

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 Cooperative Bank of Wilmington, N.C. (“FDIC-R”), and Frederick Willetts III, Otto C. Burrell, and Dickson B. Bridger (collectively, the “Settling Defendants”), and the Cincinnati Insurance Company (“Insurer”). The FDIC-R, the Settling Defendants, and the Insurer may be referred to herein as “Party” and collectively as the “Parties.”

RECITALS

WHEREAS:

Prior to June 19, 2009, Cooperative Bank of Wilmington, N.C. (“Bank”) was a depository institution organized and existing under the laws of North Carolina.

On June 19, 2009, the North Carolina Office of Commissioner of Banks 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 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, officers, and/or employees of the Bank.

On August 10, 2011, the FDIC-R filed a complaint for money damages against the Settling Defendants, each of whom 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

Eastern District of North Carolina in *FDIC as Receiver for Cooperative Bank v. Willetts, et al*, Case No. 7:11-cv-00165-BO (E.D.N.C.) (“D&O Action”). The Settling Defendants expressly deny liability in the D&O Action.

Insurer issued Financial Institutions Blue Chip policy number which (b)(4) insured the directors and officers of the Bank according to the terms, provisions, and conditions of the Policy. The Settling Defendants have asserted claims for coverage under the Policy. Insurer reserved its rights to deny coverage under the Policy for claims asserted by the FDIC-R against the Settling Defendants.

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: Payments to FDIC-R

A. As an essential covenant and condition of this Agreement, on or before thirty (30) calendar days following the date that the Agreement is executed by all parties (“Due Date”), the Insurer agrees to pay to the FDIC-R the sum of Four Million One Hundred Thousand Dollars (\$4.1 million) on behalf of the Settling Defendants (“the Settlement Payment”).

B. The Insurer shall deliver the Settlement Payment to the FDIC-R in care of Steven C. Morrison or Michael Pollack, at the address given in section VII below, made payable to FDIC as Receiver for Cooperative Bank, by a check drawn on a depository institution acceptable to the FDIC-R that shall be sent by overnight delivery to the addressee provided in this paragraph, with advanced email notice to the parties. In the event that the Settlement Payment is

not delivered to the FDIC-R by the Due Date, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the Due Date until the date of payment.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the Due Date, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full 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)(3); or;

2. Enforce this Agreement, in which event the Settling Defendants and the Insurer who brought about such enforcement action agree to jurisdiction in United States District Court for the Eastern District of North Carolina 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, move to vacate any dismissal order, to which the Settling Defendants and the Insurer agree to consent, and reinstitute an action on the FDIC-R's claims. The Settling Defendants and Insurer further agree to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims 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.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

Settlement Payment in full.

SECTION II: Stipulation of Dismissal

Within five (5) business days after 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 in the form attached hereto as Exhibit A, in the D&O action.

SECTION III: Releases

A. The FDIC-R's Releases.

Upon receipt of the Settlement Payment in full as provided in Section I, and except as provided in Section III.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges:

1. The Settling Defendants and their respective heirs, executors, trustees, administrators, representatives, beneficiaries, 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 Defendants' respective functions, duties and actions as officers and/or directors of the Bank, including, without limitation, the causes of action alleged in the D&O Action and any alleged wrongful acts set forth in prior demand letters.

2. The Insurer, its parents, subsidiaries, affiliates and reinsurers, and their respective 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 Policy. As part of this release of the Insurer, the FDIC-R agrees that any interest it may have under the Policy is extinguished.

3. All other former directors, officers, and employees of the Bank (collectively, the “Covered Persons”) and their respective heirs, executors, trustees, administrators, 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, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the Covered Persons’ respective functions, duties and actions as directors, officers and/or employees of the Bank, including without limitation the causes of action alleged in the D&O Action and any alleged wrongful acts set forth in prior demand letters. This release shall be null and void as to any Covered Person if such Covered Person asserts any claim against the FDIC-R.

B. The Settling Defendants’ Release.

Effective simultaneously with the release granted in Section III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, beneficiaries, representatives, successors, and assigns, hereby release and discharge:

1. 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 the Settling Defendants’ respective functions, duties and actions as officers and/or directors of the Bank, including, without limitation, the causes of action alleged in the D&O Action and any alleged wrongful acts set forth in prior demand letters.

2. The Insurer, its parents, subsidiaries, affiliates, and reinsurers, and their respective 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 D&O Action and any alleged wrongful acts set forth in prior demand letters.

3. Each other Settling Defendant 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 performance, nonperformance, or manner of performance of their respective functions, duties and actions as officers and/or directors of the Bank, including, without limitation, the causes of action alleged in the D&O Action.

C. The Insurer's Release.

Effective simultaneously with the releases granted in Section III.A. above, the Insurer, 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:

1. The FDIC-R, 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 Policy, the D&O Action, and any alleged wrongful acts set forth in the prior demand letters.

2. Each of the Settling Defendants, and their respective heirs, executors, administrators, beneficiaries, 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 D&O Action and any alleged wrongful acts set forth in prior demand letters.

D. 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 a Settling Defendant 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 him or it to FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by the FDIC-R as successor in interest to the Bank or any person or entity other than the 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 IV: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that Settling Defendants are or were shareholders of the Bank 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, the Settling Defendants 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 V: Representations and Acknowledgement

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 Defendant has submitted financial information to the FDIC-R, including Personal Financial Statements (FDIC 7600/01 (9-05) and herein affirms that his or its financial information is true and accurate as of the date it was delivered to the FDIC-R and there have been no material changes to each Settling Defendant's financial information since that date and up and until the date of this Agreement. Each Settling 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 the Settling Defendants. The FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information.

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 D&O 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 the Settling Defendants maintain their express denial of the FDIC-R's allegations, and 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 North Carolina.

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:

Steven C. Morrison and
Michael Pollack
Federal Deposit Insurance Corporation
3501 Fairfax Drive
Arlington, Virginia 22226

(b)(6) _____ [Redacted]

and

R. H. "Chip" Chockley
WOLFF ARDIS
5810 Shelby Oaks Dr.
Memphis, TN 38134

(b)(6) _____ [Redacted]

If to the Settling Defendants:

Thomas E. Gilbertsen
Meredith L. Boylan
VENABLE LLP
575 7th Street, N.W.
Washington, D.C. 20004

(b)(6) _____ [Redacted]

If to Insurer:

Victor C. Peters
PETERS & NYE
14 Executive Court, Suite 2
South Barrington, IL 60010

(b)(6)



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. All 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 COOPERATIVE BANK

Date: 1/11/16

BY: (b)(6)

TITLE: Counsel

PRINT NAME: Steven C. Morrison

SETTLING DEFENDANTS

Date: _____

FREDERICK WILLETTS, III

Date: _____

OTTO C. BURRELL

Date: _____

DICKSON B. BRIDGER

THE CINCINNATI INSURANCE CO.

Date: _____

BY: _____

TITLE: _____

PRINT NAME: Constance S. Hennigan

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
COOPERATIVE BANK**

Date: _____

BY: _____

TITLE: Counsel

PRINT NAME: Steven C. Morrison

SETTLING DEFENDANTS

Date: 01-11-2016

FREDERICK WILLETTS, III

(b)(6)

Date: _____

OTTO C. BURRELL

Date: _____

DICKSON B. BRIDGER

**THE CINCINNATI INSURANCE
CO.**

Date: _____

BY: _____

TITLE: _____

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 COOPERATIVE BANK

Date: _____

BY: _____

TITLE: Counsel

PRINT NAME: Steven C. Morrison

SETTLING DEFENDANTS

Date: _____

FREDERICK WILLETTS, III

Date: Jan. 8, 2016

OTTO C. BURRELL

(b)(6)

Date: _____

DICKSON B. BRIDGER

THE CINCINNATI INSURANCE CO.

Date: _____

BY: _____

TITLE: _____

PRINT NAME: Constance S. Hennigan

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 COOPERATIVE BANK

Date: _____

BY: _____

TITLE: Counsel

PRINT NAME: Steven C. Morrison

SETTLING DEFENDANTS

Date: _____

FREDERICK WILLETTS, III

Date: _____

OTTO C. BURRELL

Date: 21/08/16

DICKSON B. BRIDGER

(b)(6)



THE CINCINNATI INSURANCE CO.

Date: _____

BY: _____

TITLE: _____

PRINT NAME: Constance S. Hennigan

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 COOPERATIVE BANK

Date: _____

BY: _____

TITLE: Counsel

PRINT NAME: Steven C. Morrison

SETTLING DEFENDANTS

Date: _____

FREDERICK WILLETTS, III

Date: _____

OTTO C. BURRELL

Date: _____

DICKSON B. BRIDGER

THE CINCINNATI INSURANCE CO.

Date: January 14, 2016

BY: _____ (b)(6)

THU Insurance Management Liability Claims

PRINT NAME: Constance S. Hennigan