

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
(FORT LAUDERDALE DIVISION)

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In re

SOUTHEAST BANKING CORPORATION,

Debtor.

)
) Chapter 7

)
) Case No. 91-14561-BKC-PGH
)
)

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**TRUSTEE'S EX PARTE MOTION FOR APPROVAL OF SETTLEMENT AND
COMPROMISE OF CLAIM NO. 1076 (AMERICAN PIONEER NOTES)**

Jeffrey H. Beck, as Trustee (the "Trustee") for the Chapter 7 estate of Southeast Banking Corporation (the "Estate"), by and through his undersigned counsel and pursuant to Federal Rule of Bankruptcy Procedure 9019 and Local Rules 9013-1(C)(1) and (D)(3)(b), moves on an *ex parte* basis for entry of the annexed Order approving the settlement and compromise by and between the Estate, The Federal Deposit Insurance Corporation ("FDIC-Corporate"), and the Ad Hoc Committee of Subordinated Noteholders (the "Ad Hoc Committee"), upon the terms and conditions contained in the *Stipulation for Settlement of Claim No. 1076 (American Pioneer Notes)* attached hereto and made a part hereof as Exhibit A (the "Settlement Agreement"). The annexed Order includes provisions giving parties an opportunity to object following its entry and providing for a return to the status quo if any such objection is sustained.

In support of the requested relief, the Trustee would show as follows:

**PRELIMINARY STATEMENT
AND SUMMARY OF THE SETTLEMENT AGREEMENT**

1. By way of this Motion, the Trustee seeks the entry of an Order approving the Settlement Agreement providing for the resolution of all disputes and the mutual

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release of all claims by and between the Estate and FDIC-Corporate in connection with the American Pioneer Notes,¹ as well as the resolution of disputes regarding the subordination of those Notes and an allocation of the benefits of the settlement between the Estate and the subordinated noteholders whose interests are represented by the Ad Hoc Committee. The Settlement Agreement resolves a series of complex disputes relating to what is by far the single largest unresolved claim against the estate, and will materially advance the conclusion of this case. In light of the active participation of the Ad Hoc Committee in the negotiation of this Settlement Agreement, the fact that Gabriel Capital, L.P., the representative of a majority of the Senior Notes, has been consulted about the economic substance of the settlement and advised the Trustee that it had no objection (but has not reviewed the final form of Settlement Agreement), and the requirement that the FDIC Distribution Amount (as defined in the Settlement Agreement) be paid prior to year-end (subject to the refund provisions of the Settlement Agreement if an objection to the requested Order is sustained following its entry), the Trustee requests that the Court grant this motion on an *ex parte* basis, allowing any party in interest who objects to the relief granted ten (10) days from service of the annexed Order (the "Approval Order") within which to object to the settlement. It is respectfully submitted that the foregoing procedure is consistent with the letter and spirit of Local Rules 9013-1(C)(1) and (D)(3)(b).

¹ Capitalized terms used herein that are not otherwise defined have the meanings set forth in the Settlement Agreement.

2. In general, the terms of the Settlement Agreement by, between and among the Trustee, FDIC-Corporate, and the Ad Hoc Committee involve the following three steps:

A. Claim No. 1076 will be deemed allowed for distribution in the reduced amount of \$15,954,158.10, including any and all right to post-petition interest (defined in the Settlement Agreement as the "Allowed FDIC Claim Entitlement"). This reduction will release to the Estate, for distribution to other creditors, \$10,454,158.10 that has been reserved for Claim No. 1076;

B. FDIC-Corporate will receive immediate payment by wire transfer of the sum of \$5.5 million in cash (defined in the Settlement Agreement as the "FDIC Distribution Amount"), which will not be subject to subordination, in full and final satisfaction of Claim No. 1076; and

C. The balance of the Allowed FDIC Claim Entitlement of \$10,454,158.10 shall be deemed subordinated to the Senior Notes under the American Pioneer Note Subordination Provisions, shall be reallocated to the Subordinated Indenture Trustees pursuant to the Global Settlement Order (as defined below), entered on November 3, 2003, and shall be paid over to the Subordinated Indenture Trustees by wire transfer in accordance with the Settlement Agreement as soon as the Approval Order becomes final and is no longer subject to rehearing or appeal.

3. **The foregoing description is a summary of the proposed settlement by, between and among the Trustee, FDIC-Corporate and the Ad Hoc Committee. The precise terms of the proposed settlement are set forth in detail in the Settlement Agreement, to which the Court and parties in interest are respectfully**

referred to for a full and complete recitation of those terms and conditions. In the event of any inconsistency between the terms of that Agreement and the recitations of this Motion the terms of the Settlement Agreement shall govern.

4. The Trustee believes that the Settlement Agreement should be approved in accordance with controlling law in this Circuit, in that it falls well above the lowest point in the range of reasonableness and is in the best interests of the Estate and creditors.

GENERAL FACTUAL BACKGROUND

5. This case was commenced on September 20, 1991 (the "Petition Date"), by the filing of a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"). The filing was precipitated by the seizure of the Debtor's two wholly-owned subsidiary banks, Southeast Bank, N.A. ("SEBNA") and Southeast Bank of West Florida by federal and state regulatory authorities, and the appointment of the FDIC as their Receiver.

6. Claim No. 1076 is currently held by FDIC-Corporate, as successor to certain assets of American Pioneer Federal Savings Bank ("American Pioneer"), formerly under the control of the Resolution Trust Corporation ("RTC") and (later) the FDIC-Receiver for American Pioneer.

7. Claim No. 1076 is a late-filed claim (dated June 29, 1992) filed by the RTC as Receiver for American Pioneer. The Claim arises from two Notes issued by the Debtor to American Pioneer in connection with a May 26, 1989 Asset Purchase Agreement, pursuant to which the Debtor, through its then-subsiary SEBNA, purchased First Pioneer Bank from American Pioneer for use as branches of SEBNA.

8. The two Notes, in the aggregate principal amount of \$22.1 million, are: (i) the December 28, 1989 10.64% Subordinated Note Due 2001 in the principal amount of \$3.5 million; and (ii) the December 28, 1989 10.64% Subordinated Note Due 2001 in the principal amount of \$18.6 million (collectively, the "American Pioneer Notes" or "Notes"). The total amount of Claim No. 1076 is \$23,275,720, representing principal plus accrued interest on the Notes as of the Petition Date.

9. The FDIC in its capacity as Receiver ("FDIC-Receiver"), succeeded the RTC as Receiver of American Pioneer as of December 31, 1995. The American Pioneer Receivership was terminated effective December 1, 2001, and certain remaining American Pioneer assets, including the Notes and Claim No. 1076, were sold by the FDIC-Receiver to FDIC-Corporate pursuant to a corporate purchase and assumption agreement. Accordingly, FDIC-Corporate now asserts standing to pursue Claim No. 1076 against the Estate.

REQUEST FOR RELIEF AND LEGAL ARGUMENT IN SUPPORT

10. The Trustee respectfully requests that the Court approve the Settlement Agreement in its entirety, under the legal standards governing the approval of any proposed settlement or compromise under Federal Rule of Bankruptcy Procedure 9019.

11. The approval of any proposed settlement is a matter within the sound discretion of the bankruptcy court. *In re Jackson Brewing Co.*, 624 F.2d 599 (5th Cir. 1980); *In re Teltronics Servs., Inc.*, 762 F.2d 185 (2d Cir. 1985); *In re Prudence Co.*, 98 F.2d 599 (2d Cir. 1938), *cert. denied* 306 U.S. 636 (1939).

12. In order to exercise this discretion properly, the Court must consider all of the relevant facts and evaluate whether the proposed compromise falls below the

"lowest point in the range of reasonableness." See, e.g., *Teltronics Servs.*, 762 F.2d at 189; *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983). In a case which remains binding authority in this Circuit, the former Fifth Circuit Court of Appeals stated as follows:

To assure a proper compromise, the bankruptcy judge must be apprised of all the necessary facts for an intelligent, objective and educated evaluation. He must compare the terms of the compromise with the likely rewards of litigation [and] evaluate and set forth in a comprehensible fashion:

- (1) The probability of success in the litigation, with due consideration for the uncertainty in fact and law,
- (2) The complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and
- (3) All other factors bearing on the wisdom of the compromise.

Jackson Brewing Co., 624 F.2d at 602 (citation omitted).

13. The third element of the *Jackson Brewing* test has been interpreted to include the following factors:

- the proportion of the creditors who do not object to or who affirmatively support the proposed settlement;
- the relative benefits to be received;
- the nature and breadth of releases to be issued as a result of the settlement; and
- the extent to which the settlement is truly the product of arms' length bargaining and not the product of fraud or collusion.

In re Best Products Co., 168 B.R. 35, 50 (Bankr. S.D.N.Y. 1994) (citing *In re Fugazy*, 150 B.R. 103, 106 (Bankr. S.D.N.Y. 1993)). Consideration of each of these factors leaves no question that the proposed settlement is in the best interests of the estate and creditors and should be approved.

A. Probability of success in litigation

14. The Trustee has advised FDIC-Corporate that the Estate disputes the validity and amount of Claim No. 1076. In particular, the Trustee contends that Claim No. 1076 should be deemed released under the Mutual Release executed in connection with the November 1997 Settlement Agreement between the Estate, FDIC-Corporate and other parties, which was approved by this Court by Order dated February 26, 1998 (C.P. No. 2805) (the "Release Issue").

15. In addition, the Ad Hoc Committee asserts that the American Pioneer Note Subordination Provisions have the effect of fully subordinating any recovery on Claim No. 1076 to the payment in full of the Senior Notes, including Postpetition Interest on the Senior Notes at the contract rate and that, pursuant to the terms of this Court's *Order Approving and Implementing Global Settlement of Issues Affecting Calculation and Payment of Post Petition Interest and Attorneys' Fees and Related Priority and Subordination Issues, and Procedure for Interim Distributions of Post Petition Interest on Negative Notice Without Hearing*, entered on November 3, 2003, (C.P. No. 4258) (the "Global Settlement Order"), any distribution which would have been made or would be made on account of Claim No. 1076 or the American Pioneer Notes or any Postpetition Interest thereon, in the absence of the American Pioneer Note Subordination Provisions, must be paid over instead to the Subordinated Indenture Trustees for distribution to the holders of Subordinated Notes (the "Subordination Issue").

16. Both the Release Issue and the Subordination Issue raise unsettled questions under Florida law, and the probability of success on one or both of those

Issues is highly uncertain. In negotiating and entering into the Settlement Agreement the Trustee has taken the litigation positions of both the FDIC-Corporate and Ad Hoc Committee into consideration, and believes that the proposed settlement represents a fair compromise based on the uncertainties associated with such litigation.

B. Complexity and likely duration of litigation, including expense, inconvenience, and delay

17. The Trustee believes that without question litigation of the Release and Subordination Issues, including any appeals, would be time consuming and costly, and likely would take years to resolve. Not only is the amount in controversy substantial, but prior litigation and appeals to three different courts regarding subordination provisions in other indentures in the course of this bankruptcy case took almost 5-1/2 years to resolve, at a cost of millions of dollars to Estate and other parties in interest. There is no reason to believe that litigation over the validity and priority of Claim No. 1076 would be of lesser duration or expense. This point is reinforced by the fact that whereas the subordination provisions at issue in the prior litigation were governed by New York law, those at issue here are governed by Florida law.

18. Moreover, because the amount of Claim No. 1076 is so substantial, litigation of the Release and Subordination Issues would likely preclude the distribution of over \$26 million held in reserve with respect to that Claim, and the closing of this bankruptcy case, for an extended period of time. Resolution of the issues surrounding Claim No. 1076 will remove one of the few (and one of the largest) remaining obstacles to the closing of this case.

C. All other factors bearing on the wisdom of the compromise

19. All other factors bearing on the wisdom of the compromise support approval of this settlement as well. Claim No. 1076 is the single largest unresolved claim remaining against the Estate - - indeed, the only such claim of economic significance to the claims resolution process. Its reconciliation was deferred for several years at the outset of the case, when it appeared that no distribution would be made in respect of late-filed claims which are subordinated to timely claims under 11 U.S.C. § 726(a)(3). Thereafter, resolution of Claim No. 1076 was complicated first by its transfer from the RTC to the FDIC-Receiver and then to FDIC-Corporate, and more recently by the complexity of and absence of clear authority on both the Release and Subordination Issues.

20. As referenced above, it is the Ad Hoc Committee that controls and has the real economic interest in the Subordination Issue pursuant to the Global Settlement Order. The Trustee worked closely with representatives of the Committee in negotiating and structuring the Settlement Agreement over the past several months, and the Committee actively supports the agreement. The Trustee is not aware of any parties in interest who oppose the proposed settlement, and for that reason believes that the *ex parte* entry of the annexed Approval Order, subject to a ten-day objection period, affords appropriate notice and hearing under 11 U.S.C. § 102(1) and is consistent with Local Rules 9013-1(C)(1) and (D)(3)(b).

21. The nature and breadth of releases to be issued in connection with the settlement are appropriate, in that the settlement will fully and completely resolve all of the Release and Subordination Issues associated with Claim No. 1076, between and

among the Estate, the FDIC-Corporate and the Ad Hoc Committee. The Trustee believes that Claim No. 1076 represents the sole remaining claim of FDIC-Corporate against the Estate.

22. The Settlement Agreement is the product of arms-length bargaining between and among sophisticated parties represented by experienced counsel, and is not tainted by any fraud or collusion.

CONCLUSION

23. For all of the foregoing reasons, the Trustee respectfully submits that the proposed Settlement Agreement resolving the Release and Subordination Issues and the treatment of Claim No. 1076 is in the best interests of creditors and the Estate, and requests that the Court enter the annexed Approval Order on an *ex parte* basis, subject to the ten-day objection period provided therein.

WHEREFORE, the Trustee requests that the Court enter the annexed Approval Order on an *ex parte* basis, and as provided in that Approval Order, direct any party in interest who objects to the relief be granted ten (10) days from service of such Order within which to file and serve a written objection on all parties identified on the service list attached to the Approval Order, with a hearing to be scheduled on any such timely-filed objection at the convenience of the Court.

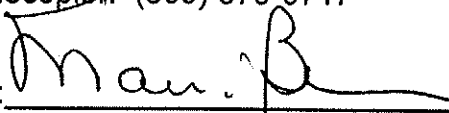
I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional

qualifications to practice in this Court set forth in Local Rule 2090-1(A).

DATED this 30th day of December, 2004.

Respectfully submitted,

GREENBERG, TRAURIG, P.A.
Attorneys for the Trustee
1221 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 579-0500
Telecopier: (305) 579-0717

By: 
MARK D. BLOOM
Florida Bar No. 303836
SCOTT M. GROSSMAN
Florida Bar No. 0176702

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
(FORT LAUDERDALE DIVISION)

In re)	Chapter 7
)	
SOUTHEAST BANKING CORPORATION,)	Case No. 91-14561-BKC-PGH
)	
Debtor.)	
)	

STIPULATION FOR SETTLEMENT OF CLAIM NO. 1076
(AMERICAN PIONEER NOTES)

THIS STIPULATION is entered into this _____ day of December, 2004, by and between Jeffrey H. Beck, as Chapter 7 Trustee (the "Trustee") for the estate of Southeast Banking Corporation (the "SEBC Estate"), the Federal Deposit Insurance Corporation ("FDIC-Corporate"), and the Ad Hoc Committee of Subordinated Noteholders, as further defined below (the "Ad Hoc Committee") (collectively, the "Parties," and each individually, a "Party").

RECITALS:

WHEREAS, on or about September 20, 1991 (the "Petition Date"), Southeast Banking Corporation ("SEBC") filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code in this Court (the "Bankruptcy Court");

WHEREAS, Jeffrey H. Beck is the duly appointed and qualified successor Chapter 7 Trustee for the SEBC Estate;

WHEREAS, FDIC-Corporate is successor to the remaining assets of American Pioneer Federal Savings Bank ("American Pioneer"), for which the Resolution Trust Corporation ("RTC") was appointed Receiver;

WHEREAS, the Federal Deposit Insurance Corporation succeeded the RTC as Receiver of American Pioneer ("FDIC-Receiver") pursuant to 12 U.S.C. § 1441(a) as of December 31, 1995;

WHEREAS, the claims bar date in this case was February 10, 1992;

WHEREAS, on or about June 29, 1992, after the claims bar date, the RTC as Receiver for American Pioneer filed Claim No. 1076 in the amount of \$23,275,720.00 (principal plus accrued interest as of the Petition Date) ("Claim No. 1076") against the SEBC Estate, arising from two notes issued to American Pioneer by SEBC in connection with a May 26, 1989 Asset Purchase Agreement between American Pioneer and SEBC, pursuant to which SEBC, through its subsidiary Southeast Bank, N.A. ("SEBNA"), purchased First Pioneer Bank from American Pioneer, for use as branches of SEBNA; the two notes, in the aggregate principal amount of \$22.1 million, are: (i) the December 28, 1989 10.64% Subordinated Note Due 2001 in the principal amount of \$3.5 million, which is designated as "No. 1"; and (ii) the December 28, 1989 10.64% Subordinated Note Due 2001 in the principal amount of \$18.6 million, which is designated as "No. 2" (collectively, the "American Pioneer Notes" or "Notes");

WHEREAS, the American Pioneer Receivership was terminated effective December 1, 2001, and the remaining American Pioneer assets, including the Notes and Claim No. 1076, were sold by FDIC-Receiver to FDIC-Corporate pursuant to a corporate purchase and assumption agreement;

WHEREAS, FDIC-Corporate now holds the American Pioneer Notes and asserts standing to pursue Claim No. 1076 against the SEBC Estate, and represents and warrants that it is the sole legal and equitable owner of the Notes and of Claim No. 1076 and has not transferred the Notes, Claim No. 1076, or any other claim arising under, on account of, or relating to the Notes or Claim No. 1076, or any portion of any of the foregoing to any other person or entity (as the term "transfer" is defined in 11 U.S.C. § 101(54));

WHEREAS, all timely and late-filed claims against the SEBC Estate have become entitled to payment in full of the amount allowed as of the Petition Date, and to a partial distribution of Postpetition Interest (as defined below) under the Eighth Interim Distribution approved by the Court;

WHEREAS, the Trustee disputes the validity and amount of Claim No. 1076 and asserts, among other defenses, that said Claim should be deemed released under the Mutual Release executed in connection with the November 1997 Settlement Agreement between the Estate, FDIC-Corporate and other parties, which was approved by the Bankruptcy Court by Order dated February 26, 1998;

WHEREAS, Claim No 1076 is the last remaining unresolved claim of any significant amount against the SEBC Estate;

WHEREAS, Article Seven, Sections 701-05, inclusive, of each of the American Pioneer Notes (the "American Pioneer Note Subordination Provisions") contain provisions for the subordination of the American Pioneer Notes to "Senior Indebtedness," as defined therein, which language has not heretofore been addressed by this or any other Court;

WHEREAS, pursuant to the Court's *Order Approving and Implementing Global Settlement of Issues Affecting Calculation and Payment of Post Petition Interest and Attorneys' Fees and Related Priority and Subordination Issues, and Procedure for Interim Distributions of Post Petition Interest on Negative Notice Without Hearing*, entered on November 3, 2003, (CP No. 4258) (the "SEBC Global Settlement Order"), the Ad Hoc Committee has the sole and exclusive control over the enforcement of the American Pioneer Note Subordination Provisions and the settlement of any claim thereunder, either in its own name or on behalf of and in the name of the Senior Indenture Trustee (as defined below) and, if the Ad Hoc Committee elects to prosecute such claims in

its own name, has all the right, power, standing and authority to prosecute such claims as the Senior Indenture Trustee would have had in its capacity as indentured trustee under the Senior Indenture (as defined below) to enforce, prosecute, litigate and settle such claims;

WHEREAS, the Ad Hoc Committee asserts that the American Pioneer Note Subordination Provisions have the effect of fully subordinating any recovery on Claim No. 1076 to the payment in full of the Senior Notes, including Postpetition Interest on the Senior Notes at the contract rate and that, pursuant to the terms of the SEBC Global Settlement Order, any distribution (or portion thereof) which would have been made or would be made on account of Claim No. 1076 or the American Pioneer Notes or any Postpetition Interest thereon, in the absence of the American Pioneer Note Subordination Provisions, must be paid over instead to the Subordinated Indenture Trustees (as defined below) for distribution to the holders of Subordinated Notes (as defined below);

WHEREAS, FDIC-Corporate disputes the assertions of the Trustee and the Ad Hoc Committee regarding the allowance and subordination of Claim No. 1076;

WHEREAS, the Trustee, the Ad Hoc Committee, and FDIC-Corporate recognize the uncertainties and expense of engaging in litigation over the allowance and subordination of Claim No. 1076, including the prosecution of any appeals;

WHEREAS, in order to conserve assets and avoid substantial fees and costs and the uncertainties of litigation, the Parties are desirous of settling all matters as among and between them pertaining to Claim No. 1076 or the American Pioneer Notes, as well as any other claims or matters which FDIC-Corporate may be entitled to assert against the SEBC Estate;

NOW, THEREFORE, in consideration of the mutual promises and representations hereinafter set forth, and for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree and stipulate as follows:

1. Incorporation of Recitals. The recitals set forth above are true and correct and incorporated herein by reference, and all representations and warranties contained therein are part of this Stipulation.

2. Definitions. All capitalized terms used in the foregoing recitals of this Stipulation shall have the meanings set forth in such recitals, and all capitalized terms defined in Paragraphs 3-15 of this Stipulation shall have the meanings set forth therein. In addition, as used herein, the following terms shall have the following meanings:

a. "Ad Hoc Committee" means the Ad Hoc Committee of Subordinated Noteholders formed in the SEBC Chapter 7 case, which consists of the following entities: Elliott Associates, L.P.; Stonehill Investment Group and Mariner Investment Group, Inc.

b. "BNY" means the Bank of New York, in its capacity as Indenture Trustee under the 1972 Indenture and the 1989 Indenture.

c. "Final Order" means an order entered by the Bankruptcy Court (or any other court of competent jurisdiction) as to which no appeal, petition for certiorari, or other proceeding for reargument or rehearing may be timely filed or is then pending or, in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such order or judgment has been affirmed by the highest court to which such order or judgment was appealed, or certiorari, reargument, or rehearing has been denied, and the time to take any further appeal, petition for certiorari, or move for reargument or rehearing shall have expired, excluding any motions, rehearings or other actions

taken pursuant to or under Federal Rule of Civil Procedure 60(b) or Federal Rule of Bankruptcy Procedure 9024.

d. "1972 Indenture" means the Indenture dated as of October 15, 1972, between SEBC and Morgan Guaranty Trust Co. of New York, as Trustee, for \$35 million in original principal amount of 4-3/4% Convertible Subordinated Debentures due 1997.

e. "1984 Indenture" means that certain Indenture between SEBC and Morgan Guaranty Trust Co. of New York, as Trustee, dated as of December 1, 1984, for \$75 million in original principal amount of Floating Rate Subordinated Notes due 1996.

f. "1985 Indenture" means that certain Indenture between SEBC and Morgan Guaranty Trust Co. of New York, as Trustee, dated as of November 1, 1985, for \$75 million in original principal amount of Floating Rate Subordinated Capital Notes due 1997.

g. "1987 Indenture" means that certain Indenture between SEBC and Morgan Guaranty Trust Company of New York, dated as of April 1, 1987 for \$50 million in original principal amount of 6%% Subordinated Capital Notes Due 1999.

h. "1989 Indenture" means that certain Indenture between SEBC and Irving Trust Co., as Trustee, dated as of March 15, 1989, for Subordinated Debt Securities.

i. "Postpetition Interest" means interest on any claim which accrues or is calculated for the period from and after the Petition Date.

j. "Senior Indenture" means the Indenture, dated as of March 1, 1983, between the Debtor and Manufacturers Hanover Trust Co., as Trustee.

k. "Senior Indenture Trustee" means JPMorgan Chase Bank f/k/a The Chase Manhattan Bank, as successor by merger to Manufacturers

Hanover Trust Co., in its capacity as the Indenture Trustee under the Senior Indenture.

l. "Senior Notes" means the Notes issued under the Senior Indenture.

m. "Subordinated Indentures" means, collectively, the 1972 Indenture, the 1984 Indenture, the 1985 Indenture, the 1987 Indenture, and the 1989 Indenture.

n. "Subordinated Indenture Trustees" means, collectively, BNY and U.S. Bank. Any reference to a distribution or other payment being made "to the Subordinated Indenture Trustees" shall mean a distribution or payment "to the Subordinated Indenture Trustees, for the benefit of holders of Subordinated Notes."

o. "Subordinated Notes" means the notes issued by SEBC under each of the Subordinated Indentures.

p. "U.S. Bank" means U.S. Bank National Association, in its capacity as successor Indenture Trustee under the 1984 Indenture, the 1985 Indenture, and the 1989 Indenture.

Unless otherwise indicated, all references to "paragraphs" herein are to paragraphs of this Stipulation.

3. Partial Allowance and Disallowance of Claim No. 1076. In full and complete settlement and satisfaction of Claim No. 1076 and of any and all other claims held or asserted against the SEBC Estate arising under, respecting or relating to the American Pioneer Notes, including, without limitation, the right to any and all past, present and future Postpetition Interest, Claim No. 1076 will be deemed allowed for distribution in the amount of \$15,954,158.10, including without limitation any and all entitlement to Postpetition Interest (the

"Allowed FDIC Claim Entitlement"), and any amount of Claim No. 1076 in excess of the Allowed FDIC Claim Entitlement shall be disallowed with prejudice.

4. Resolution of Issues Regarding American Pioneer Note Subordination Provisions. In full and complete settlement and satisfaction of any and all rights, defenses, disputes and claims of the Parties regarding the effect and enforcement of the American Pioneer Note Subordination Provisions and the subordination of Claim No. 1076, the Trustee shall cause to be distributed to FDIC Corporate from the Allowed FDIC Claim Entitlement, and in accordance with paragraph 5 of this Stipulation, the sum of \$5,500,000 (the "FDIC Distribution Amount"); the balance of the Allowed FDIC Claim Entitlement in the amount of \$10,454,158.10 (the "Subordinated FDIC Claim Amount") shall be deemed subordinated to the Senior Notes under the American Pioneer Note Subordination Provisions, shall be reallocated to the Subordinated Indenture Trustees pursuant to the SEBC Global Settlement Order and shall be paid over to the Subordinated Indenture Trustees in accordance with Paragraph 10 of this Stipulation.

5. Payment of FDIC Distribution Amount. Within one (1) business day following the Effective Date (as defined in paragraph 13), the Trustee shall distribute the FDIC Distribution Amount to FDIC-Corporate from funds of the SEBC Estate, in immediately available funds by wire transfer to an account to be designated in writing by FDIC-Corporate, subject to the obligation of FDIC-Corporate to return the FDIC Distribution Amount if this Stipulation is subsequently disapproved as provided for in paragraphs 9 and 10 below.

6. Release by FDIC-Corporate of Claim to Any Amount in Excess of FDIC Distribution Amount. The FDIC Distribution Amount shall be the sole and exclusive amount which FDIC-Corporate shall be entitled to receive from the SEBC Estate in respect of Claim No. 1076 or the Notes. FDIC-

Corporate, on its own behalf and on behalf of any successors or assigns, hereby waives, releases, and relinquishes any and all claims (as the term "claim" is defined in 11 U.S.C. § 103(5)), whenever arising, known or unknown, contingent or fixed, liquidated or unliquidated, matured or unmatured, in law, equity or otherwise (collectively, "Claims"), against the Trustee, the SEBC Estate or any past, present or future representative of the SEBC Estate, with respect to, arising out of, or relating to the American Pioneer Notes and Claim No. 1076, including, without limitation, claims for post-petition fees or costs or Postpetition Interest, save and except only for the right to receive the FDIC Distribution Amount under this Stipulation, and further waives, releases and relinquishes any Claims arising out of, relating to or respecting any distribution from the SEBC Estate to the Subordinated Indenture Trustees or any holder of Subordinated Notes, including, without limitation, pursuant to this Stipulation.

7. No Admissions. This Stipulation and the settlement set forth herein shall not constitute an acknowledgment or admission by the Trustee, FDIC-Corporate and/or the Ad Hoc Committee as to the validity or invalidity of Claim No. 1076, or of any objections and/or subordination rights in respect thereof.

8. Binding Effect. This Stipulation (i) shall inure to the benefit of and be enforceable by the Parties and their respective successors and assigns and (ii) shall be binding upon and enforceable against the Parties and their respective successors and assigns, upon the execution of the Approval Order, as further provided in paragraphs 9 and 10 below; provided, however, that the second sentence of paragraph 9 shall be binding on the Parties upon execution of this Stipulation by all of the Parties.

9. Bankruptcy Court Approval. This Stipulation is expressly subject to and contingent on the execution of an order approving this Stipulation

by the Bankruptcy Court (the "Approval Order"), except that the next sentence shall become binding immediately upon execution of this Stipulation by the Parties. The Trustee shall promptly move the Bankruptcy Court for entry of the Approval Order, subject to the following procedures: promptly following execution of the Approval Order, such Order shall be served by counsel to the Trustee on all parties in interest on the general service list maintained in this case and will provide that any objection to the settlement set forth in this Stipulation must be filed and served within ten (10) days following service of notice of the Approval Order, or be forever barred. In the event that the Bankruptcy Court denies execution of the Approval Order, this Stipulation shall be null and void, and the Trustee shall not distribute to FDIC-Corporate the FDIC Distribution Amount in accordance with paragraph 5 of this Stipulation. In the event that the Bankruptcy Court executes the Approval Order, the Trustee will make the distribution to FDIC-Corporate required under paragraph 5 of this Stipulation; provided, however, that if any party in interest objects to the Approval Order and the Bankruptcy Court enters an order sustaining such objection, FDIC-Corporate shall immediately refund to the SEBC Estate the FDIC Distribution Amount, and, except for such refund obligation, this Stipulation shall be deemed null and void and of no further force or effect. In the event that any party objects to the Approval Order and the Bankruptcy Court enters an order overruling such objection, but the Approval Order or such other order overruling such objection, is reversed or modified on appeal in a manner that denies approval to this Stipulation, then FDIC-Corporate shall immediately refund the FDIC Distribution Amount to the SEBC Estate.

10. Finality of Approval or Disapproval of Stipulation. In the event that (i) the Bankruptcy Court executes the Approval Order and no party timely objects thereto; or (ii) the Approval Order, or another order approving this

Stipulation in its entirety) becomes a Final Order, then the following shall occur: (A) the FDIC shall be entitled to retain the FDIC Distribution Amount; and (B) the Trustee shall promptly distribute to the Subordinated Indenture Trustees in immediately available funds by wire transfer the full amount of the Subordinated FDIC Claim Amount, without further notice or order of the Bankruptcy Court. In the event that approval of this Stipulation has been denied by a Final Order, then FDIC-Corporate shall be obligated to refund the FDIC Distribution Amount and, save and except for such obligation, this Stipulation shall be null and void and of no further force or effect, and, neither this Stipulation, nor any negotiations and writings in connection with this Stipulation shall in any way be construed as, or deemed to be evidence of an admission of any of the Parties hereto, regarding any claim or right that such Party may have against any other Party hereto, or otherwise.

11. Non-Severability. The provisions of this Stipulation are mutually interdependent, indivisible and non-severable.

12. Entire Agreement. This Stipulation constitutes the entire agreement among the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, written and oral, or among the Parties with respect to the subject matter hereof. This Stipulation may not be modified or amended except by a writing signed by all of the Parties. All representations, warranties, promises, inducements, or statements of intention made by the Parties hereto with respect to this Stipulation are embodied in this Stipulation, and no Party hereto shall be bound by, or liable for, any alleged representation, warranty, inducement, or statement of intention with respect to this Stipulation that is not expressly embodied herein.

13. Effective Date. This Stipulation may be executed in one or more counterparts and by facsimile, all of which shall be considered one and the

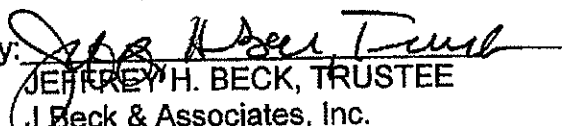
same agreement, and shall become effective when one or more such counterparts have been signed by each of the Parties and delivered to all Parties, and the Bankruptcy Court has executed the Approval Order (the date on which all of such conditions have been satisfied being the "Effective Date"); provided, however, that the second sentence of Paragraph 9 shall be binding on the Parties upon execution of this Stipulation by all of the Parties.

14. Retention of Jurisdiction. The Bankruptcy Court shall retain exclusive jurisdiction to interpret, implement, and enforce the provisions of this Stipulation, and the Parties hereby consent to the exclusive jurisdiction of the Bankruptcy Court with respect thereto. The Parties waive arguments of lack of personal jurisdiction or forum non-conveniens with respect to the Bankruptcy Court.

15. Headings. The descriptive headings of the several sections of this Stipulation are inserted for convenience of reference only and do not constitute a part of this Stipulation.

DATED this 29th day of December, 2004.

JEFFREY H. BECK, CHAPTER 7
TRUSTEE FOR THE ESTATE OF
SOUTHEAST BANKING
CORPORATION

By: 
JEFFREY H. BECK, TRUSTEE
J Beck & Associates, Inc.
225 NE Mizner Boulevard
Suite 780
Boca Raton, Florida 33432
Telephone: (561) 447-8776 Ext. 201
Facsimile: (561) 447-7940

By: Mark Bloom

MARK D. BLOOM
Florida Bar No. 303836
GREENBERG TRAURIG, P.A.
Counsel for the Trustee
1221 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 579-0500
Telecopier: (305) 579-0717

FEDERAL DEPOSIT INSURANCE
CORPORATION IN ITS CORPORATE
CAPACITY

By: _____

CAROL S. MARKS
Resolutions & Receiverships
Specialist
Federal Deposit Insurance
Corporation
550 17th Street N.W.
Room F-7014
Washington D.C. 20249
(202) 898-3699 (telephone)
(202) 898-7005 (fax)

By: _____

TOM M. REEVES
Counsel
KS Sup.Ct. #7259
Federal Deposit Insurance
Corporation
550 17th Street N.W.
Room H-11078
Washington D.C. 20429
(202) 736-0403 (telephone)
(202) 736-0194 (fax)

By: MARK D. BLOOM
Florida Bar No. 303836
GREENBERG TRAURIG, P.A.
Counsel for the Trustee
1221 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 579-0500
Telecopier: (305) 579-0717

FEDERAL DEPOSIT INSURANCE
CORPORATION IN ITS CORPORATE
CAPACITY

By: Carol S Marks
CAROL S. MARKS
Resolutions & Receiverships
Specialist
Federal Deposit Insurance
Corporation
550 17th Street N.W.
Room F-7014
Washington D.C. 20249
(202) 898-3699 (telephone)
(202) 898-7005 (fax)

By: Tom M Reeves
TOM M. REEVES
Counsel
KS Sup.Ct. #7259
Federal Deposit Insurance
Corporation
550 17th Street N.W.
Room H-11078
Washington D.C. 20429
(202) 736-0403 (telephone)
(202) 736-0194 (fax)

AD HOC COMMITTEE OF
SUBORDINATED NOTEHOLDERS

By: 

MICHAEL C. FOSTER

Florida Bar No. 0042765

BILZIN SUMBERG BAENA PRICE &
AXELROD, LLP

Counsel for the Ad Hoc Committee
of Subordinated Noteholders

Wachovia Financial Center
200 South Biscayne Boulevard
Suite 2500

Miami, FL 33131

Telephone: (305) 374-7580

Telecopier: (305) 374-7593

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