

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 Polk County Bank (“FDIC-R”), and Timothy Rhoades, Robert Miller, Thomas Miller, Kenneth Bilbrey, Susan Clark, William Kimball, and Kurt Stocker (collectively the “Settling Directors”). The FDIC-R and the Settling Directors may be individually referred to herein as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS:

Prior to November 18, 2011, Polk County Bank, Johnston, Iowa (“Bank”) was a depository institution organized and existing under the laws of the State of Iowa and the United States;

On November 18, 2011, the Iowa Division of Banking 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 asserted claims against the Settling Directors, each of whom served at various times as a director of the Bank. The Settling Directors deny liability for the claims.

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 final Party executes this Agreement, the Settling Directors agree to cause the sum of \$500,000 (“the Settlement Payment”) to be paid to the FDIC-R.

B. The Settling Directors 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 the Settling Directors or by certified or cashier’s check drawn upon a depository institution acceptable to FDIC-R. In the event the FDIC-R does not provide wire transfer instructions within five (5) days following the date the final Party executes this Agreement, the deadline for making the Settlement Payment shall be extended by a period commensurate with the number of days in excess of five (5) it takes the FDIC-R to provide wire transfer instructions.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsections A and B 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 (including all accrued interest) to:

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

2. Enforce this Agreement, in which event the Settling Directors agree to jurisdiction in United States District Court for the Southern District of Iowa, 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 Settling Directors further agree to waive all 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.

D. 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 the Settlement Payment (including all accrued interest) in full.

SECTION II: Releases

A. The FDIC-R's Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section II.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Settling Directors and their respective heirs, executors, trustees, administrators, 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, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the Settling Directors' respective functions, duties and actions as officers and/or directors of the Bank.

B. The Settling Directors' Release.

Effective simultaneously with the release granted in Section II.A. above, the Settling Directors, 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 Settling Directors' 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 Settling Directors 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 III: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that Settling Directors are or were shareholders of the 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, Settling Directors 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 IV: 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 Settling Director has submitted financial information to the FDIC-R, including a personal financial statement, and each herein affirms that his or her financial information is true and accurate as of the date of the statement to the best of each Settling Director's ability to ascertain his or her financial situation at the time. Each Settling Director 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 Settling Directors. 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 a Settling Director failed to disclose any material interest, legal, equitable, or beneficial, in any asset, that Settling Director 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 the Settling Director's undisclosed material interest in such asset(s); or (2) the amount of unpaid damages alleged against that Settling Director.

SECTION V: Reasonable Cooperation

A. 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.

B. The Settling Directors agree to cooperate fully with the FDIC-R in connection with any action required under this Agreement. Such cooperation shall consist of:

1. 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 this Agreement;

2. Appearing as requested 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 this Agreement;

3. Testifying as requested by the FDIC-R, without the necessity of a subpoena, in any matter relevant to this Agreement, as determined by the FDIC-R;

4. Signing truthful affidavits, regarding any matter, as determined by the FDIC-R in its sole discretion, to be relevant to this Agreement.

SECTION VI: 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 Iowa.

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:

Federal Deposit Insurance Corporation
Legal Division/PLU
3501 Fairfax Drive, Suite B-7022
Arlington, Virginia 22226
Attn: Kevin W. Wheelwright

(b)(6)

and

Robinson Curley & Clayton, P.C.
300 South Wacker Drive, Suite 1700
Chicago, Illinois 60606
Attn: Susan Valentine

(b)(6)

If to the Settling Directors:

Belin McCormick, P.C.
666 Walnut Street, Suite 2000
Des Moines, Iowa 50309
Attn: Stephen H. Locher

(b)(6)

[For Directors Miller, Miller, Bilbrey, Clark,
Kimball and Stocker]

and

Ahlers & Cooney, P.C.
100 Court Ave., Suite 600
Des Moines, IA 50309-2231
Attn: Wade R. Hauser III

(b)(6)

[Redacted Signature]

[For Director Rhoades]

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 POLK COUNTY BANK**

(b)(6)

Date: 4-30-2015

[Redacted Signature]

BY:
TITLE: COUNSEL
PRINT NAME: Kevin W. Wheelwright

AND

(b)(6)

Date: 4-9-15



TIMOTHY RHOADES

Date: _____

ROBERT J. MILLER

Date: _____

THOMAS MILLER

Date: _____

KENNETH BILBREY

Date: _____

SUSAN CLARK

Date: _____

WILLIAM KIMBALL

Date: _____

KURT STOCKER

Date: _____

TIMOTHY RHOADES

(b)(6)

Date: *4/16/15*



ROBERT J. MILLER

Date: _____

THOMAS MILLER

Date: _____

KENNETH BILBREY

Date: _____

SUSAN CLARK

Date: _____

WILLIAM KIMBALL

Date: _____

KURT STOCKER

Date: _____

TIMOTHY RHOADES

Date: _____

ROBERT J. MILLER

(b)(6)

Date: 4-17-2015



THOMAS MILLER

Date: _____

KENNETH BILBREY

Date: _____

SUSAN CLARK

Date: _____

WILLIAM KIMBALL

Date: _____

KURT STOCKER

Date: ____

TIMOTHY RHOADES

Date: ____

ROBERT J. MILLER

Date: ____

THOMAS MILLER

(b)(6) Date: APRIL 15, 2015



KENNETH BILBREY

Date: ____

SUSAN CLARK

Date: ____

WILLIAM KIMBALL

Date: ____

KURT STOCKER

Date: _____

TIMOTHY RHOADES

Date: _____

ROBERT J. MILLER

Date: _____

THOMAS MILLER

Date: _____

KENNETH BILBREY

(b)(6)

Date: 4/24/15



SUSAN CLARK

Date: _____

WILLIAM KIMBALL

Date: _____

KURT STOCKER

Date: _____

TIMOTHY RHOADES

Date: _____

ROBERT J. MILLER

Date: _____

THOMAS MILLER

Date: _____

KENNETH BILBREY

Date: _____

SUSAN CLARK

(b)(6) Date: 4-15-15



WILLIAM KIMBALL

Date: _____

KURT STOCKER

Date: _____

TIMOTHY RHOADES

Date: _____

ROBERT J. MILLER

Date: _____

THOMAS MILLER

Date: _____

KENNETH BILBREY

Date: _____

SUSAN CLARK

Date: _____

WILLIAM KIMBALL

(b)(6) Date: 4/20/16

KURT STOCKER