "Payment Due Date"), the Settlement Funds shall be delivered to the FDIC by check or direct wire transfer into an account designated by the FDIC. In the event that the Settlement Funds are not delivered to the FDIC by the Payment Due Date, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the Payment Due Date until the date of payment. Any obligation to pay interest shall be severable and interest shall be due only from the Party or Parties failing to pay their respective share of the Settlement Funds by the Payment Due Date.

B. In the event that all Settlement Funds (including all accrued interest) are not received by the FDIC by the Payment Due Date, then the FDIC shall have the right to enforce this Agreement against the Party or Parties failing to deliver their share of the Settlement Funds, in which event the non-delivering Party, or Parties, agree to jurisdiction in Federal District Court in Georgia and agree to pay all of the FDIC's reasonable attorney's fees expended in enforcing the terms of this Agreement.

**SECTION II: Releases**

A. Releases of the Settling Individuals by the FDIC.

Effective upon payment of their portion of the Settlement Funds plus any accrued interest thereon, the FDIC, for itself and its successors and assigns, and in all of its capacities, hereby waives, releases, acquits and forever discharges the Settling Individuals, and each of them and their respective heirs, executors, and administrators, from any and all claims, demands, obligations, damages, actions, liabilities, and causes of action, whether known or unknown, whether accrued, inchoate, liquidated, contingent, actual or asserted, direct or indirect, in law, including but not limited to any violation of any state or federal statute, rule or regulation, or in equity, belonging to the FDIC, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of the Settling Individuals, concerning their respective functions, duties and actions as employees, officers and/or directors of the Bank.

B. Release of the FDIC by the Settling Individuals.

Effective simultaneously with the release granted in Paragraph II.A. above, the Settling Individuals, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge the FDIC, 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 FDIC Claims.

C. Mutual Release of FDIC and Certain Other Former Directors, Officers and Employees of the Bank.

In addition to the Settling Individuals, the FDIC, for itself and its successors and assigns, and in all its capacities, waives, releases, acquits and forever discharges each of the Bank's former directors, officers, and employees listed in Exhibit A ("the Additional D&Os"), and each of them and their respective heirs, executors, and administrators, from any and all claims, demands, obligations, damages, actions, liabilities, and causes of action, whether known or

unknown, whether accrued, inchoate, liquidated, contingent, actual or asserted, direct or indirect, in law, including but not limited to any violation of any state or federal statute, rule, or regulation, or in equity, belonging to the FDIC, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of the Additional D&Os concerning their respective functions, duties, and actions as employees, officers and/or directors of the Bank. In return, the Additional D&Os mutually release and discharge the FDIC, in all of its capacities, 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 FDIC Claims. These mutual releases shall be effective only upon execution of this Agreement and only upon execution by each of the Additional D&Os of the Supplemental Agreement attached hereto as Exhibit B.

D. Release of Progressive by the FDIC.

Effective upon payment of Progressive's share of the Settlement Funds and any interest accrued thereon, the FDIC, for itself, in all capacities, and its successors and assigns, hereby releases and discharges Progressive, its parents, subsidiaries, affiliates and reinsurers and its and their respective employees, officers, directors, agents, managing general agents, attorneys, representatives, successors and assigns, from any and all actions, causes of action, suits, claims for sums of money, contracts, controversies, agreements, promises, liabilities, costs, attorneys' fees, expenses, interest, recoupment of defense costs, damages, settlements, judgments, awards, and demands whatsoever, direct or indirect, in law or in equity, known or unknown, fixed or contingent, now existing or hereafter arising, whether contractual, extra-contractual, in tort, or otherwise, that arise from or relate to the FDIC Claims or the Progressive Policy; provided that this release shall not extend to or affect any other Progressive policy of insurance. The FDIC

agrees that any interest, in any capacity, it has, had or may have under the Progressive Policy is extinguished. This release includes, but is not limited to, claims for breach of contract, bad faith, unfair claims handling practices, or any claims under the common law implied covenant of good faith and fair dealing or statutory causes of action.

E. Release of the FDIC by Progressive

Effective simultaneously with the release granted in Paragraph II.D. above, Progressive, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby releases and discharges FDIC, and its employees, officers, directors, agents, 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 FDIC Claims or the Progressive Policy. This release shall not affect Progressive's rights in connection with any policy of insurance other than the Progressive Policy.

F. Release of RSUI by the FDIC.

Effective upon RSUI's payment of its share of the Settlement Funds and any interest accrued thereon, the FDIC, in all of its capacities, for itself and its successors and assigns, hereby releases and discharges RSUI, its parents, subsidiaries, affiliates and reinsurers, and its and their respective employees, officers, directors, agents, managing general agents, attorneys, representatives, successors and assigns, from any and all actions, causes of action, suits, claims for sums of money, contracts, controversies, agreements, promises, liabilities, costs, attorneys' fees, expenses, interest, recoupment of defense costs, damages, settlements, judgments, awards, and demands whatsoever, direct or indirect, in law or in equity, known or unknown, fixed or contingent, now existing or hereafter arising, whether contractual, extra-contractual, in tort, or

otherwise, that arise from or relate to the FDIC Claims or to the RSUI Policy; provided that this release shall not extend to or affect any other RSUI policy of insurance. The FDIC agrees that any interest, in any capacity, it has, had, or may have under the RSUI Policy is extinguished. This release includes, but is not limited to, claims for breach of contract, bad faith, unfair claims handling practices, or any claims under the common law implied covenant of good faith and fair dealing or statutory causes of action.

G. Release of the FDIC by RSUI

Effective simultaneously with the release granted in Paragraph II.H. above, RSUI, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby releases and discharges the FDIC, and its employees, officers, directors, agents, 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 FDIC Claims or the RSUI Policy. This release shall not extend to or affect RSUI's rights in connection with any policy of insurance other than the RSUI Policy.

H. Express Reservations From Releases By the FDIC.

1. Notwithstanding any other provision, by this Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed, any claims or causes of action:

a. against the Settling Individuals, the Additional D&Os, 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, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by the

FDIC as successor in interest to the Bank or any person or entity other than the Bank, and including but not limited to the right to object to the discharge or dischargeability of any such indebtedness in any bankruptcy proceeding;

b. against any person or entity not expressly released in this Agreement; and

c. which are not expressly released in Paragraph II above;

2. Notwithstanding any other provision, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction and authority of the FDIC in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition or any other administrative enforcement action which may arise by operation of law, rule or regulation.

3. Notwithstanding any other provision, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by any other federal or state governmental agency, including the United States through either the Department of Justice, the United States Attorney's Office for the Northern District of Georgia or any other federal judicial district.

### **SECTION III: Waiver of Dividends and Receivership Claims**

To the extent, if any, that Settling Individuals are or were shareholders of the Bank and by virtue thereof are or may have been entitled to a dividend, payment, or other *pro rata* distribution upon resolution of the receivership of the Bank, they hereby knowingly assign to the FDIC any and all rights, titles and interest in and to any and all such dividends, payments or other *pro rata* distributions. The Settling Individuals also waive any claim in the FirstBank receivership.

### **SECTION IV: Waiver of Dividends and Proceeds from Litigation**



To the extent, if any, that Settling Individuals are or were shareholders of FirstBank Financial Services, 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 FirstBank Financial Services or proceeds in any litigation that has been or could be brought against the United States based on or arising out of, in whole or in part, the closing of FirstBank Financial Services, or any alleged acts or omissions by the FHLBB, OTS, RTC, FDIC, the FSLIC Resolution Fund or the United States government in connection with FirstBank Financial Services, its conservatorship or receivership, they hereby knowingly assign to the FDIC any and all rights, titles and interest in and to any and all such dividends, payments or other distributions, or such proceeds.

**SECTION V: Salvage and Waiver of any Subrogation**

The FDIC shall retain all rights to recover from any of the debtors, direct obligors, or guarantors, and to sell or otherwise dispose of any collateral securing the underlying obligations which form the bases of the losses claimed by the FDIC against the Settling Individuals. The Settling Individuals, Progressive, and RSUI waive any and all rights or claims of subrogation, legal, equitable, or otherwise.

**SECTION VI: Representations and Acknowledgements**

A. No Admission of Liability. The Settling Individuals expressly deny the FDIC Claims. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims, including the claims for coverage, and nothing in this Agreement shall constitute, or shall be construed as, an admission of fact or liability, or evidence of liability by any of them regarding any claim.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the parties named herein and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all parties hereto; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the party or parties subscribed thereto upon the execution by all parties to this

Agreement.

C. Binding Effect. Each of the undersigned persons represents and warrants that he or she is a party hereto or is authorized to sign this Agreement on behalf of the respective party, and that she or she has 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, administrators, representatives, successors and assigns.

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 Georgia.

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. This Agreement may not be amended or modified except by another written instrument signed by the party or parties to be bound thereby, or by their respective authorized attorney(s) or other representative(s). The Settling Individuals, FirstBank Financial Services, Progressive, and RSUI have also entered into a separate agreement, captioned Release Agreement, which governs certain rights and duties between and among them, as set forth therein.

F. Jointly Drafted. All of the Parties and their respective counsel mutually contributed to the preparation of, and have had the opportunity to review and revise this Agreement. Accordingly, no provision of this Agreement shall be construed against any Party because that Party, or its counsel, drafted the provision. This Agreement and all of its terms shall be construed equally as to all persons or entities.

G. Specific Representations Warranties and Disclaimer. The Settling Individuals expressly acknowledge that in determining to settle the claims released here, the FDIC has reasonably and justifiably relied upon the accuracy of financial information in the financial statements submitted (if any). The Settling Individuals agree that if, in their financial statements, they have failed to disclose any material interest, legal, equitable, or beneficial, in any asset, the

settling parties consent to the reinstatement of FDIC's claims solely as to the particular settling party that failed to make the requisite disclosures; and waive any statute of limitations that would bar any of the FDIC's claims against them. Nothing in this paragraph shall affect the validity of any such settling party's release of any other party released herein.

The FDIC represents and warrants that it owns all claims, demands, and causes of action against the Bank's former directors, officers, and employees arising from the performance, nonperformance, and manner of performance of their respective functions, duties, and acts as directors and/or officers of the Bank and the FDIC has not assigned or transferred or purported to assign or transfer any to any person or entity.

H. Reasonable Cooperation.

1. The undersigned parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement.

2. Further, the Settling Individuals agree to cooperate fully with the FDIC in connection with any action required under this Agreement. Any such cooperation that involves any out of pocket costs is subject to reasonable reimbursement by the FDIC pursuant to its internal guidelines and policy for such reimbursement. Such cooperation shall consist of:

a. producing all documents requested by the FDIC, without the necessity of subpoena, as determined by the FDIC, in its sole discretion, to be relevant to the Bank;

b. making themselves available upon request by the FDIC at reasonable times and places for interviews regarding facts, as determined by the FDIC in its sole discretion, to be relevant to the Bank;

c. appearing to testify, upon request by the FDIC, in any matter determined by the FDIC in its sole discretion, to be related to the Bank, without the necessity of subpoena;

d. signing truthful affidavits upon request by the FDIC, regarding any matter, as determined by the FDIC in its sole discretion, to be relevant to the Bank.

I. 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, his or her counsel.

**SECTION VII: Destruction of Confidential Documents and ESI**

Within thirty (30) days of the execution of this Agreement, counsel for the Settling Individuals, Progressive, and RSUI will certify by sworn affidavit or declaration that all confidential documents and electronically stored information ("ESI") produced by the FDIC in connection with the claims asserted and which they each respectfully received, if any, have been destroyed and deleted, with no copies retained, in a manner designed to protect the confidential nature of the documents and ESI; provided that, the Settling Individuals, Progressive, RSUI and their counsel may retain copies of the FDIC's mediation statements and exhibits thereto; provided further that, the Settling Individuals, Progressive and RSUI will continue to keep the retained mediation statements strictly confidential.

**IN WITNESS WHEREOF** the Parties have executed this Agreement individually and with the approval of their attorneys, and the FDIC has executed this agreement by its duly authorized representatives. By executing this Agreement, each Party stipulates, agrees, and warrants as follows: (i) that the terms of this Agreement are reasonable; (ii) that he or it will not challenge or contest in any way the capacity or the authority of any Party hereto to make the Agreements set forth herein, and (iii) that the person executing this Agreement on his behalf, or on behalf of the entity indicated, has the necessary and appropriate authority and capacity to execute this Agreement and to make this Agreement fully binding upon and enforceable against himself or the entity he represents.

FEDERAL DEPOSIT INSURANCE  
CORPORATION

By: \_\_\_\_\_

[Redacted Signature Box]

(b)(6)

Title: Counsel

Date: 16 Dec 2011

Print Name: Stavros E. Smith

(b)(6)

[Redacted]

LARRY D. ADAMS

Title: DIRECTOR

Date: \_\_\_\_\_

Print Name: LARRY D. ADAMS

(b)(6)

[Redacted]

WILEY ARCH BROWN

Title: Director

Date: \_\_\_\_\_

Print Name: Wiley A. Brown

(b)(6)

[Redacted]

DONALD CAGEE

Title: Chairman

Date: \_\_\_\_\_

Print Name: Don H. Cagge

(b)(6)

[Redacted]

LUTHER M. DENNEY, III

Title: Director

Date: 12/01/10

Print Name: Luther M. Denney III

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(b)(6)

Print Name: \_\_\_\_\_

[Redacted]

LARRY D. ADAMS

Title: DIRECTOR

Date: \_\_\_\_\_

Print Name: LARRY D. ADAMS

(b)(6)

[Redacted]

WILEY ARCH BROWN

Title: Director

Date: \_\_\_\_\_

Print Name: Wiley A. Brown

(b)(6)

[Redacted]

~~DO~~ H. CAGLE

Title: Chairman

Date: \_\_\_\_\_

Print Name: Don H. Cagle

(b)(6)

[Redacted]

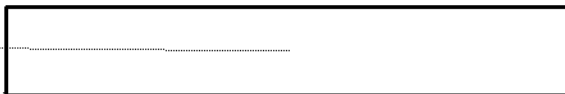
LUTHER M. DENNEY, III

Title: Director

Date: 12/01/10

Print Name: Luther M. Denney III

(b)(6)



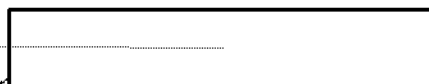
**RICHARD A. GRIMES**

Title: DIRECTOR

Print Name: RICHARD A. GRIMES

Date: December 1, 2010

(b)(6)



**LARRY M. PHILLIPS**

Title: Director

Print Name: Larry M Phillips

Date: December 1, 2010

**WILLIAM M. WALLER**

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

(b)(6)



**THADDEUS M. WILLIAMS**

Title: CEO / Director

Date: December 1, 2010

Print Name: Thaddeus M. Williams

**PROGRESSIVE CASUALTY INSURANCE  
COMPANY**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

**RICHARD A. GRIMES**

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**LARRY M. PHILLIPS**

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

(b)(6)



**WILLIAM M. WALLER**

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

**THADDEUS M. WILLIAMS**

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

**PROGRESSIVE CASUALTY INSURANCE  
COMPANY**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_



**RICHARD A. GRIMES**

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**LARRY M. PHILLIPS**

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**WILLIAM M. WALLER**

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**THADDEUS M. WILLIAMS**

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**PROGRESSIVE CASUALTY INSURANCE  
COMPANY**

(b)(6)

By

[Redacted Signature]

*as agent  
for Progressive*

Title: Senior Attorney

Print Name: KATHARINE K. RUSSUM

Date: 12/07/2010

**RSUI INDEMNITY COMPANY**

(b)(6)

By:

[Redacted Signature]

Title:

Chief Claims Specialist

Date:

12/6/10

Print Name:

Scott J. Fahy



**EXHIBIT A**

- The Honorable James T. Chafin, III
- William Lee Craddock, Jr.
- Lisa Maxwell
- Milton Stanley Coggins
- Robert J. McDonald

EXHIBIT B

SUPPLEMENTAL D&O AGREEMENT

I hereby acknowledge that I have been provided and have read a copy of the Settlement and Release Agreement dated the \_\_\_\_\_ day of November, 2010 (the "Agreement"), a copy of which is annexed hereto. I specifically agree to the mutual release provision of the Agreement set forth in Paragraph II.C.

(b)(6)   (b)(6)  
The Honorable James I. Chalm, III William Lee Craddock, Jr.

\_\_\_\_\_  
Lisa Maxwell

\_\_\_\_\_  
Milton Stanley Coggins


(b)(6)   
Robert J. McDonald

EXHIBIT B  
SUPPLEMENTAL D&O AGREEMENT

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\_\_\_\_\_  
The Honorable James T. Chafin, III

\_\_\_\_\_  
William Lee Craddock, Jr.

(b)(6)

[Redacted Signature]

Lisa Maxwell

\_\_\_\_\_  
Milton Stanley Coggins

\_\_\_\_\_  
Robert J. McDonald

EXHIBIT B  
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\_\_\_\_\_  
The Honorable James T. Chafin, III

\_\_\_\_\_  
Lisa Maxwell

\_\_\_\_\_  
Robert J. McDonald

\_\_\_\_\_  
William Lee Craddock, Jr.

\_\_\_\_\_  


Milton Stanley Coggins

(b)(6)