

AGREEMENT TO MEDIATE

1. This is an agreement by the Federal Deposit Insurance Corporation (FDIC) and class agents Chris Conan. Marvin Gordon and Willitta Gordon Hawkins (Class Agents) to participate in mediation concerning the class action titled Conan. *FDIC, FDIC* No. 93-74 (the "**Conan** class action"). The FDIC and the Class Agents are collectively referred to herein as the "Parties." The Parties, their counsel and their representatives understand that mediation is a voluntary process that may be terminated at any time.
2. In order to promote communication among the Parties, representatives, counsel and the mediator, and to facilitate settlement of the dispute, each of the undersigned agrees that all statements made during the course of the mediation are privileged settlement discussions, are made without prejudice to any party's legal position, shall not be construed as an admission against interest, and are inadmissible for any purpose in any legal proceeding. Any information disclosed by a party, or by a representative of a party, or by counsel of a party, or by an expert or witness on behalf of a party, is confidential. This confidentiality extends to and includes any statements made or documents prepared by any party, representative, counsel, expert or witness, or the mediator. The disclosure of any information in connection with the mediation shall not constitute a waiver of any privilege, and the undersigned agree that no such waiver will be claimed or argued with respect to any such information. The undersigned agree that they will not voluntarily disclose any confidential information, or seek the disclosure of confidential information in any subsequent or collateral proceeding, or any third-party proceeding, including any labor-management proceeding. The mediation is a compromise negotiation for purposes of the Federal Rules of Evidence. This Agreement to Mediate incorporates by reference the confidentiality provisions of the Administrative Dispute Resolution Act of 1996, 5 USC, section 574, and its terms shall bind the Parties, except where inconsistent with the terms of this Agreement.
3. Any information that has been or will be provided by the Parties, representatives, counsel, witnesses and/or by experts, in the course of any settlement discussions (as well as the settlement discussions themselves) shall be maintained as confidential by the Parties and their agents, and shall not be used for any purpose whatsoever other than for confidential evaluation and discussion of settlement of **the Conan** class action. This Agreement shall not restrict Class Agents' counsel from disclosing these settlement discussions in confidence to those class members who have a legitimate need to know, and shall not restrict the FDIC's counsel from disclosing such discussions and information in confidence to those in management who have a legitimate need to know.

4. Any expert or consultant who provides written or oral information or analyses in the course of any settlement discussions shall not be questioned about any such information or analyses in any litigation proceeding, and shall not be precluded from testifying as an expert in any litigation proceeding because of his/her participation in any settlement discussion.
5. The provision of any information by the Parties, and/or by experts or consultants retained by them, in the course of any settlement discussions shall in no way prejudice any party's rights to seek or object to separate discovery of the underlying facts, or expert opinions and interpretations of the underlying facts, in any litigation or administrative proceeding in accordance with applicable discovery rules.
6. The Parties agree to make no attempt to compel the mediator's testimony or to compel the mediator to produce any documents created by the mediator or provided by the other party to the mediator. In no event will the mediator voluntarily disclose confidential information provided during the course of mediation, testify on behalf of either party, or submit any type of report to any court or administrative tribunal in connection with the Conanan class action without the consent of both Parties. The mediator may find it helpful to meet with each party separately. In that event, the mediator will not reveal what is said by one participant to other(s) without permission. Any party, participant, counsel, representative or the mediator shall, within five (5) days of receiving a request for confidential information, notify the other party, or, in the case of the mediator, both parties, of the existence and terms of such request. If a response to such request is due within ten (10) days or less, such notice shall be given within twenty-four (24) hours after service of such request.

Notice to the Class Agents should be sent to:

Avis Buchanan, Esq.
Washington Lawyers' Committee for Civil Rights
and Urban Affairs
11 Dupont Circle, Suite 400
Washington, DC 20036
Phone: (202) 319-1000

Notice to FDIC should be sent to:

Thomas J. Sarisky, Esq.
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Room H-5008
Washington, DC 20429
Phone: (202) 736-0133

7. During the course of the mediation process, the mediator, Parties, counsel, representatives, and any experts or witnesses will not discuss any matter relating to the mediation with the public, the news media, or the press except by express written permission of all Parties, counsel and the mediator.
8. The Parties, and if they desire, their counsel, are invited to attend mediation sessions. No one else may attend mediation sessions without the permission of the Parties and the consent of the mediator.
9. The Parties shall not be bound by anything said or done at the mediation unless a written settlement is reached and executed by all necessary parties, participants and representatives with applicable authority. If a settlement is reached, the agreement shall be reduced to writing, and, when signed and approved by the appropriate authorities for all the Parties and participants, shall be legally binding on all signatories to the Agreement.
10. The Parties agree that the mediator has the discretion to terminate mediation at any time if the mediator believes that the case is inappropriate for mediation or that an impasse between the Parties has been reached.
11. This Agreement to Mediate shall survive the termination of the mediation and shall remain in force and effect with regard to the Parties, participants, counsel, representatives, experts, witnesses and the mediator, whose signatures appear below.
12. Each of the Parties, counsel, representatives, the mediator and experts, witnesses or participants whose signatures appear below, acknowledges that he/she has read, understood, and agreed to abide by the terms of this Agreement.

Chris Conanan Date: 2/3/00
 Chris Conanan
 Class Agent

D. Michael Collins Date: 2/18/2000
 D. Michael Collins
 FDIC Representative

Leonard Glenn Marvin Gordon Date: 2/18/00
 LEONARD GLENN MARVIN GORDON
 Class Agent REPRESENTATIVE

Michael J. Zamorski Date: 2/18/2000
 Michael J. Zamorski
 FDIC Representative

Willitta Gordon Hawkins Date: 2/9/00
 Willitta Gordon Hawkins
 Class Agent

Thomas J. Sarisky Date: 2-18-00
 Thomas J. Sarisky
 Counsel for FDIC

Joseph M. Sellers Date: 2/2/00
 Joseph M. Sellers
 Counsel for Class Agents

Cathy A. Costantino Date: 2/18/00
 Cathy A. Costantino
 Counsel for FDIC

Avis E. Buchanan Date: 2/1/00

Avis E. Buchanan
Counsel for Class Agents

Suzette M. Malveaux Date: 2/1/00

Suzette M. Malveaux
Counsel for Class Agents

Lisa M. Villarreal Date: 2/18/00

Lisa M. Villarreal
Counsel for FDIC

Anthony F. Pasano III Date: 2/19/00

Anthony F. Pasano, III
Counsel for FDIC

Linda Singer Date: 2/15/00
Mediator