ORIGINAL

FILED IN CLERK'S OFFICE
U.S.D.C. - Atlanta

OCT 07 2011

JAMES N. HATTEN, Clerk
By: Deputy Clerk

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

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR ALPHA BANK & TRUST

Plaintiff,

v.

JAMES A. BLACKWELL, JR., JOSEPH L. BRINER (nominally, to extent of insurance policy coverage only), DAN E. BURGE, CLAUD E. CLARK, THOMAS D. DANIEL, ROBERT E. GARRISON, BARRY E. MANSELL, JACK V. MILLER, JAYANTILAL K. PATEL, ROBERT E. SKEEN, III, and D. MICHAEL SLEETH,

Defendants.

Civil Action No.

1:11-CV-3423

RWS

COMPLAINT

Plaintiff Federal Deposit Insurance Corporation ("FDIC), as Receiver for Alpha Bank & Trust, states its complaint against the Defendants, and each of them, as follows:

I. INTRODUCTION

1. The FDIC brings this action in its receivership capacity against certain former directors and officers of Alpha Bank & Trust of Alpharetta, Georgia

("Alpha" or "Bank"). Alpha was closed by the Georgia Department of Banking & Finance ("GDBF") on October 24, 2008 after operating less than 30 months, making it the fastest-failing bank between 1992 and 2008 according to the FDIC's Office of the Inspector General's May 1, 2009, Material Loss Review audit report. The estimated loss to the Deposit Insurance Fund is currently estimated to be $214.5 million.

2. The FDIC, as Receiver for Alpha, brings this action to recover $23.92 million in damages caused by Defendants' failure to use ordinary care and gross negligence.

3. The $23.92 million damage claim is based on losses from eleven commercial real estate ("CRE") loans and two other commercial loans (collectively the "Loss Loans") approved by the Bank from June 20, 2006, through June 6, 2008.

4. Approval of the Loss Loans was part of the Bank's aggressive growth strategy, a strategy that significantly departed from the Bank's business plan submitted with its applications to the FDIC for deposit insurance and GDBF's approval of its Articles of Incorporation (the "GDBF Approval Order"), and deviated from safe and sound banking practices, as well.

5. Defendants approved the Loss Loans despite: (1) violations of statutory lending limits, (2) violations of the Bank's Loan to Value ("LTV") ratio limits, (3) insufficient borrower repayment information and repayment sources, (4) inadequate real estate appraisals, (5) insufficient analyses of collateral or inadequate collateral, (6) the questionable character of the borrower or guarantor and (7) other loan policy violations.

6. The actions and inactions of Defendants were the direct and proximate cause of the Loan Losses the FDIC now seeks to recover.

II. JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction of this matter as actions in which the FDIC is a party are deemed to arise under federal law pursuant to 12 U.S.C. § 1811, et seq.; 12 U.S.C. § 1819(b)(1) and (2), and 28 U.S.C. §§ 1331 and 1345. The FDIC the power to bring suit in any court of law. 12 U.S.C. § 1819.

8. This Court has personal jurisdiction over the Defendants who at all relevant times were residents of, and conducted the business of the Bank, in the State of Georgia.

9. Venue is proper in this district under 28 U.S.C. § 1391(b) as all or substantially all of the events and/or omissions giving rise to the claims asserted herein occurred in this district.

III. THE PARTIES

10. The FDIC is a corporation organized and existing under the laws of the United States of America with its principal place of business in Washington, D.C. 12 U.S.C. § 1811, et seq. The FDIC is an instrumentality of the United States of America and is charged with, among other duties, the orderly liquidation of failed banks. 12 U.S.C. § 1821(d). The FDIC was appointed as the Receiver of Alpha pursuant to 12 U.S.C. §1821(c) on October 24, 2008. Pursuant to 12 U.S.C. § 1821(d)(2)(A) and §1823(d)(3)(A) the FDIC succeeded to all rights, titles, powers, and privileges of Alpha, including, but not limited to, claims against the Bank's former directors and officers.

11. Defendant James A. Blackwell ("Blackwell") served as Alpha's Chairman of the Board of Directors ("Board"), from February 7, 2006 to October 24, 2008. Blackwell is a resident of the State of Georgia residing in Marietta, Georgia.

12. Defendant Dan E. Burge ("Burge") served on Alpha's Board from February 7, 2006 to October 24, 2008. Burge was chairman of the Directors Loan Committee ("DLC") from March 16, 2006 until October 24, 2008. Burge is a resident of the State of Georgia residing in Marietta, Georgia.

13. Defendant Claud E. Clark ("Clark") served on Alpha's Board from February 7, 2006 to October 24, 2008. Clark was a DLC member from March 16, 2006 until October 24, 2008. Clark is a resident of the State of Georgia residing in Marietta, Georgia.

14. Defendant Thomas D. Daniel ("Daniel") served on Alpha's Board from February 7, 2006 to October 24, 2008. Daniel served on the DLC from March 16, 2006 until October 24, 2008. Daniel is a resident of the State of Georgia residing in Alpharetta, Georgia.

15. Defendant Robert Garrison ("Garrison") served on Alpha's Board from February 7, 2006 to October 24, 2008. Garrison was a member of the DLC from June 25, 2008 until October 24, 2008. Garrison is a resident of the State of Georgia residing in Big Canoe, Georgia.

16. Defendant Barry E. Mansell ("Mansell") served on Alpha's Board from February 7, 2006 to October 24, 2008. Mansell was a member of the DLC from May 2007 until October 24, 2008. Mansell is a resident of the State of Georgia residing in Alpharetta, Georgia.

17. Defendant Jack V. Miller ("Miller") served on Alpha's Board from February 7, 2006 to October 24, 2008. Miller was a member of the DLC from March 16, 2006, until October 24, 2008. He was also Vice Chairman of the DLC

from June 25, 2008 to October 24, 2008. Miller is a resident of the State of Georgia residing Hiawassee, Georgia.

18. Defendant Jayantilal K. Patel ("Patel") served on Alpha's Board from February 7, 2006 to October 24, 2008. Patel was a member of the DLC from March 16, 2006, until October 24, 2008. Patel is a resident of the State of Georgia residing in Alpharetta, Georgia.

19. Defendant Joseph L. Briner ("Briner") served on Alpha's Board from February 7, 2008, to February 28, 2008. Briner also served as President of the Bank and Chief Executive Officer ("CEO") of Alpha until February 28, 2008. Briner is a resident of the State of Georgia residing in Alpharetta, Georgia.[1]

20. Defendant Robert E. Skeen III ("Skeen") was the Executive Vice President ("EVP") and Chief Lending Officer ("CLO") from April 20, 2006 until July 25, 2008, when became Senior Lender. Skeen was a member of the DLC

---

[1] Briner has received a discharge pursuant to Chapter 7 of the Bankruptcy Code for personal debts outstanding prior to the discharge. Accordingly, the FDIC sues Briner nominally only, and solely for the purpose of obtaining coverage for him pursuant to any policy of insurance that covers him for his actions during the policy period. The FDIC expressly disclaims and does not seek any recovery from Briner in his personal capacity over and above the limits of director and officer ("D&O) insurance coverage on him. On September 8, 2011, the FDIC sought modification of the Section 524 injunction in the Briner bankruptcy action to permit the FDIC to file this action, which the Bankruptcy Court granted by written Order dated October 4, 2011.

from March 16, 2006, until August 14, 2008. Skeen is a resident of the State of Georgia residing in Woodstock, Georgia.

21. Defendant David Michael Sleeth ("Sleeth") served as Chief Financial Officer ("CFO") and served on Alpha's Board from March 16, 2006, until October 24, 2008. Sleeth was also a member of the DLC from June 25, 2008, until the Bank closed on October 24, 2008. Sleeth is a resident of the State of Georgia residing in Eatontown, Georgia.

IV. BACKGROUND

22. Alpha opened to the public on May 8, 2006, with its principal place of business in Alpharetta, Georgia.

23. From the time the institution opened until its closure, the Director Defendants and every member of the DLC were responsible for analyzing loan applications and supporting documentation to ensure that loans were properly documented and otherwise satisfied the Bank's lending policies as well as prudent lending practices.

24. The Director Defendants were also responsible for selecting, monitoring, and evaluating management; establishing business strategies and policies; monitoring and assessing the Bank's business operations; establishing and monitoring adherence to policies and procedures required by statute, regulation,

and principles of safety and soundness; following and implementing the advice of regulators; reviewing and approving the actions of the DLC, including but not limited to, the DLC's actions in approving loans; and making business decisions on the basis of fully informed and meaningful deliberation.

25. Among other duties, as President, Briner was responsible for the overall management of the Bank, including but not limited to, ensuring that the Bank had adequate loan policies, procedures and internal controls, that the Bank adhered to those loan policies, procedures and internal controls, and that the Bank pursued a business model consistent with safe and sound banking practices.

26. Among other duties, as Chief Financial Officer, Sleeth was responsible for monitoring the Bank's fiscal performance and advising senior management and the Board on matters of fiscal control and profitability to (a) ensure compliance with applicable laws and regulations, (b) ensure compliance with the Bank's internal policies and procedures, and (c) act in a manner consistent with safeguarding the Bank's assets.

27. Among other duties, as Chief Lending Officer, Skeen was responsible for providing support and direction in the adoption of appropriate loan policies, procedures, and internal controls, monitoring lending activity and supervising Bank personnel to secure compliance with those loan policies, procedures, and

internal controls, and otherwise ensuring the overall quality of the Bank's loan portfolio.

28. Alpha grew rapidly from the date of its opening through high concentrations in CRE loans and acquisition, development, and construction ("ADC") loans.

29. Defendants pursued growth in the ADC/CRE loan portfolio without properly monitoring, adjusting or enforcing underwriting policies and procedures for the loans rapidly swelling the portfolio. Defendants' approval of grossly imprudent loans evinces an absence of even a slight degree of care by them as Directors and Officers, and thus demonstrates Defendants' negligence and gross negligence in the performance of the same.

V. THE LOSS LOANS

30. Pursuant to the Loan Policy, the Directors' Loan Committee was responsible for overall credit functions. DLC membership included at least 25 percent of the Board members and at least 3 outside directors, including the President and CEO (Briner), and the CLO (Skeen).

31. The Loan Policy provisions relating directly to the Loss Loans, include the following:

- Sound credit analysis will precede all commercial and real estate loan decisions.
- The Bank will maintain the highest standard of supporting credit and collateral documentation.
- The borrower's cash flow and financial resources must be sufficient to repay all of a loan's term obligations as they become due and payable.
- The character of the borrower/applicant is the most basic and important element in the extension of credit, and extensions of credit are to be made only to borrowers demonstrating good character.
- Prohibiting loans including loans to people whose honesty is questionable.
- Prohibiting capitalizing accrued interest on renewals, side loans to pay delinquent interest, or any other tactic that masked asset quality.
- LTV ratio limits of 75 percent for land development; 80 percent for commercial construction; and 90 percent for one-to-four family residential construction.
- ADC loans limited to no more than 40 percent of total assets.
- Policy requirement that all loans be kept current and monitored.
- Policy discouraged loans to new businesses unless business adequately capitalized.

32. Despite the fact that the Loss Loans all contained multiple violations of one or more of the loan policies listed above, each of the Defendants voted to approve at least two of the following Loss Loans:

Borrower	Approval Dates	Loan Amount	Loss
1. West Clark, LLC	June 20, 2006	$5,475,000	$3,400,000
2. Norris Lake, LLC	July 20, 2006	[i] $10,847,080	$4,650,000
3. Norris Lake, LLC	Sept. 5, 2006	[a] $1,450,000	
4. Benjamin F. Giles	Aug. 31, 2006	[i] $1,650,000	$410,000
5. Benjamin F. Giles	June 6, 2008	[a] $200,000	$30,000
6. Georgia 4-S Corporation	Sept. 11, 2006	[i] $4,000,000	$3,500,000
7. Georgia 4-S Corporation	March 6, 2007	[a] $250,000	
8. Homeland Security Corporation	Oct, 17, 2006	$4,900,000	$4,060,000
9. West Panola, LLC	Dec. 5, 2006	[i] $4,000,000	$2,150,000
10. West Panola, LLC	May 15, 2007	[a] $1,500,000	
11. Waterfall Properties, LLC	May 15, 2007	$1,980,000	$1,540,000
12. Celestine Properties, LLC	Aug. 7, 2007	$2,850,000	$1,460,000
13. 1084 W. Peachtree, LLC	Dec. 18, 2007	$5,400,000	$2,720,000
TOTAL		**$44,502,080**	**$23,920,000**

Note: "i" = initial loan; "a" = additional credit

33. Defendants approved the Loss Loans despite underwriting deficiencies and loan policy violations that were or should have been readily apparent to even a casual reviewer.

34. In all thirteen of the Loss Loans, Defendants approved the loans despite plainly inadequate, incomplete, or outdated financials of the borrowers and/or guarantors, resulting in loans advanced to borrowers with no apparent ability to repay or otherwise service the loans.

35. In eleven of the Loss Loans, collateral appraisals were either not performed or were performed and accepted based upon improper criteria such as "as-developed" rather than "as-is" value.

36. In six of the Loss Loans, the collateral pledged to support the loan was unverified, plainly inadequate, or not secured by proper descriptions or agreements.

37. In six of the Loss Loans, the loan amounts exceeded the Bank's approved Loan-to-Value ("LTV") or Loan-to-Cost ("LTC") ratios.

38. The thirteen Loss Loans each suffered from key deficiencies that should have been readily apparent to even a careless reviewer, examples of which appear below:

Loan	Deficiencies
1. West Clark	• Failed to evaluate takedown schedules and interest reserve adequacy during construction; • Failed to verify size and number of collateral lots • Used "as developed" appraisal value rather than 'as-is' value; true value yielded LTV of 107%
2. Norris Lake 3. Norris Lake	• Placed no restrictions on disbursal, and loan was disbursed even though the subdivision was never developed • Approved despite discrepancies in the legal description of collateral property, missing appraisal and participation agreement
4. Benjamin Giles 5. Benjamin Giles	• Approved despite project outside Bank's trade area • Permitted proceeds from second loan to pay interest past due on first loan, as well as past due interest for another entity (Driftwood Partners) • Approved despite inadequate loan service coverage evident from tax returns

6. Georgia 4-S 7. Georgia 4-S	• Accepted estimated value of collateral stock and then failed to perfect lien on collateral • Failed to validate legitimacy of borrowing entity, as no corporate documents were provided and no research was performed • Approved despite undated financial statements
8. Homeland Security Corp.	• Extended loan to purchase equity in company with no apparent ability to service debt and without verifying liquidity and strength of guarantors • Approved even though company was subject of litigation alleging majority shareholders "looted" assets of company and committed fraud • Approved without pledge agreement for stock collateral and despite outdated corporate financials
9. West Panola 10. West Panola	• Accepted appraisal based upon "as developed" and not "as is" values • Placed no restrictions on disbursal, and loan was disbursed yet the subdivision was never developed
11. Waterfall Properties	• Approved even though guarantor's tax returns show inadequate income and liquidity to service loans and high contingent debt • Renewed loans without principal paydown
12. Celestine Properties	• Approved even though guarantor's tax returns show inadequate income and liquidity to service loans and high contingent debt • Failed to require takedown requirement commercial parcels were sold
13. 1084 W. Peachtree	• Approved for $5.4 million when only $3.2 million of loan was to refinance existing loan by prior lender, and $2.2 million net proceeds were given to borrower for no stated use or purpose • Violated Loan-to-Cost Ratio, as takeout of prior loan requires evaluation of cost rather than overall land value • Approved despite unsigned covenants and missing taxpayer identification number

39. Each of the Loss Loans contained deficiencies that were readily identifiable to Defendants, yet Defendants approved the loans despite the deficiencies.

40. Defendants failed to exercise even slight care in their review, evaluation and approval of the Loss Loans, causing losses in the amount of at least $23.92 million.

41. The Defendants and each of them failed, neglected or refused to fully and properly discharge their duties and obligations, and failed, neglected or refused to exercise that degree of diligence, care, and skill which ordinarily prudent persons would exercise under similar circumstances in like positions.

42. Each of the Defendants caused or permitted some or all of the following acts or omissions, among others:

a) Causing or permitting loan and asset growth at a rate that substantially deviated from the business plan submitted to the FDIC and GDBF at the expense of the sound underwriting and adherence to the Bank's policies and procedures

b) Failing to insure that the Bank's policies and procedures were reasonable and adequate for their intended purposes, including but not limited to the failure to adopt and enforce prudent underwriting standards, the failure to follow policies regarding LTV ratios, the failure to follow policies regarding proper appraisals of collateral;

c) Failing to inform themselves and each other about the true nature and condition of the Bank's loan portfolio, and failing adequately to review and inquire into the Bank's loan transactions;

d) Failing to establish and adhere to policies and procedures that took into account the warnings and criticisms of the Bank by regulatory authorities, including but not limited to the failure adopt and enforce prudent underwriting procedures, the failure to enforce appropriate loan-to-value ratios, approving and/or acquiescing in the imprudent growth of the Bank's CRE and ADC loan portfolios, failing to maintain appropriate capital-to-asset ratios.

e) Causing or permitting loans to be made to borrowers who were or should have been known to be not creditworthy or who demonstrated a lack of ability to repay their loan;

f) Causing or permitting loans to be made with inadequate or inaccurate financial information regarding the creditworthiness of the borrower, the borrower's prospective source of repayment, and the borrower's security, if any, and failing to make reasonable efforts to verify the accuracy of such information;

g) Causing or permitting the Bank to maintain inadequate loan documentation and files;

h) Causing or permitting loans to be made on an unsecured or inadequately secured basis, including but not limited to repeated violations of policies and regulations pertaining to appropriate LTV ratios;

i) Causing or permitting loans to be made on the basis of inadequate or non-existent appraisals;

j) Causing or permitting loans to be made without properly and promptly perfecting security interests in the loan collateral;

k) Failing generally to exercise their duties to manage and supervise the affairs of the Bank in a safe, sound and prudent manner consistent with their duty to protect the assets of the Bank.

43. In connection with the aforementioned acts and omissions, Defendants, individually and collectively, made uninformed decisions without

meaningful deliberation and disregarded advice of third parties and regulators designed to assist them in their decision-making.

44. Defendants' actions and inactions displayed such an absence of care in the exercise of their affairs as to constitute gross negligence in the performance thereof, and constitute abuses of discretion and/or demonstrations of bad faith.

45. The breaches of the duties of care each Defendant owed to the Bank proximately caused the damages complained of herein, as measured by the Loss Loans.

VI. THE BANK'S CLOSURE

46. From its inception, the Bank's growth strategy placed portfolio growth above all else, including safety and soundness. For example, the Bank enacted a compensation policy that rewarded loan officers for loan originations rather than performance of the loans. Armed with such incentives, the sales force rapidly put forward, and the Defendants approved, loans that filled the Bank's portfolio with heavy concentrations of risky ADC/CRE loans, which loans were frequently laden with Bank-financed interest reserves. Significant portions of the loans fell into default in the first two years after exhausting their interest reserves. The resulting avalanche of defaults caused the Bank heavy losses, which, in turn, eroded its capital base and caused it to fail.

47. The Bank's myopic focus on portfolio growth caused it to ignore, disregard or even reject the advice of regulators[2] and third-party consultants who uniformly cautioned against, then criticized, the Bank's strategy. For example, the GDBF in its 2006 Report of Examination ("RoE") pointedly questioned the Bank's high credit concentrations in CRE and warned that the Bank should be careful in loan underwriting and administration.

48. Defendants took no meaningful action to address the concerns of the GDBF as expressed in its 2006 RoE. Indeed, the Bank increased its ADC/CRE concentration and lending growth after the 2006 RoE.

49. In the FDIC's March 2007 RoE, the FDIC cited a lack of controls during Alpha's period of rapid growth; noted that 40 percent of the FDIC Final Order conditions that remained outstanding as of the GDBF 2006 RoE were still not met; expressed concern that Alpha's reliance on noncore deposits was at maximum levels; and directed the Bank to strengthen its credit risk analysis and

---

[2] As a financial institution organized under the laws of the State of Georgia, pursuant to the Official Code of Georgia § 7-1-60 and other applicable laws and regulations, the affairs of the Bank were subject to the supervision and regulation of the GDBF. The Bank was also subject to regulatory review by the FDIC as a new, non-member bank receiving deposit insurance pursuant to the Federal Deposit Insurance Act.

administration procedures and to address the still-increasing concentration in CRE/ADC lending.

50. Also in March 2007, Credit & Compliance Financial Resources, Inc., ("CCFR"), a third-party consultant hired by Alpha to review its portfolio and compliance procedures, analyzed a randomly-chosen sample of half of the loans in the portfolio in March 2007. In its resulting report, CCFR found that 68 percent of the loans contained documentation failures, and advised the Bank to review and tighten its underwriting criteria and policies.

51. Alpha never made material updates to its Loan Policy to improve or strengthen its underwriting in response to the March 2007 CCFR and FDIC reviews, but instead continued to make imprudent loans under the virtually same lending policy. Indeed, only eleven months later, CCFR performed another documentation-compliance and asset quality review and noted a documentation exception rate of 64 percent, virtually unchanged from the prior review. CCFR noted that ADC/CRE lending represented 78% of the entire loan portfolio, nearly twice the concentration limit stated in the Bank's own written policy, and opined that excessive concentrations represented inherent risk to the Bank. CCFR also recommended that the Bank downgrade 50 loans, heralding the coming tide of defaults that ultimately swamped the Bank.

52. In its April 2008 RoE, the GDBF concluded that the Bank faced the risk of an overall failure due to the Bank's sharply declining portfolio of assets, dwindling capital and Defendants' failure to heed prior warnings concerning portfolio concentrations and underwriting standards. The GDBF opined that while the condition of the real estate market affected borrowers' rapid financial decline, the Bank's focus on asset growth resulted in basic underwriting failures and contributed significantly to the deterioration of the overall condition of the Bank.

53. The GDBF issued a Cease and Desist Order to the Bank on July 27, 2008, and the Bank was closed on October 24, 2008.

54. Defendants' failure to exercise even slight care in the performance of their duties in pursuing rapid loan portfolio growth through imprudent lending, including approving the Loss Loans identified in this Complaint, caused the Bank more than $23.92 million in damages.

VII. CLAIMS FOR RELIEF

Count 1 – Negligence Against All Defendants.

55. FDIC incorporates by reference each of the allegations in paragraph 1 through 54 of this complaint.

56. Each of the Defendants, as officers and/or directors of the Bank, owed the Bank the obligation to exercise the degree of diligence, care, and skill which

ordinarily prudent persons in like positions would exercise under similar circumstances in the management, supervision and conduct of the Bank's business and financial affairs, including its lending practices.

57. By their actions and inactions, as described specifically and generally herein, each of the Defendants failed and neglected to perform their respective duties as officers and/or directors of the Bank, constituting breaches of their statutory and common law duties of care owed to the Bank.

58. By way of example and not of limitation, Defendants failed to adhere to lending policies, applicable requirements, and sound lending practices, and thus knew, or in the exercise of reasonable diligence should have known, that their practices and the practices of other Bank officers and employees over whom they exercised supervisory control were improper, imprudent and harmful to the Bank.

59. Among other things, Defendants rejected or disregarded the advice of third parties and regulators designed to assist them in their decision-making with respect to the Bank's lending policies.

60. Among other things, Defendants were aware, or in the exercise of reasonable diligence, should have been aware of significant weaknesses in the Bank's underwriting practices and procedures.

61. Defendants were also aware, or in the exercise of reasonable diligence, should have been aware of the deterioration of the Bank's loan portfolio caused by imprudent CRE and ADC lending.

62. Defendants were also aware, or in the exercise of reasonable diligence should have been aware of the negative impact on the Bank's earnings, liquidity and capital-to-asset ratio caused by high risk CRE and ADC loans.

63. Defendants were also aware, or in the exercise of reasonable diligence should have been aware of the deficiencies in underwriting and loan support exhibited by the Loss Loans, yet Defendants approved the Loss Loans anyway.

64. As a direct and proximate result of the negligent acts and omissions of each Defendant, the Bank suffered damage and sustained losses exceeding $23.92 million, or such other amount as may be proved at trial.

65. With respect to their actions and inactions in managing the affairs of the Bank, Defendants pursued a common plan or design and, therefore, each Defendant is jointly and severally liable for all losses.

Count 2 - Gross Negligence Against All Defendants.

66. FDIC incorporates by reference each of the allegations in paragraph 1 through 54 of this complaint.

67. Section 1821 (k) of FIRREA holds directors or officers of financial institutions personally liable for loss or damage to the institution caused by their "gross negligence," as defined by applicable state law.

68. Defendants owed a duty to exercise even the slight diligence that every person of common sense, however inattentive he or she may be, exercises under the same or similar circumstances.

69. The Defendants' actions and inactions as described herein demonstrate an absence of the slight diligence expected from a person with common sense, and instead exhibited such a degree of carelessness and/or inattention to the performance of their duties as to constitute gross negligence under Georgia law.

70. By way of example and not of limitation, Defendants failed to adhere to lending policies, applicable requirements, and sound lending practices, and thus knew, or in the exercise of reasonable diligence should have known, that their practices and the practices of other Bank officers and employees over whom they exercised supervisory control were improper, imprudent and harmful to the Bank.

71. Among other things, Defendants rejected or disregarded the advice of third parties and regulators designed to assist them in their decision-making with respect to the Bank's lending policies.

72. Among other things, Defendants were aware, or in the exercise of reasonable diligence, should have been aware of significant weaknesses in the Bank's underwriting practices and procedures.

73. Defendants were also aware, or in the exercise of reasonable diligence, should have been aware of the deterioration of the Bank's loan portfolio caused by imprudent CRE and ADC lending.

74. Defendants were also aware, or in the exercise of reasonable diligence should have been aware of the negative impact on the Bank's earnings, liquidity and capital-to-asset ratio caused by high risk CRE and ADC loans.

75. Defendants were also aware, or in the exercise of reasonable diligence should have been aware of the deficiencies in underwriting and loan support exhibited by the Loss Loans, yet Defendants approved the Loss Loans anyway.

76. As a direct and proximate result of the Defendants' grossly negligent actions and omissions as described herein, the Bank suffered damage and sustained losses exceeding $23.92 million, or such other amount as may be proved at trial.

77. With respect to their grossly negligent actions and inactions in managing the affairs of the Bank, Defendants pursued a common plan or design and, therefore, each Defendant is jointly and severally liable for all losses.

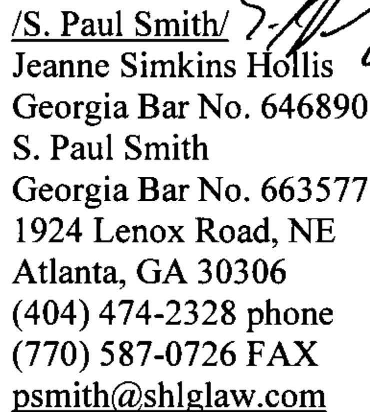
VIII. RELIEF REQUESTED

I. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the FDIC demands a trial by jury on all claims.

II. On Counts 1-2, the FDIC requests judgment against all Defendants, jointly and severally, in sums to be proven at trial, together with appropriate interest pursuant to 12 U.S.C. § 1821(l), the costs of this action, and such other and further relief as the Court deems just and proper.

Respectfully submitted this 7th day of October, 2011.

SIMKINS HOLLIS LAW GROUP, PC



/S. Paul Smith/
Jeanne Simkins Hollis
Georgia Bar No. 646890
S. Paul Smith
Georgia Bar No. 663577
1924 Lenox Road, NE
Atlanta, GA 30306
(404) 474-2328 phone
(770) 587-0726 FAX
psmith@shlglaw.com
Attorneys for the Federal Deposit Insurance Corporation, as Receiver for Alpha Bank & Trust

LR 7.1 CERTIFICATE

Pursuant to L.R. 7.1D, counsel certifies that the foregoing Complaint complies with the font and point selections approved by the Court in L.R. 5.1.C. This

Complaint was prepared using Times New Roman font, 14-point.

/S. Paul Smith/
S. Paul Smith
Simkins Hollis Law Group, P.C.