

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the following undersigned parties:

The Federal Deposit Insurance Corporation as Receiver for Tennessee Commerce Bank (“FDIC-R”), H. Lamar Cox, Thomas Crocker, Paul Dierksen, Irving Ginsberg, Dennis Grimaud, Arthur Helf, Thomas R. Miller, Darrel Reifschneider, Charles Douglas Rogers, Michael Sapp, and Paul Thomas (collectively the “Settling Individuals”), and Continental Casualty Company (“CNA”) (individually, the FDIC-R, the Settling Individuals, and CNA may be referred to herein as a “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to January 27, 2012, Tennessee Commerce Bank (“Bank”) was a depository institution organized and existing under the laws of Tennessee;

On January 27, 2012, the Tennessee Department of Financial Institutions 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 Individuals, each of whom served at various times as a director and/or officer of the Bank. The Settling Individuals deny liability for the claims;

Insurer AXIS Insurance Company (“AXIS”) issued a director and officer liability policy

(b)(4) numbered [redacted] for the period February 15, 2011 to February 15, 2012 (“Axis Policy”), and Insurer CNA issued a director and officer liability policy numbered [redacted] for (b)(6)

the period February 15, 2011 to February 15, 2012 (“CNA Policy”) (collectively, the “Policies”), which insured the directors and officers of the Bank according to the terms, provisions, and conditions of the Policies. The Settling Individuals asserted claims for coverage under the Policies. Collectively, AXIS and CNA are referred to as the “Insurers.” The Insurers have reserved their rights to deny coverage under the Policies for claims asserted by the FDIC-R against the Settling Individuals; and

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 the FDIC-R

A. As an essential covenant and condition to this Agreement, on or before thirty (30) calendar days following the date the Agreement is executed by the Parties, and the receipt by AXIS and CNA of adequate payment and/or wiring instructions, the Settling Individuals agree to pay or cause the Insurers to pay to the FDIC-R the sum of \$6.1 million (“the Settlement Payment”). In addition, \$1.0 million of the CNA Policy will be held back for use by Insured Persons (as defined in the CNA Policy) for Defense Costs (as defined in the CNA Policy) expended or to be expended associated with matters currently asserted against them, or which may be asserted against them and as to which CNA reasonably determines that Defense Costs are properly payable under the CNA Policy (the “CNA Holdback”); to the extent the full \$1.0 million is not used for the Defense Costs of the Insured Persons by January 28, 2018, the remainder will be paid to the FDIC-R within thirty (30) days of that date as additional payment for settlement of the FDIC-R’s claims (“Additional Payment”). Should the CNA Holdback be fully expended prior to January 28, 2018, CNA shall promptly notify the FDIC-R of that fact.

B. The Settlement Payment shall be delivered to the FDIC-R by check(s) drawn on the account(s) of the Insurers and/or attorney trust account(s) of one or more law firm(s) for the

Settling Individuals, and/or by direct wire transfer into an account designated by the FDIC-R by notice to the attorneys for the Settling Individuals and CNA.

In the event that the Settlement Payment or Additional Payment is not delivered to the FDIC-R (or its counsel) by the date determined in subsection A. above, interest shall accrue on all unpaid amounts at the rate of 5% per annum from that date until the date of payment.

However, if said Settlement Payment is not delivered to the FDIC-R by that date as a result of the FDIC-R's failure to execute this Agreement, no interest shall accrue until five days after the FDIC-R executes the Agreement.

C. If the FDIC-R does not receive the Settlement Payment or Additional Payment in full on or before thirty (30) days following the date determined by subsection A. 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 or Additional 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 Individuals and/or CNA agree to jurisdiction in United States District Court for the Middle District of Tennessee 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. With respect to non-receipt of the Settlement Payment only, terminate the Agreement and institute an action on the FDIC-R's claims. The Settling Individuals and CNA further agree to waive any defense accruing after this Agreement is fully executed 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 (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.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges:

1. The Settling Individuals and their respective lawful spouses, domestic partners, estates, heirs, executors, trustees, administrators, representatives, insurers, 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 Individuals' respective functions, duties, and actions as officers and/or directors of the Bank.

2. CNA, their parents, subsidiarics, 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 CNA Policy, with the exception of the CNA Holdback referenced in Section I.A. As part of this release of CNA, and with the exception of the CNA Holdback, the FDIC-R agrees that any interest it may have under the CNA Policy is extinguished. The Release shall be extended to the CNA Holdback either upon receipt of the Additional Payment or notification that the CNA Holdback has been expended as provided in Section I.A.

3. All other former directors, officers, and employees of the Bank (collectively, the "Covered Persons") and their respective lawful spouses, domestic partners, estates, 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. 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 Individuals' Release.

Effective simultaneously with the release granted in Section II.A. above, the Settling Individuals, on behalf of themselves individually, and their respective lawful spouses, domestic partners, estates, heirs, executors, trustees, administrators, agents, representatives, successors, and assigns, hereby release and discharge 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 Individuals' respective functions, duties, and actions as officers and/or directors of the Bank.

C. CNA's Release.

Effective simultaneously with the releases granted in Section II.A. above, CNA, 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-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 CNA Policy.

D. Exceptions from Releases by the 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 Individuals 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 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.

F. Express Reservation of Rights of Bond Carrier.

1. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall release or prejudice the rights of BancInsure, Inc. or any other underwriter of any financial institution bond, fidelity bond, or banker's blanket bond on which the Bank is an insured, to bring any claims by way of subrogation to the claims of the FDIC-R, against (a) any directors, officers, or employees of the Bank, including but not limited to the Settling Defendants, in their capacities as directors, officers, or employees of the Bank or in any other capacity, or (b) any other individual or entity.

2. Nothing herein shall be construed to admit the existence of, or to establish,

any claim or cause of action on the part of BancInsure, Inc. or any other bond underwriter by way of subrogation to claims of the FDIC-R, that would not exist had this Agreement not been executed.

SECTION III: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that Settling Individuals are or were shareholders of the Bank 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 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 Individuals hereby knowingly assign to the FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, 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, her, or its counsel.

C. Financial Disclosure Representation. Each Settling Individual has submitted financial information to the FDIC-R including a signed Financial Disclosure Form and herein affirms that his/her financial information is true and accurate as of the date of this agreement.

Each Settling Individual 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 Individuals. 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 Individual failed to disclose any material interest, legal, equitable, or beneficial, in any asset, that Settling Individual 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 Individual's undisclosed material interest in such asset(s); or (2) the amount of unpaid damages alleged against that Settling Individual.

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

C. Nothing contained herein shall be construed or interpreted as waiving, modifying, restricting or limiting in any way any Settling Individual's rights under the Fifth Amendment to the United States Constitution, including the privilege of refusing to testify or provide specific responses to inquiries in any interview, examination, or affidavit that may be requested pursuant to Section V.B. of this Agreement, above.

SECTION VI: Other Matters

A. No Admission of Liability. The Settling Individuals expressly deny the claims asserted by the FDIC-R. 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 Tennessee.

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:

Robert J. Gibson, Esq.
Federal Deposit Insurance Corporation
1601 Bryan Street, ENG-35002
Dallas, Texas 75201

If to Lamar Cox:	Charles W. McElroy White & Reesor, PLC 3100 West End Avenue Suite 1100 Nashville, Tennessee 37203
If to Tommy Crocker:	Robert R. Long Alston & Bird LLP One Atlantic Center 1201 West Peachtree Street Atlanta, GA 30309-3424
If to Paul Dierksen, Dennis Grimaud, Tom Miller, or Darrel Reifschneider:	Cliston V. "Doc" Bodine, III Gerrish McCreary Smith, PC 700 Colonial Road, Suite 200 Memphis, TN 38117
If to Irving Ginsberg, Charles Douglas Rogers, or Michael Sapp	Joseph L. Barloon Skadden, Arps, Slate, Meagher & Flom LLP 1440 New York Avenue, N.W. Washington, D.C. 20005
If to Arthur Helf:	Overton Thompson Bass, Berry & Sims PLC 150 Third Avenue South, Suite 2800 Nashville, TN 37201
If to CNA:	Jennifer Lawson, Esq. CNA Specialty Claim Management Liability, Financial Institutions & Technology 333 S. Wabash Ave. Chicago, IL 60604

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 TENNESSEE COMMERCE BANK

(b)(6)

Date: Oct 7, 2014

BY:

[Redacted Signature Box]

TITLE:

Senior Attorney

PRINT NAME:

Robert J. Gibson

II. LAMAR COX

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

THOMAS CROCKER

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

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(b)(6)

Date: Oct 7, 2014

BY:

[Redacted Signature]

TITLE: Senior Attorney

PRINT NAME: Robert J. Gibson

H. LAMAR COX

Date: 10/10/14

BY:

[Redacted Signature]

(b)(6)

TITLE: _____

PRINT NAME: _____

THOMAS CROCKER

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

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Date: Oct 7, 2014

BY:

[Redacted Signature Box]

TITLE:

Senior Attorney

PRINT NAME:

Robert J. Gibson

H. LAMAR COX

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

THOMAS CROCKER

Date: 10-17-14

BY:

[Redacted Signature Box]

(b)(6)

TITLE:

PRINT NAME:

Tommy Crocker

(b)(6)

PAUL DIERKSEN



Date: 10-14-14

BY:

TITLE: Director

PRINT NAME: Paul W. Dierksen

IRVING GINSBERG

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

DENNIS GRIMAUD

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

ARTHUR HELF

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

PAUL DIERKSEN

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

IRVING GINSBERG

(b)(6)

Date: 10-10-14

BY:

TITLE: _____

PRINT NAME: Irving B. Ginsberg

DENNIS GRIMAUD

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

ARTHUR HELF

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

PAUL DIERKSEN

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

IRVING GINSBERG

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

DENNIS GRIMAUD

Date: 10/14/14

BY: 

(b)(6)

TITLE: DIRECTOR

PRINT NAME: DENNIS L. GRIMAUD

ARTHUR HELF

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

PAUL DIERKSEN

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

IRVING GINSBERG

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

DENNIS GRIMAUD

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

ARTHUR HELF

Date: 10/15/14

BY: 

TITLE: _____

PRINT NAME: Arthur F. Helf

(b)(6)

THOMAS R. MILLER,



(b)(6)

Date: 10/14/14

BY:

TITLE:

Director

PRINT NAME:

Thomas R. Miller

DARREL REIFSCHEIDER

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

CHARLES DOUGLAS ROGERS

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

MICHAEL SAPP

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

THOMAS R. MILLER

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

DARREL REIFSCHNEIDER

(b)(6)

Date: 10-14-14

BY:

TITLE: Doyle make

PRINT NAME: DARREL REIFSCHNEIDER

CHARLES DOUGLAS ROGERS

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

MICHAEL SAPP

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

THOMAS R. MILLER

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

DARREL REIFSCHEIDER

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

CHARLES DOUGLAS ROGERS

(b)(6)

Date: _____

BY:

TITLE: _____

PRINT NAME: _____

MICHAEL SAPP

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

THOMAS R. MILLER

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

DARREL REIFSCHNEIDER

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

CHARLES DOUGLAS ROGERS

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

MICHAEL SAPP

(b)(6)

Date: 10/13/14

BY:

TITLE: _____

PRINT NAME: MICHAEL R. SAPP

PAUL THOMAS

(b)(6)



Date: 10/14/2014

BY:

TITLE: Former Director TCB

PRINT NAME: Paul Thomas

CONTINENTAL CASUALTY COMPANY

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

PAUL THOMAS

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

CONTINENTAL CASUALTY COMPANY

(b)(6)

Date: 10/14/14

BY:

TITLE: Claims Consultant

PRINT NAME: Jennifer Lawson