

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made as of this 19 day of November, 2012, by, between, and among the following undersigned entities and individuals:

The Federal Deposit Insurance Corporation as Receiver for Metro Bank of Dade County (“FDIC”), and Donald Altemus, Charles E. Brier, Jennifer H. Bielawski, Benito Carmona, David DiMuro, Alexander Havenick, Nathan I. Leder, Lawrence Mintz, and J. David Scheiner (collectively the “Settling Directors and Officers”), and Westchester Surplus Lines Insurance Company (“Westchester”). Individually, the FDIC, the Settling Directors and Officers, and Westchester may be referred to herein as a “Party” to this Agreement and collectively as the “Parties,” and the Settling Directors and Officers, along with Westchester, may be collectively referred to as the “Settling Parties.”

RECITALS

WHEREAS:

Prior to July 16, 2010, Metro Bank of Dade County (“Bank”) was a state-chartered depository institution organized and existing under the laws of Florida;

On July 16, 2010, the Bank was closed by the Florida Office of Financial Regulation and pursuant to 12 U.S.C. § 1821(c), the FDIC was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC as receiver 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 as receiver succeeded were any and 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 and/or officers of the Bank;

By letter dated December 17, 2010 and the draft Complaint attached to letters dated May 17, 2012, the FDIC, through its counsel, notified the Settling Directors and Officers and certain other former Bank directors and officers of possible claims against them (the “FDIC’s Claims”) relating to their functions, duties and acts as directors and/or officers of the Bank;

The Settling Directors and Officers have denied liability for the FDIC's Claims;

Westchester issued CODA Premier Directors and Officers Liability Excess DIC Policy,

(b)(4) bearing policy number [REDACTED] (the "Policy"), which generally affords THREE MILLION DOLLARS (\$3,000,000.00) in insurance coverage, in accordance with its terms, conditions, limitations, and exclusions, to the directors and officers of the Bank. The Settling Directors and Officers submitted the FDIC Claims for coverage under the Policy, and Westchester reserved all of its rights and defenses under the Policy and available at law with respect to any coverage afforded for the FDIC Claims under the Policy; and

The Parties deem it in their best interests to enter into this Agreement, without prejudice or admission, 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 Parties agree, each with the other, as follows:

SECTION I: Payment to FDIC

A. As an essential covenant and condition to this Agreement, within thirty (30) days following the execution of an original, or originals in counterpart, of this Agreement by each of the Parties, Westchester shall pay THREE MILLION DOLLARS (\$3,000,000.00) to the FDIC (the "Westchester Payment"), and the Settling Directors and Officers, or any combination thereof, shall collectively pay TWO HUNDRED AND FIFTY THOUSAND (\$250,000.00) to the FDIC (the "D&O Payment").

B. Within thirty (30) days following the execution of an original, or originals in counterpart, of this Agreement by all of the Parties to this Agreement (the "Payment Deadline"), Westchester and the Settling Directors and Officers shall respectively deliver the Westchester Payment and the D&O Payment (collectively, the "Settlement Funds") to the FDIC by direct wire transfer into an account designated by the FDIC in writing.

In the event that the Settling Directors and Officers, or any combination thereof, and Westchester do not deliver their respective portions of the Settlement Funds to the FDIC by

the Payment Deadline, interest shall accrue on all unpaid amounts at the rate of 0.15% per annum, which is based upon one year U.S. Treasury bills as reported in the Wall Street Journal at the end of the last quarter immediately preceding the date of this Agreement, from the Payment Deadline until the date of payment. In no event shall Westchester be obligated to pay interest accruing on the D&O Payment, and in no event shall the Settling Directors and Officers be obligated to pay interest accruing on the Westchester Payment.

C. In addition, and without waiving any other rights that the FDIC may have, in the event that the Settling Directors and Officers or Westchester fail to deliver their respective portion of the Settlement Funds to the FDIC on or before the Payment Deadline, then, with respect to any such Party (a "Non-Delivering Party"), the FDIC, 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 with respect to such Non-Delivering Party, 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 any Non-Delivering Party. In that event, any such Non-Delivering Party agrees to exclusive personal and subject matter jurisdiction and venue in the United States District Court for the Southern District of Florida, Miami Division, and agrees to pay all of the FDIC's reasonable attorneys' fees expended in enforcing the terms of this Agreement. Any decision by the FDIC to extend the terms of this Agreement or to accept a portion of the Settlement Funds from any Settling Party shall not prejudice its rights to declare this Agreement null and void solely with respect to any Settling Party that breaches the terms hereof or otherwise fails to timely pay his, her or its share at any time prior to receipt of all Settlement Funds (including all accrued interest), shall not be grounds for any claim of rescission by any Settling Party, and shall not bar the FDIC from enforcing the terms of this Settlement Agreement against any Settling Party; provided however, that in the event the FDIC declares this Agreement null and void as to any Settling Party, the FDIC will return any and all amounts paid to it under this Agreement by such Party. In no event shall the FDIC declare this Agreement null and void with respect to any Party that has delivered

his, her or its share of the Settlement Funds on or before the Payment Deadline. The failure of one Party to deliver its share of the Settlement Funds shall not affect the validity of this Agreement with respect to a Party that has delivered its share of the Settlement Funds.

SECTION II: Releases

A. Release of Individual Settling Directors and Officers by FDIC.

Effective upon receipt in full of the Settlement Funds plus any accrued interest described in Section I. above, and except as provided in Paragraph II.I., the FDIC, for itself and its successors and assigns, hereby releases and discharges each of the Settling Directors and Officers and their respective heirs, executors, administrators, 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 that arise from or relate to the FDIC's Claims, and/or to the performance, nonperformance, or manner of performance of the Settling Directors' and Officers' respective functions, duties and actions as officers and/or directors of the Bank. In the event the FDIC declares this Agreement null and void with regard to any Settling Director or Officer for any reason set forth in Section IV., Paragraph F. below, the release in this Paragraph shall remain binding and enforceable in regard to all other Settling Directors and Officers.

B. Release of Covered Persons by the FDIC.

Effective simultaneously with the release granted in Paragraph II.A. above, and except as provided in Paragraph II.I. below, the FDIC, for itself and its successors and assigns, hereby releases and discharges all former directors, officers, and employees of the Bank (collectively, the "Covered Persons") and their respective heirs, executors, 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, based on negligence, gross negligence, and/or breach of fiduciary duty, belonging to the FDIC that arise from or relate to the FDIC's Claims. This release shall be null and void as to any Covered Person if such Covered Person asserts any claim against the FDIC.

C. Release of FDIC by the Settling Directors and Officers.

Effective simultaneously with the release granted in Paragraph II.A. above, the Settling Directors and Officers, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge FDIC, 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, the FDIC's Claims and/or to the performance, nonperformance, or manner of performance of the Settling Directors' and Officers' respective functions, duties and actions as officers and/or directors of the Bank.

D. Release by Settling Directors and Officers of Each Other.

Effective simultaneously with the release granted in Paragraph II.A. above, the Settling Directors and Officers, and their respective heirs, executors, administrators, representatives, successors and assigns, hereby release and discharge each other 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 FDIC's Claims and/or the performance, nonperformance, or manner of performance of their respective functions, duties and actions as officers and/or directors of the Bank to the same extent that each Settling Director and Officer is being released herein by the FDIC, and release one another on any obligation each Settling Director and Officer has to pay, or contribute to the payment of, the D&O Payment to the FDIC. In the event the FDIC declares this Agreement null and void with regard to any Settling Director or Officer for any reason set forth in Section IV., Paragraph F. below, the release in this Paragraph shall remain binding and enforceable among all of the Settling Directors and Officers. Further, any Settling Director(s) or Officer(s) who becomes a defendant or respondent in any lawsuit or legal proceeding brought by the FDIC for any reason set forth in Section IV., Paragraph F. below, covenants and agrees not to sue any other Settling Director or Officer concerning any claims made therein, or otherwise implead any other Settling Director or Officer into, any such lawsuit or legal proceeding.

E. Release of Westchester by FDIC.

Effective simultaneously with the releases granted in Paragraphs II.A. and II.C. above, the FDIC, for itself and its successors and assigns, hereby releases and discharges Westchester, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, 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, that arise from or relate to the Policy. The FDIC agrees that any interest it may have under the Policy is extinguished.

F. Release of Westchester by Settling Directors and Officers.

Effective simultaneously with the release granted in Paragraph II.C. above, the Settling Directors and Officers, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge Westchester, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, 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, that arise from or relate to the Bank, the Policy, the FDIC's Claims, the performance, nonperformance, or manner of performance of the Settling Directors' and Officers' respective functions, duties and actions as officers and/or directors of the Bank, and any other claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, that any Settling Director and Officer has, had, or may have had, up through the Payment Deadline, including but not limited to claims arising from or relating to Westchester's investigation, evaluation, handling, or settlement of the FDIC's Claims and claims alleging "bad faith" or breach of any promise, oral or written, or breach of any duty grounded in law or in contract relating thereto.

G. Release of FDIC by Westchester.

Effective simultaneously with the release granted in Paragraph II.E. above, Westchester, 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 FDIC, and its employees, officers, directors, 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, that arise from or relate to the FDIC's Claims and/or the Policy.

H. Release of Settling Directors and Officers by Westchester.

Effective simultaneously with the release granted in Paragraph II.F. above, Westchester, on behalf of itself and its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, attorneys, successors and assigns, hereby releases and discharges the Settling Directors and Officers, on behalf of themselves individually, and their respective heirs, executors, administrators, 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 Bank, the Policy, the FDIC's Claims, the performance, nonperformance, or manner of performance of the Settling Directors' and Officers' respective functions, duties and actions as officers and/or directors of the Bank, and any other claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, that Westchester has, had, or may have had, up through the Payment Deadline, including but not limited to claims arising from or relating to Westchester's investigation, evaluation, handling, or settlement of the FDIC's Claims and claims alleging "bad faith" or breach of any promise, oral or written, or breach of any duty grounded in law or in contract relating thereto.

I. Express Reservations From Releases By FDIC.

1. Notwithstanding any other provision, by this Agreement the FDIC 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 the Settling Directors and Officers 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, the Bank, other financial institutions, or any

other person or entity, including without limitation any claims acquired by FDIC as successor in interest to the Bank or any person or entity other than the Bank;

- b. against any person or entity not expressly released in this Agreement; and
- c. which are not expressly released in Paragraphs II.A. or II.D. above.

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.

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 Attorney's Office for the Southern District of Florida or any other federal judicial district. In addition, for any claim not released herein, the FDIC 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 III: Waiver of Dividends

To the extent, if any, that Settling Directors and Officers are or were shareholders of the Bank and by virtue thereof are or may have been entitled to a dividend, payment, or other *pro rata* distribution upon resolution of the receivership of the Bank, they hereby knowingly assign to the FDIC any and all rights, titles and interest in and to any and all such dividends, payments or other pro rata distributions.

SECTION IV: Representations and Acknowledgements

A. **No Admission of Liability.** The Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims, and that this Agreement is not an admission or evidence of liability by any of them regarding any claim.

B. **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. A signature transmitted by email shall be as effective as an original signature.

C. **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.

D. **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 Florida.

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. 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).

F. **Specific Representations, Warranties and Disclaimer.** The Settling Directors and Officers expressly acknowledge that in determining to settle the claims released herein (i) the FDIC asserts it has reasonably and justifiably relied upon the accuracy of financial information which the Settling Directors and Officers submitted, and (ii) that the FDIC is not

releasing any claims related to those alleged inducements as against any such individual respondent(s) who fraudulently understated his/her/their own supposed individual net worth in such submissions to the limited extent the FDIC relied to its detriment upon any such understated net worth submission from any such individual(s).

G. 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 effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to perform the terms of this Agreement.

2. Further, the Settling Directors and Officers agree to cooperate fully with the FDIC in connection with any action required under this Agreement provided that all such cooperation is subject to all attorney-client, work product and other privileges available to the Settling Directors and Officers. Any such cooperation that involves any out of pocket costs (including any reasonable attorneys' fees incurred by any cooperating Party) is subject to reasonable reimbursement by the FDIC pursuant to its internal guidelines and policy for such reimbursement. Such cooperation shall consist of:

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

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

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

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

H. Advice of Counsel. With the exception of Lawrence Mintz, who had the opportunity to retain and consult with counsel but declined to do so, each Party hereby acknowledges that he/she/it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that every Party by his/her/its counsel.

I. Notification of Final Agreement. The FDIC shall immediately notify each Party in writing when this Agreement is fully executed and shall provide each Party with a copy of the final Agreement as executed by all Parties.

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

Date: 11/19/12

BY: (b)(6)

TITLE: Counsel

PRINT NAME: Gregory K. Conway

Settling Directors and Officers

Date: _____

Donald Altemus

Date: _____

Charles E. Brier

Date: _____

Jennifer H. Bielawski

Date: _____

Benito Carmona

Date: _____

David DiMuro

Date: _____

Alexander Havenick

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FEDERAL DEPOSIT INSURANCE CORPORATION

Date: _____

BY: _____

TITLE: Counsel

PRINT NAME: Gregory K. Conway

Settling Directors and Officers

(b)(6)

Date: 11/8/12

[Redacted Signature]

Donald Altemus

Date: _____

Charles E. Brier

Date: _____

Jennifer H. Bielawski

Date: _____

Benito Carmona

Date: _____

David DiMuro

Date: _____

Alexander Havenick

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FEDERAL DEPOSIT INSURANCE CORPORATION

Date: _____

BY: _____

TITLE: Counsel

PRINT NAME: Gregory K. Conway

Settling Directors and Officers

Date: _____

Donald Altemus

(b)(6)

Date: Nov. 13, 2012

[Redacted Signature]

Charles E. Brier

Date: _____

Jennifer H. Bielawski

Date: _____

Benito Carmona

Date: _____

David DiMuro

Date: _____

Alexander Havenick

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BY: _____

TITLE: Counsel

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Settling Directors and Officers

Date: _____

Donald Altemus

Date: _____

Charles E. Brier

(b)(6)

Date: 11/13/2012



Jennifer H. Bielawski

Date: _____

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Date: _____

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Date: _____

Alexander Havenick

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Date: _____

Jennifer H. Bielawski

(b)(6)

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David DiMuro

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Alexander Havenick

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BY: _____

TITLE: Counsel

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Settling Directors and Officers

Date: _____

Donald Altemus

Date: _____

Charles E. Brier

Date: _____

Jennifer H. Bielawski

Date: _____

Benito Carmona

(b)(6)

Date: 11/9/12



David DiMuro

Date: _____

Alexander Havenick

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

Date: _____

BY: _____

TITLE: Counsel

PRINT NAME: Gregory K. Conway

Settling Directors and Officers

Date: _____

Donald Altemus

Date: _____

Charles E. Brier

Date: _____

Jennifer H. Bielawski

Date: _____

Benito Carmona

Date: _____

David DiMuro

(b)(6)

Date: 11/13/2012

Alexander Havenick

Date: 11/13/12

(b)(6)
Nathan I. Leder

Date: _____

Lawrence Mintz

Date: _____

J. David Scheiner

WESTCHESTER SURPLUS LINES INSURANCE CO.

Date: _____

BY: _____

TITLE:

PRINT NAME: Kelley Purdie

Date: _____

Nathan I. Leder

(b)(6)

Date: 11/17/2012

Lawrence Mintz

Date: _____

J. David Scheiner

WESTCHESTER SURPLUS LINES INSURANCE CO.

Date: _____

BY: _____

TITLE:

PRINT NAME: Kelley Purdie

Date: _____

Nathan I. Leder

Date: _____

Lawrence Mintz

(b)(6)

Date: _____

11/13/2012



[Signature]
David Scheiner

WESTCHESTER SURPLUS LINES INSURANCE CO.

Date: _____

BY: _____

TITLE:

PRINT NAME: Kelley Purdie

Date: _____

Nathan I. Leder

Date: _____

Lawrence Mintz

Date: _____

J. David Scheiner

WESTCHESTER SURPLUS LINES INSURANCE CO.

Date: 11/9/12

BY: _____

(b)(6)

TITLE: Director, Claims

PRINT NAME: Kelley Purdie