

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made as of this 13TH day of April, 2012, by, between, and among the following undersigned parties: The Federal Deposit Insurance Corporation, as receiver of Silverton Bank, N.A. (“FDIC-R”), and Brian Bueche (“Bueche”). The FDIC-R and Bueche may be referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS:

1. Prior to May 1, 2009, Silverton Bank N.A. (“Silverton” or “Bank”) was a depository institution organized and existing under the laws of the United States;
2. On May 1, 2009, the Bank was closed by the Office of the Comptroller of the Currency and, pursuant to 12 U.S.C. § 1821(c), the FDIC-R was appointed receiver of the Bank. 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;
3. Among the assets to which the FDIC-R succeeded were any and all of the Bank's claims, demands, and causes of actions 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 and/or officers of the Bank;
4. On August 23, 2011, the FDIC-R filed a complaint for money damages against certain persons, including Bueche, who had each served at various times as directors and/or officers of the Bank. Those claims for damages are now pending in the United States District Court for the Northern District of Georgia, in *Federal Deposit Insurance Corporation, as Receiver of Silverton Bank, N.A. v. Bryan et. al.*, Civil Action No. 1:11-cv-02790-JEC (“D&O Action”).

5. Federal Insurance Company, a member insurer of the Chubb Insurance Group (“Chubb”), issued DFI Primary Professional Liability Policy No. [REDACTED] (“Chubb Policy”), (b)(4) which insures the directors and officers of the Bank according to the terms, provisions and conditions of the Chubb Policy. Westchester Fire Insurance Company (“Westchester”) issued an (b)(4) Excess Liability Policy No. [REDACTED] (“Westchester Policy”), which provides excess insurance coverage to the directors and officers of the Bank according to the terms, provisions and conditions of the Westchester Policy. Bueche has made a claim under the Chubb Policy and the Westchester Policy relating to the claims asserted in the D&O Action. Chubb has denied coverage under the Chubb Policy and Westchester has denied coverage under the Westchester Policy.

6. This Agreement is entered into to settle the claims asserted by the FDIC-R against Bueche in the D&O Action.

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

AGREEMENT

SECTION I: Payment to the FDIC-R

A. As an essential covenant and condition to this Agreement, Bueche agrees to pay the FDIC-R the sum of \$320,000.00 (“Settlement Funds”).

B. Upon the execution of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement, but by no later than within thirty (30) days

of execution of this Agreement by the FDIC-R, the Settlement Funds shall be delivered to FDIC-R by direct wire transfer into an account designated by the FDIC-R. In the event that the Settlement Funds are not delivered to the FDIC-R within thirty (30) days of execution of this Agreement by the FDIC-R, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the date that is thirty-one (31) days after the date of execution of this Agreement by the FDIC-R, until the date of payment.

C. In addition, and without waiving any other rights that the FDIC-R may have, in the event that all Settlement Funds are not received by the FDIC-R within thirty (30) days of execution of this Agreement by the FDIC-R, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of all Settlement Funds (including all accrued interest) to declare this Agreement null and void, shall have the right to extend this Agreement for any period of time until it receives all Settlement Funds (including all accrued interest), and/or shall have the right to enforce this Agreement against Bueche in which event Bueche agrees to jurisdiction in the United States District Court for the Northern District of Georgia and agrees to pay all of the FDIC-R's reasonable attorney's fees expended in enforcing the terms of this Agreement. Any decision by the FDIC-R to extend the terms of this Agreement or to accept a portion of the Settlement Funds shall not prejudice its rights to declare this Agreement null and void at any time prior to receipt of all Settlement Funds (including all accrued interest) or to enforce the terms of this Settlement Agreement; provided, however, that in the event the FDIC-R declares this Agreement null and void, the FDIC-R will return all amounts paid to it under this Agreement by Bueche.

SECTION II: Stipulated Judgment in Favor of the FDIC-R

The FDIC-R and Bueche stipulate to the entry of a final and binding judgment in the

D&O Action in favor of the FDIC-R and against Bueche in the amount of \$21,621,938 (“Stipulated Judgment”). The Stipulated Judgment shall bear post-judgment interest (beginning from the date judgment is entered until payment) pursuant to 28 U.S.C. § 1961(a).

SECTION III: FDIC-R Covenant Not to Execute and Assignments by Bueche

A. In consideration for the assignments set forth in Sections III. D. and III. E., the FDIC-R and its successors, assignees, agents, and any other person or entity acting on or in the FDIC-R’s behalf, covenant and agree not to cause the filing of any lawsuit, process, petition, or other legal proceeding in execution upon, or to take any action of any kind to document, record, or register as a lien, execute upon, or to collect the Stipulated Judgment from Bueche, except as set forth in paragraphs III.B. and VI.E. This covenant not to execute shall be effective immediately after the entry of the Stipulated Judgment and after the assignments set forth in Section III. D. and III. E. become effective in accordance with their terms.

B. The FDIC-R shall apply to payment of the Stipulated Judgment upon receipt the Settlement Funds, and all funds received by the FDIC-R as a result of its efforts to collect upon the rights, titles and interests of Bueche in the Chubb Policy and the Westchester Policy together with all of his respective rights, claims, and causes of action against Chubb and Westchester and their agents, brokers, employees, officers including, but not limited to, all statutory rights, contractual rights, and rights arising in tort or otherwise, relating to Chubb’s and Westchester’s duties to Bueche with respect to the D&O Action, specifically including the duty to settle and pay for the settlement of the D&O Action on behalf of Bueche. The FDIC-R may execute on the Stipulated Judgment to the extent necessary to realize the full value of Bueche’s rights against Chubb and Westchester assigned to the FDIC-R hereunder, but will not collect or attempt to collect the Stipulated Judgment from Bueche, except as set forth in Section VI.E.

C. The FDIC-R is solely responsible for all efforts to collect the Stipulated Judgment. The FDIC-R agrees that all such efforts will be undertaken solely at its own risk and expense and that if those efforts are in any way unsuccessful, the FDIC-R shall have no recourse against Bueche or his attorneys.

D. In consideration for the covenant not to execute set forth in Section III. A., Bueche assigns to the FDIC all of his rights, claims, and causes of action against Chubb and its agents, brokers, employees, officers and all other persons or entities relating to or arising out of any applicable insurance policy or policies, the D&O Action, or the Stipulated Judgment including, but not limited to, all statutory rights, contractual rights, and rights arising in tort or otherwise, relating to Chubb's duties to Bueche with respect to the D&O Action, specifically including the duty to settle and pay for the settlement of the D&O Action on behalf of Bueche. The assignment in this Section III. D. will be effective immediately following the entry of the Stipulated Judgment and before the covenant not to execute set forth in Section III. A. is effective.

E. In consideration for the covenant not to execute set forth in Section III. A., Bueche assigns to the FDIC all of his rights, claims, and causes of action against Westchester and its agents, brokers, employees, officers and all other persons or entities relating to or arising out of any applicable insurance policy or policies, the D&O Action, or the Stipulated Judgment including, but not limited to, all statutory rights, contractual rights, and rights arising in tort or otherwise, relating to Westchester's duties to Bueche with respect to the D&O Action, specifically including the duty to settle and pay for the settlement of the D&O Action on behalf of Bueche. The assignment in this Section III. E will be effective immediately following the entry of the Stipulated Judgment and before the covenant not to execute set forth in Section III.

A is effective.

F. Within seven (7) days of entry of the Stipulated Judgment, Bueche shall seek the dismissal (without prejudice) of his claims pursuant to O.C.G.A. § 33-4-6 (“Bad Faith Claims”) against Chubb and Westchester. Bueche may not re-assert the Bad Faith Claims against Chubb and/or Westchester without the express written consent of the FDIC-R, which consent the FDIC-R may withhold for any reason. Within fourteen (14) days of the entry of the Stipulated Judgment, the FDIC-R shall, pursuant to Federal Rule of Civil Procedure 25, seek to substitute itself for Bueche in connection with Bueche’s claims against Chubb and Westchester and Chubb’s and Westchester’s claims against Bueche. Once the FDIC-R is substituted in as the proper party, the FDIC-R shall have complete discretion as to how those claims shall be prosecuted and defended.

SECTION IV: Releases

A. Release of Bueche by the FDIC-R.

1. Effective upon receipt in full of the Settlement Funds plus any accrued interest described in Section I. above, and except for the Stipulated Judgment and as provided in Paragraph IV.C. below, the FDIC-R, on behalf of itself and its employees, officers, directors, representatives, successors and assigns, hereby releases and discharges Bueche and his respective heirs, executors, administrators, agents, representatives, successors and assigns, from any and all civil 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 Bueche’s functions, duties and actions as an officer and/or director of the Bank that were not asserted by the FDIC-R against Bueche in the D&O Action.

B. Release of the FDIC-R by Bueche.

Effective simultaneously with the release granted in Paragraph IV.A. above, Bueche, on behalf of himself individually and his respective heirs, executors, administrators, agents, representatives, successors and assigns, 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 Bueche's functions, duties and actions as an officer and/or director of the Bank or that arise from or relate to the Chubb Policy or the Westchester Policy.

C. Express Reservations from Releases by the FDIC-R.

1. Notwithstanding any other provision, by 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 Bueche 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-R, 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 Bank;

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

c. the Stipulated Judgment (but FDIC will not collect or attempt to collect the Stipulated Judgment from Bueche, except as set forth in Section VI.E);

d. which are not expressly released in Paragraph II.B. above; and

e. the payment of the Settlement Funds.

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 the United States through either the Department of Justice, the United States Attorneys' Office for the Northern District of Georgia or any other federal judicial district. In addition, the FDIC-R specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et. seq.*, if appropriate.

SECTION V: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that Bueche is or was a shareholder of Silverton 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 Silverton 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 Silverton, or any alleged acts or omissions by the Federal Home Loan Bank Board (or its successors), the Office of Thrift Supervision (or its successors), the Resolution Trust Corporation (or its successors), the FDIC, the Federal Savings and Loan Insurance Corporation Resolution Fund (or its successors), the Office of the Comptroller of the Currency, or the United States government in connection with Silverton, its conservatorship or receivership, Bueche 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 such proceeds.

SECTION VI: Representations and Acknowledgements

A. 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.

B. Binding Effect. Each of the undersigned persons represents and warrants that they are a Party 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, administrators, representatives, successors and assigns.

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. 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).

E. Specific Representations Warranties and Disclaimer. Bueche expressly acknowledges that, in determining to settle the claims herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of financial information, including, but not limited to,

personal financial statements and related materials submitted by Bueche to the FDIC-R (“Financial Information”). If, in such Financial Information, Bueche has failed to disclose any material interest, legal, equitable, or beneficial, in any asset, Bueche agrees to cooperate fully with the FDIC-R to transfer his interest in the asset to the FDIC-R and to sign any and all documents necessary to transfer his interest in the asset to the FDIC-R. Moreover, if, in his Financial Information, Bueche has failed to disclose any material interest, legal, equitable, or beneficial, in any asset, the FDIC-R, in its sole discretion, may exercise one or more or all of the following remedies: (i) the FDIC-R may declare the releases granted to Bueche null and void; (ii) the FDIC-R may retain the Settlement Funds; (iii) the FDIC-R may declare the covenant not to execute as null and void; (iv) the FDIC may retain the Stipulated Judgment; and (v) the FDIC-R may sue Bueche for damages, an injunction, and specific performance for the breach of this agreement. Bueche agrees that if, in his Financial Information, he has failed to disclose any material interest, legal, equitable, or beneficial, in any asset, then Bueche consents to the reinstatement of the FDIC-R’s claims and waives any statute of limitations that would bar any of the FDIC-R’s claims against him.

F. Reasonable Cooperation.

1. The undersigned 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 perform the terms of this Agreement.

2. Bueche agrees to cooperate fully with the FDIC-R 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-R pursuant to its internal guidelines and policy for such reimbursement. Such cooperation shall consist of:

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

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

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

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

3. Bueche will, upon request of the FDIC-R or its attorneys, provide reasonable assistance in all efforts to collect the Stipulated Judgment and any other amounts based on the assigned rights, claims, and causes of action, including, but not limited to, responding to discovery requests, providing access to relevant non-privileged documents, giving truthful affidavits and deposition testimony at reasonable times and places, and testifying truthfully at trial. This Agreement shall not limit or affect the testimony which Bueche gives in any proceeding and it is understood and agreed that Bueche will also refrain from taking any actions that will prejudice the FDIC-R's ability to collect the Stipulated Judgment from any responsible party, provided however, that Bueche will give truthful testimony.

G. Advice of Counsel. Each Party hereby acknowledges that he 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 its counsel.

H. No Prior Transfer of Claims. Bueche warrants and represents that he has not assigned, sold, or otherwise transferred or disposed of, and will not assign, sell, or otherwise transfer or dispose of, any interest in the Chubb Policy or the Westchester Policy or Bueche's respective rights, claims, and causes of action against Chubb and Westchester and their agents, brokers, employees, officers and all other persons or entities relating to or arising out of any applicable insurance policy or policies, the D&O Action or the Stipulated Judgment, including, but not limited to, all statutory rights, contractual rights, and rights arising in tort or otherwise, relating to Chubb's and/or Westchester's duties to Bueche with respect to the D&O Action, specifically including the duty to settle and pay for the settlement of the D&O Action on behalf of Bueche. The FDIC-R warrants and represents that it (i) owns all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to Bueche's conduct as officer and/or director of Silverton, and (ii) has not assigned, sold, or otherwise transferred or disposed of, and other than as contemplated by this Agreement, will not assign, sell, or otherwise transfer or dispose of, any of such claims, demands, obligations, damages, actions, and causes of action.

I. Enforceability. In the event that any portion of this Agreement is held to be void or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall have the same force and effect as though the void or unenforceable parts have been deleted.

J. Authorship. In the event any dispute, disagreement or controversy arises regarding this Agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

K. 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.

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 SILVERTON BANK, N.A.

(b)(6)

Date: April 19, 2012

By:

[Redacted Signature]

Gregory K. Conway, Esq.
Counsel

BRIAN BUECHE

(b)(6)

Date: April 19, 2012

By:

[Redacted Signature]

Brian Bueche

Defendant, Brian Bueche (“Bueche”). Having considered the pleadings and evidence before the Court, the Court finds as follows:

1. In this civil action (“D&O Action”), the FDIC-R has filed its complaint alleging breaches of fiduciary duty and acts of negligence and gross negligence in connection with Bueche’s role as an officer of Silverton Bank, N.A. (“Complaint”).

2. The FDIC-R and Bueche have entered into a settlement agreement pursuant to which, among other things, Bueche consents to the entry of a judgment against him in the amount of \$21,621,938 (plus post-judgment interest) (“Stipulated Judgment”).

3. The Stipulated Judgment will be a complete and final judgment addressing all claims against Bueche.

4. The Motion is well taken and should be GRANTED, it is therefore ORDERED and ADJUDGED as follows:

A. Judgment is entered in this matter in favor of the FDIC-R against Defendant Brian Bueche on the FDIC-R’s Counts Two, Three and Four for relief set forth in the Complaint, in the amount of \$21,621,938 to bear post-judgment interest (beginning from the date this judgment is entered until payment) pursuant to 28 U.S.C. § 1961(a).

B. The judgment against Bueche is several, and no amount recovered by the FDIC-R on the Stipulated Judgment shall be credited against any amount awarded to the FDIC-R (if any) in the future against any other Defendant in the D&O Action. Similarly, no amount collected by the FDIC-R from any other Defendant in the D&O Action shall be credited against the Stipulated Judgment.

C. Each party to bear their own costs.

This _____ day of April, 2012.

Honorable Julie E. Carnes
Judge, United States District Court
Northern District of Georgia