

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 Montgomery Bank & Trust, Ailey, Georgia ("FDIC-R"); Melanie Damian, as sole Director for Montgomery County Bankshares, Inc. ("MCBI") and as Receiver for PFGBI, LLC ("PFGBI") (collectively "SEC-R"), and St. Paul Mercury Insurance Company ("St. Paul") (individually, the FDIC-R, the SEC-R and St. Paul, may be referred to herein as "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

Prior to July 6, 2012, Montgomery Bank & Trust, Ailey, Georgia ("Bank") was a depository institution organized and existing under the laws of the State of Georgia.

The Bank was wholly owned by Montgomery County Bankshares, Inc. which, in turn, was majority owned (72%) by PFGBI. Aubrey Lee Price ("Price") was the managing member and of PFGBI.

St. Paul issued a Financial Institution Bond, Policy No. (the "Bond"), to the (b)(4)
Bank for the period of December 31, 2011 to December 31, 2012. The Bond provided a Single Loss Limit of Liability of \$1 million for employee dishonesty.

The Bank, MCBI, and PFGBI are all listed as Insureds under the Bond, with MCBI being the First Named Insured.

On July 6, 2012, the Georgia Department of Banking and Finance ("GDBF") 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 St. Paul relating to and arising under the Bond.

On August 10, 2012, the District Court for the Northern District of Georgia (the "District Court") presiding over the case styled *Securities and Exchange Commission v. Aubrey Lee Price et al.*, Case No. 1:12-CV-2296 TCB, appointed Ms. Damian as the Receiver for the Estate of Aubrey Lee Price and for PFG, LLC, PFGBI, LLC, Montgomery Asset Management, LLC f/k/a PFG Asset Management, LLC (Florida), and Montgomery Asset Management, LLC f/k/a PFG Asset Management, LLC (Georgia). [D.E. 20].

Pursuant to the District Court's Order Appointing the Receiver (the "Receivership Order"), the Receiver is obligated to, among other things, "sue for and collect, recover, receive, and take into possession from third parties all Receivership Property and records relevant thereto[.]" [D.E. 20 at §7(B)]. Furthermore, the Receivership Order authorizes the Receiver "[t]o take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property[.]" [D.E. 20 at §7(H)]. Among the assets to which the SEC-R succeeded were all of the Receivership Defendant's claims, demands, and causes of action against St. Paul relating to and arising under the Bond.

On January 7, 2013, the FDIC-R submitted a Proof of Loss to St. Paul alleging a loss during the policy period caused by the dishonest acts of Price ("FDIC-R Bond Claim").

The SEC-R, in her capacity as Receiver of PFGBI, subsequently filed a Proof of Loss with St. Paul on behalf of PFGBI, alleging a loss during the policy period caused by the dishonest acts of Price.

The SEC-R, in her capacity as sole Director of MCBI, also filed a Proof of Loss with St. Paul on behalf of MCBI, alleging a loss during the policy period caused by the dishonest acts of Price (collectively the Proofs of Loss filed on behalf of PFGBI and on behalf of MCBI are referred to as "SEC-R Bond Claim").

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 and SEC-R

A. As an essential covenant and condition to this Agreement, St. Paul agrees to pay the FDIC-R the sum of ONE HUNDRED TWENTY THOUSAND AND 00/100 DOLLARS (\$120,000.00) ("FDIC-R Settlement Payment") and agrees to pay the SEC-R the sum of ONE HUNDRED EIGHTY THOUSAND 00/100 DOLLARS (\$180,000.00) ("SEC-R Settlement Payment"), for a total payment of THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$300,000.00) (collectively, the "Settlement Payments"). The Settlement Payments will be made within fifteen (15) business days after the District Court's order approving this Agreement.

B. St. Paul shall deliver the FDIC-R Settlement Payment 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] (b)(4) for credit to FDIC National Liquidation Account Montgomery Bank & Trust, Ailey, Georgia (b)(5) (PIN 10448) Professional Liability [REDACTED] DIF Fund. Asset Number is [REDACTED] (b)(5) (b)(6) Contact [REDACTED] DRR Investigations, (972) 761-8112.

C. St. Paul shall deliver the SEC-R Settlement Payment by direct wire transfer into the following account: Gibraltar Bank, FSB, 55 Alhambra Plaza, Miami, FL 33134, Beneficiary Account [REDACTED] Routing/ABA#: [REDACTED] Beneficiary: Receiver's Account Estate of Aubrey Lee Price PFG LLC, Beneficiary Address: 1000 Brickell Ave., Ste. 1020, Miami, FL 33131. (b)(4)

The Parties agree that time is of the essence with respect to the obligation to make the Settlement Payments.

D. If the FDIC-R and the SEC-R do not receive their respective Settlement Payments in full on or before the date determined by subsection A above, then the FDIC-R and/or SEC-R, at its sole discretion, shall have the right at any time prior to receipt of its Settlement Payment in full (including all accrued interest) to:

1. Extend the period of time for the Settlement Payment; or

2. Enforce this Agreement, in which event St. Paul agrees to jurisdiction in the District Court Case No. 1:12-CV-2296 TCB and to pay all of the FDIC-R's and the SEC-R's reasonable attorneys' 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 and/or SEC-R's claims. St Paul further agrees to waive any defense based on any statute of limitations that would bar any of the FDIC-R's or the SEC-R's claims relating to and arising under the Bond 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.D.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's or the SEC-R's rights to take any of the actions set forth in Section I.D.2 through I.D.4 at any time prior to receipt of their respective Settlement Payment (including all accrued interest) in full.

SECTION II: Releases

A. The FDIC-R's Release.

Upon receipt of the FDIC-R Settlement Payment in full by the FDIC-R, as provided in Section I, and except as provided in Section II.E, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges St. Paul and its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, 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 FDIC-R Bond Claim.

B. St. Paul's Release of FDIC-R.

Effective simultaneously with the release granted in Section II. A. above, St. Paul for itself, and its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, attorneys, successors and assigns, hereby releases and

discharges the FDIC-R and its employees, officers, directors, agents, 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 FDIC-R Bond Claim.

C. The SEC-R's Release.

Upon receipt of the SEC-R Settlement Payment in full by the SEC-R, as provided in Section I, and except as provided in Section II.E, the SEC-R, for itself and its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, attorneys, successors and assigns, hereby releases and discharges St. Paul and its parents, subsidiaries, affiliates and reinsurers, and their respective employees, attorneys, 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, in contract or in tort, that arise from or in any way relate to the SEC-R Bond Claim including but not limited to any principal claims or statutory or common law bad faith claims.

D. St. Paul's Release of SEC-R.

Effective simultaneously with the release granted in Section II.C. above, St. Paul for itself, and its parents, subsidiaries, affiliates and reinsurers, and their respective receivers, employees, attorneys, officers, directors, agents, representatives, attorneys, successors and assigns, hereby releases and discharges the SEC-R and its respective 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, in contract or in tort, that arise from or in any way relate to the SEC-R Bond Claim, including but not limited to any principal claims or statutory or common law bad faith claims.

E. Express Reservations from Releases by FDIC-R and SEC-R.

1. Notwithstanding any other provision in this Agreement, the FDIC-R 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 St. Paul 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, the SEC-R, 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 or SEC-R in this Agreement.

2. Notwithstanding any other provision in this Agreement, the SEC-R 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 arising from St. Paul or SEC-R's breach of this Agreement, if any.

3. 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 proceedings seeking removal, prohibition or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

4. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either 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 III: Cooperation and Subrogation

The Parties affirm their understanding and agreement to be bound by the Bond provisions relating to cooperation and subrogation and assignment rights as set forth in the Bond. The

Parties further agree that the FDIC-R's agreement with the SEC-R not to share in any distribution of the SEC-R's proceeds from this settlement shall not be deemed an impairment of St. Paul's subrogation or other rights under the Bond.

SECTION IV: Representations and Acknowledgements

A. Authorized Signatories. Each 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 on behalf of whom he or she is signing, and that he or she has 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. 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 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.

C. 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; 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.

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 and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except by another written instrument signed by the Parties bound thereby, or by their respective authorized attorney(s), or

other representative(s).

F. 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.

G. 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 his or her counsel.

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

If to the FDIC-R:

Barbara Slott Pegg
Counsel, Federal Deposit Insurance Corporation
3501 Fairfax Dr., # B-7062
Arlington, VA 22226

(b)(6)

[Redacted]

and

Alan Curley
Robinson Curley & Clayton, P.C.
300 South Wacker Drive, Suite 1700
Chicago, Illinois 60606

(b)(6)

[Redacted]

If to SEC-R:

Melanie E. Damian, Receiver
c/o Kenneth Dante Murena, P.A.
Damian & Valori, LLP
1000 Brickell Avenue, Suite 1020
Miami, Florida 33131

(b)(6)

[Redacted]

If to St. Paul:

Michael Caldwell
Travelers Bond & Financial Products Claims
1000 Windward Concourse, Suite 100
Alpharetta, Georgia 30005

(b)(6)

I. 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.

J. No Confidentiality. All Parties acknowledge 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, and as required for the SEC-R to obtain the District Court's approval to enter into this Agreement.

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
MONTGOMERY BANK & TRUST**

Date: 7/18/2016

By:

(b)(6)

Title: Counsel
Print Name: Barbara Slott Pegg

**MELANIE E. DAMIAN AS
RECEIVER FOR PFGBI, LLC**

Date: 7/19/2016

By:

(b)(6)

Title: Receiver
Print Name: Melanie E. Damian

**MELANIE E. DAMIAN AS
DIRECTOR FOR MONTGOMERY
COUNTY BANKSHARES, INC.**

Date: 7/19/2016

[Redacted Signature]

(b)(6)

By:
Title: Sole Director
Print Name: Melanie E. Damian

Date: 7/29/2016

**ST. PAUL MERCURY INSURANCE
COMPANY**

[Redacted Signature]

(b)(6)

By:
Title: Claims Executive
Print Name: Michael Caldwell