

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF ARKANSAS

JAN TAYLOR, CARLA C. CROSSWHITE,  
and LAURA T. GODSEY, individually and  
on behalf of a class of all other persons  
similarly situated and on behalf of the ANB  
Financial, N.A. Employee Stock Ownership  
Plan,

Plaintiffs,

v.

ANB BANCSHARES, INC.; DANIEL  
DYKEMA; HARRY BROWN; GREGREY  
D. LANDIS; DEBRA JACKSON; ERIC  
BROWN, BLAKE EVANS, and VIC  
EVANS,

Defendants.

Case No. 08-5170

**HONORABLE ROBERT T. DAWSON**

**NOTICE OF PENDENCY AND SETTLEMENT OF CLASS  
ACTION LAWSUIT**

**A federal court ordered this notice. This is not a solicitation from a  
lawyer. You have not been sued.**

**IF YOU WERE A PARTICIPANT IN THE ANB FINANCIAL, N.A. (“ANB”) EMPLOYEE STOCK OWNERSHIP PLAN FROM JULY 1, 2005, TO MAY 9, 2008, YOUR RIGHTS MAY BE AFFECTED BY THE SETTLEMENT OF A CLASS ACTION LAWSUIT. PLEASE READ THIS NOTICE CAREFULLY.**

This Notice is intended to inform you of the pendency and settlement of a lawsuit involving the ANB Financial, N.A. Employee Stock Ownership Plan (“the Plan”). This Lawsuit is about whether the Defendants improperly invested and/or maintained the investments of the Plan in ANB stock up to its termination in May 2008. Three former Plan Participants, Jan Taylor, Carla C. Crosswhite, and Laura T. Godsey (the “Named Plaintiffs”), have sued defendants ANB Bancshares, Daniel Dykema, Harry Brown, Gregrey D. Landis, Debra Jackson, Eric Brown, Blake Evans, and Vic Evans (“Defendants”), on behalf of all individuals who participated in the Plan between July 1, 2005, to May 9, 2008 (the “Class period”). A federal judge has certified this lawsuit as a class action.

The Court has preliminarily approved a proposed settlement of the Lawsuit brought under the Employee Retirement Income Security Act (often referred to as “ERISA”) (the “Settlement”). The Settlement will provide for a payment in the amount of \$2 million that will be allocated among the members of the Class, after payment of attorneys’ fees, costs, incentive payments to the class representatives, and the settlement administrator’s fees.

The Court has scheduled a hearing on final approval of the Settlement and on the Named Plaintiffs’ motion for attorneys’ fees and expenses and for compensation to the Named Plaintiffs. The hearing, before United States District Judge Robert T. Dawson, has been scheduled for \_\_\_\_\_ at the United States District Court for the Western District of Arkansas, Judge Isaac C. Parker Federal Building, 30 South 6th Street, Fort Smith, Arkansas 72901, in the courtroom assigned to Judge Dawson.

Any objections to the Settlement or to the motion for attorneys’ fees and expenses and compensation to the Named Plaintiffs, must be sent in writing to the Clerk of the Court and to the Settlement Administrator, who are identified in Section 12 of this Notice. The procedure for objecting is described in Section 12.

**PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE CLASS TO WHOM THIS NOTICE IS ADDRESSED, THE SETTLEMENT WILL AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT HAVE TO APPEAR IN COURT, AND YOU DO NOT HAVE TO HIRE AN ATTORNEY IN THIS CASE. IF YOU ARE IN FAVOR OF THE SETTLEMENT, YOU DO NOT NEED TO DO ANYTHING. IF YOU DISAPPROVE, YOU MAY OBJECT TO THE SETTLEMENT BY FOLLOWING THE PROCEDURE DESCRIBED BELOW.**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>YOU CAN DO NOTHING.</b>	If the Settlement is approved by the Court and you are a member of the Class, then the portion, if any, of the Net Settlement Fund to be allocated to your Plan account will be calculated as part of the implementation of the Settlement as described in Section 9 below.
<b>YOU CAN OBJECT (BY _____)</b>	If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and the Settlement Administrator about why you do not like the Settlement. There are specific deadlines by which you must object to the Settlement, as described in Section 12 below.
<b>YOU CAN GO TO A HEARING (TO BE HELD ON _____)</b>	If you have submitted a written objection to the Settlement to the Court and Settlement Administrator, you may (but do not have to) attend the Court hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will only be allowed to speak at the hearing if you file written comments in advance of the hearing, except by leave of the Court.

- These rights and options – **and the deadlines to exercise them** – are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made only if the Court approves the Settlement and that approval is upheld in the event that anybody appeals from the Court's approval.
- Further information regarding the lawsuit and this notice may be obtained by contacting the Settlement Administrator:

Nicholas L. Saakvitne  
532 Colorado Avenue, Second Floor  
Santa Monica, California 90401-2408

- You may also obtain additional information on the website of Class Counsel: [www.lewisfeinberg.com](http://www.lewisfeinberg.com), or by contacting Class Counsel:

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Andrew Lah  
LEWIS, FEINBERG, LEE, RENAKER & JACKSON, P.C.  
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Telephone: (479) 464-9828  
Facsimile: (479) 464-9768  
Email: [dbk@kendalldrewyor.com](mailto:dbk@kendalldrewyor.com)

<b>WHAT THIS NOTICE CONTAINS</b>
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## **1. WHY YOU RECEIVED THIS NOTICE**

You received this notice because Plan records indicate that you were a participant in or beneficiary of the Plan at any time from July 1, 2005, through May 9, 2008. The Court caused this Notice to be sent to you because, if you fall within that group, you have a right to know about the Lawsuit, the Settlement, and all of your options before the Court decides whether to approve the Settlement. If the Court approves the Settlement, the net amount of the Settlement Fund will be allocated among eligible Class Members by the Settlement Administrator. This Notice describes the Lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

## **2. DESCRIPTION OF THE LAWSUIT**

The Plaintiffs filed this lawsuit on July 29, 2008 (the "Lawsuit"). This case stems from the investment of assets of the Plan in stock of ANB Bancshares, Inc., the bank holding company for ANB Financial, N.A. (the "Bank"). The Bank was taken over by federal government regulators on May 9, 2008, and as a result of the Bank's failure, ANB stock became worthless. This lawsuit is about whether the Defendants acted improperly in investing Plan assets in ANB stock during the Class period.

Plaintiffs claim that these Defendants, each of whom is alleged to have served as a fiduciary of the Plan, breached their duties of loyalty and prudence under ERISA by continuing Plan investments in ANB stock when the stock was an imprudent investment, and by misrepresenting and failing to disclose to plan participants material information concerning the Plan's investment in ANB stock. Plaintiffs asked the Court to order the Defendants to restore the losses to the Plan that Plaintiffs allege resulted from Defendants' breaches of fiduciary duty.

Defendants deny any and all wrongdoing and maintain that the ANB stock was never "imprudent" and its demise was caused by the unforeseeable global economic collapse. The Defendants deny that they have liability to the Plan or its participants or beneficiaries. Defendants have raised numerous defenses to liability, including that there was no market on which to sell the ANB stock, even if it was "imprudent" to hold, that they fully discharged all fiduciary duties imposed on them by ERISA and that the Plan's investments were at all times prudent.

The Court has not yet determined which side is correct.

This is a class action lawsuit, where the Named Plaintiffs have sued on behalf of people who have similar claims. All of the individuals on whose behalf the Named Plaintiffs are suing are "Class Members." One court will resolve the issues for all Class Members. The lawsuit is pending in the District Court for the Western District of Arkansas before U.S. District Judge Robert T. Dawson. In an order dated Order dated November 4, 2010, the Court certified a class on Plaintiffs' claims. Copies of the Complaint, Order Granting Class Certification and other documents filed in the Lawsuit are available at [www.lewisfeinberg.com](http://www.lewisfeinberg.com).

## **3. WHO IS AFFECTED BY THIS LAWSUIT**

On November 4, 2010, the Court certified the following class (“the Class”):

**All participants in the ANB Financial, N.A. Employee Stock Ownership Plan (“the Plan”) for whose individual accounts the Plan held shares of stock of ANB Bancshares, Inc., at any time from July 1, 2005, through May 9, 2008. Excluded from the Class are the individual defendants, officers and directors of the corporate defendants, members of their immediate families, and the beneficiaries, heirs, successors, or assigns of any of the foregoing.**

Any individual who is a member of the Class will be affected by this lawsuit.

#### **4. HOW YOU MAY BE AFFECTED BY THIS LAWSUIT**

You have been sent this notice because you may be a member of the class described above. If so, the outcome of the case will affect your rights with respect to your benefits under the Plan. As a member of the class, you are automatically included as a plaintiff in these claims and do not have the right to withdraw yourself from this litigation. You will be bound by any judgment made by the Court, whether favorable or unfavorable to you.

You do not need to do anything in order to be a class member in this lawsuit. You do not need to affirmatively state your intent to participate, nor can you exclude yourself from the litigation.

#### **5. LEGAL REPRESENTATION**

The Court has determined that the interests of the members of the Class will be represented by Plaintiffs Taylor, Crosswhite, and Godsey through their attorneys, as counsel for the Class. Because the Court has approved these attorneys as Class Counsel, and because this is a mandatory class, you do not have the right to change counsel for the class.

Attorneys for Plaintiffs and the Class are:

Teresa S. Renaker  
Andrew Lah  
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476 9th Street  
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Class members may enter appearances in this lawsuit. However, class members are responsible for compensating any attorney that they hire for this purpose and will not receive any reimbursement from Plaintiffs or the Class.

## **6. THE CASE HAS BEEN AGGRESSIVELY LITIGATED**

The Lawsuit was filed in July of 2008. The parties have engaged in extensive discovery, exchanged thousands of pages of documents, and deposed the Named Plaintiffs. While discovery was still ongoing, the Defendants sought to have the case against them dismissed in its entirety. The Plaintiffs aggressively defended against the Motion and extensively briefed the issues before the Court. The Court ultimately denied the Defendants' motion, with minor exceptions.

The parties also extensively briefed the issue of class certification. On November 4, 2011, the Court certified the case as a class action and appointed Plaintiffs' lawyers as Class Counsel.

On November 8, 2011, all parties and their lawyers attended a full-day mediation in Rogers, Arkansas, with a professional mediator, Layn Phillips, formerly a judge of the United States District Court for the Western District of Oklahoma. The parties were unable to reach an agreement on that date. However, the parties continued settlement efforts through Judge Phillips following the mediation. This Settlement is the product of negotiations between Class Counsel and defense counsel, with the assistance and participation of the professional mediator over a period of several months. The mediation process included many telephonic discussions, a full day of face-to-face meetings, and written correspondence.

## **7. POTENTIAL OUTCOME OF THE ACTION**

As with any litigated case, Plaintiffs would face an uncertain outcome if the Lawsuit were to continue against the Defendants. Continued prosecution of the Lawsuit against these Defendants could result in a judgment or verdict greater or lesser than the recovery under the Settlement, or in no recovery at all. In this case, the uncertainty of recovery is particularly high because the Defendants lack assets to pay a judgment. Defendants have submitted under penalty of perjury written statements of net worth to Judge Phillips, who has reviewed these statements and concluded that Defendants lack the financial resources to pay a judgment of the type sought in this case. Defendants are covered by a fiduciary liability insurance policy with a coverage limit of \$4 million. The policy is a "wasting policy," meaning that the legal costs of defending this lawsuit erode the amount of insurance funds available to satisfy a judgment and significant defense costs have already been incurred over the past three years. Had this case not settled, the defense costs would likely have eroded the entire insurance policy limit of \$4 million, and the Plaintiffs would receive nothing, even if they were successful in winning a judgment.

Throughout this lawsuit, the Plaintiffs and the Defendants have disagreed on both liability and damages, and they do not agree on the amount that would be recoverable even if the Plaintiffs were to win the case.

The Defendants have denied and continue to deny the claims and contentions alleged by the Plaintiffs, that they are liable at all to the Class, and that the Class or the Plan has suffered any damages for which the Defendants could be legally responsible. Nevertheless, the Defendants have taken into account the uncertainty and risks inherent in any litigation, particularly in a complex case such as this, as well as the costs of litigation, and have concluded that it is desirable that the case be fully and finally settled as to them on the terms and conditions set forth in the Settlement.

The Plaintiffs and their attorneys, including attorneys who are experienced in litigating ERISA class actions, believe that they have strong claims against the Defendants. However, they recognize that there is uncertainty and risk in any litigation. In addition, they understand that even if they win the case, they could recover for the Plan and its participants less than the Settlement amount, and that any recovery could be delayed for as much as several years or even voided by an appeal. As a result, the Plaintiffs and their attorneys have concluded that it is desirable to settle the case on the terms set forth in the Settlement.

## **8. SUMMARY OF SETTLEMENT**

The following is a summary of the terms of the settlement:

- A Settlement Fund consisting of \$2 million in cash will be established.
- If the Court approves the Settlement and no appeals are taken, or if the Court's approval is affirmed on appeal, then any Court-approved attorneys' fees, costs, compensation to the Named Plaintiffs, Settlement Administrator's fees and costs, and any fees and taxes, will be paid out of this fund. The remaining amount, including interest ("Net Settlement Fund") will be paid to the Plan. The amount paid to the Plan will be allocated among members of the Class in accordance with the Plan of Allocation based upon the vested balance in their employer stock fund accounts on May 9, 2008. If you did not have a vested balance on May 9, 2008, you will not receive an allocation from the Net Settlement Fund.
- Nicholas L. Saakvitne, an experienced pension attorney and professional Trustee with experience in administering terminated plans, will serve as the Settlement Administrator. He will provide notice to class members; prepare tax forms, as necessary; compute and distribute the Net Settlement Fund among Class Members; provide distribution election forms and tax information to each Class Member; respond to Class Member inquiries regarding distributions; and complete tax reports of distributions. The cost of the administration of the Settlement will come from the Settlement Fund. This cost is anticipated to be \$32,500.
- In exchange for these things, the Named Plaintiffs and each of the Class Members are deemed to fully release the "Released Persons" from the "Released Claims." The Released Persons are the Defendants and certain persons and entities affiliated with Defendants, as defined in the Settlement. The Released Claims generally include all claims that could have been asserted against the Defendants



for their actions (or inaction) in relation to the Plan. By way of examples, the Released Claims include claims based on (a) imprudent investment of Plan assets, (b) improper investigation of Plan investments, (c) improper monitoring of Plan investments, (d) plan communications, and (e) the Defendants' actions in relation to administration of the Plan.

The above description of the operation of the Settlement is only a summary. The full terms and conditions of the Settlement are contained in a Stipulation and Agreement of Compromise and Settlement of Class Action (the "Settlement"). Capitalized terms used in this Notice, but not defined in this Notice, have the meanings assigned to them in the Settlement. The governing provisions are set forth in the Settlement (including its exhibits), which may be obtained at [www.lewisfeinberg.com](http://www.lewisfeinberg.com), by contacting Class Counsel, or by contacting the Settlement Administrator.

## **9. YOUR SHARE OF THE SETTLEMENT**

Your share of the Net Settlement Fund paid into the Plan will depend on your proportionate share of Plan assets allocated to the Plan's employer stock fund, excluding those assets allocated to the accounts of persons excluded from the Class (such as Defendants), as of May 9, 2008. Each Class Member's proportionate share will be determined using a Plan of Allocation. Because the Net Settlement Fund is less than the total investment losses alleged by the Class, each Class Member's proportionate recovery will be less than the amount of the Plan's loss attributable to his or her former employer stock fund account. Because Settlement Fund distributions represent additional benefits under the Plan, it is anticipated that they will be eligible for rollover to an individual retirement account or another employer's qualified plan that accepts rollovers.

You are not responsible for calculating the amount you may be entitled to receive under the Settlement. This calculation will be done as part of the implementation of the Settlement. In general, your proportionate share of the Net Settlement Fund will be calculated as follows:

- Using the Plan's records and other records as necessary, the Settlement Administrator will identify each member of the Class.
- The Settlement Administrator will use Plan records to determine the vested balance of each Class Member's employer stock fund account in the Plan on May 9, 2008.
- Each Class Member with a vested balance as of May 9, 2008, will be assigned a Plan Percentage, which shall be his or her account balance as a percentage of the employer stock fund assets held by the entire Class as of May 9, 2008, under the calculation in the previous step.
- The Settlement Administrator will allocate to each Class Member a share of the Net Settlement Fund multiplied by the Class Member's Plan Percentage under the Plan.

Do not worry if you do not have records that show your account balances with the Plan.

If you are entitled to a share of the Net Settlement Fund, you will receive a statement showing the amount of your share, together with paperwork to elect a form of distribution. If you have

questions regarding the Settlement or the Plan of Allocation, please contact Class Counsel or the Settlement Administrator.

#### **10. COMPENSATION FOR THE NAMED PLAINTIFFS**

The three Named Plaintiffs who represent the Class in the Litigation will share in the allocation of the money paid to the Plan on the same basis and to the same extent as all other members of the Class, except that, in addition, the Named Plaintiffs may apply to the Court for compensation up to \$10,000 each, which includes reimbursement of their reasonable costs and expenses directly relating to their representation of the Class, as well as compensation for the considerable amount of time they have spent on the case. In particular, the Named Plaintiffs have gathered documents, prepared for and given depositions, monitored Class Counsel's work and consulted with them on the progress of the Litigation, and participated in the mediation and subsequent settlement negotiations. Any compensation awarded to the Named Plaintiffs by the Court will be paid from the proceeds of the Settlement Fund.

#### **11. PAYMENT OF ATTORNEYS' FEES**

Class Counsel are being paid for their time on a contingency basis, which means that if there is no recovery on the class claims, there will be no attorneys' fees awarded and the attorneys will not be paid for their time. If there is a recovery on one or more of the claims, Class Counsel will receive attorneys' fees as determined by the Court, which may be a part of any settlement obtained or money judgment in favor of the members of the Class.

Class Counsel have applied to the Court for an order awarding to Class Counsel, from the proceeds of the Settlement Fund, attorneys' fees of 25% of the amount recovered in the Settlement (\$500,000.00), plus reimbursement of the expenses they have incurred to litigate the case (approximately \$50,000.00). The motion for attorneys' fees is available on Class Counsel's website, [www.lewisfeinberg.com](http://www.lewisfeinberg.com).

You will not be charged directly by these attorneys. If you choose to be represented by your own lawyer, you may hire one at your own expense.

#### **12. OBJECTING TO THE SETTLEMENT OR THE ATTORNEYS' FEES**

You can tell the Court that you do not agree with the Settlement or some part of it, including the attorneys' fees and expenses the attorneys intend to seek. If you are a Class Member, you can object to the Settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. To object, you must send a letter or other written statement saying that you object to the Settlement of Taylor v. ANB Bancshares, Case No. CV 2008-5170. Be sure to include your name, address, telephone number, signature, and a full explanation of all reasons you object to the Settlement. Your written objection must be sent to the Clerk of the Court and to the Settlement Administrator at the following addresses:

Settlement Administrator:  
Nicholas L. Saakvitne  
532 Colorado Avenue, Second Floor

Santa Monica, California 90401-2408

and

Clerk of the United States District Court  
John Paul Hammerschmidt Federal Building  
35 East Mountain Street, Suite 510  
Fayetteville, Arkansas 72701-5354

Your objection must be postmarked no later than \_\_\_\_\_.

### **13. THE COURT'S FAIRNESS HEARING**

The Court will consider whether to approve the Settlement as fair, adequate, and reasonable (the "Fairness Hearing"). The Fairness Hearing, before United States District Judge Robert T. Dawson, has been scheduled for \_\_\_\_\_ at the United States District Court for the Western District of Arkansas, Judge Isaac C. Parker Federal Building, 30 South 6th Street, Fort Smith, Arkansas 72901, in the courtroom assigned to Judge Dawson.

You may attend the Fairness Hearing in person or through an attorney retained at your expense. You do not have to attend the Fairness Hearing. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to approve the Settlement. The Court also will rule on the motions for attorneys' fees and expenses and for compensation to the Named Plaintiffs. We do not know how long after the Fairness Hearing the Court will issue its decisions.

You do not have to attend the fairness hearing. Class Counsel will answer any questions Judge Dawson may have. But you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mail your written objection on time, it will be before the Court when the Court considers whether to approve the Settlement as fair, adequate, and reasonable. You also may have your own lawyer attend the Fairness Hearing, but such attendance is not necessary.

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in Taylor v. ANB Bancshares, Case No. CV 08-5170. Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be sent to the Settlement Administrator and the Clerk of the Court as the address listed in paragraph 12, postmarked no later than \_\_\_\_\_2011.

### **14. FURTHER INFORMATION**

Further information regarding the Lawsuit and this Notice may be obtained by contacting Class Counsel:

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KENDALL DREWYOR LAW FIRM

3706 Pinnacle Hills Parkway #201  
Rogers, AR 72758  
Telephone: (479) 464-9828  
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Andrew Lah  
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Or the Settlement Administrator:

Nicholas L. Saakvitne  
532 Colorado Avenue, Second Floor  
Santa Monica, California 90401-2408

**THIS NOTICE AND ITS CONTENT HAS BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS, THE HONORABLE ROBERT T. DAWSON, UNITED STATES DISTRICT COURT JUDGE. THE COURT HAS MADE NO DECISION ABOUT THE MERITS OF THE CLAIMS OR DEFENSES ASSERTED BY ANY PARTY IN THIS CASE.**