IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER OF SILVERTON BANK, N.A.,	§	
Plaintiff,	§	
v.	§	**CIVIL ACTION NO. _____**
TOM A. BRYAN, PAUL T. BENNETT, MICHAEL CARLTON, W. ROGER CROOK, J. MICHAEL ELLENBURG, BRIAN R. FOSTER, ROBERT I. GULLEDGE, CHARLES F. HARPER, R. RICK HART, CHRISTOPHER B. MADDOX, J. EDWARD NORRIS, STEPHEN L. PRICE, BOBBY SHEPARD, HUNTER SIMMONS, TONY W. WOLFE, BRIAN D. BUECHE, BROCK FREDETTE, FEDERAL INSURANCE COMPANY, and WESTCHESTER FIRE INSURANCE COMPANY,	§	**JURY TRIAL DEMANDED**
Defendants.	§	

FDIC'S ORIGINAL COMPLAINT

TO THE HONORABLE COURT:

Now comes the Federal Deposit Insurance Corporation ("FDIC"), in its capacity as Receiver ("FDIC-R") of Silverton Bank, N.A. ("Silverton" or "the Bank"), and files its Original Complaint:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 12 U.S.C. § 1819(b)(1)-(2)(a) and 28 U.S.C. §§ 1331 and 1345. Supplemental jurisdiction over the FDIC-R's state law claims may be exercised by the Court under 28 U.S.C. § 1367.

2. Pursuant to 28 U.S.C. § 1391(b), venue is proper in the Northern District of Georgia because the claims and causes of action asserted in this Complaint arose in this district.

II. THE PLAINTIFF

3. The FDIC is an instrumentality of the United States, established under the Federal Deposit Insurance Act, 12 U.S.C. §§ 1811-1833(e).

4. Silverton, which prior to its demise was located in Atlanta, Georgia, was formed on February 3, 1986. It was originally chartered by the State of Georgia as a "banker's bank." As a banker's bank, Silverton was chartered to serve the needs of community financial institutions.

5. In 2007, the Bank sought and obtained the approval from the Office of the Comptroller of the Currency ("OCC") to convert from a state charter to a national commercial bank. The OCC is a bureau of the United States Department of the Treasury and is the agency of the United States government charged with the administration of the National Bank Act. The OCC chartered individual national banks and supervised the safety and soundness of the national banking system. Its responsibilities included the supervision and examination of Silverton.

6. On May 1, 2009, the OCC declared Silverton to be insolvent, and appointed as receiver the FDIC-R pursuant to 12 U.S.C. § 1821(c). Pursuant to 12 U.S.C. § 1821(d)(2)(A)(i), the FDIC-R succeeded to all rights, titles, and privileges of Silverton and its stockholders, members, account holders, depositors, and directors of Silverton with respect to Silverton and Silverton's assets.

III. THE DEFENDANTS

A. Director Defendants

7. Defendant, Tom A. Bryan ("Bryan") served on Silverton's board of directors during the relevant time period. He also served as the President and Chief Executive Officer of Silverton during the period of time relevant to this Complaint. Bryan served on the Executive Loan Committee at Silverton from

April 2004 to April 2009. Bryan may be served with process at 5601 Cross Gate Dr. NW, Atlanta, GA 30327.

8. Defendant, Paul T. Bennett ("Bennett") served on Silverton's board of directors during the period of time relevant to this Complaint. Bennett served on the Executive Loan Committee at Silverton from April 2005 to April 2007. Bennett is the former President of South Banking Company of Alma, Georgia, a constituent community bank formerly doing business with Silverton. Bennett may be served with process at 501 W. 12th Street, Alma, GA 31510.

9. Defendant Michael Carlton ("Carlton") served on Silverton's board of directors during the period of time relevant to this Complaint. Carlton served on the Executive Loan Committee at Silverton from April 2005 to April 2009. Carlton is President and CEO of Crescent State Bank of Cary, North Carolina, a constituent community bank formerly doing business with Silverton. Carlton may be served with process at 1005 High House Road, Cary, NC 27513.

10. Defendant W. Roger Crook ("Crook") served on Silverton's board of directors during the period of time relevant to this Complaint. Crook served on the Executive Loan Committee at Silverton from April 2007 to April 2009. Crook is President and CEO of Bank of Walterboro of Walterboro, South Carolina, a

constituent community bank formerly doing business with Silverton. Crook may be served with process at 1100 North Jeffries Boulevard, Walterboro, SC 29488.

11. Defendant J. Michael Ellenburg ("Ellenburg") served on Silverton's board of directors during the period of time relevant to this Complaint. Ellenburg served on the Executive Loan Committee at Silverton from April 2006 to April 2009. Ellenburg is President and CEO of First Southern State Bank of Stevenson, Alabama, a constituent community bank formerly doing business with Silverton. Ellenburg may be served with process at 80 Bank Street, Stevenson, AL 35772.

12. Defendant Brian R. Foster ("Foster") served on Silverton's board of directors during the period of time relevant to this Complaint. Foster served on the Executive Loan Committee at Silverton from April 2007 to April 2009. Foster is President and CEO of First Chatham Bank of Savannah, Georgia, a constituent community bank formerly doing business with Silverton. Foster may be served with process at 111 Barnard Street, Savannah, GA 31401.

13. Defendant Robert I. Gulledge ("Gulledge") served on Silverton's board of directors during the period of time relevant to this Complaint. Gulledge served on the Executive Loan Committee at Silverton from April 2005 to April 2007. Gulledge is the former President, CEO and Chairman of Citizen's Bank, Inc. of Robertsdale, Alabama, a constituent community bank formerly doing

business with Silverton. Gulledge may be served with process at Hwy. 104 & County Road, Robertsdale, AL 36567.

14. Defendant Charles F. Harper ("Harper") served on Silverton's board of directors during the period of time relevant to this Complaint. Harper is Chairman and President of The Commercial Bank of Ozark of Ozark, Alabama, a constituent community bank formerly doing business with Silverton. Harper may be served with process at The Commercial Bank of Ozark, 208 Merrick Avenue, Ozark, AL 36360.

15. Defendant R. Rick Hart ("Hart") served on Silverton's board of directors during the period of time relevant to this Complaint. Hart is Chairman, President and CEO of Capital Bank & Trust Co. of Nashville, Tennessee, a constituent community bank formerly doing business with Silverton. Hart may be served with process at 209 Troy Street, Tupelo, MS 38801.

16. Defendant Christopher B. Maddox ("Maddox") served on Silverton's board of directors during the period of time relevant to this Complaint. Maddox served on the Executive Loan Committee at Silverton from April 2005 to April 2009. Maddox is the former President and CEO of The People's Bank of Winder, Georgia, a constituent community bank formerly doing business with Silverton. Maddox may be served with process at 847 Commons Park, Statham, GA 30666.

17. Defendant J. Edward Norris ("Norris") served on Silverton's board of directors during the period of time relevant to this Complaint. Norris is the former President and CEO of Plantation Federal Bank of Pawley's Island, South Carolina, a constituent community bank formerly doing business with Silverton. Norris may be served with process at 11039 Ocean Highway, Pawleys Island, SC 29585.

18. Defendant Stephen L. Price ("Price") served on Silverton's board of directors during the period of time relevant to this Complaint. Price served on the Executive Loan Committee at Silverton from April 2007 to April 2009. Price is the former Chairman, President and CEO of Florida Community Bank of Immokalee, Florida, a constituent community bank formerly doing business with Silverton. Price may be served with process at 3212 16th Street W, Lehigh Acres, FL 33971.

19. Defendant Bobby Shepard ("Shepard") served on Silverton's board of directors during the period of time relevant to this Complaint. Shepard is the former President and CEO of PlantersFIRST of Cordele, Georgia, a constituent community bank formerly doing business with Silverton. Shepard may be served with process at 182 Lakeview Circle, Cordele, GA 31015.

20. Defendant Hunter Simmons ("Simmons") served on Silverton's board of directors during the period of time relevant to this Complaint. Simmons is

President and CEO of 1st South Bank of Jackson, Tennessee, a constituent community bank formerly doing business with Silverton. Simmons may be served with process at 1862 Highway 45 Bypass, Jackson, TN 38305.

21. Defendant Tony W. Wolfe ("Wolfe") served on Silverton's board of directors during the period of time relevant to this Complaint. Wolfe served on the Executive Loan Committee at Silverton from April 2005 to April 2007. Wolfe is President and CEO of Peoples Bank of Newton, North Carolina, a constituent community bank formerly doing business with Silverton. Wolfe may be served with process at 518 West C Street, Newton, NC 28658.

22. Hereinafter, Bryan, Bennett, Carlton, Crook, Ellenburg, Foster, Gulledge, Harper, Hart, Maddox, Norris, Price, Shepard, Simmons, and Wolfe will collectively be referred to as "the Board" or the "Director Defendants."

B. Officer Defendants

23. Defendant Brian D. Bueche ("Bueche") was the Chief Lending Officer at Silverton during the period of time relevant to this Complaint. Bueche may be served with process at 1271 Cobblemill Way NW, Kennesaw, GA 30152.

24. Defendant Brock Fredette ("Fredette") was the Chief Credit Officer and Senior Vice President at Silverton during the period of time relevant to this

Complaint. Fredette may be served with process at 3012 Shandwick Court, Birmingham, AL 35242.

25. Hereinafter, Bueche and Fredette will collectively be referred to as "Management" or the "Officer Defendants."

C. The Insurance Company Defendants

26. Defendant, Federal Insurance Company, is a member insurer of the Chubb Group of Insurance Companies (hereinafter this Defendant shall be referred to as "Chubb"). Chubb is incorporated in Indiana and maintains its principal place of business in New Jersey. This Court has personal jurisdiction over Chubb as it maintains a registered agent for service in Georgia, conducts business in Georgia, and issued and delivered an insurance policy to Silverton in Georgia that is the subject matter of a claim within this Complaint.

27. Chubb may be served with process by and through its registered agent, CT Corporation, 1201 Peachtree Street, NE, Atlanta, GA 30361.

28. Defendant, Westchester Fire Insurance Company ("Westchester") is an insurance company doing business in the State of Georgia. Westchester is both incorporated in and maintains its principal place of business in Pennsylvania. This Court has personal jurisdiction over Westchester as it maintains a registered agent for service in Georgia, conducts business in Georgia, and issued and delivered an

insurance policy to Silverton in Georgia that is the subject matter of a claim within this Complaint.

29. Westchester may be served with process by and through its registered agent, Mark G. Irwin, 500 Colonial Ctr. Pkwy. #200, Roswell, GA 30076.

IV. NATURE OF THIS SUIT

30. This suit seeks to recover damages in excess of $71 million for losses incurred by Silverton in connection with certain transactions as described more particularly below. The current estimated total loss to the Deposit Insurance Fund as a result of Silverton's failure is $386 million. The losses described in this Complaint were caused by the negligence, gross negligence, breaches of fiduciary duties, and/or waste committed by Silverton's Board and/or Management.

31. This case presents a text book example of officers and directors of a financial institution being asleep at the wheel and robotically voting for approval of transactions without exercising any business judgment in doing so. What makes this case so unique and troubling is that Silverton's Board was not comprised of ordinary businessmen. Rather, the members of the Board were all CEO's or presidents of other community banks, which was a requirement to serve on the Board. Silverton's Board members, by virtue of their elevated positions within their own banks, were more skillful and possessed superior attributes, in relation to

fulfilling their duties to Silverton, than others who may serve in this capacity. With this specialized knowledge and expertise, the Silverton Board should have fully understood the manner in which they were required to discharge the duties owed to Silverton. Indeed, the individual members of Silverton's Board should be viewed as more skillful, more knowledgeable, and more intelligent than that of an ordinary individual lacking such extensive experience and success in the banking industry. Existence of these attributes demands conduct that is consistent therewith. Instead, Silverton's Board and Management were reckless and completely failed in discharging the duties they owed to Silverton causing substantial loss to the Bank and ultimately leading to its failure.

V. FACTUAL BACKGROUND

A. The Bankers Bank

32. Silverton began as Georgia's Banker's Bank in 1986, and later changed its name to The Bankers Bank. A banker's bank is a financial institution that provides financial services to community banks. Banker's banks exist for the purpose of servicing the charter banks that founded them, are owned by investor banks, may provide services only to community banks, and do not service the public in any fashion. Smaller community banks, forming the customer base of the correspondent banker's bank, seek a variety of services from banker's banks

including credit and deposit services, investment services, and loan participations. Banker's banks are designed to provide these services that are typically economically available only to large national or multinational banks. Community banks can then in turn offer these services to their customers, allowing these smaller independent banks to effectively compete with larger banks.

33. Silverton started as a typical banker's bank by providing correspondent and clearinghouse services to small community banks. The primary source of Silverton's income was the fees it received from these and related services and products. Silverton Financial Services, Inc. ("SFSI") owned all of the stock in Silverton. In 2008, the Bank's name changed for a second time to Silverton Bank, N.A.

34. Initially providing funding for start-up banks and capital infusions for existing banks, the Bank eventually expanded into hospitality lending and then into residential and commercial real estate acquisition and development loans. Such loans were accomplished through "participations" in which the Bank shared the funding and risk with other banks, rarely taking the "lead" position in these loans. Silverton also provided payment and check clearing services to its community banks, organizational lines of credit for de novo banks, direct loans to financial institutions for expansion and capital needs, direct loans to individuals to purchase

holding company stock of financial institutions, loans to directors and executive officers of client/owner banks, federal funds lines of credit, in addition to investment, consulting, credit card, and insurance services.

35. Silverton was originally chartered by the State of Georgia and was a member of the Federal Reserve System. As such, the Bank was supervised and examined by both the State of Georgia (Georgia Department of Banking and Finance) and the Federal Reserve. In 2007, Management and the Board wanted to expand Silverton's lending into markets all across the United States, and in order to facilitate this expansion decided to convert to a national charter. Obtaining a national charter would allow Silverton to open satellite lending operations outside of Georgia without first having to obtain individual state charters.

36. In early 2007, Silverton submitted an application to the OCC to become a nationally chartered bank. In response to Silverton's application, the OCC conducted an examination of the Bank to determine whether to grant the requested charter. In connection with its examination, the OCC submitted a letter, dated July 20, 2007, to Bryan, the President and CEO of Silverton, setting forth Matters Requiring Attention ("MRAs") by the Bank. These MRAs included: (1) "Management should develop a comprehensive plan to develop strong credit risk management processes. Due to the bank's high level of commercial real estate

(CRE) lending, this should include compliance with OCC Bulletin 2006-46 Interagency Guidance on CRE concentration risk management . . . The board should ensure an appropriate level of oversight is provided as part of a strong credit risk management process . . . Management of the loan portfolio should be improved, including the policy, reports, market analysis, and credit risk review function;" (2) "Management should revisit the strategic planning process to ensure growth and expansion are appropriate. The strategic plan should be re-evaluated in light of your increasing risk profile and risk management systems which do not support these plans. Goals and objectives outlined in the strategic plan are too broad and not supported by more specific departmental level business plans;" and, (3) "Management should develop a more comprehensive capital plan to meet the guidelines outlined in the bank's Capital and Dividend Policy, including a thorough analysis of the impact of growth plans and qualitative risk factors upon capital adequacy. The challenges that the board and management face in expanding the bank into a national presence, particularly in this adverse real estate market, are significant." The OCC's MRAs are statutory requirements enforceable under 12 U.S.C. § 1818. Any violation of these MRAs could have subjected the Bank, and its institution-affiliated-parties, including the individual members of the Bank's Board, to individual liability pursuant to 12 U.S.C. § 1818(b) and (i).

37. Bryan, and at least one Director, Ellenburg, received the OCC's July 20, 2007 pre-conversion letter. On July 26, 2007, Bryan, on behalf of the Bank, responded to the OCC's July 20, 2007 letter identifying the three MRAs pledging that the Bank was "committed to establishing and maintaining the resources, policies, and procedures required to meet all of [the OCC's] concerns," including the MRAs. In response to Bryan's July 26, 2007 letter, the OCC conditionally approved the Bank's conversion request by letter dated August 7, 2007, subject to two special conditions: (i) that the Bank's total risk-based capital ratio be maintained at not less than eleven percent (11%); and (ii) that the Bank take the steps necessary to ensure that the commitments in response to the OCC's MRAs set forth in the Bank's July 26, 2007 letter are fully accepted, timely implemented, and adhered to thereafter. Each member of the Board received this August 7, 2007 conditional approval letter.

B. Silverton's Expansion

38. Silverton sought to become the country's largest banker's bank, and from the mid 2000's onward, Silverton embarked on a major expansion plan resulting in the Bank's assets growing from $1.7 billion in 2005 to $3 billion by 2008. The Bank created an Expansion Committee in 2005 and later an Expansion Task Force in 2006 to further this goal. The plan to grow the Bank's assets to $3

billion was tied to the desire to increase earnings per share by 10 percent. To encourage growth, a large portion of the compensation package for Executive Management was tied to meeting growth goals.

39. Bank Management decided to expand by entering new markets in new territories through the establishment of Loan Production Offices ("LPOs") in these new target areas. The out-of-territory LPOs then engaged in high risk lending through commercial real estate ("CRE") and acquisition, development, and construction ("ADC") loans. To push the Bank's growth strategy, LPOs were incentivized to generate loans in order to earn bonuses; however, loans were made based on quantity not quality. Justin Perry, Silverton's in-house counsel, opined that: "[b]ooking bad loans should not have led to bonuses. People were compensated for doing bad things."

40. As discussed above, to accomplish this expansion, the Bank elected to pursue a national charter as this would allow broader expansion at a faster pace. The national charter option would also allow the Bank to issue brokered deposits, warehouse loans, and enter other lines of business. The Bank purchased airplanes and a bigger office and changed its name all in effort to promote the Board's expansion strategy.

41. Silverton's Board pursued expansion plans despite cautionary statements made at the Mid-Year Strategic Planning Meeting in June 2007. Potential future pitfalls included: growing too fast causing the Bank to stumble; changes in economic conditions and insufficient preparation for planned growth; not maintaining controls related to compliance and substantial credit loss; and, being too focused on growth for growth's sake alone. Additionally, the real estate market was soft in the southeast. In response to these concerns, the Bank took on the attitude "if we grow fast enough to generate enough money, we can take care of our problems." The Bank pressed onward and implemented its plan of unbridled expansion, later succumbing to the very same pitfalls forecasted at the June 2007 meeting.

42. Silverton embarked on a course of rapid growth in the real estate construction and investment areas in markets nationwide. Silverton's growth had been steady, but accelerated significantly after its conversion to a national charter. Silverton's total assets grew from $2 billion as of December 31, 2006 to $3.2 billion as of December 31, 2008. In the first quarter of 2009, total assets increased 32 percent reaching an asset size of $4.2 billion by March 31, 2009. During this time, the Bank also overly relied on brokered deposits, which grew to $1 billion by December 31, 2008 and then to $1.4 billion by March 31, 2009. The Bank

aggressively pursued ADC lending by participating in or originating loan participations. Many of these loans were concentrated out of the Georgia area in places such as California, Florida, Nevada, Texas, and Arizona. Silverton had little or no experience or market awareness in these areas at the time of this expansion. The aggressive growth plan, especially expansion into the west coast, was straight into the territory of competition with other banker's banks.

43. In addition to ADC loans, the Bank focused heavily on CRE lending. The OCC's 2006-46 Bulletin set forth that CRE lending was not to exceed 300 percent of a bank's capital. At Silverton however, from 2006 to 2009 CRE lending consistently remained above 300 percent, increasing to an astonishing 1,279 percent by the end of the 2009 first quarter. At the Board's February 2009 Asset Quality Committee meeting, Board members discussed Silverton's CRE concentration. Notably, Bryan stated that the 300 percent ceiling was just a guideline and that the Board always waived it. The minutes from this meeting were then "tweaked" to mask the fact that the Board knew all along that the CRE level was in excess of 300 percent to prevent this fact from being publicized.

44. Silverton's aggressive expansion plan was accompanied by significant weaknesses in loan underwriting, credit administration, and a complete disregard of a declining economy. Ultimately this led to the failure of the Bank.

C. Ignoring the Declining Economy

45. The interest of the Board and Management was strictly in growing the Bank, and, in doing so, they ignored ominous warning signs in the economy even as the economy was turning downward in 2007-2008. There were clear indications that the real estate market was declining in 2007, and Silverton's Board and Management chose to ignore the indicators of a declining market and instead continued to grow the Bank. Because of the reckless manner in which loans were underwritten, Silverton's loans were highly susceptible to negative changes in the real estate market. The Board and Management should have been cognizant of the need for heightened market awareness.

46. Silverton's Board and Management had no excuse for ignoring the obvious signs that the economy was taking a turn for the worse. Their conduct was especially egregious because they failed to correct their behavior to conform to the market when the economy did begin to decline. The Director Defendants were all bankers with specialized knowledge of the banking industry. With this background, the Bank's Board should have been on a heightened state of alert regarding the market, particularly in the area of commercial real estate lending given the Bank's high concentration in that area.

47. Evidence of the declining market was readily apparent and readily available to the Bank's Board and Management. The OCC addressed its concern over Silverton's growth plan "in light of the current declining real estate market" in the OCC's pre-conversion letter dated July 20, 2007. In a draft response to the OCC's pre-conversion letter, circulated between Bryan, Bueche, and Fredette, the "terrible real estate market nationwide" is discussed and concern is expressed in connection with the Bank's growth strategy. On August 24, 2007, Fredette and Bueche shared an email correspondence with an Atlanta-area home builder regarding the less-than-favorable market in Atlanta. Then in October of 2007, Silverton's Executive Summary on commercial lending acknowledges that the market was continuing to weaken. In the OCC's April 2008 letter to the Board, the OCC again referenced the economy and requested that Silverton "reevaluate strategic planning to ensure growth and expansion are appropriate as risk profile is increasing, adverse credit quality indicators and weakening real estate market exist." By October 2008, even shareholders were expressing concern about the market conditions. To these concerns, Bryan responded that everything was "okay" in an attempt to dissuade their fears and convey that the Bank was stable. Everything was not, in fact, okay and the Bank was not stable. Two months later

on December 29, 2008 the OCC issued a letter placing the Bank in troubled condition.

D. Warnings from Bank Examiners

48. Upon conversion to a national bank, the OCC assumed the role of primary regulator for Silverton. As discussed above, the OCC conducted a Pre-Conversion Examination of Silverton. As a result of this examination the OCC identified several significant supervisory issues that had to be addressed. Indeed, conversion to a national charter was contingent upon several conditions being met.

49. The first Matter Requiring Attention ("MRA") set forth by the OCC was the high concentration in CRE lending and the need for a comprehensive plan to develop strong credit risk management processes. The OCC viewed Silverton's credit risk profile as "high and with increasing risk, based upon loan mix, credit concentrations, loan types, growth, geographic distribution, and executive management level oversight." To this end, the OCC required that a comprehensive plan be implemented that would develop strong credit risk management processes.

50. The OCC believed that management and staffing of the lending function was "very lean and without a senior level officer responsible for oversight of this most critical operation." The OCC also believed that there was insufficient oversight at the Board level with respect to the lending area other than for credit

approvals. Additionally, the OCC found that the credit reports presented to the Board were general and not supported by more detailed reports at the management level. It was also recommended that loan concentration reporting be improved.

51. The OCC further determined that "management and the board should reassess and ensure that the strategic planning objectives are realistic and appropriate, given adverse credit quality indicators and a weakening real estate market." In requiring the Bank to develop a more comprehensive capital plan, the OCC noted that "[t]he challenges that the board and management face in expanding the bank into a national presence, particularly in this adverse real estate market, are significant." Unfortunately, Management and the Board were simply not up to these challenges. By the time the OCC examined Silverton again in 2008, the problems faced by Silverton were enormous and insurmountable.

52. The first full OCC report of examination, dated June 24, 2008, downgrading Silverton to a composite CAMELS 4, found that: (1) Management and Board oversight of the lending area were inadequate; loan staffing levels were inadequate; (2) capital levels were deficient given the Bank's high and increasing risk profile; (3) the quality of the loan portfolio was deficient; (4) the Board and Management did not effectively plan, assess, and manage portfolio concentrations; and, (5) earnings were insufficient to support continued operations and to maintain

appropriate capital and ALL levels. In addition to identifying numerous unsafe and unsound underwriting, monitoring, and credit risk management practices, the OCC found there were underwriting and credit administration problems in half of the loans reviewed. The next OCC report of examination, dated February 2, 2009, downgraded Silverton to a composite CAMELS 5, the lowest possible rating.

E. Loan Approval Process and Procedures at Silverton

53. Pursuant to Silverton's loan approval policy, the manner in which loans were approved was based on the total amount of Silverton's portion of the loan. As a correspondent bank, generally Silverton would receive a request to participate in funding a loan with a lead bank. Silverton was then supposed to evaluate the entire loan amount based on the contents of the underwriting package from the lead bank as well as conduct its own underwriting analysis. Because Silverton had certain hold limits in place, it would attempt to engage other banks as downstream participants to purchase part of its total participation with the lead bank. This was done in order to prevent having an excess of the hold limit on the Bank's books; however, this did not always happen. Silverton, at times, would have to retain more than its hold amount after participating with the lead bank, and in some cases, was never able to sell the rest downstream.

54. Silverton's loan approval policies provided the following five approval levels: (1) Lender Authority was the first level and the only defined limit was the loan officer's individual credit authority; (2) the Regional Credit Officer reviewed and approved loans between $1 and $3 million; (3) the Regional Credit Committee reviewed and approved loans up to $9 million; (4) on loans over $9 million the Corporate Credit Committee served a gate keeping function and would review and approve the loan before sending it to the Executive Loan Committee ("ELC"); and (5) after receiving preliminary approval from the Corporate Credit Committee, formal approval or ratification by the ELC was required on loans over $ 9 million, not to exceed the legal lending limit. For any approved loan, Silverton would send a commitment letter to the lead bank, which then prepared a participation agreement for Silverton.

55. Silverton's loan policy, in addition to requiring approval by certain committees, required that real estate loans have a loan-to-value ("LTV") of no more than 75 percent (85 percent is the Federal Reserve Regulation H supervisory limits); a review of the customer's financial information; an in-depth credit risk review of the borrower; an appraisal or at a minimum an evaluation[1] of the transaction; and, an appraisal review on all transactions in excess of $1,000,000

[1] An evaluation could be conducted in lieu of an appraisal with certain limited transactions such as new transactions at or below the $250,000 threshold.

(Silverton's portion). Financial information provided by potential borrowers was a particularly significant part of the foundation of the Bank's credit decision. Therefore, credit requests should have been supported by complete and current financial information on the borrower, guarantor, co-maker, and/or endorser. The loan policy required that for loans under $500,000 financial information must be compiled; for loans between $500,000 and $2,000,000 financial information must be reviewed; and, for loans exceeding $2,000,000 financial information must be audited.

56. Silverton's loan policy set out two major components for evaluating a commercial real estate loan: 1) the analysis of the financial sponsorship (borrower(s), owner(s), and guarantor(s)); and, 2) project analysis (market, collateral, and loan structure). This includes an in-depth market analysis and an evaluation of the specific project or property that is the subject of the financing request under consideration. The property evaluation entailed an evaluation of the physical collateral, the construction contract, and the selected contractors. The loan policy required that any exceptions to the underwriting guidelines have mitigating factors that offset the additional risk inherent in not conforming to the guidelines. Any exceptions were required to be identified in the Exceptions section of the Commercial Real Estate Approval Form.

57. Despite these internal procedural requirements, the Bank consistently made loans without complying with the loan policies and without proper underwriting or credit administration. As a result, loans were made to borrowers with no real ability to service the loan, with insufficient equity in the project, and/or insufficient liquidity.

F. The Loss Transactions

Corporate Waste Transactions

58. The Defendants took numerous actions in direct contravention of the OCC's directives to the detriment of the Bank. Defendants directed the Bank on a course of expansive and extravagant spending on unnecessary items for the Bank after the economy began to decline. The Defendants authorized the purchase of two new aircrafts, a new airplane hangar to house three large and expensive airplanes, and a large and lavish new office building. The Bank also employed, at a minimum, eight private pilots to carry directors and prospective clients to meetings and other locations. Silverton's annual shareholders' meeting was held at the luxurious Cloister resort hotel on Sea Island, Georgia. The Bank spent upwards of $62,000 a year on the shareholder meeting. In addition, the Bank held an annual board meeting on Amelia Island, Florida while hosting a luxurious "Executive Management Conference" for its correspondent banking customers at

the Ritz-Carlton. The cost for this annual board meeting and conference was incredible and amply demonstrates the cavalier attitude of the Board when it came to spending the Bank's money on luxuries. Hosting this event, which included paying for the flights of correspondent bank's members as well as transportation for Silverton's officers and directors and their wives, cost the Bank in excess of $4,000,000 between 2002 and 2009. These transactions were approved at a time when Silverton's financial condition was seriously impaired, and they were not approved on an informed basis.

Purchase of the Falcon 20 & King Air

59. On or about April 26, 2007, Defendants Bennett, Bryan, Carlton, Crook, Ellenburg, Foster, Harper, Hart, Maddox, Norris, Price, Shepard, Simmons, and Wolfe approved the funding of SFSI's purchase of a $3,500,000 Falcon 20 jet. At the May 24, 2007 Board meeting, the Board of Directors approved a one time dividend of $5,000,000 to SFSI, for the "primary purpose [of] purchas[ing] the Falcon 20."

60. The Bank funded SFSI's purchase of the Falcon 20 jet at a time when Silverton itself already owned one small jet airplane, was leasing a second King Air airplane from Defendant Tom Bryan, and was in a precarious financial position. At the September 27, 2007 Board meeting, former Chief Financial

Officer Patrick Derpinghaus stated that the Bank "had not budgeted for the $5,000,000 dividend from the bank to the holding company" to purchase the Falcon 20. As a result, the funding of SFSI's $3,500,000 purchase of the Falcon 20 caused the Bank's capital to drop below the 11 percent required minimum set by the OCC just one month earlier. Simply stated, this was reckless activity by these Defendants. The estimated loss for the funding of the Falcon 20 is $3,500,000.

61. In addition, in November 2007, when the Bank was still below its required risk-based capital ratio, Silverton funded SFSI's purchase of Defendant Bryan's King Air airplane for $1,350,000. Defendants Bryan, Bennett, Carlton, Ellenburg, Gulledge, Maddox, and Wolfe approved the purchase of the King Air airplane earlier on June 22, 2006. The purchase of this additional plane caused the Bank's capital to remain below the required 11 percent minimum as set by the OCC in July 2007. The estimated loss for the funding of the King Air airplane is $1,350,000.

62. The Bank's Board minutes do not contain any discussion of why the Bank funded SFSI's purchase of these two airplanes. The minutes fail to reflect that the decision was made in a deliberate manner or on an informed basis or that any business judgment was exercised by these Defendants in this regard. Despite

the fact that Silverton provided the funds that were used to purchase these planes, SFSI took title to both airplanes. Moreover, Silverton had no lien on either airplane. Accordingly, when the airplanes were later sold, Silverton received nothing, and the $4,850,000 that Silverton advanced for these two purchases was a total loss to the Bank. Such loss was proximately caused by the conduct alleged herein. The decision to fund the purchase of these airplanes (which were not owned by the Bank) was reckless and demonstrates a complete disregard of the interests of the Bank. There was a total lack of diligence in connection with the decision to fund the purchase of these airplanes. This lack of diligence and care is amply demonstrated by the manner in which this transaction was structured. Simply stated, these Defendants were reckless and failed to make this decision in an informed and deliberate manner. The Defendants failed to exercise any business judgment in this regard or even exercise a slight degree of care. There was a complete disregard for the interests of the Bank in this regard.

63. The detrimental impact on the Bank of the purchase of these two planes was exacerbated when combined with the purchase of the hangar and the eight or more full-time employees in the "aviation" department. These expenses ran well over $1,500,000 in 2008.

The Airplane Hangar

64. On or about August 23, 2007, Defendants Bennett, Bryan, Carlton, Crook, Ellenburg, Foster, Harper, Hart, Maddox, Norris, Price, Shepard, and Simmons approved funding to construct a new $3,800,000 airplane hangar. This funding was approved after the Bank fell below its required risk-based capital ratio. Upon Defendant Bryan's request, the Board unanimously approved the funding for the new hangar despite knowing the Bank's net income was severely below budget for the previous month. The Bank's Board minutes do not reflect that the Board ever considered or even noted the cost of the hangar's construction either when it initially approved the new hangar or at any time thereafter. There is no evidence that these Defendants made their decision in a deliberate manner or on an informed basis or exercised any business judgment in this regard.

65. The Bank had no written contract with the contractor, and it was under no legal obligation to build the hangar. Nevertheless, construction on the hangar began in August 2008 at a time when the Bank had ceased all new lending and during a year in which the Bank had fallen below its required risk-based capital ratio for several months.

66. The Bank had no ownership interest in the hangar. The Bank funded the construction of the hangar and the lease of the space on behalf of SFSI. The

lease was entered into by SFSI and the landowner, and the Bank was not a party to this contract. Per the terms of the lease, upon the expiration or earlier termination of the lease, SFSI was obligated to return the hangar space to the landowner. Thus, at the end of the day, the Bank paid cash on behalf of its holding company to build a hangar that neither the Bank nor SFSI ever owned or could ever own.

67. The hangar remained unfinished when the Bank failed in May 2009. Silverton lost approximately $3,000,000 on the airplane hangar project. Such loss was proximately caused by the conduct alleged herein. The decision to build this airplane hangar was reckless and demonstrates a complete disregard of the Bank's interests. There was a total lack of diligence in connection with the decision to approve this transaction. Simply stated, these Defendants were reckless and failed to make this decision in an informed and deliberate manner. The Defendants failed to exercise any business judgment in this regard or even exercise a slight degree of care. There was a complete disregard for the interests of the Bank in this regard.

New Offices

68. On or about November 16, 2006, Defendants Bennett, Bryan, Crook, Ellenburg, Foster, Gulledge, Hart, Maddox, Norris, Price, Shepard, Simmons, and Wolfe approved the purchase of a new multi-million dollar headquarters, known as the Medici, replete with 26 conference rooms.

69. Construction for the palatial new office was funded by a $35 million loan to The Medici, LLC, a single asset entity formed for the purpose of acquiring, owning, developing, operating, and leasing the Medici office building. The loan was originated by Peoples Bank and participated out to 17 other banks. Silverton owned 25 percent of The Medici, LLC. Silverton also leased 89 percent of the Medici at a cost of $19.50 per square foot for a total lease payment of $2.6 million a year or $219,521 per month.

70. Following approval of the loan to The Medici, LLC, construction began in February 2007, and the Bank occupied the new building in February 2008. When Silverton moved operations over to the new building, it was still required to continue making its old office lease payments in the amount of $176,455 per month, while the old office sat vacant. At this time, the Bank owed a remaining 20 months of rent under the lease for the old office. The Bank made 14 of the old lease payments for a total of $2,470,000 between February 2008 and when the Bank failed on May 1, 2009. Silverton's remaining obligation under the lease for the old office space at the time of its failure was $1,060,000.

71. The Bank could have and should have timed completion of construction of the new building to approximate the expiration of the Bank's existing lease, which would have been in October 2009. The Silverton Board

minutes contain no indication that the Board ever considered this point or the possibility that the Bank would have to pay a costly double-lease payment for such a lengthy period of time. There was a total lack of diligence in connection with the decision to purchase the new office building. Simply stated, these Defendants were reckless and failed to make this decision in an informed and deliberate manner. The Defendants failed to exercise any business judgment in this regard or even exercise a slight degree of care. There was a complete disregard for the interests of the Bank in this regard.

72. The estimated loss for the Bank's double rent payment, as a result of purchasing the new office building, is $2,470,000. This loss was proximately caused by the conduct alleged herein.

The Loan Transactions

73. The following 15 loans caused significant loss to the Bank. The loans were approved by the Defendants described herein in blatant violation of the duties owed by them to the Bank.

Coro Willis Wood Valley

74. On or about April 30, 2007, Defendants Bryan, Carlton, Crook, Foster, Maddox, and Price as members of Silverton's ELC, approved a $6,300,000

participation in a $10,135,000 acquisition and development loan to Coro Willis Wood Valley, LLC (hereinafter the "Coro Willis Loan").

75. The Coro Willis Loan was for the acquisition of 9.748 acres and the subsequent development of this property into a 119 townhome development in Smyrna, Georgia. The lead bank on this loan, Peachtree Bank, needed to participate the loan out due to related exposure. This loan had been on Peachtree Bank's books since June of 2006. The borrower was a newly formed entity created for the purpose of purchasing, managing, developing, and selling the townhome development project. The principals of the borrower were Coro Realty Advisors, LLC and Johnson-Willis, LLC. The guarantors on this loan were John Lundeen, William Bartlett, John Willis, and Earl Johnson.

76. According to the Loan Committee Application, the primary source of repayment was to be from the proceeds from the sale of the lots, which increased the Bank's risk exposure on the project. The approval of the Coro Willis Loan violated the Bank's loan policy's underwriting requirements. The approval was given without obtaining proper financial documentation on the borrower, principals, and guarantors. Audited financial statements from the guarantors were not obtained, which was a requirement under the loan policy given the size of this loan. Further violations of the loan policy included the failure to obtain year end

financial statements and tax returns for all of the guarantors and principals of the borrower. Effective financial statement reporting requirements were not implemented, and because the required financial documents were never obtained, the loan was approved without taking into consideration the weak and deteriorating financial condition of the guarantors. Approval of this loan in the face of the failure to adhere to these most basic requirements of the loan policy was reckless and demonstrates a complete disregard of the interests of the Bank. Without this information, there was simply no basis upon which to approve this loan. Thus, Defendants who approved this loan failed to do so in a deliberate manner or on an informed basis and failed to exercise any business judgment in this regard. There was a complete lack of diligence by the Defendants who approved this loan.

77. The Defendants who approved this loan also failed to heed warnings and react in a prudent manner in light of known market deterioration in Smyrna, Georgia. Market surveys revealed that the housing market was deteriorating as of April 2007. Furthermore, increased inventory levels were present. Market conditions continued to worsen throughout 2007.

78. Remarkably on January 2, 2007 (well before Silverton participated in this loan) one of the guarantors (John Lundeen) wrote Peachtree Bank and discussed the significant problems that the project was facing. Mr. Lundeen

informed Peachtree Bank that two of the guarantors, John Willis and Earl Johnson, could "not proceed with the purchase of developed lots due to the fact that no Bank will offer them a loan to purchase the lots . . ." According to Mr. Lundeen, "[w]e now face the dilemma to either walk away from this investment or work with the Bank on a restructure where we can come up with a reasonable exit strategy . . . If the Bank is not willing to negotiate a settlement at a discounted payment then we have no alternative but to offer the Bank a Deed in lieu of Foreclosure." Approval of this participation in the face of this very significant negative information was reckless and demonstrates that the loan approvers failed to exercise even a slight degree of care. There was a complete disregard of the interests of the Bank.

79. Lastly, the Coro Willis Loan was approved without ensuring that the borrower could obtain subsequent financing for the take down of the lots and planned development. As the letter from Mr. Lundeen demonstrates, the borrower was indeed unable to procure subsequent financing to complete the project.

80. The Bank suffered a loss on the Coro Willis loan in an amount to be determined by the jury, which amount is at least $500,000. Such loss was proximately caused by the conduct alleged herein.

Cordoba-Ranch Development

81. On or about July 11, 2006, Defendants Bueche and Fredette approved a $22,132,000 loan to Cordoba-Ranch Development, LLC to finance the acquisition and development of 1,065 acres into a 283-lot single family subdivision in Lutz, Florida (hereinafter the "Cordoba-Ranch Loan"). Cordoba-Ranch Development, LLC was a single asset entity formed for the sole purpose of developing the Cordoba-Ranch subdivision. The guarantor was Lance Ponton, the sole owner of the borrowing entity.

82. Silverton originally purchased a 73 percent participation interest ($16,132,000) in the Cordoba-Ranch Loan from First Priority Bank, the lead bank. Of its $16,000,000 participation amount, Silverton retained $9,000,000 and sub-participated the remainder out to four other banks.

83. The Bank's Loan Approval Form states that the purpose of the loan was to fund the development of the pre-sold lots in an equestrian based subdivision project. However, the loan's actual purpose was to pay off the $18,000,000 loan made by Bank of America in connection with the original acquisition and development of the Cordoba-Ranch property. The primary source of repayment for this loan was the sale of yet-to-be completed lots, which increased the Bank's risk exposure.

84. The loan was funded despite the fact that the guarantor had insufficient liquid assets to satisfy the debt. The Loan Approval Form rated the guarantor's liquidity fairly high, giving it a "2," and stated that the guarantor had "significant liquidity" relative to the amount of the loan. The Loan Approval Form, and subsequently Bueche and Fredette when approving this loan, relied heavily on Mr. Ponton's $2,177,389 in cash. However, it appears that this cash may have been tied up "in escrow" and not even available. Without this cash, the guarantor had virtually zero liquidity. The majority of Mr. Ponton's other assets were tied up in real estate investments, primarily the Cordoba-Ranch project. With the addition of the Cordoba-Ranch Loan, Mr. Ponton's contingent liabilities increased to $43,121,409. The guarantor's tax analysis, financial statement, and contingent liabilities schedule were all attached to and referenced in the Loan Approval Form. Had Bueche and Fredette reviewed these documents, they would have noticed this glaring inconsistency.

85. The Bank's loan policy states that for commercial customers with total loan exposure over $2,000,000 audited financial statements need to be obtained. In this instance such audited financial statements were not obtained.

86. The Bank's risk exposure was further increased by permitting the borrower to place little cash equity in the project, relative to the total loan amount.

Total equity in the project equaled $10,700,000 with $8,700,000 coming from Community Development District financing and the borrower contributing only $2,000,000 in cash equity through sponsorship.

87. This loan was approved while relying on the poor underwriting and approval process of the lead bank. For example, the loan was approved without insuring that all security interests were perfected. As it turned out the lead bank had perfected liens only with respect to 803 of the 1,065 acres of collateral within the Cordoba-Ranch Community District. Bueche and Fredette failed to detect this significant issue. Such failure demonstrates the reckless manner in which this loan was approved.

88. Additionally, Bueche and Fredette failed to heed numerous warning signs of the instability and the steady deterioration of the markets in Tampa and the surrounding geographic area. Indeed, as participations were being marketed to other banks, at least one potential lender acknowledged "the bad press regarding the current state of residential building." Ultimately, this bank declined to participate in this loan. Revealingly all of the potential participants located in Florida declined to participate in the Cordoba-Ranch Loan. This red flag was ignored.

89. The loan was subsequently refinanced on August 16, 2008. On November 19, 2008, Silverton purchased a loan package from the FDIC, as receiver for First Priority Bank, which contained First Priority Bank's 27 percent interest (approximately $5,000,000) in the Cordoba-Ranch loan. This purchase made Silverton the 100 percent owner of this loan. Silverton purchased this additional interest in the Cordoba-Ranch loan from the FDIC even after First Priority Bank sent the borrower a notice of default on March 27, 2008, and filed a complaint against the borrower and all related entities on May 19, 2008 for breach of commercial loan note loan agreement, mortgage foreclosure, breach of contract, breach of guarantee agreement, and declaratory judgment.

90. The Bank suffered a loss on the Codoba Ranch Loan in an amount to be determined by the jury, which amount is at least $8,894,673. Such loss was proximately caused by the conduct alleged herein.

The Crossing at Purple Sage

91. On or about August 29, 2006, Defendants Bueche and Fredette approved Silverton's $7,000,000 participation in a $8,295,000 loan to the Crossing at Purple Sage, LLC (hereinafter the "Purple Sage Loan"). The lead bank, New South Federal Savings Bank originated the loan on May 30, 2006. The borrower was a newly formed entity created for the purpose of acquiring and developing a

73.02 acre parcel of land located in north Middleton, Canyon County, Idaho. The land was to be developed into 147 lots within a subdivision development called The Crossing at Meadowpark. The initial draw on this loan of $2,457,000 was intended to pay off the existing land loan of $2,340,000 and to finance the closing costs of $117,000.

92. The guarantors of the loan were Michael Coronado, James Hammer, Albert Flanagas, Kent Lay, Clifford Stratton, John Stratton, and Roland Sturm. The same seven individuals, in their capacity as managing members of seven different entities, were the principal owners of the borrowing entity with each having a 14.29 percent ownership.

93. The approval of this loan violated the Bank's loan approval policy in numerous ways. All the required financial documents such as the previous three year's financial statements, audited financial statements, and tax returns were never obtained from the guarantors or principals of the borrower. In fact, none of the principals submitted any financial documentation. The contractor and subcontractor bonds were not in the file. Furthermore, part of the property was secured with a second deed of trust behind the original owners, which violated Bank policy. Approval of this loan despite the failure to comply with the requirements of the Bank's policies was reckless and represents a complete

disregard of the interests of the Bank. By failing to acquire or analyze information regarding the financial condition of the borrower or the guarantors there was simply no basis (much less an informed basis) upon which to approve this loan. Thus, Bueche and Fredette failed to approve this loan in an informed and deliberate manner and failed to exercise any business judgment in this regard. The loan approvers failed to exercise a slight degree of care and completely disregarded the interests of the Bank.

94. The deterioration of the market was completely ignored despite obvious signs that the real estate market was on the decline. Numerous emails, appraisals, and the loan submission documents all indicated that the real estate market had gone soft. Email correspondence indicated that there was already a high concentration of loans on property in the Boise area and that the levels of competition in the Boise market were limiting factors.

95. After approval, the loan was improperly supervised and maintained. Draws were issued to the borrower without inspection, and no inspection reports were conducted until it was too late and the Bank classified the loan as a troubled asset. In 2008, construction on this project halted. The guarantors felt that "both projects failed not only as a result of declining real estate values, but as a result of

the Lender's negligent inattention and failed promises as well." The guarantors also felt the lender let the loan "languish in an indeterminate state."

96. The Bank suffered a loss on the Purple Sage loan in an amount to be determined by the jury, which amount is at least $5,814,356. Such loss was proximately caused by the conduct alleged herein.

Fairhope Falls

97. On or about June 25, 2007, Defendants Bryan, Foster, Maddox, Price, and Ellenburg approved two loans totaling $14,825,000 to Fairhope Falls, LLC ($7,325,000) and Fairhope Falls Improvement Dist. No. 1 ($7,500,000) that were originated by Parish National Bank (hereinafter the "Fairhope Falls Loan"). Parish National Bank subsequently took a small participation ($1,000,000) in the Fairhope Falls Loan. Defendant Carlton voted not to approve this loan. The purpose of the loan was to pay off the existing acquisition and development loan on 185 acres into what was described as a 237 lot single family residential community, known as the Fairhope Falls project, in Fairhope, Alabama. Loan approval was based on this 237 lot figure; however, the borrower only intended to develop 150 lots.

98. The borrower was a single-asset entity, newly formed to acquire and develop the Fairhope Falls project. The borrower was owned solely by Olson &

Associates, which in turn was wholly owned by Carl Olson, Jr. and Sandra Phillips, each owning 50 percent. The guarantors of the project were Olson & Associates, Carl Olson, Jr., Elaine Olson, Rubert Phillips, and Sandra Phillips. The primary source of repayment for this loan was supposed to be the sale of the lots through the normal course of business followed by liquidation of the collateral and guarantors support. These repayment sources increased the Bank's risk exposure on this project.

99. By approving this loan Defendants Bryan, Foster, Maddox, Price, and Ellenburg violated the Bank's credit and underwriting policies. Loan approval was granted despite failing to obtain complete and accurate financial documentation from the primary guarantor, Olson & Associates, as well as failing to obtain audited financial statements from any guarantor. Approval of this loan despite the failure to comply with the requirements of the Bank's policies was reckless and represents a complete disregard of the interests of the Bank. By failing to acquire or analyze complete information regarding the financial condition of the borrower or the guarantors there was simply no basis (much less an informed basis) upon which to approve this loan. Thus, the loan approvers failed to approve this loan in a deliberate manner or on an informed basis or exercise any business judgment in this regard and did not exercise slight diligence.

100. Silverton's Credit Policy Manual required that individual guarantors must have a FICO score above 660, and FICO scores below 700 were considered "derogatory" and required an explanation. However, despite this requirement two of the guarantors had credit scores below 660 and another guarantor had a credit score below 700. No explanation was obtained for these low FICO scores. This, in conjunction with the borrower and guarantors low levels of liquidity and failure to disclose their contingent liabilities, should certainly have been sufficient indicators that the borrower and guarantors were not credit-worthy.

101. There were also clear warning signs that the market in this area of Alabama was on the decline. These warning signs were completely ignored. At the time of approval, a significant imbalance existed in the supply and demand of new housing units: a steadily increasing number of homes for sale with a steadily decreasing demand. Even prior to funding the loan, certain members of the Board were aware that the real estate market had gone soft and that the Bank already had a large concentration of exposure in this market. In fact, the initial loan submission on January 18, 2007 to the lead bank indicated an inherent risk in the real estate market for development due to the continued slow down of the economy.

102. In August of 2008, after several participating institutions threatened legal action, the Bank repurchased the entire participation amount. These participant banks made numerous allegations against the Bank such as "[s]omebody stole money in the project;" "[s]omebody is not telling us the whole story;" "[i]nformation in the package was false;" "[t]here has been serious mis-management and some type of fraud involved," "lack of diligence and total dismissal of Silverton's fiduciary role in this project;" "[a]ll participants understood that there existed 'contracts/reservations' and 'pre-sold' lots in order to share the underlying strengths of this credit;" and "[w]e were told in April by one of your officers that the project was 95% complete. It was not, and it remains not especially when one considers the total monies were to develop 280+ lots not 150 as we are being told now."

103. The Bank suffered a loss on the Fairhope Falls Loan in an amount to be determined by the jury, which amount is at least $7,421,535. Such loss was proximately caused by the conduct alleged herein.

FirstCity Bancorp

104. Defendants Bueche and Fredette, on or about September 30, 2005, approved a loan to FirstCity Bancorp, Inc. (hereinafter the "FirstCity Bancorp Loan").

105. This loan refinanced an existing revolving line of credit of $2,000,000 first set up in August 2002. Subsequently, the line was reduced to $600,000. At the time of the refinance, FirstCity Bancorp was requesting an increase in the line from $600,000 to $1,950,000 million to accommodate growth in its loan portfolio. FirstCity Bancorp needed month-end funds immediately, so Silverton, through Defendants Bueche and Fredette, approved a 30 day interest only note for $1,450,000. However, over the next two years the line increased to $4,900,000.

106. The primary source of repayment was to come from cash dividends up-streamed from the subsidiary bank of the borrower. Simply stated, this borrower should have never been issued this loan. Since the inception of this loan, the borrower had increasingly high credit concentrations. For example, the borrower had loans to one guarantor representing over 15 percent of total assets and also had geographic concentrations over 60 percent of its total asset base. The primary concentration issue was in CRE specifically in the area of ADC in the Atlanta, Georgia region. Defendants Bueche and Fredette apparently never reviewed reports given by outside parties indicating the borrower was in violation of Georgia Code Section 7 by over concentrating itself in specific borrowers and in certain geographical areas.

107. There were further warning signs and clear indications of the instability of the borrower's financial status: year after year the borrower requested additional funds to infuse capital into the bank and had concentrations of credit that far exceeded statutory guidelines. In addition to failing to observe the weak and deteriorating financial condition of the borrower, there was a complete failure to implement effective financial statement reporting requirements and to enforce even the weak requirements that were imposed.

108. The deficiencies in the approval of the FirstCity Bancorp Loan also stem from Defendants Bueche and Fredette's failure to follow the Bank's underwriting requirements. Financial documentation from the principals of the borrower was never obtained nor did Bueche and Fredette require a guarantor in violation of Bank policy.

109. The Bank suffered a loss on the FirstCity Bancorp Loan in an amount to be determined by the jury, which amount is at least $4,818,366. Such loss was proximately caused by the conduct alleged herein.

Goodby's Creek

110. On or about October 19, 2005, Defendant Fredette approved a non-revolving line of credit to finance and develop construction of a condominium project in Jacksonville, Florida to Goodby's Creek, LLC (hereinafter the

"Goodby's Creek Loan"). This line was to finance the first phase of a 76-unit, 2 six-story building condominium project called the Cove of St. Johns. Approval was given for a participation interest of $16,811,000 out of the total loan amount of $22,000,000 held by Fairfield Financial Services, the lead bank. However, the original Loan Approval Form contains facially inconsistent terms. The Loan Approval Form states that the Bank's maximum exposure is $5,000,000 with the Bank holding $5,000,000. Yet on the same page the form also states that the total loan amount is $22,000,000 with the Bank purchasing $22,000,000 but only holding $2,000,000. The latter figures are repeated once again in the Loan Approval Form.

111. The principals of Goodby's Creek, LLC are Wallace Devlin, Sr., The Devlin Group, Inc. – by Wallace Devlin, Jr., Chase Properties, Inc. – by Michael Balanky, River Haven II, LLC – by Leane Ross, and Concept Development, Inc. – by William Johnson. The guarantors for the Cove of St. Johns project were Wallace Devlin, Sr. and Wallace Devlin, Jr. The primary source of repayment was the sale of 38 condominium units and 13 boat slips project which elevated the Bank's level of risk exposure. The secondary source of repayment would be to resort to the guarantors' resources.

112. Material violations of the Bank's underwriting policy were committed during the approval process for the Goodby's Creek Loan. For example, the required financial documents were never obtained. Financial statements and tax returns were never obtained for the principals of Goodby's Creek, LLC. Furthermore, the guarantors failed to reflect all their liabilities on their personal financial statements. What little information that was received showed that the guarantors had stated liquidity of $34,000,000; however, only $1,000,000 of the amount was in cash. Because all of the required financial documents were never received, it was impossible for Fredette to correctly and accurately analyze the liquidity and net worth of the guarantors and borrower and their ability to cash flow the project. Approval of this loan in the face of this failure to obtain the most basic of financial information was reckless and demonstrates a complete disregard of the interests of the Bank. Without this most basic underwriting information, there was no basis upon which to approve this loan. Fredette failed to approve this loan in an informed or deliberate manner and failed to exercise any business judgment in this regard. Fredette failed to exercise a slight degree of care and completely disregarded the interests of the Bank.

113. Moreover, approval of this loan violated Bank loan policy requirements because it exceeded the LTV policy maximum. The LTV on this

loan was 80 percent, above the policy maximum of 75 percent. The loan memo failed to completely identify the LTV exception on multifamily construction and inadequately justified the high LTV by stating that presales of the project should be sufficient to cover the loan as well as reliance on the guarantors' liquidity.

114. An additional deficiency was the failure to heed the warnings from the guarantors' FICO scores and their prior defaults. Both guarantors had derogatory credit histories, and one of the guarantors had a credit score below 700 with no accompanying explanation as required by the Credit Policy Manual. According to Wallace Devlin, Jr.'s credit report, one real estate mortgage had been continuously delinquent since the inception of the account and one other account had been delinquent for 30 days.

115. The borrower had low levels of equity in this project. Total equity in the project was $4,392,000; however, only $2,243,600 of this amount was cash equity provided by the borrower. The remaining $2,149,900 in equity was provided by Fairfield Financial Services, in a mezzanine loan. At the closing of the Goodby's Creek Loan, the Bank funded $16,811,000 to the borrower in a reserve account and the remainder was financed by the lead bank.

116. The Bank suffered a loss on the Goodby's Creek Loan in an amount to be determined by the jury, which amount is at least $3,027,208. Such loss was proximately caused by the conduct alleged herein.

Jordyn Holdings IV

117. Defendants Bueche and Fredette approved a direct loan to Jordyn Holdings IV, LLC for a maximum amount of $30,000,000 on or about December 7, 2005 (hereinafter the "Jordyn Holdings Loan"). The majority of the loan was participated downstream with Silverton retaining a $4,000,000 interest. The purpose of this loan was to finance the acquisition and resale of 298 acres in Lehigh Acres, Florida, in an area known as Copperhead Development. The borrower was a single asset entity created for the sole purpose of acquiring and developing the 298 acre project in the Copperhead Development. The guarantors on the loan to Jordyn Holdings IV, LLC were Steve Libel and David Chessler.

118. Despite the size of this loan, virtually no real analysis went into the decision to make this loan. This fact is amply demonstrated by the failure to obtain an appraisal until after the loan was approved. This loan was approved based on a "to be determined" collateral valuation, which is astonishing because the primary source of repayment was based entirely on the proceeds for the sale of the

property. While the appraisal dated December 29, 2005 arrived at a value of $38,840,000 it was never reviewed, which is a violation of the Bank's loan policy.

119. Defendants Bueche and Fredette also failed to obtain audited financial statements in violation of the Bank's loan policy's underwriting requirements for loans of this size. Furthermore, this loan should never have been approved given the poor liquidity of the guarantors relative to the total loan amount. In connection with this $30,000,000 loan, the combined liquidity of the two guarantors was only $760,000. There was no adequate justification for approving this loan given the guarantors' limited liquidity. Indeed, the guarantors were heavily dependent on untapped real estate equity and anticipated cash flow from upcoming land sales. Bueche and Fredette did nothing besides rely on the take down of the future lots. However, when the take downs did not come to fruition, the Bank was left with no alternate avenue to seek repayment of the loan.

120. Approval of this loan with the foregoing deficiencies was reckless and represents a complete disregard of the interests of the Bank. There was simply no basis (much less an informed basis) upon which to approve this loan. Thus, Bueche and Fredette failed to approve this loan in an informed deliberate manner or exercise any business judgment in this regard and demonstrated a total lack of diligence. Bueche and Fredette failed to exercise a slight degree of care.

121. While Silverton had originally participated out all but $4,000,000 of this loan, in 2007 the Bank repurchased many of the participating banks' interests, making the Bank the primary participant with 59.9 percent of the loan or $7,973,304. Jordyn Holdings IV, LLC subsequently filed for Chapter 11 bankruptcy on June 13, 2007.

122. The Bank suffered a loss on the Jordyn Holdings Loan in amount to be determined by the jury, which amount is at least $3,080,362. Such loss was proximately caused by the conduct alleged herein.

Mountain Shadows 331

123. On or about March 20, 2007, Defendants Bueche and Fredette approved a loan participation brought to Silverton by New South Federal Savings Bank in connection with a loan to Mountain Shadows 331, LLC (hereinafter the "Mountain Shadows Loan"). The borrower was created for the purpose of acquiring and developing a 331.5 acre planned area development in Casa Grande, Arizona. The Mountain Shadows Loan was intended to finance the purchase of the 331.5 acres, perform pre-development work and provide escrow for taxes and interest. The total loan amount was $8,750,000, with Defendants Bueche and Fredette approving a $6,562,500 participation interest.

124. The owner of the borrower is Black Rock Capital Partners, LLC. And the Guarantors on the Mountain Shadows Loan are Black Rock Capital Partners, LLC, Matthew Warner, Bradley Shultis, Phil Zobrist, and Michael Park (the four managing members of Black Rock Capital Partners, LLC).

125. The Mountain Shadows Loan is replete with material violations of the Bank's loan policy. When Defendants Bueche and Fredette gave their approval for this loan they relied on stale income information for some guarantors and had no financial documentation for others. The requirement to obtain tax returns for the guarantors was waived without justification. Of the financial statements obtained by Bueche and Fredette, most failed to provide sufficient cash flow detail. In addition, cash flow information for nearly all guarantors was missing from the file, and of the documents in the file, there was no documentation of contingent liabilities within them. Also due to the size of the loan, audited financial statements were required; however, they were never obtained rendering the loan defective in this aspect as well.

126. Without obtaining the required financial documents, determining the guarantors' ability to carry the project in the event of a market downturn was impossible. Only one of the guarantors (Phil Zobrist) had any significant liquidity and even then that liquidity was not significant enough for a loan of this

magnitude. Consequently, the financial analysis that was done on the guarantors was completely inadequate and failed to provide an assessment of cash flow. The underwriting memo provides an inadequate assessment of the primary source of repayment. In fact, had a thorough and correct financial analysis been conducted, it would have revealed that the guarantors' resources were only sufficient to cover interest for seven (7) months. Approval of this loan in the face of the failure to obtain sufficient financial information on the borrower or guarantors (as required by the loan policy) was reckless and demonstrates a complete disregard of the interests of the Bank. Without this most basic underwriting information, there was simply no basis upon which to approve this loan. Thus, Bueche and Fredette failed to approve this loan in an informed and deliberate manner and failed to exercise any business judgment in this regard. Bueche and Fredette failed to exercise slight diligence.

127. At the time of approval, there were obvious signs the market was deteriorating. For example, the borrower purchased the property at a significantly discounted price from the seller. This discounted price should have raised a red flag regarding the value of the property. However, there is no evidence that the Bank ever obtained an external appraisal review as required on all loans greater than $1,000,000 per the Bank's loan policy. The appraisal that was relied upon

used six comparables, five of which were from sales between October 2005 and March 2006 with only one comparable being less than 12 months old. None of the comparables were similar in size to the subject property. Despite these differences the appraisal failed to mark the collateral valuation up or down. The appraisal also failed to explain why the appraised value was significantly higher than the contract price for the land and there was no discount in value for the holding costs and related expenses. The loan approvers failed to notice these glaring indications and inconsistencies and any reliance on these appraisals was simply not justified. The failure to properly analyze the value of the collateral is particularly egregious and reckless in light of the total failure on the part of Bueche and Fredette to analyze the financial strength of the borrower or guarantors.

128. The Mountain Shadows Loan approval violated the Bank's loan policy because the LTV exceeded the supervisory limit of 65 percent for vacant land. The actual LTV for this property was 72 percent not the 39.5 percent listed in the loan approval form. This loan had overly liberal repayment terms with the Bank funding the interest reserve on this speculative land deal and allowing escrow to be funded from the loan as well. The problems with the loan were later exacerbated when borrower draws were issued without requiring inspections on the property.

129. The Bank suffered a loss on the Mountain Shadows Loan in an amount to be determined by the jury, which amount is at least $2,295,000. Such loss was proximately caused by the conduct alleged herein.

Nash-York

130. Defendants Bueche and Fredette approved this loan to Nash-York, LLC on or about August 21, 2006 (hereinafter the "Nash-York Loan"). Defendants are responsible for the approval of the $9,000,000 participation in the $28,500,000 loan originated by Sun South Bank. The Nash-York Loan was a non-revolving line of credit to finance the acquisition of 14.5 acres and development of the acreage into residential and retail lots in Panama City Beach, Florida.

131. Nash-York, LLC is a single asset entity formed for the purpose of developing the subdivision project described above, known as La Borgata. The members of the LLC served as the guarantors for this project. The eight guarantors were Herbert Graham, Elliot Levine, Jason From, Elizabeth Yates, James Stroud, Joseph Flom, Gary Smith, and Dwight Wiles. The primary source of repayment for this loan was to be the sale of developed sites. This repayment source created a greater risk to the Bank.

132. Defendants Bueche and Fredette, yet again, violated the Bank's underwriting requirements by failing to obtain all required financial statements,

failing to obtain tax returns for the individual guarantors, and failing to obtain audited financial statements. The guarantors failed to disclose their liabilities and obligations in the financial information submitted. Defendants Bueche and Fredette failed to follow up on these omissions. Additionally, in approving this loan, warning signs from the guarantors' FICO scores and prior defaults were completely ignored. No explanation was offered to justify (as required in the Credit Policy Manual) one guarantor's credit score of 608 and another two guarantors' scores below 700.

133. The financial status and condition of the guarantors and principals was never accurately determined for this loan. When attempting to determine the liquidity of the guarantors and their ability to cash flow this project, the guarantors' assets and ownership interests were looked at in the aggregate rather than as individuals. Each guarantor guaranteed 150 percent of their interest in the Borrower; however, not every guarantor had sufficient liquidity to cover their portion. Four out of the eight guarantors did not have adequate liquidity to cover their individually guaranteed portion of the loan with one guarantor reporting losses for the years 2006 and 2007.

134. Moreover, Bueche and Fredette relied on a stale appraisal, dated November 4, 2005, with no comparables, when they approved this loan. A new

appraisal was obtained in September 2006, two months after the loan's approval. In this new appraisal, however, one of the comparables was in fact the subject property. Thus, this loan was approved by Bueche and Fredette without ever determining the true market value of the collateral. Bueche and Fredette did not approve this loan on an informed basis and exercised no business judgment in this regard. This conduct can only be described as reckless in light of the failure by Bueche and Fredette to adequately analyze the financial condition of the borrower or the guarantors as described above. The magnitude of this failure is amply demonstrated by the 61 percent drop in the collateral's value in less than two years from an alleged $25,000,000 value in September 2006 to only $9,800,000 by May 2008. Bueche and Fredette's conduct demonstrates a total lack of diligence.

135. There was a total lack of diligence by Bueche and Fredette in approving this loan. Bueche and Fredette failed to approve this loan in informed and deliberate manner and failed to exercise any business judgment in this regard. Bueche and Fredette failed to exercise slight diligence.

136. After funding, the problems with this loan continued. The loan was improperly managed and poorly maintained. There was no enforcement of the requirement to receive ongoing financial reports or financial statements. As of April 2008, the LTV increased to 221 percent based on the "as-is" value and 161

percent based on the "as complete" value, both values greatly in excess of the required LTV of 75 percent. Beginning September 16, 2007, purchasers began backing out of their presales agreements and ultimately this loan went into default.

137. The Bank suffered a loss on the Nash-York Loan in an amount to be determined by the jury, which amount is at least $2,357,901. Such loss was proximately caused by the conduct alleged herein.

NR Inlet Beach

138. The $6,880,000 acquisition and development loan to NR Inlet Beach, LLC was approved by Defendants Bueche, Fredette, Bryan, Gulledge, and Wolfe on or about March 11, 2005 (hereinafter the "NR Inlet Loan"). This loan was in addition to a companion loan in the amount of $7,400,000 to Inlet Beach Residential Development, Inc. The purpose of these loans was to finance the acquisition of 12.01 undeveloped acres and fund the subsequent development of the project located in Panama City, Florida. The Bank ended up holding $3,480,000 of the NR Inlet Loan. NR Inlet Beach, LLC is a Florida limited liability corporation controlled by Jack Fiorella, who was also a director of Red Mountain Bank, the lead bank. In addition to being the controlling principal of the borrower, Jack Fiorella was also the sole guarantor on the project. This conflict of

interest alone should have been sufficient reason to turn down this loan. However, the conflict of interest was not the only problem with approving this loan.

139. This loan was approved with highly questionable sources of repayment that increased the Bank's risk. There was no independent source of cash flow to service the debt and the primary repayment source was the cash flow of the primary sponsor followed by liquidation of the collateral. Mr. Fiorella, had liquidity of $2,886,000; however, most of his net worth was tied up in equity investments in real estate assets, much like the subject project.

140. Defendant Wolfe raised the following issues on this matter when he responded to the request for loan approval: (1) the primary source of repayment being Mr. Fiorella's personal cash flow is questionable; (2) the loan package does not contain details on personal financial statements as to what Mr. Fiorella owns individually or jointly with his wife; and (3) consequently, given Mr. Fiorella's partnerships and recourse liability – his guarantee may not offer much value to the credit. Unfortunately, these issues were simply ignored by the loan approvers (including Mr. Wolfe) and the loan was approved. In early 2009, Mr. Fiorella experienced a drastic drop in his net worth and liquid assets. The loan subsequently went into default.

141. This loan was also approved as an exception to Silverton's LTV loan policy requirements. As a land loan the maximum LTV permitted was 65 percent. The LTV for the NR Inlet loan was 80 percent. This exception was justified because it was anticipated that the loan would quickly convert into a construction or development loan. This never happened and this high LTV resulted in the FDIC reporting a violation of banking regulations.

142. The Bank suffered a loss on the NR Inlet Loan in an amount to be determined by the jury, which amount is at least $3,835,310. Such loss was proximately caused by the conduct alleged herein.

Plant A Seed

143. Defendant Bueche approved the loan to Plant A Seed, LLC on or about May 13, 2005. Fairfield Financial Services, a subsidiary of Security Bank, presented this $8,380,000 participation interest in the $10,881,000 residual land loan to finance the acquisition and development of 301.7 acres of undeveloped land in Oconee County, Georgia, and to make certain improvements thereon (hereinafter the "Plant A Seed Loan"). This acreage made up the second phase in a 528 acre master planned unit development and was excess land to the 226 acre first phase. The first phase was financed by a $16,600,000 acquisition and development loan also originated through Fairfield Financial Services. The Bank held

$4,000,000 out of the $8,380,000 and participated out the remaining $4,380,000. Plant A Seed, LLC, according to the Loan Approval Form, was a single asset entity formed for the sole purpose of acquiring and developing 528 acres in north Oconee County, Georgia. Plant A Seed, LLC is owned in equal shares by five principals James Finerty, Starke Hudson, Mark Jennings, Zach McLeroy, and Stephen Rogers.

144. This loan was made subject to highly questionable repayment sources. The primary source of repayment would "most likely" be refinancing with the next phase of this two phase development project. There were also flagrant violations of the Bank's underwriting requirements by Bueche in approving this loan. The credit investigation of the guarantors was well below substandard. The guarantors had questionable loan histories that at the very least should have been explained. This loan was approved without receiving much of the required financial information on the borrower and guarantors. It is clear that the Bank was merely relying on the underwriting done by the lead bank.

145. The collateral for this project was insufficiently valued and approval was premised on a stale appraisal dated December 17, 2004. The failure by Bueche to obtain an appraisal review on this appraisal was an additional violation of the appraisal requirements in the Bank's loan policy.

146. After approval, draws to the borrower were issued without completed property inspections, and there is no evidence that any property inspections were completed. Development of the property went stagnant a mere 16 months after approval.

147. The Bank suffered a loss on the Plant a Seed Loan in an amount to be determined by the jury, which amount is at least $1,570,484. Such loss was proximately caused by the conduct alleged herein.

Wacca Wache Marina

148. On or about January 22, 2007, Defendants Bueche and Fredette approved a loan to Wacca Wache Marina, LLC to finance the purchase of a marina and additional property in Murells Inlet, South Carolina (hereinafter the "Wacca Wache Loan"). Community First Bank, the lead bank, presented Silverton with this $8,980,000 participation in the $14,725,000 loan. Silverton retained a total of 51 percent, $7,509.25, and sub-participated the remaining 10 percent out to Claxon Bank.

149. Wacca Wache Marina, LLC was a single-purpose entity formed on January 29, 2007, to acquire the Wacca Wache Marina and convert the marina into slips or "dockominiums." At the time of approval, Douglas Booth, Francis Clark, and James Rocco were both guarantors and equal owners in the borrowing entity.

150. There were critical violations of the Bank's loan policy including failing to obtain audited financial statements and all required financial documentation. Indeed, there was a total failure to obtain financial information from some of the guarantors. Approval of this loan in the face of this failure to obtain sufficient financial information (as required by the loan policy) was reckless and demonstrated a complete disregard of the interests of the Bank. Without this information, there was simply no basis upon which to approve this loan. Thus, Bueche and Fredette did not approve this loan in an informed and deliberate manner and failed to exercise any business judgment in this regard. Bueche and Fredette failed to exercise a slight degree of care.

151. In addition, the market analysis performed by Bueche and Fredette was dismal. The original loan application discusses "the general slow down of the real estate market and overabundance of condos on the market in the Myrtle Beach Area." It is noted that there is a lack of this specific type of product in the market; however, this was not an adequate justification for making this loan because it is then noted that the market for this product is completely unknown.

152. After closing, the loan was not properly maintained by not obtaining ongoing financial statements and reports. The project began performing poorly immediately after closing. Only 13 wet slips sold, and none of the dry slips sold.

The 13 wet slips that sold, all of which closed between August 6, 2007 and November 20, 2007, generated only a little over $1,000,000 in revenue. This project was doomed from the start and the loan should never have been approved. In fact, in November 2008, a potential purchaser of the marina, in his letters to the Bank stated, "I think that this project was probably fatally flawed . . . and I do not believe that one has ever worked . . . I am surprised that a bank would finance these, but a lot of crazy things have happened in the last few years."

153. The Bank suffered a loss on the Wacca Wache Loan in an amount to be determined by the jury, which amount is at least $6,200,000. Such loss was proximately caused by the conduct alleged herein.

Westridge Partners III

154. On or about March 30, 2006, Enterprise Banking Company presented Silverton with a loan participation opportunity. Defendants Bennett, Bueche, Bryan, Carlton, Fredette, Maddox, and Wolfe on April 24, 2006 approved a loan for $9,300,000 to Westridge Partners III, LLC (hereinafter the "Westridge Loan"). This loan was to increase a $5,000,000 existing line of credit for business investment purposes which included a 643 acre development project in Henry County, Georgia. These same Defendants, as members of the ELC, just one month prior on March 24, 2006, had approved this $5,000,000 line of credit. The

proceeds from the Westridge Loan were to be used to (1) pay off another loan held by a different lending institution; (2) pay off personal income taxes of the principals; and (3) fund various aspects of the subject project. There were approximately $2,100,000 in excess loan proceeds to be used at the borrower's discretion.

155. The principals of Westridge Partners, LLC were Hans Broder Jr., Gerald Hudgins, and Harry Mahaffey. Mr. Broder was a former director of Silverton, and, at the time the Westridge Loan was approved, was the Chairman of the lead bank, Enterprise Banking Company. In addition, Hudgins and Mahaffey were directors of the lead bank. Mahaffey and Hudgins were also the guarantors for this project. These conflicts of interest alone should have been sufficient reason to turn down this loan. However, the conflicts of interest were not the only problems with approving this loan.

156. The primary source of repayment was the sale of the yet-to-be developed lots followed by guarantor support and/or liquidation of the collateral. As with so many of the loans approved at Silverton, these Defendants here failed to obtain all of the required financial statements, failed to obtain audited financial statements of those they did obtain, and failed to conduct a credit investigation of the borrower or guarantors. In conjunction with failing to obtain the proper and

complete financial documentation on the guarantors and borrowing entity, an adequate assessment of the guarantors' liquidity and net worth was never conducted. All of the guarantors, in fact, were extremely illiquid. The total combined liquidity of all guarantors was only $829,400.

157. In approving this loan as members of the ELC, these Defendants failed to consider the guarantors' FICO scores and prior defaults. One guarantor had a credit score of 537 with serious negative reports. With this type of FICO score it is unlikely this guarantor would have been approved for a credit card.

158. Another deficiency in approving this loan was the failure to require the borrower to put any equity into the project. The loan was also approved subject to the following conditions: obtaining proof of adequate and appropriate insurance on the property and project, obtaining proof of proper zoning, utility availability, and all necessary easements for ingress/egress. These conditions were never met prior to closing. After funding the loan, the requirement to obtain ongoing financial statements and financial reporting was never enforced.

159. The Bank suffered a loss on the Westridge Loan in an amount to be determined by the jury, which amount is at least $2,367,184. Such loss was proximately caused by the conduct alleged herein.

WHM Merrill Ranch Investments

160. On or about September 13, 2006, Defendants Bennett, Bryan, Bueche, Ellenburg, Fredette, Gulledge, and Wolfe, as members of the ELC, approved a loan to WHM Merrill Ranch Investments, LLC (hereinafter the "Merrill Loan"). Silverton had a $99,000,000 participation in this loan and sub-participated out all but $12,000,000. Defendant Maddox was the President and CEO of the lead bank on this loan, which kept only $1,000,000 out of the entire $100,000,000 loan. Four months earlier, Silverton had approved and closed a $50,000,000 loan to this borrower and upon the borrower/guarantor's request, the Bank rolled the $50,000,000 transaction into this $100,000,000 line of credit. The purpose of the Merrill Loan was for the refinance of the $50,000,000 land loan and the further acquisition, development, and construction of the 6,121 acres of raw land into single family residences and commercial projects in Florence, Arizona, another out-of-area market about which the approving Defendants had very little knowledge or experience. Another stated purpose of this loan was to allow the borrower "to take advantage of acquisition opportunities that may require an expedient disposition from prospective sellers **in light of a softening market**." (emphasis added).

161. Merrill Trust & Affiliates and its primary beneficiary, Harrison

Merrill, guaranteed the Merrill Loan. Harrison Merrill is the acting Chairman and President of Merrill Trust & Affiliates. Merrill Trust & Affiliates and Harrison Merrill are the principal owners of WHM Merrill Ranch Investments, LLC.

162. The approving Defendants failed to exercise any business judgment in connection with their handling of the appraisals for this project. The first appraisal, dated March 20, 2006, valued the collateral at $420,000,000 as of February 5, 2006. Following this appraisal, another appraisal was ordered but not received until after the Merrill Loan was approved. This appraisal, dated September 25, 2006, showed a value of $250,000,000 (as of September 25, 2006), a 40 percent decline in value in a mere seven months. Had this appraisal been reviewed prior to approving this loan, the tremendous drop in the collateral's value would have been considered and in all likelihood this loan would have never been made. Subsequent appraisals illustrate that this drop in value was not an anomaly. By October 2007, the value decreased to $160,000,000, three months later the commercial acreage, only, was valued at $53,500,000, and by March 2009, the commercial acreage was only valued at $4,625,000. The failure to analyze the appraisal or require an additional appraisal be obtained (and considered before loan approval) is particularly troubling since this loan was made primarily based on the value of the asset. Indeed, approval of this loan without receiving or reviewing the

updated appraisal was reckless and demonstrates a complete disregard of the Bank's interests. These Defendants did not make this loan in an informed and deliberate manner and failed to exercise any business judgment in this regard. These loan approvers did not exercise a slight degree of care.

163. Simply stated, the Merrill Loan should never have been made. There was no equity or strategic plan for this project's development. The loan-to-cost ratio exceeded the Bank's policy guideline of 75 percent, and was, in fact, well beyond 100 percent; the consolidated financial statements were misleading and understated; not all guarantors provided financial statements; and an adequate cash flow source was not identified. The Consolidated Financial Statements of Merrill Trust and Affiliates failed to list on its financial statements the total debts of its resort properties, investment properties, and other properties rendering the financial analysis on this entity inaccurate and incomplete. The trusts that guaranteed the Merrill Loan did not provide financial statements, which made it impossible to do any type of financial analysis on the guarantors' liquidity. Also, the borrower only provided statements for W. Harrison and the Merrill Trust and nothing on the remaining guaranteeing trusts. The failure to obtain all required financial information before approving this loan was reckless and demonstrates a complete disregard of the Bank's interests. Without this information the

Defendants did not have sufficient information in order to make an informed business decision and thus failed to exercise any business judgment in this regard. The loan approvers failed to exercise a slight degree of care.

164. The collateral securing this loan was located in Florence, Arizona, which is located over sixty (60) miles from Phoenix. Despite how far away this land is from Phoenix, any analysis that was done with respect to the collateral was conducted as if it were in the "Phoenix housing area." Nevertheless, even if Florence could be considered in the "Phoenix housing area," the increased market risk associated with the Phoenix housing area was simply ignored. Indeed, an internal Bank e-mail described the Phoenix market as "[n]ot a pretty picture." Additionally, when the principal on the Merrill Loan exceeded 50 percent, the maximum outstanding cap set in the loan agreement, the account was not put on hold in October of 2007 as it should have been and additional draws were not halted until June of 2008.

165. Additionally, the Merrill loan was made despite deficient credit scores of the guarantors especially in light of the size of this loan. Silverton's Credit Policy Manual required that individual guarantors must have a FICO score above 660, and FICO scores below 700 were considered "derogatory" and required an explanation. However, despite this requirement, two of the guarantors had credit

scores below 660 and another guarantor had a credit score below 700. No explanation was obtained for these low FICO scores. The last inquiry Silverton made, according to the Credit Report, was on August 25, 2006, and at this time the borrower's credit score was 661. Negative reports include owing too high an amount on revolving accounts and too many inquires in the past twelve and three months.

166. Director Hart was particularly outspoken against approval for the Merrill Loan and declined its approval. On his approval form, Hart urged that this loan be discussed at a full board meeting and stated he was opposed to the loan for the following reasons: "(1) the depressed housing market, especially with the national news in Arizona; (2) collateral is raw land; (3) cash flow is strictly dependent upon the future sale of the property; (4) capitalization of $21,000,000 in interest; and, (5) a total land play." Hart concludes by stating, "[i]n my opinion we are way out of our expertise to extend this proposal." Unfortunately, Hart's warnings were simply ignored. By March 2008, it was evident that "this loan [was] a ticking time bomb."

167. The Bank suffered a loss on the Merrill Loan in an amount to be determined by the jury, which amount is at least $7,561,493. Such loss was proximately caused by the conduct alleged herein.

Windsor Mill Homes

168. Defendant Bueche, on or about August 20, 2007, approved a $8,979,300 participation in a $27,210,000 loan to Windsor Mill Homes, LLC. (hereinafter the "Windsor Mill Loan"). The lead bank, The Mechanics Bank, presented Silverton with this loan for the purpose of financing the land advance and site work for development of a 200-unit residential subdivision in Windsor, California.

169. The borrower, Windsor Mill Homes, LLC is a single-purpose entity formed in May 2006 to acquire, own, hold, lease, operate, manage, develop, and improve the property known as the Windsor Mills Project in Sonoma County, California. The guarantors for this project were Douglas Elliot, John Barella, Wendell Nordby, III, Community Builders LLC, and Nordby Development, LLC.

170. The primary source of repayment for this loan was to be the sale of future phases within the development project with the secondary source being the liquidation of the collateral followed by the guarantors as the third and final option. These sources of repayment increased the Bank's risk on this already risky loan made outside the Bank's normal lending area.

171. Material violations of the Bank's loan policy occurring in connection with the approval of the Windsor Mill Loan include failing to obtain a credit report

on the guarantors, and failing to adequately assess the liquidity and net worth of the guarantors. All of the guarantors had exceedingly low levels of liquidity. The guarantors combined liquidity was $2,830,000, with the bulk of this amount attributed to just one guarantor. Guarantors Douglas Elliot and Wendell Nordby, III had minimal liquidity with each at $65,000 and $20,000, respectively.

172. Moreover, the borrower had very little equity in the project. The borrower contributed $1,120,000, which was only 2.9 percent of costs, while the remaining $12,315,000 in equity was provided by two mezzanine lenders. Also, before this loan was approved, an appraisal review was required; however, there was no appraisal review on either the May 1, 2006 or January 18, 2007 appraisals upon which the Bank relied when considering this participation interest.

173. In May, 2008 the pre-sale of the 32-unit live/work subdivision to Bill Garlock for $6,500,000, which was a condition of the loan funding, was cancelled and the $200,000 non-refundable deposit was returned to the buyer as they were no longer comfortable with the market risk. The credit line was frozen in October of 2008.

174. The Bank suffered a loss on the Windsor Mill Loan in an amount to be determined by the jury, which amount is at least $1,135,590. Such loss was proximately caused by the conduct alleged herein.

G. Silverton's D & O Insurance Coverage

175. The officers and directors of the Bank, (collectively the "Insureds") are insured under a DFI Primary Professional Liability Policy No. 6803-6886 (the "Policy") issued by Federal Insurance Company, a member insurer of the Chubb Group of Insurance Companies (hereinafter this Defendant will be referred to as "Chubb"). The Policy was issued and delivered in the state of Georgia. The Policy had a policy period of March 9, 2009 to March 9, 2010, and an aggregate limit of $5 million. The Policy has two insuring clauses:

> 1. The Company shall pay on behalf of each of the **Insured Persons** all **Loss** for which the **Insured Person** is not indemnified by the **Organization** and which the **Insured Person** becomes legally obligated to pay on account of any **Claim** first made against such **Insured Person**, individually or otherwise, during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** committed, attempted, or allegedly committed or attempted by such **Insured Person** before or during the **Policy Period**.
>
> 2. The Company shall pay on behalf of the **Organization** all **Loss** for which the **Organization** grants indemnification to each **Insured Person**, as permitted or required by law, which the **Insured Person** has become legally obligated to pay on account of any **Claim** first made against such **Insured Person** individually or otherwise, during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** committed, attempted, or allegedly committed or attempted by such **Insured Person** before or during the **Policy Period**.

176. **Insured Person** is defined by the Policy as meaning any past, present, or future duly elected director or duly elected or appointed officer of the **Organization**. The Director Defendants and the Officer Defendants are **Insured Persons.** **Organization** is defined in the Policy as meaning the **Parent Organization** and/or any **Subsidiary**. The named **Parent Organization** is SFSI. The Bank was a **Subsidiary** of SFSI.

177. **Wrongful Act** means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted, by an **Insured Person**, individually or otherwise, in his **Insured Capacity**, or any matter claimed against him solely by reason of his serving in such **Insured Capacity**. Simply stated, the Policy provides coverage to the Director Defendants and Officer Defendants for the wrongful acts alleged herein.

178. By letter dated March 1, 2010, the FDIC-R sent a Demand for Payment of Civil Damages and Notice of Wrongful Acts (the "Demand") to the Director Defendants and the Officer Defendants. A copy of the Demand was also provided to Chubb. By letter dated April 7, 2010, Chubb denied coverage under the Policy based on Exclusion 4(c) contained in the Policy (hereinafter the

"Insured versus Insured Exclusion") and an alleged endorsement that excluded coverage for claims brought by the FDIC (hereinafter the "Regulatory Exclusion").

179. On or about December 30, 2008, in response to a Notice of Non-Renewal received from Chubb several weeks earlier, an application was submitted to Chubb to renew the Policy (the "Application"). The Application designated Chief Operating Officer and Executive Vice President Earl Howell ("Howell") "as agent of all insured Directors and Officers, to receive any and all notices from the Insurer or their authorized representative(s) concerning th[e] insurance."

180. On March 26, 2009, Silverton issued a check to Silverton Insurance Services, LLC ("SIS") in the amount of $629,157.00, which included the $200,000 premium for the Policy. On March 31, 2009, Thomas "Tee" Zerfoss ("Zerfoss") of SIS and as agent for Chubb sent an email to Howell attaching the binder for the Policy issued by Chubb that was dated March 3, 2009 (the "Binder"). The Binder provided that the Policy would be effective from March 9, 2009 through March 9, 2010 and would include: (1) an Executive Liability and Indemnification Policy ("D&O Policy"), (2) an Employment Practices Liability Policy, and (3) a Fiduciary Liability Policy. Regarding its legal effect, the Binder stated as follows:

> This Binder shall terminate automatically upon the expiration shown above, or upon the issuance of the policy, whichever occurs first. A short rate premium charge will be made for the Binder unless the Policy is issued by [Chubb] and accepted by [Silverton].

> The foregoing Binder for coverage is subject to modification or withdrawal by [Chubb] if, before the proposed inception date, any new, corrected or updated information becomes known which relates to any proposed Insured's claims history or risk exposure or which could otherwise change the underwriting evaluation of any proposed Insured and [Chubb], in its sole discretion, determines that the terms of this Binder are no longer appropriate.

181. The Binder also listed several endorsements (ten, in total) to the D&O Policy, including a "Regulatory Exclusion Endorsement" (Form 17-02-1228). The form Exclusion, which appears to have been attached in specimen form to the Binder, provides:

> It is agreed that [Chubb] shall not be liable for Loss on account of any Claim by, or on behalf of, or at the behest of any federal, state or provincial regulatory or administrative agency or bureau or any self-regulatory agency, including, but not limited to, the . . . Federal Deposit Insurance Corporation . . . in any capacity whatsoever.

182. When the Policy was issued on April 1, 2009, however, it included only seven of the ten endorsements to the D&O Policy that were included in the Binder.[2] In particular, the Policy as issued did not contain the Regulatory Exclusion. Also, the Policy did not include an endorsement contained in the binder that would have expanded coverage: The Outside Directorship Liability

[2] The Notice of Loss Control Services was included as an endorsement in the Binder, and while not listed as an endorsement in the as issued D&O Policy, this endorsement is included at the beginning of the D&O Policy.

Extension Endorsement. This endorsement provides coverage to an Insured Person under the D&O Policy for claims arising out of actions taken while acting, on Silverton's behalf, as an **Outside Director** of an **Outside Entity**, as both terms are defined by the Policy.

183. On May 1, 2009, the Bank was closed and the FDIC was appointed as receiver. However, in the afternoon on that same day S. Scott Mynatt, an underwriting officer with Chubb, sent an email to Zerfoss that stated: "[i]n reviewing the Silverton Insurance D&O Policy I noticed that the Regulatory Exclusion Endorsement was on the Binder but left off of the policy in error. I have ordered a printed version for you but wanted to send it over via e-mail for your records" (the "May 1 Email"). Attached to the May 1 Email were (i) a letter also dated May 1, 2009 from Chubb to Zerfoss stating, "[e]nclosed is our DFI Primary Professional Liability Endorsement for delivery as an amendment to the policy for [Silverton]," and (ii) the purported Endorsement containing the alleged Regulatory Exclusion (the "Amendment"). There is no evidence that this purported Amendment was ever forwarded, by either Chubb or Zerfoss, to Howell, as agent for the Insureds. Since, as stated above, Zerfoss served as an agent for Chubb, the May 1 Email was effectively sent from Chubb to Chubb. The alleged Regulatory Exclusion was dated May 1, 2009, with an effective date of March 9, 2009. It was

labeled "Endorsement No. 9", although none of the three component policies within the Policy had more than seven endorsements.

184. The timing of the alleged Amendment certainly suggests that Chubb was tipped off regarding the Bank's closing. Revealingly, the Regulatory Exclusion Endorsement was the only endorsement forwarded that day. As referenced above, another endorsement was left off the Policy that would have expanded coverage, the Outside Directorship Liability Extension Endorsement. Apparently Chubb didn't feel it necessary to forward endorsements that expanded coverage. In any event, Chubb's last minute attempt to unilaterally change the terms of the Policy fails miserably.

185. While the Binder included the Regulatory Exclusion, both the terms of the Binder itself and Georgia law are clear that the Binder terminated upon Chubb's issuance of the Policy and that Chubb was not obligated to provide the same coverage as set forth in the Binder. The Binder provided that it would "terminate automatically . . . upon the issuance of the policy." In addition, the Binder expressly contemplated that Chubb could modify the coverage provided in the Binder before finally issuing the Policy. A binder affords temporary protection pending the investigation of risk by an insurer or until the issuance of a formal policy. When the formal policy is issued, the binder terminates and its terms are

superseded by the policy. Thus, although the Binder constituted a temporary contract between the Insureds and Chubb, the Binder terminated when the Policy was issued on April 1, 2009, and the terms of the Policy as issued are controlling. The Regulatory Exclusion is simply not part of the Policy.

186. Nor does the Insured versus Insured Exclusion preclude coverage for the claims asserted herein against the Director Defendants and the Officer Defendants. The specific exclusion relied upon by Chubb provides:

> The Company shall not be liable for **Loss** on account of any **Claim** made against any **Insured Person**:
>
> > brought or maintained by or on behalf of any other **Insured Person** or the **Organization** except:
> >
> > > a **Claim** that is a derivative action brought or maintained on behalf of the **Organization** by one or more persons who are not **Insured Persons** and who bring and maintain the **Claim** without the solicitation, assistance or participation of any **Insured Person** or the **Organization**

187. The obvious intent behind this exclusion is to protect insurance companies such as Chubb from collusive lawsuits between insureds. No such risk of collusion exists here and that it is why the Policy contains exceptions to this exclusion. The fact that Chubb makes an exception for derivative actions (so long as collusion does not exist) reflects its intention to place itself at risk for actions

against officers and directors based on allegations of mismanagement and waste, which are the very claims being asserted by FDIC-R herein against the Director Defendants and Officer Defendants. Thus, the Policy unambiguously provides that the exception to the Insured versus Insured Exclusion applies and there is coverage under the Policy.

188. Additionally, as a statutorily created and appointed entity, the FDIC-R does not simply step into the shoes of the bank; the FDIC-R succeeds to all claims of "any stockholder, member, accountholder, depositor, officer, or director" of the Bank. 12 U.S.C. § 1821(d). Therefore, this action is not just brought "on behalf of" the Bank but also pursuant to the FDIC-R's own independent authority under 12 U.S.C. § 1821(d). As such, the Insured versus Insured Exclusion is inapplicable to the FDIC in its capacity as receiver of Silverton.

189. To the extent any ambiguity exists; however, it must be decided against Chubb and in favor of the Insureds. Furthermore, there can be no doubt how Chubb truly interprets this provision as evidenced by the fact that it attempted at the 11th hour to slip in the Regulatory Exclusion. If Chubb truly believed that the Insured versus Insured Exclusion applied there would be no reason for the Regulatory Exclusion. Actions speak louder than words. Despite the position it

now takes, Chubb well knows that the Insured versus Insured Exclusion does not apply to the actions brought by the FDIC-R herein.

190. Following the Bank's closing, the Policy converts to run-off coverage, that is, coverage under the D&O Policy continues in effect through the end of the policy period, except that as to the Bank and its directors and officers, the Policy only covers claims arising prior to the closing such as the claims asserted herein. The Bank fully complied with all of its obligations under the Policy and Chubb was timely provided with the Notice of Claim. Chubb's subsequent denial of coverage was wrongful and an actual controversy exists between the FDIC-R and Chubb.

191. The officers and directors of the Bank, (collectively the "Insureds") are also insured under an Excess Liability Insurance Policy No. G24063616 001 (the "Excess Policy") issued by Westchester Fire Insurance Company ("Westchester"). The Excess Policy had a policy period of March 9, 2009 to March 9, 2010, and an aggregate limit of $5 million. The Excess Policy provides "insurance coverage to the insureds in accordance with the terms, definitions, exclusions and limitations of the Followed Policy . . .." The "Followed Policy" is the Policy issued by Chubb discussed above (hereinafter the "Chubb Policy").

192. The Excess Policy provides coverage after the "exhaustion" of the Chubb Policy. Westchester has denied coverage for the claims asserted by the FDIC-R herein because "the primary policy has not been exhausted by payments for Loss." Westchester, also maintains, however, that no coverage exists under the Excess Policy because the Regulatory Exclusion was allegedly part of the Chubb Policy. Thus, according to Westchester, since coverage under the Excess Policy is no broader than coverage under the Chubb Policy, the followed policy, coverage does not exist under the Excess Policy. Because Chubb's last minute attempt to sneak the Regulatory Exclusion into the Policy fails, it follows that the Regulatory Exclusion was never incorporated into the Excess Policy either. The Excess Policy also contains endorsements that, in substance, are duplicates of those found in the Chubb Policy.[3] As with these other endorsements, Westchester could have included a regulatory endorsement of their own; however, it did not and cannot now claim that coverage under the Excess Policy is precluded based on this nonexistent endorsement. Accordingly, an actual controversy exists between FDIC-R and Westchester.

[3] The Excess Policy contains the following: the Cap on Losses From Certified Acts of Terrorism Endorsement, the Disclosure Pursuant to Terrorism Risk Insurance Act (labeled as an endorsement), and the Trade or Economic Sanction Endorsement.

VI. CLAIMS FOR RELIEF

Count One

Claim for Corporate Waste (Georgia law)
(Against the Director Defendants)

193. FDIC-R realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 192 of this Complaint as though fully set forth herein.

194. Under Georgia law the directors and managers of a corporation who control and have charge of its effects are bound to care for its property and manage its affairs in good faith, and for a violation of these duties resulting in waste of its assets and injury to the property they are liable to account for the same as other trustees. Georgia statutory law provides that a director or officer of a corporation may be sued for "[t]he acquisition, transfer to others, loss, or waste of corporate assets due to any neglect of, failure to perform, or other violation of duties." O.C.G.A. § 14-2-831.

195. The Director Defendants and the Officer Defendants allowed the Bank's assets to be wasted by entering into transactions that were so one-sided that no business person of ordinary, sound judgment would conclude that the Bank received adequate consideration.

196. As a direct and proximate result of the waste committed by the Director Defendants and Officer Defendants, the FDIC-R suffered damages in an amount to be determined at trial.

Count Two

Claim for Negligence (Georgia law)
(Against Director Defendants and Officer Defendants)

197. The FDIC-R realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 192 of this Complaint as though fully set forth herein.

198. Director Defendants and Officer Defendants owed duties to Silverton to conduct its business consistent with safe and sound lending practices. Specifically, Georgia statutes outline the duties directors and officers owe to their corporations and the standard of conduct for discharging those duties. O.C.G.A. § 14-2-830 (general standards for directors); O.C.G.A. § 14-2-842 (general standard of conduct for officers) and O.C.G.A. § 7-1-490 (responsibility of officers and directors in the context of financial institutions). These Defendants were required to discharge their duties in good faith and with that diligence, care, and skill which an ordinarily prudent person in a like position would exercise under similar circumstances. These Defendants in fact possess greater skill, knowledge, and

intelligence in regards to the banking industry, and as such, they should be held to a standard of an ordinarily prudent person with these superior attributes.

199. "In general, ordinary diligence is that degree of care which is exercised by ordinarily prudent persons under the same or similar circumstances. As applied to the preservation of property, the term 'ordinary diligence' means that care which every prudent man takes of his own property of a similar nature. The absence of such diligence is termed ordinary negligence." O.C.G.A. § 51-1-2.

200. As further detailed in this Complaint, each of the Director Defendants and Officer Defendants failed to discharge their duties and was negligent by failing to perform his responsibilities to the Bank, unreasonably failing to investigate material facts, failing to use his business judgment in carrying out his responsibilities to the Bank, and closing his eyes to the danger his negligence was causing to the Bank. The decisions made by the Director Defendants and Officer Defendants as described more particularly herein were not good faith business decisions made in an informed and deliberate manner.

201. As a direct and proximate result of the negligence of the Director Defendants and Officer Defendants, the FDIC-R suffered damages in an amount to be determined at trial.

Count Three

Claim for Gross Negligence (Georgia law and 12 U.S.C. § 1821(k)) (Against Director Defendants and Officer Defendants)

202. The FDIC-R realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 192 of this Complaint as though fully set forth herein.

203. Section 1821(k) of The Financial Institutions Reform, Recovery and Enforcement Act holds directors and officers of financial institutions personally liable for loss or damage to the institution caused by their "gross negligence," as defined by applicable state law. Georgia statutory law defines gross negligence as follows: "[i]n general, slight diligence is that degree of care which every man of common sense, however inattentive he may be, exercises under the same or similar circumstances. As applied to the preservation of property, the term 'slight diligence' means that care which every man of common sense, however inattentive he may be, takes of his own property. The absence of such care is termed gross negligence." O.C.G.A. § 51-1-4. Georgia case law has defined gross negligence as equivalent to the failure to exercise even a slight degree of care or lack of the diligence that even careless men are accustomed to exercise. Taking into consideration the entirety of the circumstances in the instant suit, the elevated level of skill, knowledge, and intelligence these Defendants presumably possess must be

taken into account. Accordingly, they should be held to a standard consistent with these attributes.

204. As described more particularly herein, the Director Defendants and Officer Defendants were grossly negligent in that their manner of carrying out their duties and responsibilities to the Bank failed to constitute even a slight degree of care and demonstrated a lack of diligence that even careless men are accustomed to exercise. Moreover their actions were reckless and demonstrated a complete disregard for the interests of the Bank.

205. The decisions made by the Director Defendants and Officer Defendants as described more particularly herein were not good faith business decisions made in an informed and deliberate manner. As a direct and proximate result of the gross negligence of the Director Defendants and Officer Defendants, the FDIC-R suffered damages in an amount to be determined at trial.

Count Four

Claim for Breach of Fiduciary Duty of Care (Georgia law) (Against Director Defendants and Officer Defendants)

206. The FDIC-R realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 192 of this Complaint as though fully set forth herein.

207. The Director Defendants and Officer Defendants occupied a fiduciary relationship with the Bank. Thus, the Director Defendants and the Officer Defendants owed Silverton fiduciary duties to exercise the utmost care, skill, and diligence in the performance of their responsibilities. These Defendants failed to discharge these fiduciary duties as detailed in this Complaint.

208. As a direct and proximate result of the breaches of fiduciary duty of care of the Director Defendants and Officer Defendants, the FDIC-R suffered damages in an amount to be determined at trial.

Count Five

Claim for Breach of Fiduciary Duty of Loyalty (Georgia law) (Against Director Defendants)

209. The FDIC-R realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 192 of this Complaint as though fully set forth herein.

210. The Director Defendants and Officer Defendants occupied a fiduciary relationship with the Bank. Thus, the Director Defendants and the Officer Defendants owed Silverton a fiduciary duty of loyalty and had a duty to act with the utmost good faith and in the best interests of the Bank. These Defendants failed to discharge these fiduciary duties as detailed in this Complaint.

211. As a direct and proximate result of the breaches of fiduciary duty of care of the Director Defendants and Officer Defendants, the FDIC-R suffered damages in an amount to be determined at trial.

Count Six

Claim for Declaratory Relief (28 U.S.C. § 2201)
(Against Chubb and Westchester)

212. The FDIC-R realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 192 of this Complaint as though fully set forth herein.

213. A case of actual controversy exists between Chubb and the FDIC-R with respect to whether the Chubb Policy provides coverage to the Director Defendants and the Officer Defendants for the acts alleged herein. Specifically, an actual controversy exists between the FDIC-R and Chubb as to whether the Regulatory Exclusion is part of the Chubb Policy. Additionally, an actual controversy exists between FDIC-R and Chubb as to whether the Insured versus Insured Exclusion preclude coverage for the claims asserted herein by FDIC-R against the Director Defendants and the Officer Defendants. In order to resolve this controversy, the FDIC-R requests that, pursuant to 28 U.S.C. § 2201, this Court declare the respective rights and interests of Chubb and the FDIC-R in this matter.

214. A case of actual controversy exists between Westchester and the FDIC-R with respect to whether the Excess Policy provides coverage to the Director Defendants and the Officer Defendants for the acts alleged herein. Specifically, an actual controversy exists between the FDIC-R and Westchester as to whether the Regulatory Exclusion is part of the Excess Policy. Additionally, an actual controversy exists between FDIC-R and Westchester as to whether the Insured versus Insured Exclusion preclude coverage for the claims asserted herein by FDIC-R against the Director Defendants and the Officer Defendants. In order to resolve this controversy, the FDIC-R requests that, pursuant to 28 U.S.C. § 2201, this Court declare the respective rights and interests of Westchester and the FDIC-R in this matter.

215. Specifically, the FDIC-R seeks declarations of the following:

a. A declaration that the Regulatory Exclusion is not a part of, or a term of, the Chubb Policy and/or the Excess Policy;

b. A declaration that the Insured versus Insured Exclusion contained in the Chubb Policy does not apply in actions brought by the FDIC in any capacity; and

c. A declaration that the Chubb Policy and the Excess Policy provide coverage for any judgment on Counts One through Five that the FDIC-R may obtain in this action against the Director Defendants and/or the Officer Defendants.

VII. JURY DEMAND

216. The FDIC-R respectfully demands a trial by jury for all issues in this case that are triable by the jury.

VIII. PRAYER FOR RELIEF

WHEREFORE, the FDIC-R prays for relief as follows:

1. For compensatory and consequential damages, jointly and severally, against the Director Defendants and the Officer Defendants as follows (together with prejudgment interest):

a. Judgment for at least $3,500,000 against Bryan, Bennett, Crook, Ellenburg, Foster, Hart, Maddox, Norris, Price, Wolfe, Carlton, Harper, Shepard, and Simmons for their negligence, gross negligence, breach of fiduciary duty of care and

loyalty, and corporate waste in connection with the purchase of the Falcon 20 airplane;

b. Judgment for at least $1,350,000 against Bryan, Bennett, Ellenburg, Gulledge, Maddox, Wolfe, and Carlton for their negligence, gross negligence, breach of fiduciary duty of care and loyalty, and corporate waste in connection with the purchase of the King Air airplane;

c. Judgment for at least $3,000,000 against Bryan, Bennett, Crook, Ellenburg, Foster, Hart, Maddox, Norris, Price, Carlton, Harper, Shepard, and Simmons for their negligence, gross negligence, breach of fiduciary duty of care and loyalty, and corporate waste in connection with the construction of the airplane hangar; and

d. Judgment for at least $2,470,000 against Bryan, Bennett, Crook, Ellenburg, Foster, Gulledge, Hart, Maddox, Norris, Price, Wolfe, Shepard, and Simmons for their negligence, gross negligence,

breach of fiduciary duty of care and loyalty, and corporate waste in connection with the lease payments on Silverton's former office building.

e. Judgment for at least $500,000 against Bryan, Carlton, Crook, Foster, Maddox, and Price for their negligence, gross negligence, and breach of fiduciary duty of care in connection with the Coro Willis Wood Valley Loan;

f. Judgment for at least $8,894,673 against Bueche and Fredette for their negligence and breach of fiduciary duty of care in connection with the Cordoba-Ranch Development Loan;

g. Judgment for at least $5,814,536 against Bueche and Fredette for their negligence, gross negligence, and breach of fiduciary duty of care in connection with The Crossing at Purple Sage Loan;

h. Judgment for at least $7,421,535 against Bryan, Foster, Maddox, Price, and Ellenburg for their negligence, gross negligence, and breach of

fiduciary duty of care in connection with the Fairhope Falls Loan;

i. Judgment for at least $4,818,366 against Bueche and Fredette for their negligence and breach of fiduciary duty of care in connection with the FirstCity Bancorp Loan;

j. Judgment for at least $3,027,208 against Fredette for his negligence, gross negligence, and breach of fiduciary duty of care in connection with the Goodby's Creek Loan;

k. Judgment for at least $3,080,362 against Bueche and Fredette for their negligence, gross negligence, and breach of fiduciary duty of care in connection with the Jordyn Holdings IV Loan;

l. Judgment for at least $2,295,000 against Bueche and Fredette for their negligence, gross negligence, and breach of fiduciary duty of care in connection with the Mountain Shadows 331 Loan;

m. Judgment for at least $2,357,901 against Bueche and Fredette for their negligence, gross negligence, and breach of fiduciary duty of care in connection with the Nash-York Loan;

n. Judgment for at least $3,835,310 against Bueche, Fredette, Bryan, Gulledge, and Wolfe for their negligence and breach of fiduciary duty of care in connection with the NR Inlet Beach Loan;

o. Judgment for at least $1,570,484 against Bueche for his negligence and breach of fiduciary duty of care in connection with the Plant A Seed Loan;

p. Judgment for at least $6,200,000 against Bueche and Fredette for their negligence, gross negligence, and breach of fiduciary duty of care in connection with the Wacca Wache Marina Loan;

q. Judgment for at least $2,367,184 against Bueche, Fredette, Bryan, Carlton, Maddox, Wolfe, and Bennett for their negligence and breach of

fiduciary duty of care in connection with the Westridge Partners III Loan;

r. Judgment for at least $7,561,493 against Bueche, Fredette, Bryan, Ellenburg, Gulledge, Wolfe, and Bennett for their negligence, gross negligence, and breach of fiduciary duty of care in connection with the WHM Merrill Ranch Investments Loan;

s. Judgment for at least $1,135,590 against Bueche for his negligence and breach of fiduciary duty of care in connection with the Windsor Mill Homes Loan;

2. For a declaratory judgment against Chubb declaring that:

a. The Regulatory Exclusion is not a part of, or a term of, the Chubb Policy and/or the Excess Policy;

b. The Insured versus Insured Exclusion contained in the Chubb Policy does not apply in actions brought by the FDIC in any capacity; and

c. The Chubb Policy and Excess Policy provide coverage for any judgment that the FDIC-R may obtain in this action on Counts One through Five against the Director Defendants and/or the Officer Defendants.

3. For its costs of suit against all Defendants;

4. For attorneys' fees, costs for investigation and litigation against all Defendants; and

5. For such other and further relief as this Court deems just and proper.

Respectfully submitted this 22nd day of August, 2011.

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