

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 Ameribank, Inc. (“FDIC-R”), and Jack A. Baldini, David G. Cogswell, Louis J. Dunham, Michael O’Brien, and James M. Sutton (collectively the “Settling Defendants”). Individually, the FDIC-R and the Settling Defendants may be referred to herein as “Party” and collectively as the “Parties”.

RECITALS

WHEREAS:

Prior to September 19, 2008, Ameribank, Inc. (“Bank”) was a depository institution organized and existing under the laws of the United States.

On September 19, 2008, the United States Office of Thrift Supervision closed the Bank, and pursuant to 12 U.S.C. § 1821(c), and 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.

On October 26, 2012, the FDIC-R filed a complaint for money damages against the Settling Defendants, each of whom served at various times as a director and/or officer of the Bank. Those claims for damages are now pending in the United States District Court for the Southern District of West Virginia in *Federal Deposit Insurance Corporation, as Receiver for Ameribank, Inc. v. Baldini, et al.*, Case No. 1:12-7050 (“D&O Action”). The Settling Defendants have denied liability in the D&O Action.

The Settling Defendants were issued a director and officer liability policy (“Policy”), which insured the directors and officers of the Bank according to the terms, provisions, and

conditions of the Policy. The Settling Defendants asserted claims for coverage under the Policy.

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: 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 Parties execute this Agreement, the sum of One Million One Hundred Fifty Thousand Dollars (\$1,150,000) ("the Settlement Payment") shall be paid by or on behalf of the Settling Defendants to the FDIC-R as set forth below.

B. The Settlement Payment shall be delivered to the FDIC-R by direct wire transfer into an account designated by FDIC-R by notice to the attorneys for the Settling Defendants. In the event that the Settlement Payment is not delivered to the FDIC-R by the date determined by Subsection A above, interest shall accrue on all unpaid amounts at the rate calculated in accordance with 26 U.S.C. § 6621(a)(2) from the date determined by Subsection A above until the date of payment. The FDIC-R shall provide all necessary payment instructions no later than five calendar days after full execution of the Agreement.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection A above, and assuming the FDIC-R provides all necessary payment instructions as are required by subsection 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; or

3. Terminate the Agreement, move to vacate any dismissal order, and reinstate the D&O Action on the FDIC-R's claims, to which the Settling Defendants agree to consent; 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: Stipulation and Dismissal

Within ten business days after the latter of (1) full execution of this Agreement by all of the Parties, and (2) 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 hereto, in the form attached hereto as Exhibit A, in the D&O Action. Dismissal with prejudice concludes all matters related to or arising from Ameribank.

SECTION III: Releases

A. The FDIC-R's Releases.

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

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, representatives, attorneys, 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 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.

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 Defendants 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 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, 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 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 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 in May 2014 and

herein affirms that his financial information is true and accurate as of the date set forth in the financial statements. 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.

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 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 West Virginia.

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:

Bryce Quinc, Counsel
Federal Deposit Insurance Corporation
1601 Bryan Street
Dallas, TX 75201

(b)(6)

[REDACTED]
(972) 761-8520

If to the Settling Defendants:

Rebecca A. Betts
Kay Casto & Chaney PLLC
1500 Chase Tower
707 Virginia Street E.
Charleston, WV 25301

(b)(6)

[REDACTED]
(304) 345-8900
(Attorney for Messrs. Cogswell, Dunham and
O'Brien)

Matthew P. Boshier
Hunton & Williams, LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219

(b)(6)

[REDACTED]
(804) 788-8585
(Attorney for Mr. Sutton)

Julia A. Chincheck
Bowles Rice LLP
600 Quarrier Street
Charleston, WV 25301

(b)(6)

[REDACTED]
(304) 347-1713
(Attorney for Mr. Baldini)

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 AMERIBANK, INC.:

(b)(6)
Date: 10/29/14


By: Bryce Quine
Title: Counsel, Legal Division

SETTLING DEFENDANTS:

(b)(6)
Date: _____


Jack A. Baldini

Date: _____

David G. Cogswell

Date: _____

Louis J. Dunham

Date: _____

Michael O'Brien

Date: _____

James M. Sutton

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RECEIVER FOR AMERIBANK, INC.:

(b)(6)

Date: 10/29/14

[Redacted Signature]

By: Bryce Quine
Title: Counsel, Legal Division

SETTLING DEFENDANTS:

Date: _____

Jack A. Baldini

(b)(6)

Date: 10/29/14

[Redacted Signature]

David G. Cogswell

Date: _____

Louis J. Dunham

Date: _____

Michael O'Brien

Date: _____

James M. Sutton

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(b)(6)

Date: 10/29/14

[Redacted Signature]

By: Bryce Quine
Title: Counsel, Legal Division

SETTLING DEFENDANTS:

Date: _____

Jack A. Baldini

Date: _____

David G. Cogswell

(b)(6)

Date: 11.9.14

[Redacted Signature]

Louis J. Dunham

Date: _____

Michael O'Brien

Date: _____

James M. Sutton

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Date: 10/29/14

By: Bryce Quine
Title: Counsel, Legal Division

SETTLING DEFENDANTS:

Date: _____

Jack A. Baldini

Date: _____

David G. Cogswell

Date: _____

Louis J. Dunham

(b)(6)

Date: _____

Michael O'Brien

Date: _____

James M. Sutton

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(b)(6)

Date: 10/29/14

[Redacted Signature]

By: Bryce Quine
Title: Counsel, Legal Division

SEETING DEFENDANTS:

Date:

Jack A. Baldini

Date: _____

David G. Cogswell

Date:

Louis J. Dunham

Date:

Michael O'Brien

(b)(6)

Date: _____

[Redacted Signature]

James M. Sutton

(b)(6)

[Redacted Signature]

EXHIBIT A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
At BLUEFIELD**

**FEDERAL DEPOSIT INSURANCE
CORPORATION as receiver for
AMERIBANK, INC.,**

Plaintiff,

v.

Civil Action No. 1:12-cv-07050

JACK A. BALDINI, et al.

Defendants.

_____ /

STIPULATED ORDER OF DISMISSAL WITH PREJUDICE

The parties, by counsel, have represented to the Court that all matters in controversy between them have been compromised and settled and have accordingly stipulated that this matter be dismissed, with prejudice, with each party to bear his or its own costs and expenses, including attorney fees.

Based on the foregoing, the Court does hereby **DISMISS, with prejudice**, this civil action and directs the Clerk to strike it from the docket of this Court.

Entered this ___ day of _____, 2014.

The Hon. David A. Faber

Agreed to and jointly submitted by:

/s/ _____
Rebecca A. Betts

(b)(6) [Redacted]

Jack D. Hoblitzell

(b)(6) [Redacted]

/s/ _____
Julia A. Chincheck

[Redacted]

J. Mark Adkins

[Redacted]

(b)(6) Kay Casto & Chaney PLLC
1500 Chase Tower
707 Virginia Street, East
P.O. Box 2031
Charleston, WV 25327
Phone: (304) 345-8900
Fax: (304)345-8909
Attorneys for David G. Cogswell, Louis J. Dunham, and Michael O'Brien

Floyd Boone
[Redacted]
Bowles Rice LLP
600 Quarrier Street
Charleston, WV 25301
Phone: (304) 347-1713
Fax: (304) 343-2867
Attorneys for Jack A. Baldini

(b)(6) /s/ [Redacted]
Michael W. Carey
[Redacted]
Carey, Scott, Douglas & Kessler PLLC
707 Virginia Street East
901 Chase Tower
Charleston, WV 25323
Phone: (304) 345-1234
Fax: (304) 342-1105

/s/ [Redacted]
Michael F. Gibson
[Redacted]
Gibson, Lefler & Associates
1345 Mercer Street
Princeton, West Virginia 24740
Phone: (304) 425-8276
Fax: (304) 487-1574

and

and

(b)(6) Matthew Boshier
[Redacted]
Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Phone: (804) 788-8200
Fax: (804) 788.8218
Attorneys for James M. Sutton

Frederick J. Springer
[Redacted]
Bryant Miller Olive P.A.
101 North Monroe Street, Suite 900
Tallahassee, Florida 32301
Phone: (850) 222-8611.
Fax: (850) 222-8969
Attorneys for FDIC, as receiver for Ameribank, Inc.