

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION**

No. ____ : ____ -CV- ____ - ____

**FEDERAL DEPOSIT INSURANCE CORPORATION,
as Receiver for CAPE FEAR BANK,**

Plaintiff,

vs.

Civil Action No.: _____

**JOHN CAMERON COBURN, LARRY FLOWERS,
R. JAMES MACLAREN, MARK TYLER, CRAIG S. RELAN,
JERRY S. SELLERS, WALTER O. WINTER
Defendants.**

COMPLAINT

Plaintiff, the Federal Deposit Insurance Corporation, as Receiver of Cape Fear Bank, in Cape Fear Bank, North Carolina ("FDIC"), for its Complaint states as follows:

The FDIC brings this lawsuit in its capacity as Receiver of Cape Fear Bank ("Cape Fear" or "Bank"), to recover approximately \$11.2 million in losses the Bank suffered on twenty three (23) commercial real estate ("CRE") and acquisition, development, and construction loans ("ADC") approved by the Defendants between September 27, 2006, through February 27, 2009 ("Loss Loans"). The approval of the Loss Loans as well as numerous other acts of negligence, gross negligence, and/or breaches of fiduciary duties and/or other legal duties by the Defendants were the direct and proximate cause of the Bank's losses.

Preliminary Statement

The Bank of Cape Fear Bank was founded on June 23, 1998. The North Carolina Commissioner of Banking ("NCCOB") closed Cape Fear, a state nonmember bank, on April 10,

2009, and appointed the FDIC as Receiver. The FDIC plays a critical role in safeguarding the stability of the nation's financial system. Prior to 1933, when a bank failed, depositors discovered that the bank's failure meant that their deposits were lost. The panic at one bank failing often caused runs on nearby healthy banks, often causing them to fail also. As a result, the government established the FDIC to insure bank deposits, so that bank customers would not lose their money if the bank failed, and to add stability to the nation's banking system. Along with the responsibility to step in to protect depositors, the FDIC was also charged with the power and duty to hold responsible any officers and directors whose conduct lead to the failure of the bank. Since the formation of the FDIC, no depositor has lost a single cent of insured funds. Cape Fear's failure on April 10, 2009, cost the Deposit Insurance Fund over \$141 million in losses. Absent the FDIC's deposit insurance, many citizens of Wilmington NC would have lost much of their hard-earned savings.

The Defendants are seven former directors and officers of the bank. The Defendants pursued a flawed strategy of branching growth without developing a plan to monitor the five new branches that were opened between April 2006 and November 2007. Furthermore, they were enticed by the "bubble" in the real estate sector of the Bank's lending markets which caused the Bank to pursue a growth strategy heavily concentrated in higher risk, and speculative commercial real estate ("CRE") loans. The Bank's branching strategy and growth in CRE's and Acquisition Development and Construction ("ADC") resulted in rapid loan growth in 2006, 2007, and 2008.

The Defendants, however, were ill-equipped to properly manage the risks associated with the Bank's growth. The Defendants increased the Bank's already high-risk exposure by implementing policies and procedures void of the most basic prudent lending controls in an effort to pursue the Bank's ill advised growth and branching strategy. The President and CEO, James Coburn totally dominated the lending activities of the Bank although he had insufficient experience to lead a Bank.

State and federal regulators repeatedly warned the Defendants of the increasing risks associated with the Bank's heavily concentrated real estate loan portfolio, and lax oversight and control of the lending function. The Defendants had actual notice of these risks and a growing awareness of adverse changes in the real estate market but made little or no effort to diversify the Bank's real estate portfolio, enhance oversight of the lending function or otherwise mitigate the increased risk they created by following such a high-risk growth strategy. Instead, they continued to choose short-term profits over prudent lending, betting that the demand for real estate in the Bank's chosen markets would continue indefinitely.

Between 2000 and 2008, Coburn dominated the Board and the Bank's lending. Coburn issued a mandate to increase the Bank's assets through ADC loans. In two years, from December 31, 2003, to December 31, 2005, Bank assets increased 164 percent from \$130 million to \$343 million. During this same period, the Board failed to develop a plan to address funding sources, asset diversification, and monitoring and reporting requirements. The Board allowed management to rapidly increase the Bank's loans without providing appropriate oversight or reporting. Between April 2006 and November 2007, the bank opened five new branches despite

the high cost of overhead that it added to the bank. To support the increased overhead, the Bank made more loans, many of which had loan policy exceptions. As of September 30, 2008, the Bank's concentration of ADC loans totaled \$150 million or 533 percent of Tier 1 Capital. Of this amount, \$29 million was adversely classified. Almost half of the loan portfolio required interest only payments and was being serviced by interest reserves provided by the Bank's loan itself.

The Defendants' failure to establish and adhere to sound policies and procedures, and their ill advised pursuit of opening additional branches despite repeated warnings from the regulators, resulted in the approval of poorly underwritten and structured real estate dependent loans, including the Loss Loans. The Loss Loans, at the time of approval, (1) increased previously criticized concentrations, (2) violated Loan Policy and applicable laws and regulations, (3) lacked proper financial analysis or verification of the creditworthiness of the borrower and/or guarantor, and/or (4) often lacked a proper appraisal of the collateral. The inherent risks created by these improvidently granted loans were magnified when the inevitable slowdown in the real estate market began. Rather than restricting high risk lending, working out the existing troubled Loss Loans, and preserving the Bank's capital, the Defendants instead took actions that masked the Bank's mounting problems. They approved additional Loss Loans and renewed and made additional loan advances on non-performing Loss Loans, often replenishing interest reserves which allowed borrowers to pay interest with more borrowed funds.

The Parties

Plaintiff

1.

Plaintiff, the FDIC, is a corporation organized and existing under the laws of the United States of America. 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). Cape Fear Bank was a state-chartered, non-member bank which operated under the laws of the state of North Carolina, and its deposits were insured by the FDIC. On or about April 10, 2009, the North Carolina Commissioner of Banking (“NCCOB”) determined that Cape Fear Bank was operating in an unsafe and unsound manner, and secured a court order that Cape Fear Bank be closed. The same court appointed the FDIC as Receiver of Cape Fear Bank, and the FDIC accepted that appointment as Receiver. Pursuant to 12 U.S.C. § 1821(d)(2)(A)(i), the FDIC as Receiver succeeded to all rights, titles, powers, and privileges of Cape Fear Bank and Cape Fear Bank’s shareholders with respect to Cape Fear Bank, including, but not limited to, Cape Fear Bank’s claims against the Bank’s former directors and officers for negligence, gross negligence and breaches of fiduciary duty or other legal duties.

Defendants

2.

John Cameron Coburn (“Coburn”) was the primary organizer of the Bank on January 20, 1998, and served as its Executive Vice President from January 1998 to January 2000; President and Chief Executive Officer (“CEO”) from January 2000 to September 19, 2008; and Chairman

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of the Board from July 2001 to September 19, 2008. On information and belief, plaintiff alleges Coburn resides in this judicial district.

3.

Larry Flowers (“Flowers”) was the Chief Credit Officer (“CCO”) from January 20, 1998, until he retired on January 1, 2007. President Coburn rehired Flowers on October 7, 2007, as a loan workout specialist with the title of Senior Management Advisor. Flowers’s lending authority was revoked by the Board on October 8, 2008. On information and belief, plaintiff alleges Flowers resides in this judicial district.

4.

R. James MacLaren (“MacLaren”) joined the Bank on March 8, 1999, and served as Senior Vice President and Chief Credit Officer (“CCO”) from March 2007 until the Bank failed. On information and belief, plaintiff alleges MacLaren resides in this judicial district.

5.

Mark Tyler (“Tyler”) was a Commercial Lender and Pine Valley Branch Manager from August 26, 1999, to March 2007; Senior Vice President and Chief Banking Officer from March 2007 until the Bank failed; and interim President from September 19, 2008, to November 24, 2008. On information and belief, plaintiff alleges Tyler resides in this judicial district.

6.

Craig S. Relan (“Relan”) was a Director from June 23, 1998, until he resigned on December 30, 2008. On information and belief, plaintiff alleges Relan resided in this judicial district during the time and dates of the actions complained herein, and that the actions occurred in this judicial district.

7.

Jerry S. Sellers (“Sellers”) was a Director from March 17, 2003, until he resigned on August 19, 2008. On information and belief, plaintiff alleges Sellers resides in this judicial district.

8.

Walter O. Winter (“Winter”) was a Director from June 23, 1998, until the Bank failed. On information and belief, plaintiff alleges Winter resides in this judicial district.

Jurisdiction and Venue

9.

This Court has subject matter jurisdiction over 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 has the power to sue and complain in any court of law. 12 U.S.C. § 1819.

10.

The 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 North Carolina.

11.

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.

ALLEGATIONS OF FACT APPLICABLE TO ALL COUNTS

12.

The Bank of Wilmington was founded on June 23, 1998. The Bank changed its name to Cape Fear Bank on October 1, 2006. The Bank was a traditional community bank with a designated market area of New Hanover County, North Carolina. The Bank's core business was a mix of commercial real estate (CRE), acquisition development and construction (ADC) and consumer lending in and around New Hanover County in Eastern North Carolina. The Defendants chose to pursue rapid loan growth by focusing more on CRE and ADC loans.

13.

Coburn was the primary organizer of the Bank but was advised by regulators that he had insufficient experience to lead a Bank. As a result, Coburn initially held the position of Executive Vice President. After the president and CEO resigned on January 4, 2000, the Board, led by then-Chairman Richard Coburn (Coburn's father), elected Coburn as President and CEO. When Coburn's father resigned six months later on July 19, 2001, Coburn became Chairman of the Board at age 34.

14.

Between 2000 and 2008, Coburn dominated the Board and the Bank's lending. Coburn issued a mandate to increase the Bank's assets through ADC loans. In two years, from December 31, 2003, to December 31, 2005, Bank assets increased 164 percent from \$130 million to \$343 million. During this same period, the Board failed to develop a plan to address funding sources, asset diversification, and monitoring and reporting requirements. The Board allowed management to rapidly increase the Bank's loans without providing appropriate oversight or reporting. Between April 2006 and November 2007, the Bank opened five new branches, despite the fact that the new branches greatly increased the Bank's overhead expenses. To support the increased overhead, the Bank made more loans, many of which had loan policy exceptions. As of September 30, 2008, the Bank's concentration of ADC loans totaled \$150 million or 533 percent of Tier 1 Capital. Of this amount, \$29 million was adversely classified. Almost half of the loan portfolio required interest-only payments.

15.

In 2005, Chief Financial Officer, Betty Norris ("CFO Norris") submitted monthly financial analysis reports to the Board that core deposits were not growing commensurate with the Bank's increased lending and that the Bank lacked sufficient capital. Coburn instructed Norris to obtain brokered deposits at any cost. Several times, CFO Norris had to search for brokered deposits on a Friday afternoon to cover a loan funding that had occurred earlier that day. When she informed the Board that the high cost and risk of brokered deposits would impair

earnings and threaten the Bank's existence, Coburn had Norris's office moved to an annex away from the Bank's executive offices.

16.

Shareholders of the bank began a proxy battle to replace Coburn and the directors that supported him. The Bank incurred \$1.3 million in legal fees fighting the proxy battle and in the end was forced to replace the Board and senior management. On September 19, 2008, Coburn resigned as a condition of a settlement of the proxy battle. A new management team brought in on November 24, 2008, attempted to improve Cape Fear's condition, but the Bank's capital, liquidity, and asset quality were critically deficient. (None of the members of this new team are defendants.)

17.

Neither Coburn nor the Board had ever developed a well-defined contingency funding plan for a liquidity crisis or a capital restoration plan. Ultimately, the flawed business strategy approved by the prior Board led to the Bank's failure. Cape Fear failed on April 10, 2009.

18.

During the 2007 NCCOB examination, regulators learned that the Bank's Board of Directors had never reviewed nor approved the Bank's loan policy and that the Bank had been operating with a draft policy. Following criticism by regulators of this fact, the Board approved the loan policy on December 30, 2007.

19.

As approved, however, the loan policy did not satisfactorily address real estate concentrations and other generally accepted criteria for loan policies, and the regulators urged the Bank to improve the policy in these respects. Despite the policy's basic shortcomings, the Bank did not even comply with the requirements that the policy did provide. Examples of this noncompliance are the loss loans themselves.

20.

Loan to value (LTV) exceptions were constantly pointed out by the regulators, however, the Defendants failed to address these critical violations of the Rules and Regulations of the FDIC.

The Defendants Disregarded Regulatory and Auditor Warnings

21.

On or about August 16, 2006, the Board of Directors was informed by letter from the FDIC that the most recent bank examination had revealed: "deficiencies in risk management and less than satisfactory earnings. The bank has grown rapidly in the past two years without the benefit of appropriate Board established limits and monitoring of commercial real estate lending and noncore funding sources. Additionally, deficiencies were identified in internal audit, credit administration, and information technology activities. These issues along with other matters requiring your attention will be discussed at our planned meeting with the board on August 24, 2006." The examiners then met with the Board of Directors on August 24, 2006, and detailed in more depth the above-mentioned deficiencies. Despite those specific warnings, the defendants continued to approve loans without properly correcting the deficiencies.

22.

Cape Fear struggled under ineffective management from the day that it opened. In 1998, regulators told Bank organizers that then-32-year old Coburn lacked experience to run a Bank, yet he became CEO within a year and Chairman within 18 months. From 2001 to 2009, examiners regularly noted numerous underwriting and credit administration weaknesses in Reports of Examination (“RoEs”). The August 16, 2001, RoE assigned the Bank a composite CAMELS 3 rating and noted that “the two main causes of the Bank’s condition are poor planning in the pre-business and early stages of operations and inadequate management of the Bank’s growth.” The RoE criticized overhead expenses and warned that “lending deficiencies need to be corrected before leading to future asset quality problems,” and cautioned that “The Board of Directors...needs to take a more active role in supervising...asset liability management and growth strategies.”

23.

In 2002 regulators again assigned the Bank a composite CAMELS 3 rating and warned the defendants that: “Management has not fully identified, measured, monitored, or controlled the Bank’s credit risk with asset quality deteriorating.”

24.

In 2003 and 2005, the Bank raised capital that reduced the adverse impact of delinquent loans on its financial condition, and the Bank received a composite CAMELS 2 rating in both years. In 2003, regulators warned the defendants that “there are areas of credit underwriting...that need improvement,” that “delinquent loans had increased,” that the Bank was

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not consistently analyzing a borrower's repayment capacity on large loans, that the Bank failed to adequately monitor loans to new businesses, and used unsupported in-house appraisals on real estate and equipment loans. In 2005, regulators acknowledged that the Bank had adopted improved management policies, but remained critical of the Bank's failures to identify loans exceeding approved LTV ratio limits, to consider the borrower's overall creditworthiness in credit memos, and to make inspections before making construction loan disbursements.

25.

In 2006, regulators warned the Board that the Bank had grown rapidly in the last two years without the benefit of appropriate Board-established limits and monitoring of CRE lending and noncore funding sources. They warned that underwriting and credit administration standards were not uniformly applied throughout the loan portfolio. They assigned the Bank a composite CAMELS 2 rating and a component 3 management rating. Almost half of the Bank's loans required only interest payments which were being paid by loan interest reserves; thus, the Bank loans were keeping these loans current.

26.

The Bank was downgraded to composite CAMELS ratings of 3 in 2007 and to 5 in 2008. In both years, the Board and management were severely criticized for their performance and for failing to take corrective measures recommended in prior RoEs, and the examiners cited lack of prudent banking practices, policies, and insufficient Board supervision as having led to the Bank's deteriorating condition. Despite these criticisms, no meaningful corrective action was taken. In April 2009, Cape Fear experienced a Bank run. The Bank failed on April 10, 2009.

Approval of Loss Loans

27.

The 23 Loss Loans

The Loss Loans were approved by the Internal Loan Committee (“ILC”), the Directors Loan Committee (“DLC”) and Board of Directors from September 20, 2006 until July 25, 2008. Each loan and its associated losses are included in the table below and described in further detail in the paragraphs that follow. This table identifies each of the 23 loss loans and other information relevant to the loss loans along with the recommended defendants who voted to approve each loan.¹

Borrower	Loan Amount	Approval Date	Loss	Loan Approval Votes						
				MacLaren	Tyler	Flowers	Relan	Sellers	Winter	Coburn
1. AK.- 6445	\$325,000	12/12/07	\$265,000	x	x			x	x	
2. AK-6842	\$200,000	06/21/08	\$200,000	x				x		x
3. AK – 5384	\$1,400,000	11/08/06	\$1,181,330	x	x	x				x
4. AK- 5385	\$1,000,000	11/18/06	\$1,000,000	x	x	x		x	x	x
5. AK – overdraft	\$95,940	2/27/09	\$95,940	x	x	x	x	x	x	x
6. AK – 5386	\$750,000	11/08/06	\$265,000	x	x	x		x	x	x
7. JI – 5988	\$155,000	8/3/07	\$54,039	x	x				x	
8. JI – 6906	\$100,000	7/18/08	\$100,142	x						
9. PEJ- 6827	\$110,000	6/11/08	\$109,755	x	x			x	x	x
10. PEJ – 5725	\$73,375	2/15/07	\$73,375	x						
11. PEJ – 5589	\$20,000	2/15/07	\$16,939	x	x			x	x	x
12. PEJ- 5428	\$1,305,000	12/20/06	\$1,167,300	x	x	x		x	x	x
13. Ord-Smith – 5696	\$325,000	6/20/07	\$175,000		x	x			x	

¹ Individual borrowers/guarantors are identified in this Complaint by their first and last initial only in order to preserve their right to financial privacy afforded by applicable North Carolina and federal banking laws. The Defendants, however, will be provided with the complete names of individual borrowers/guarantors.

Borrower	Loan Amount	Approval Date	Loss	Loan Approval Votes						
				MacLaren	Tyler	Flowers	Relan	Sellers	Winter	Coburn
14. The Forum - 5871	\$3,200,000	6/20/07	\$1,777,232	x	x	x		x	x	x
15. Juniper C.-5922	\$169,000	7/1/07	\$89,978	x	x				x	x
16. Juniper C. – 5313	\$1,200,000	9/27/06	\$1,200,000	x	x	x		x	x	x
17. Juniper C. – 6813	\$585,000	6/18/08	\$518,244	x	x		x	x	x	x
18. Woodland – 5984	\$210,000	7/25/08	\$40,012	x	x			x	x	x
19. Woodland - 5985	\$210,000	7/25/08	\$92,299	x	x			x	x	x
20. Woodland - 5986	\$210,000	7/25/08	\$80,181	x	x			x	x	x
21. Woodland - 6663	\$218,480	4/2/08	\$60,492	x	x			x	x	x
22. Kirk Const.– 5441	\$1,180,000	11/8/06	\$391,641	x	x		x	x	x	x
23. T&C Dev. – 6786	\$2,700,000	5/21/08	\$1,610,585	x				x		x

28.

AK – 6445

A \$325,000.00 loan was recommended by Defendant MacLaren and was approved by Director Loan Committee Members/Defendants Sellers, Winter, Tyler and MacLaren on December 12, 2007. The stated purpose of this loan was for a Revolving Line of Credit to support inventory purchases for auto sales. The true purpose of the loan was to pay off a short term note (6313) at Cape Fear Bank in the amount of \$151,968.75 and deposit the remaining amount of \$163,420.39 into the DDA #23853 to cover an overdraft in the amount of \$154,252.00. These loan proceeds also paid the past due 2007 property taxes on four properties listed as collateral in the total amount of \$6,454.39. There was no repayment source as the borrower continued to be in an overdraft position and basically ran his business from the

overdraft protection line as the business cash flow was non-existent. Collateral was a second Deed of Trust on properties that were also cross collateralized on two additional loans to the borrower.

29.

Other deficiencies and violations identified on this loan include: failure to establish or follow adequate collection procedures, allowing continued extensions of credit based on inadequate or inaccurate information concerning the financial condition of prospective borrowers, and failure to supervise, manage conduct and direct the business and affairs of the bank to ensure compliance with the law, the by-laws of the bank, and safe, sound prudent principles of banking. To date, the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$265,000.00.

30.

AK – 6842

A \$200,000.00 loan was recommended by Defendant MacLaren, and was approved telephonically by Defendants, Coburn and Sellers on June 21, 2008. The Promissory Note was signed on June 30, 2008. The purpose of this loan was a revolving line of credit to support inventory increases. The funds were used for overdraft purposes and loan payments. There is no repayment source. The borrower was constantly in a position of overdraft and was running his business from an overdraft protection line. The automotive market had declined significantly during this time and cash flow was non-existent. Collateral was a third Deed of Trust on properties that were already cross collateralized to other loans. Appraised values were not

verifiable as there was a failure to obtain current appraisals on all real estate held as collateral to all the loans.

31.

Deficiencies and violations identified on this loan include: failure to establish or follow adequate collection procedures, continued extensions of credit based on inadequate or inaccurate information concerning the financial condition of prospective borrowers, failure to supervise, manage conduct and direct the business and affairs of the bank to ensure compliance with the law, the by-laws of the bank, and safe, sound prudent principles of banking. To date, the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$200,000.00.

32.

AK – 5384

A \$1,400,000.00 loan was recommended by Defendant Flowers and Defendant MacLaren, and was approved by the Internal Loan Committee/Defendants Coburn, Tyler & MacLaren on November 8, 2006. This loan was presented to the Directors Loan Committee for approval on November 8, 2006 and this loan request was “withdrawn to be represented at a later date due to questions that needed to be answered by the lender”. This loan was then presented by telephone poll approval by Defendant MacLaren to Defendants Coburn, Winter & Sellers on November 10, 2006 and at this time, the loan was approved.

33.

The purpose of this loan originated as a pay off on a loan to Coastal Federal in the amount of \$1,400,000.00. The primary source of repayment was to be from the cash flow of the business and secondary source of repayment was the borrowers' financial strength. Collateral was a first and second Deed of Trust on property located at 6121 Market Street, Wilmington, NC which was an improved commercial property with a 24,760 square foot metal building and a 10,000 square foot show room. The appraisal on the property appears to be three years old. This appraisal did not take into account the significant downturn in the auto industry in the Wilmington, NC area. The borrowers were essentially insolvent and unable to pay their debts as evidenced by their continuous high dollar overdraft condition.

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The bank was in contravention of its own loan policy as the appraisals used were older than twelve months old when the loans were renewed and there had been significant change in the market conditions. It was the policy of the Bank to identify the primary source of repayment along with a secondary source of repayment sufficient to repay the loan with adequate cushion based on the risks, regardless of the loan size.

35.

Deficiencies and violations identified on this loan include: failure to heed the warnings of regulators, substantial and continuing overdrafts, allowing continued extensions of credit in violation of the institution's own written loan policies, failure to establish adequate debtor repayment programs, failure to establish or follow adequate real estate appraisal procedures,

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failure to establish or follow adequate collection procedures, allowing extensions of credit based on inadequate or inaccurate information concerning the financial condition of prospective borrowers, failure to supervise, manage conduct and direct the business and affairs of the bank to ensure compliance with the law, the by-laws of the bank, and safe, sound prudent principles of banking. To date, the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$1,181,330.00.

36

AK – 5385

A \$1,000,000.00 loan was recommended by Defendant Flowers and Defendant MacLaren, and was approved by the Internal Loan Committee/Defendants Coburn, Tyler and MacLaren on November 8, 2006. This loan was presented to the Directors Loan Committee for approval on November 8, 2006 and this loan request was “withdrawn to be represented at a later date due to questions that needed to be answered by the lender”. This loan was then presented by telephone poll approval by Defendant MacLaren to Defendants Coburn, Winter & Sellers on November 10, 2006 and at this time, the loan was approved.

The note was renewed on January 23, 2008, at the Internal Loan Committee with Coburn and MacLaren being present and at the Directors’ Loan Committee with Coburn, Winter, Sellers & MacLaren being present with “interest” only payments. The note was renewed a second time on May 29, 2008, with “interest” only payments. It was renewed a third time on January 7, 2009 with “interest” only payments. The purpose of this loan originated as a revolving line of credit to purchase vehicle inventory, pay off the existing floor plan and pay off credit card debt. The

primary source of repayment was to be from the cash flow of the business and secondary source of repayment was the borrowers' financial strength. Collateral was a first and second Deed of Trust on property located at 6121 Market Street, Wilmington, NC which was a commercial property improved with a 24,760 square foot metal building with a 10,000 square foot show room.

37.

The bank was in contravention of Appraisal Policy and Real Estate Loan Underwriting Policy as the appraisals used were older than twelve months old when the loans were renewed and there had been significant change in the market conditions. It was the policy of the Bank to identify the primary source of repayment along with a secondary source of repayment sufficient to repay the loan with adequate cushion based on the risks, regardless of the loan size. The Bank failed to follow this policy.

38.

Deficiencies and violations identified on this loan include: failure to heed the warnings of substantial and continuing overdrafts, allowing continued extensions of credit in violations of the institution's own written loan policies, failure to establish adequate debtor repayment programs, failure to establish or follow adequate real estate appraisal procedures, failure to establish or follow adequate collection procedures, extensions of credit based on inadequate or inaccurate information concerning the financial condition of prospective borrowers, failure to supervise, manage conduct and direct the business and affairs of the bank to ensure compliance with the law, the by-laws of the bank, and safe, sound prudent principles of banking. To date,

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the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$1,000,000.00.

39.

AK – 5386

A \$750,000.00 loan was recommended by Defendant Flowers and MacLaren on November 8, 2006 at the Directors Loan Committee Meeting and this loan was approved by Defendants Coburn, Sellers, Winter, MacLaren and Tyler. The original purpose of the loan was to consolidate three Cape Fear Bank notes which were secured by investment properties. The primary source of repayment was investments properties. The secondary source of repayment was the liquidation of the collateral. Payments were interest only with principal and any unpaid accrued interest due at maturity.

40.

This loan was renewed on January 23, 2008 by the Internal Loan Committee and Directors' Loan Committee. Present at the approval meetings were: Defendants, Coburn, MacLaren, Winter & Sellers and again on May 29, 2008, with no principal reduction. According to the loan history, the borrower was habitually late or did not pay his monthly interest payments as contracted. There was a failure to obtain current appraisals on all real estate held as collateral to the loans, failure to obtain current title update on the properties, failure to obtain current financial statements, failure to obtain asset searches and CBI reports, failure to obtain valid sources of primary repayment, failure to obtain a floor plan on the vehicles on a monthly basis

with documentation on vehicles that were sold, and a failure to eliminate the borrowers' dependency on the overdraft protection line to operate his businesses.

41.

Collateral to this loan were two rental properties; one property was the residence of the borrower and the other was commercial real estate property. This real estate was crossed collateralized on two other loans for Cape Fear, loan 6445 in the amount of \$325,000.00 and loan 6842 in the amount of \$200,000. The file has no real documentation or verification of the true value of the property accepted as collateral. This borrower continued to be an overdraft problem since 2001 with the true purpose of these loans to consolidate mature notes, cover overdrafts, and pay off overdrafts and loan payments to keep his business from failing.

42.

Other deficiencies and violations identified in this loan were: failure to establish or follow adequate collection procedures, continuing to allow extensions of credit based on inadequate or inaccurate information concerning the financial condition of prospective borrower, failure to supervise, manage conduct and direct the business and affairs of the bank to ensure compliance with the law, the by-laws of the bank, and safe, sound prudent principles of banking. To date, the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$265,000.00.

AK – DDA Account

Cape Fear Bank allowed the borrower to overdraft his DDA account in the amount of \$95,940.50. This overdraft of the DDA account was overseen by Defendants MacLaren and Flowers. This overdraft protection line should have been shut down by Defendants MacLaren and Flowers and also by the entire Board of Directors. Defendant Coburn had a policy of requiring his approval if an account reached \$50M in overdrafts. It was the lender's responsibility for signing documentation on the decision to pay or decline the payment of the overdrafts. There was no indication that this policy was followed. FDIC rules and regulations Part 229 indicate that the bank should place a six (6) business day hold on checks deposited with only \$500.00 available. According to the information in the file, there was a hold put on the deposit, but the lender continued to keep paying checks on the over drawn account. The borrower continually had an overdraft problem with the Bank as far back as 2000. Bank policy also states that if a customer overdraws his or her account on more than six occasions, it is the loan officer's responsibility to take the necessary steps to give appropriate guidance when a customer uses the program excessively. Defendants Flowers, MacLaren and the Board of Directors continued to approve the overdrafts on this account,

44.

All of the Defendants should have required current appraisals on all the borrower's property, current financial statements, valid sources of repayment, documentation of the borrower's floor plan and elimination of the borrower's dependence on an overdraft protection

line to operate his business. All of the Defendants should have known about this constant overdraft position of the borrower.

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Other deficiencies and violations identified on this loan include: failure to heed the warnings of substantial and continuing overdrafts, failure to supervise, manage conduct and direct the business and affairs of the bank to ensure compliance with the law, the by-laws of the bank, and safe, sound prudent principles of banking. To date, the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$95,940.00.

46.

PEJ, INC. – 5725

A loan in the amount of \$73,375.00 was approved by Defendant MacLaren on February 15, 2007. This loan was listed as a “short term” loan to get a 16 acre tract on River Road ready for permitting. The primary source of repayment was to be from the sale of a potential spec home that was to be built on the property. Collateral was a second Deed of Trust on 10.94 acre residential tract of vacant land located at 231 Bagley Avenue, Wilmington New Hanover County, NC.

47.

This property was transferred from JI to PEJ, Inc. in April 2006. The borrower purchased the property for a future small subdivision but could not convince the city to rezone the property for multi-family. The first lien was originated on 10/27/2004 in the amount of \$337,875.00. The

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second lien originated on 4/12/2007 in the amount of \$73,375.00. This loan went into default and the property was foreclosed on July 20, 2009. In spite of an obvious downward pressure on undeveloped land and worsening economy, the loan was funded. The primary source of repayment was to be from the sale of a potential spec home. However, the borrower was never able to get the proper permits from the City. The value of the property does not support the balance owed and is considered a total loss.

48.

Deficiencies and violations identified on this loan include: failure to adhere to applicable laws and regulations, failure to heed the warnings of bank supervisory authorities, continued extensions of credit in violations of the institution's own written loan policies, continued extensions of credit based on inadequate or inaccurate information concerning the financial condition of prospective borrowers, permitting unsafe and unsound concentrations of credit, failure to supervise, manage, conduct and direct the business and affairs of the bank to insure compliance with the law, the by-laws of the bank, and to insure safe, sound and prudent principles of banking. To date, the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$73,375.00.

49.

PEJ, INC. – 6827

A loan in the amount of \$110,000.00 was approved by the Internal Loan Committee on June 11, 2008, with Defendants, Coburn, Tyler and MacLaren being present. This Loan was also approved by the Directors Loan Committee on June 11, 2008 with Defendants Sellers,

Winter, MacLaren and Tyler being present. The purpose of the loan was a line of credit to pay six months of interest payments on beach property and to allow the borrower marketing time for sale of property to potential buyers. The primary resource of repayment was the sale of beach property. There was no secondary source of repayment available; and there is no information in the files that indicate the borrower had sufficient liquidity to repay this loan. The borrowers were obviously experiencing financial distress when the loan was funded. Collateral was a second Deed of Trust on a piece of property that had been on the market for sale since 2005, that property being 200 S. 3rd Street, Carolina Beach. The property was foreclosed on July 20, 2009, and the unit was sold at auction on March 12, 2010 in the amount of \$401,500.00.

50.

Deficiencies and violations identified on this loan include: failure to adhere to applicable laws and regulations, failure to heed the warnings of bank supervisory authorities, extensions of credit in violations of the institution's own written loan policies, allowing extensions of credit based on inadequate or inaccurate information concerning the financial condition of prospective borrowers, permitting unsafe and unsound concentrations of credit, failure to supervise, manage conduct and direct the business and affairs of the bank to ensure compliance with the law, the by-laws of the bank, and safe, sound prudent principles of banking. To date, the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$109,755.00.

PEJ, INC.-5589

A loan in the amount of \$20,000.00 was approved February 15, 2007, by Defendant MacLaren. The purpose of the loan was to provide temporary operating money until the land sale closed on property known as "Leland-Avondale Property". The First Renewal was dated September 20, 2007. The Second Renewal was dated February 20, 2008 and approved by the Directors Loan Committee. Present at the meeting were Defendants Coburn, Winter, Sellers, MacLaren and Tyler. The primary source of repayment was the sale of the land. There is no secondary source of repayment with Cape Fear Bank being in a second lien position. The borrower did not pay off the loan with the sale proceeds of the Leland Avenue property. Collateral was a second lien position on property located at 113 Greenville Avenue in Wilmington. This property was a single family residence which was the office for PEJ, LLC. The amount owed on the first mortgage was \$126,000.00. The property was appraised at \$172,700.

This loan was in contravention of the bank's loan policy for short term loans. On the sale of property or the closing, an outside permanent mortgage should have been identified and a qualified lump sum source of repayment provided at maturity. The loan policy also requires a Primary Source of Repayment and Secondary source of repayment to repay the loan with adequate cushion based on the risks regardless of loan size.

53.

The loan proceeds were used for operations purposes to keep PEJ, LLC afloat. The borrowers did not have adequate funds to service the debt and did not pay the loan back after the sale of the property.

54.

Additional deficiencies and violations identified on this loan include: failure to heed the warnings of bank supervisory authorities, continued extensions of credit in violations of the institution's own written loan policies, failure to establish adequate debtor repayment programs, failure to establish or follow adequate collection procedures, continued extensions of credit based on inadequate or inaccurate information concerning the financial condition of prospective borrowers, permitting unsafe and unsound concentrations of credit, and failure to supervise, manage, conduct and direct the business and affairs of the bank to insure compliance with the law, the by-laws of the bank with a safe, sound and prudent principles of banking. To date, the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$16,938.68.

55

PEJ, INC.-5428

A loan in the amount of \$1,305,000.00 was approved by Defendants Coburn, Flowers, Tyler and MacLaren at the Internal Loan Committee meeting on December 20, 2006. The purpose of the loan was to consolidate loans 4482 and 4436. The loan was renewed on July 25, 2007 by the Director Loan Committee which was comprised of Defendants Winter, Sellers,

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Coburn, MacLaren and Tyler and the Internal Loan Committee comprised of Defendants Coburn, MacLaren and Tyler. The loan was renewed again on February 20, 2008, by Defendants Coburn, Winter, Sellers, Tyler and MacLaren at the Director's Loan Committee meeting. The primary source of repayment was the sale of real estate. The Borrower's income was not sufficient to service the debt. Collateral was the first Deed of Trust on 13.5 and 2.5 acres on River Road, Highway 421 in Wilmington.

56.

The Bank failed to require a new appraisal or evaluation in violation of its own loan policies. The Bank's policy required a new appraisal or evaluation on any renewal, refinancing and modification of an existing transaction when a material change in market conditions occurred. In spite of the drastic change in the real estate market, the note continued to be renewed without any appraisal or principal reduction. There was no secondary source of recovery as required by the loan policy. The LTV was 81% and it should have been at 65%.

57.

Additional deficiencies and violations identified on this loan include: failure to heed to applicable laws and regulations, failure to heed the warnings of bank supervisory authorities, continued extensions of credit in violations of the institution's own written loan policies, failure to establish adequate debtor repayment programs, and failure to establish or follow adequate collection procedures. To date, the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$1,167,300.00.

58.

JI – 6906

A loan in the amount of \$100,000.00 was approved by Defendant MacLaren on July 18, 2008. The purpose of this loan was to increase the borrower's line of credit for operating expenses and to pay off an equity line. The repayment source listed was the conversion of work invoices to cash and sale of property. This borrower did not have sufficient income to service the debt. The collateral was a second Deed of Trust on the borrower's residence. The first lien holder had a balance of \$426,970.00. At the time of the approval of this loan in July, 2008, the borrower was in obvious financial difficulties as a result of the economic conditions in the real estate market.

59.

Deficiencies and violations identified on this loan include: failure to heed the warnings of bank supervisory authorities, continued extensions of credit in violations of the institution's own written loan policies, failure to establish adequate debtor repayment programs, failure to establish or follow adequate collection procedures, permitting unsafe and unsound concentrations of credit, failure to supervise, manage conduct and direct the business and affairs of the bank to ensure compliance with the law, the by-laws of the bank, and safe, sound prudent principles of banking. To date, the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$100,142.00.

60.

JI – 5988

A loan in the amount of \$125,000.00 was approved by Defendant MacLaren. The purpose of the loan was to be used for operating expenses for his business. A renewal in the amount of \$155,000.00 was approved by Defendants Winter, Tyler and MacLaren on September 24, 2008 at the Directors Loan Committee. This loan was downgraded by the Directors Loan Committee at the same time of its renewal. This renewal was approved by Defendants Winter, Tyler, and MacLaren.

The primary repayment was to be from the cash flow of the borrower and the rental properties. Collateral was a second Deed of Trust on three single family residences. A fourth rental property was sold and released.

61.

The loan officer was in contravention of loan policies regarding a primary source of repayment. The loan policy states that the primary source of repayment is generally cash flow from the borrowers/guarantors. The borrower was using loan proceeds to operate the business, there was no cash flow available to service the debt.

62.

Additional deficiencies and violations identified on this loan include: failure to heed the warnings of bank supervisory authorities, continued extensions of credit in violations of the institution's own written loan policies, failure to establish adequate debtor repayment programs, failure to establish or follow adequate collection procedures, continued extensions of credit

based on inadequate or inaccurate information concerning the financial condition of prospective borrowers, permitting unsafe and unsound concentrations of credit, and failure to supervise, manage conduct and direct the business and affairs of the bank to ensure compliance with the law, the by-laws of the bank, and safe, sound prudent principles of banking. To date, the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$54,039.00.

63.

Orebaugh-Smith Holding Company – 5696

A loan in the amount of \$325,000.00 was recommended by Defendant Tyler, and approved by the Directors Loan Committee on June 20, 2007 which consisted of Defendants Winter, Tyler and Flowers. The purpose of the loan was to provide a temporary bank site for a mobile office until Cape Fear Bank could occupy the office building at The Forum at Sunset Beach. The primary source of repayment was the monthly lease payments received in the amount of \$3,500.00 from Cape Fear Bank for the temporary site for the mobile home office. The collateral was the first Deed of Trust on .46+ acres which was a temporary site for Cape Fear Bank mobile office until the commercial building was completed for occupancy. The loan was part of Coburn's plan to build another branch in the area despite warnings from regulators. The project encountered cost overruns and the borrowers were unable to service the debt.

64.

Deficiencies and violations identified on this loan include: failure to heed the warnings of bank supervisory authorities, and failure to supervise, manage conduct and direct the business

and affairs of the bank to ensure compliance with the law, the by-laws of the bank, and safe, sound prudent principles of banking. To date, the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are \$175,000.00.

65.

The Forum at Sunset Beach - 5871

A loan in the amount of \$3,200,000.00 was recommended by Defendant Mark Tyler and approved at the Directors Loan Committee Meeting by Defendants, Winter, Tyler and Flowers on June 20, 2007. The loan was then modified at the Directors Loan Committee meeting on July 25, 2007 with Defendants Coburn, Sellers, Winter, Tyler and MacLaren being present. The purpose of the loan was to purchase 1.37+ acres and construct a 20,340 square foot professional office building. Cape Fear was to lease 3,800 square feet for their Sunset Beach Office. The primary source of repayment for the office complex was from the leases on the building monthly lease payments received from the bank of \$3,500.00. The collateral was a first Deed of Trust on a proposed seven unit 18,683 rentable square feet professional office property on 1.37+acres of land. The building was expected to be completed by February, 2008. However, the building is approximately 70% incomplete. The bank capitalized interest and had inadequate controls over loan distribution such as \$360,000.00 in management fees, \$150,000.00 to settle a dispute with the architect and \$81,000.00 to cover three principal reductions.

66.

According to the bank loan policy, commercial loan construction shall be subject to a loan to value of 85% of appraised value. The Loan to Value was 83% and was within the policy

using the completed project value. However, the land had no improvements and was valued as is at \$895,000.00. The LTV using the amount of \$3,200,000/\$895,000 gave an actual LTV of 357%.

67.

In the 2008 Report of Examination, the bank was cited for poor credit administration and underwriting weaknesses. The loan was adversely classified and listed as an example of credit weaknesses with an exposure of \$2.9MM.

68.

In mid- summer, 2008, the borrowers determined that additional land was needed for parking. The bank agreed to advance \$30,000.00 from the construction funds for the property as well as modify the loan to give additional interest only payments for four months, as the property had delays in construction. The Bank failed to deal with construction issues on the front end, and continued their efforts to expand their branching activities despite warnings from regulators.

69.

Deficiencies and violations identified on this loan include: failure to heed the warnings of bank supervisory authorities, and failure to supervise, manage conduct and direct the business and affairs of the bank to ensure compliance with the law, the by-laws of the bank, and safe, sound prudent principles of banking. To date, the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$1,777,000.00.

70.

Juniper Creek, LLC– 5922

A loan in the amount of \$169,000.00 was approved by Defendants MacLaren, Tyler, Winter and Coburn on July 1, 2007. The purpose of the loan was to provide funding to off-set construction monies used for bonding letters of credit for roads and utilities. Primary source of repayment was the sale of lots to prospective buyers. Collateral was a first Deed of Trust on 17 residential lots and one unbuildable lot located in the Grist Creek Subdivision in Leland NC. Despite a well known declining real estate market, this loan was originated with an in-house appraisal. It is unknown if the property was inspected, but the Bank based its value on lots from another subdivision where only four lots were used to determine value. When the loan was renewed in 2008, the same stale appraisal information was utilized. The same four lots had been the only sales in that subdivision since 2006. The Bank did not treat this renewal as a new credit, interest was not brought current, nor was there any explanation as to why this loan should be renewed.

71.

Additional deficiencies and violations identified on this loan include: failure to heed the warnings of bank supervisory authorities, continued extensions of credit in violations of the institution's own written loan policies, failure to establish adequate debtor repayment programs, failure to establish or follow adequate collection procedures, continued extensions of credit based on inadequate or inaccurate information concerning the financial condition of prospective borrowers, permitting unsafe and unsound concentrations of credit, and failure to supervise,

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manage conduct and direct the business and affairs of the bank to ensure compliance with the law, the by-laws of the bank, and safe, sound prudent principles of banking. To date, the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$89,977.91.

72.

Juniper Creek, LLC– 5313

A loan in the amount of \$1,200,000.00 was approved by the Internal Loan Committee which consisted of Defendants, Coburn, Flowers, Tyler and Directors Loan Committee which consisted of Coburn, Winter, Sellers, Flowers and Tyler on September 27, 2006. The loan was renewed on August 8, 2007, at the Internal Loan Committee meeting with Defendants, Coburn, MacLaren, & Tyler being present and it was also approved by the Directors Loan Committee on the same date, with Defendants Winter, Coburn, Sellers, Tyler, and MacLaren being present at that meeting. The loan was renewed a second time on October 1, 2008 by the Internal Loan Committee with Defendant MacLaren being present and the Directors Loan Committee on the same date with Defendant Tyler being present. The purpose of the loan was to fund new money for cost overruns of the project; to cover price increases on materials; a continuance of Phase II, partial clearing for Phase III and a Letter of Credit to State DMV for a turning lane into the subdivision. The primary source of repayment was the potential sale of the lots in the subdivision, and the completed homes to be build by Woodland Builders. The secondary source of repayment was sale of land/lots in Phase II and Phase III. Collateral was a second Deed of Trust on a development known as Juniper Creek. The total area of the site to be developed was

about 140.51 acres of which 79.44 acres was classified as wetlands, and only 61.07 acres were usable.

73.

An appraisal was done on the property on 9/26/2006 and the estimated value of the property located at Old Fayetteville Road, Leland, NC was \$6,360,000.00 (\$4,500,000.00 discounted cash flow for 100 lots; \$1,620,000.00 for a 20 acre out parcel for multi-family, and \$240,000.00 for the 2 acre commercial tract). A second appraisal was done on September 30, 2008 and gave a Market Completion Value, including the completion of Phase II as \$4,335,000.00. On April 14, 2010 another appraisal was done and it was valued at \$1,400,000.00.

74.

The subdivision was never completed within the Bank policy of two years. There were numerous delays, including a lawsuit being filed for failure to pay invoices for work completed and improper licensing. This project began in 2005, before the loan had been approved for funding by Cape Fear Bank.

75.

The borrowers were served with several Notices of Violations from the North Carolina Department of Environment and Natural Resources and had multiple violations issued by the Army of Corp of Engineers for wetland violations. In addition, the borrowers did not meet project requirements such as NCDOT requirements to widen the public roadway and install turn lanes at the entrance of the subdivision. The inspections of the property also concluded that the

storm water system was not effectively transporting water away from the streets; the storm water was flowing towards the subdivision causing flooding of the streets and lots. It was the opinion of the DDC Engineers, Inc. that the project, as presently designed and constructed could not be marketed for sale and the site would have to be reverted to jurisdictional wetlands in a relatively short period of time. Regardless of what was done with the land, there would be significant costs associated with planning, design, regulatory permitting and construction. Cost estimates would be 2.5 MM+ and could take up to twenty four (24) months to complete and may or may not be accepted by authorities.

76.

The Bank violated its own loan policy that required construction completion within two years. The policy also required that borrowers have experience in developing subdivision and that licenses and permit were in place. This was not done. The Bank had an over reliance on collateral as the primary repayment source and there was insufficient borrower equity in the project. Of the four partners in the project, only one showed any significant net worth and the overall borrower strength was nominal. All this contributed to a lawsuit and licensing problems which the bank should have anticipated.

77.

There were unsupported real estate appraisals and a lack of analysis on the wetlands in this development. The borrowers had dug up areas that were protected by the North Carolina Department of Environment and Natural Resources.

78.

Additional deficiencies and violations identified on this loan include: failure to heed the warnings of bank supervisory authorities, failure to exercise adequate supervision over the institution's officers and employees, permitting unsafe and unsound concentrations of credit. To date, the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$1,200,000,00.

79.

Juniper Creek, LLC– 6813

A loan in the amount of \$350,000.00 was discussed by the Internal Loan Committee on June 11, 2008 by Defendants, Coburn, MacLaren and Tyler and at the Directors Loan Committee on June 11, 2008 with Coburn, Sellers, Winter and being present. Both Committees recommended approval of the loan request and sent it to the Board of Directors due to the working relationship that several directors had with one of the guarantors with the understanding that the loan would be increased to \$585,000.00 to cover the additional costs of a pool and clubhouse.

80.

On June 18, 2008, the loan in the amount of \$585,000.00 was presented to the Board of Directors by Defendant Tyler. Present at that meeting were Coburn, Tyler, MacLaren, Relan, and Winter. This increase was listed as monies for a pool and clubhouse. The primary purpose of the loan was to provide \$297.5M for development costs for the first twenty four (24) lots of Phase II. The primary source of repayment was the potential sale of the lots or homes that had

been completed. The secondary source of repayment was the cash flow from the borrowers or guarantors and/or sale of this residential development to another builder. Collateral was a third Deed of Trust on a development known as Juniper Creek. The total area of the site to be developed was about 140.51 acres of which 79.44 acres was classified as wetlands, and only 61.07 acres were usable. According to an engineering report dated March 2, 2010, only Phase I was complete, Phase II was partially complete and no site work had been done on Phase III or Phase IV.

81.

An appraisal done on September 26, 2006, showed an estimated value of the property to be approximately \$6,360,000.00 (\$4,500,000.00 discounted cash flow for 100 lots; \$1,620,000.00 for 20 acre out parcel for multi-family and \$240,000.00 for the 2 acre commercial tract). A second appraisal was done on September 30, 2008 and gave a Market Completion Value, including the completion of Phase II as \$4,335,000.00. A third appraisal was done on April 14, 2010 which showed the value at \$1,400,000.00.

82.

The subdivision was never completed within the time frame noted in the loan policy of two years. There were numerous delays, including a lawsuit being filed for failure to pay invoices for work completed and improper licensing.

83

The borrowers were served with several Notices of Violations from the North Carolina Department of Environment and Natural Resources and had multiple violations issued by the

Army of Corp of Engineers for wetland violations. In addition, the borrowers did not meet project requirements such as NCDOT requirements to widen the public roadway and install turn lanes at the entrance of the subdivision. The inspections of the property also concluded that the storm water system was not effectively transporting water away from the streets, and the storm water was flowing towards the subdivision causing flooding of the streets and lots. It was the opinion of the DDC Engineers, Inc. that the project, as presently designed and constructed could not be marketed for sale and the site would have to be reverted to jurisdictional wetlands in a relatively short period of time. Regardless of what was done with the land, there would be significant costs associated with planning, design, regulatory permitting and construction. Cost estimates would be 2.5 MM+ and could take up to twenty four (24) months to complete and may or may not be accepted by authorities.

84.

The Bank violated its own loan policy that required construction completion within two years. The policy also required that borrowers have experience in developing subdivision and that licenses and permit were in place. This was not done. The borrower and lender had an over reliance on collateral as the primary repayment source and there was insufficient borrower equity in the project. Of the four partners in the project, only one showed any significant net worth and the overall borrower strength was nominal. All this contributed to a lawsuit and licensing problems which the bank should have anticipated.

85.

There were unsupported real estate appraisals and a lack of analysis of the wetlands in this development. The borrowers had dug up areas that were protected by the North Carolina Department of Environment and Natural Resources.

86.

Additional deficiencies and violations identified on this loan include: failure to heed the warnings of bank supervisory authorities, failure to exercise adequate supervision over the institution's officers and employees, permitting unsafe and unsound concentrations of credit. To date, the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$518, 244.69.

87.

Woodland Building, LLC – 5984

A loan in the amount of \$210,000.00 (loan was for \$630,000.00, but divided into three separate loans) was approved by the Internal Loan Committee which consisted of Defendants, Coburn, MacLaren and Tyler on July 25, 2007, and Directors Loan Committee which consisted of Defendants, Coburn, Winter, MacLaren, Tyler, & Sellers on July 25, 2007. The purpose of the loan was to fund a spec home located in a small subdivision in Leland NC. The primary source of repayment was the sale of the home after completion. The secondary source of repayment was to be cash flow from the borrowers or guarantors. Collateral was a two story home with 3 bedrooms and 2.5 baths. Appraisal value of the property was \$160,000.00.

88.

The regulators had specifically criticized the Bank for making this type of loan; however, warnings fell upon deaf ears. The Bank failed to require the borrower to provide proper documentation of experience, licensing, plats of the subdivision, number of lots held in inventory, permanent financing criteria or qualified pre-sale requirements as stated in their loan policies. In 2007, the residential real estate market was crashing and the absorption rates on homes and lots were non-existent. The Bank should have never made this loan to this borrower, even if the deficiencies discussed above were addressed. The borrowers/guarantors' cash flow was primarily invested in real estate, therefore providing no source of recovery.

89.

Additional deficiencies and violations identified on this loan include: failure to heed the warnings of bank supervisory authorities, failure to exercise adequate supervision over the institution's officers and employees, permitting unsafe and unsound concentrations of credit and failure to supervise, manage conduct and direct the business and affairs of the bank to ensure compliance with the law, the by-laws of the bank, and safe, sound prudent principles of banking. To date, the loss suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$40,012.01.

90.

Woodland Building, LLC – 5985

A loan in the amount of \$210,000.00 (loan was for \$630,000.00, but divided into three separate loans) was approved by the Internal Loan Committee which consisted of Defendants,

Coburn, MacLaren and Tyler on July 25, 2007, and Directors Loan Committee which consisted of Defendants, Coburn, Winter, MacLaren, Tyler, & Sellers on July 25, 2007. The purpose of the loan was to fund a spec home located in a small subdivision in Leland NC. The primary source of repayment was the sale of the home after completion. The secondary source of repayment was to be cash flow from the borrowers or guarantors. Collateral was a two story home with 3 bedrooms and 2.5 baths. Appraisal value of the property was \$160,000.00.

91.

The regulators had specifically criticized the Bank for making this type of loan; however, warnings fell upon deaf ears. The Bank failed to require the borrower to provide proper documentation of experience, licensing, plats of the subdivision, number of lots held in inventory, permanent financing criteria or qualified pre-sale requirements as stated in their loan policies. In 2007, the residential real estate market was crashing and the absorption rates on homes and lots were non-existent. The Bank should have never made this loan to this borrower, even if the deficiencies discussed above were addressed. The borrowers/guarantors' cash flow was primarily invested in real estate, therefore providing no source of recovery.

92.

Additional deficiencies and violations identified on this loan include: failure to heed the warnings of bank supervisory authorities, failure to exercise adequate supervision over the institution's officers and employees, permitting unsafe and unsound concentrations of credit, failure to supervise, manage, conduct, and direct the business and affairs of the bank to insure compliance with the law, the by-laws of the Bank, and safe, sound, prudent principles of

banking. To date, the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$92,298.16.

93.

Woodland Building, LLC – 5986

A loan in the amount of \$210,000.00 (loan was for \$630,000.00, but divided into three separate loans) was approved by the Internal Loan Committee which consisted of Defendants, Coburn, MacLaren and Tyler on July 25, 2007, and Directors Loan Committee which consisted of Defendants, Coburn, Winter, MacLaren, Tyler, & Sellers on July 25, 2007. The purpose of the loan was to fund a spec home located in a small subdivision in Leland NC. The primary source of repayment was the sale of the home after completion. The secondary source of repayment was to be cash flow from the borrowers or guarantors. Collateral was a two story home with 3 bedrooms and 2.5 baths. Appraisal value of the property was \$160,000.00.

94.

The regulators had specifically criticized the Bank for making this type of loan; however, warnings fell upon deaf ears. The Bank failed to require the borrower to provide proper documentation of experience, licensing, plats of the subdivision, number of lots held in inventory, permanent financing criteria or qualified pre-sale requirements as stated in their loan policies. In 2007, the residential real estate market was crashing and the absorption rates on homes and lots were non-existent. The Bank should have never made this loan to this borrower, even if the deficiencies discussed above were addressed. The borrowers/guarantors' cash flow was primarily invested in real estate, therefore providing no source of recovery.

95.

Additional deficiencies and violations identified on this loan include: failure to heed the warnings of bank supervisory authorities, failure to exercise adequate supervision over the institution's officers and employees, permitting unsafe and unsound concentrations of credit, and failure to supervise, manage conduct and direct the business and affairs of the bank to ensure compliance with the law, the by-laws of the bank, and safe, sound prudent principles of banking. To date, the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$80,180.60.

96.

Woodland Building, LLC – 6663

A loan in the amount of \$218,480.00 was approved by the Directors Loan Committee on April 2, 2008. In attendance at this meeting were Defendants Coburn, Winter, Sellers, Tyler and MacLaren on April 2, 2008. A renewal request was approved by telephone poll by Defendant Winter on November 26, 2008. The purpose of the loan was to fund a spec home located in a small subdivision in Leland NC. The primary source of repayment was the sale of the home after completion. The secondary source of repayment was to be cash flow from the borrowers or guarantors. Collateral was a two story home with 3 bedrooms and 2.5 baths. The appraised value of the property was \$160,000.00.

97

The regulators had specifically criticized the Bank for making this type of loan; however, warnings fell upon deaf ears. The Bank failed to require the borrower to provide proper

documentation of experience, licensing, plats of the subdivision, number of lots held in inventory, permanent financing criteria or qualified pre-sale requirements as stated in their loan policies. In 2007, the residential real estate market was crashing and the absorption rates on homes and lots were non-existent. The Bank should have never made this loan to this borrower, even if the deficiencies discussed above were addressed. The borrowers/guarantors' cash flow was primarily invested in real estate, therefore providing no source of recovery.

98.

Additional deficiencies and violations identified on this loan include: failure to heed the warnings of bank supervisory authorities, failure to exercise adequate supervision over the institution's officers and employees, permitting unsafe and unsound concentrations of credit, and failure to supervise, manage conduct and direct the business and affairs of the bank to ensure compliance with the law, the by-laws of the bank, and safe, sound prudent principles of banking. To date, the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$60,492.00.

99.

Kirk Construction/Pigford Properties – 5441

A loan in the amount of \$1,180,000.00 was recommended by Defendant Tyler. The loan was approved by the Internal Loan Committee which consisted of Defendants Coburn, Tyler, and MacLaren, on November 8, 2006, and Directors Loan Committee by telephone, which consisted of Defendants, Coburn, Sellers, Relan and Winter on November 20, 2006. This loan was renewed on December 20, 2007, at the board of Directors meeting. In attendance at the

meeting were Defendants, Coburn, Relan, Winter, Sellers and Tyler. The purpose of the loan was to fund a spec home located in Landfall Subdivision in Wilmington, NC. The primary source of repayment was the sale of the home after completion. The secondary source of repayment was amortization of the loan. Collateral was a first Deed of Trust on 917 Sunrunner Place, Landfall Subdivision in Wilmington. Appraisal value of the property was \$1,685,000.00.

100

The regulators had specifically criticized the Bank for making this type of loan; however, warnings fell upon deaf ears. The Bank failed to require the borrower to provide proper documentation of experience, licensing, plats of the subdivision, number of lots held in inventory, permanent financing criteria or qualified pre-sale requirements as stated in their loan policies. In 2007, the residential real estate market was crashing and the absorption rates on homes and lots were non-existent. The Bank should have never made this loan to this borrower, even if the deficiencies discussed above were addressed. The borrowers/guarantors' cash flow was primarily invested in real estate, therefore providing no source of recovery.

101.

Additional deficiencies and violations identified on this loan include: failure to adhere to applicable laws and regulations, failure to heed the warnings of bank supervisory authorities, failure to exercise adequate supervision over the institution's officers and employees, permitting unsafe and unsound concentrations of credit, and failure to supervise, manage conduct and direct the business and affairs of the bank to ensure compliance with the law, the by-laws of the bank,

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and safe, sound prudent principles of banking. To date, the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$391,641.04.

102.

Town & Country Development – 6786

A loan in the amount of \$2,700,000.00 was approved by the Internal Loan Committee on May 21, 2008 by Defendants, Coburn and MacLaren. This loan was also approved by the Director's Loan Committee on the same date. Present at that meeting were: Defendants Coburn, Sellers, Winter (by phone), and MacLaren. The purpose of the loan was to secure Cape Fear Bank's collateral position by paying off Cape Fear Bank's note #5079 in the amount of \$2,575,311.71, paying a property tax lien in the amount of \$25,000.00 and providing \$100M for interest payments until the offer to purchase on Tryon Village was closed. The primary source of repayment was the sale of the property and there was no secondary source of repayment listed. Collateral was first Deed of Trust on 52.7 acres located on Owendon or Sea Grove Village Project, 798 Kerry Gail Lane, Shallotte NC and a second Deed of Trust on 14 acres at Tryon Village Project in Cary, NC. Appraisal value of Kerry Lane/Sea Grove Village was \$2,300,000.00 and appraisal on Tryon Lane property was \$2,070,000.00. Despite being in the middle of an abysmal real estate market and persistent warnings by the regulators, the Bank approved this line of credit in the original amount of \$2,700,000.00, with the primary source of repayment being the sale of the property and no secondary source of recovery listed. Contrary to the bank loan policy, the loan was based in part on a 2005 appraisal on the second lien position on the fourteen acres and the loan was funded before a new appraisal was received on the 52.7

acres. The LTV based on the August, 2008 appraisal was in contravention of the loan policy with 117% LTV. No credit history was located in the file. Financial information was weak and the credit memorandum lacked detail. When title work was being updated for a potential foreclosure proceeding, it was discovered that the bank was not in a first lien position as previously indicated.

103.

Additional deficiencies and violations identified on this loan include: failure to adhere to applicable laws and regulations, failure to heed the warnings of bank supervisory authorities, failure to exercise adequate supervision over the institution's officers and employees, permitting unsafe and unsound concentrations of credit, failure to supervise, manage, conduct, and direct the business and affairs of the bank to insure compliance with the law, the by-laws of the Bank, and safe, sound, prudent principles of banking. To date, the losses suffered by Cape Fear Bank as a result of the approval and subsequent mismanagement of this loan are at least \$1,610,585.89.

CLAIMS FOR RELIEF

COUNT I

Negligence and Gross Negligence

104.

The allegations of Paragraphs 1 through 103 of this Complaint are incorporated herein by reference.

105.

As directors and/or officers of Cape Fear Bank, the Defendants owed a duty of care and diligence and fair dealing in the management, conduct and direction of the business of Cape Fear Bank. The Defendants duties included, but were not limited to, the following:

- a. To manage, conduct and direct the business and affairs of Cape Fear Bank in accordance with and to ensure compliance with applicable laws, regulations, bylaws, policies, and sound and prudent banking practices;
- b. To exercise reasonable control and supervision over the officers and employees of Cape Fear Bank;
- c. To maintain a proper division of authority and responsibility among the officers of Cape Fear Bank to prevent the dominance of any officer in the conduct of the business and affairs of Cape Fear Bank;
- d. To review carefully each report of examination of Cape Fear Bank's affairs as made by the regulatory authorities and to carry out the directions and instructions contained in such reports of examination and to establish and maintain procedures to ensure no recurrence of any deficiencies set forth therein;
- e. To attend the regular meetings of the directors, ILC and DLC and actively to review and approve or disapprove each loan and/or investment;
- f. To take such action as necessary to ensure that Cape Fear Bank's loans and investments were underwritten, approved, disbursed and collected in accordance with the law, regulations, bylaws and policies applicable thereto and in accordance with sound and prudent banking practices;
- g. To take such action as necessary to ensure that the officers, employees, and agents of the institution complied with the instructions and directions of the Board and ILC, and DLC;
- h. To exercise independent judgment in the best interest of Cape Fear Bank in the conduct of its business and affairs and to avoid conflicts of interest;
- i. To ensure that Cape Fear Bank did not engage in any unsafe or unsound practices; and
- j. To perform faithfully and diligently their duties as members of Cape Fear Bank's Board committees.

In disregard of their duties to Cape Fear Bank, the Defendants failed to exercise that degree of diligence, care, judgment, skill and good faith which ordinarily prudent persons would have exercised under similar circumstances in like positions in managing, conducting, supervising and directing Cape Fear Bank's making, supervising and administering of loans. The Defendants' failures to exercise reasonable care, skill, diligence, loyalty and good faith in the discharge of their responsibilities include, but are not limited to, the following acts and omissions:

- a. Failed to inform themselves and each other of the true condition of the assets and liabilities of Cape Fear Bank and the nature of its loan portfolio, or to review and inquire adequately into Cape Fear Bank's loan transactions;
- b. Failed to establish or adhere to adequate policies and procedures prescribing the conditions and limitations under which loans could be made and the underwriting and record-keeping which should be undertaken on loans, resulting in hazardous lending;
- c. Caused or permitted approval of loans with excessive LTV ratios and/or deficient or incomplete appraisals;
- d. Failed to establish or adhere to policies responsive to the numerous and repeated warnings and criticisms of federal and state banking authorities and regulators;
- e. Failed to inform themselves and each other of the nature, viability, legality and prudence of loans presented for their review, analysis, approval or ratification;
- f. Failed to establish and maintain an Allowance for Loan and Lease Losses ("ALLL") consistent with Cape Fear Bank's high risk lending practices;
- g. Failed to maintain or require and supervise the maintenance of adequate loan documentation;

- h. Failed to exercise independent judgment and to act in the best interest of Cape Fear Bank in entering, approving, and ratifying loans;
- i. Failed to exercise due diligence and care in the supervision of Cape Fear Bank's officers and employees in the discharge of their duties;
- j. Violated or permitted violation of prudent banking practices by making or permitting loans in which the sale or liquidation of collateral security was the only method by which the loan could be repaid;
- k. Caused or permitted loans to be made to borrowers who were known or should have been known to be poor credit risks, or who were in obvious financial difficulty;
- l. Caused or permitted loans to be made on the basis of grossly inadequate or inaccurate information regarding the finances of the borrower, the value of the collateral, and/or the sources of repayment;
- m. Caused or permitted loans to be made on an under-secured basis, contrary to prudent banking practice;
- n. Caused or permitted the making and renewal of loans to borrowers or related groups of borrowers which resulted in the creation of imprudent concentrations of credit;
- o. Failed to make or cause to be made appropriate investigations into borrowers' creditworthiness, representations of values contained in the borrowers' financial statements, and the actual value of collateral given to secure loans;
- p. Caused or permitted loans to be made to borrowers or their related interests after loans made previously to these borrowers had already become nonperforming, were in default, or were classified by regulatory authorities;
- q. Failed to properly supervise loan disbursements; and
- r. Caused or permitted in excess of 100% financing for speculative ventures.

107.

Plaintiff further shows that the acts and omissions of the Defendants were so imprudent, reckless and careless as to amount to gross negligence on the part of the Defendants.

108.

As a direct and proximate result of the foregoing and other breaches, acts and omissions of the Defendants, Cape Fear Bank suffered serious financial losses in excess of approximately \$11.2 on at least twenty three (23) loans or groups of loans or transactions, referred to herein as the Loss Loans.

109.

Pursuant to provisions of applicable North Carolina and federal laws, Plaintiff is entitled to recover from the Defendants all damages sustained as a result of the negligence and gross negligence alleged herein.

COUNT II

Breach of Fiduciary Duties

110.

The allegations of Paragraphs 1 through 109 of this Complaint are incorporated herein by reference.

111.

Pursuant to applicable federal statutes, regulations and North Carolina law, directors and officers of insured financial institutions, such as Cape Fear Bank, stand in a fiduciary relationship to the institutions they serve, and the depositors and shareholders thereof, and are obligated to discharge the duties of their respective positions in accordance with the standards imposed by those laws.

112.

The Defendants owed fiduciary duties, individually and collectively, to exercise the highest degree of loyalty, care, diligence and fair dealing in the management, conduct and direction of the business of Cape Fear Bank.

113.

The Defendants approved all of the Loss Loans on the merits. As ILC members or DLC members, the Defendants were functioning effectively as officers executing policy decisions made by the Board and were required to do so in compliance with all applicable laws, regulations, and bank loan policies. A reasonably prudent person, in the face of regulatory warnings and a softening real estate market, would not have proceeded with “business as usual” in approving the Loss Loans given their significant deficiencies. A prudent ILC or DLC member would have voted not to approve the Loss Loans or would have taken action to protect the Bank from the associated risks before voting to approve them.

114.

In addition, the Defendants, individually and collectively, owed to Cape Fear Bank, and its depositors and shareholders, a duty to exercise due care and diligence in the management and administration of Cape Fear Bank’s affairs, and were deemed to stand in a fiduciary relation to Cape Fear Bank, and were required to discharge their duties with the utmost good faith and with the diligence, care, judgment and skill which ordinarily prudent persons would exercise under similar circumstances in like positions.

115.

The Defendants, individually and collectively, breached their fiduciary duties to Cape Fear Bank, and its depositors and shareholders, by not discharging their duties in good faith, and by failing to exercise that degree of diligence, care, loyalty, judgment and skill required of them in the conduct, direction, supervision and control of Cape Fear Bank's business and affairs. The Defendants committed or permitted acts and omissions which resulted in severe damage to Cape Fear Bank, including, but not limited to, those acts and omissions listed in Paragraphs 101 and 102 of this Complaint.

116.

As a direct and proximate result of the breaches of fiduciary duty by the Defendants, Cape Fear Bank sustained losses in excess of approximately \$11.2 million.

117.

Pursuant to provisions of applicable law, Plaintiff is entitled to recover from the Defendants all damages sustained as a result of the breaches of fiduciary duty alleged herein.

WHEREFORE, on Count I of its Complaint, Plaintiff prays for judgment jointly, severally and in solido against the Defendants for compensatory damages occasioned by their negligence and gross negligence in an amount in excess of approximately \$11.2 million, plus interest thereon and costs; and

On Count II of its Complaint, Plaintiff prays for judgment jointly, severally and in solido against the Defendants for compensatory damages occasioned by their breaches of fiduciary duty in an amount in excess of approximately \$11.2 million, plus interest thereon and costs; and

Plaintiff further prays for trial by jury and for all other legal and equitable relief to which it may show itself justly entitled.

Respectfully submitted this 4th day of April, 2012.

/s/ Ruth Allen
Ruth M. Allen
Attorney for Plaintiff
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LR83.1 Counsel

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Tennessee Bar No. 005070

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Federal Deposit Insurance Corporation

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Ruth Allen
7413 Six Forks Road, Suite 326
Raleigh, NC 27615 919-481-4141

DEFENDANTS

John Cameron Coburn, Larry Flowers, R. James MacLaren, Mark Tyler, Craig S. Relan, Jerry S. Sellers, Walter O. Winter

County of Residence of First Listed Defendant New Hanover
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input checked="" type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
12 U.S.C. § 1821(d)

Brief description of cause:
claims against Bank's former officers and directors for negligence, gross negligence and breaches of fiduciary duty

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

03/29/2012

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
Case No.**

Plaintiff(s),)
)
)
)
vs)
)
)
Defendant(s).)

**DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER ENTITIES WITH A
DIRECT FINANCIAL INTEREST IN LITIGATION**

Pursuant to Fed.R.Civ.P. 7.1 and Local Civil Rule 7.3, or Fed.R.Crim.P. 12.4 and Local Criminal Rule 12.3,

_____ who is _____,
(name of party) (plaintiff/defendant/other:_____)

makes the following disclosure:

1. Is party a publicly held corporation or other publicly held entity?

YES NO

2. Does party have any parent corporations?

YES NO

If yes, identify all parent corporation, including grandparent and great-grandparent corporations:

3. Is 10% or more of the stock of a party owned by a publicly held corporation or other publicly held entity?

YES NO

If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Civil Rule 7.3 or Local Criminal Rule 12.3)?

YES

NO

If yes, identify entity and nature of interest:

5. Is party a trade association?

YES

NO

If yes, identify all members of the association, their parent corporations, and any publicly held companies that own 10% or more of a member's stock:

6. If case arises out of a bankruptcy proceeding, identify any trustee and the members of any creditors's committee:

Signature: _____

Date: _____

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
v.)	Case No.
_____)	
<i>Defendant</i>)	

APPEARANCE OF COUNSEL

To: The clerk of court and all parties of record

I am admitted or otherwise authorized to practice in this court, and I appear in this case as counsel for:

_____ .

Date: _____

_____ *Attorney's signature*

_____ *Printed name and bar number*

_____ *Address*

_____ *E-mail address*

_____ *Telephone number*

_____ *FAX number*