

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation as Receiver for Pacific State Bank, Stockton, California ("FDIC-R"); Steven A. Rosso ("Rosso"); and Progressive Casualty Insurance Company ("Insurer") (individually, the FDIC-R, Rosso, and the Insurer may be referred to herein as "Party" and collectively as the "Parties").

### RECITALS

#### WHEREAS:

Prior to August 20, 2010, Pacific State Bank ("Bank") was a depository institution organized and existing under the laws of California;

On August 20, 2010, the California Department of Financial Institutions closed the Bank and pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets.

Among the assets to which the FDIC-R succeeded were all of the Bank's claims, demands, and causes of action against its former directors, officers, and employees arising from the performance, nonperformance, and manner of performance of their respective functions, duties and acts as directors, officers, and employees of the Bank;

The FDIC-R has asserted claims against Rosso, who served at various times as a director and officer of the Bank. Rosso has denied and continues to deny liability for the FDIC-R's claims. No lawsuit has been filed by the FDIC-R against Rosso.

Insurer issued a director and officer liability policy numbered  ("Policy"), (b)(4) which insured the directors and officers of the Bank according to the terms, provisions, and conditions of the Policy. Rosso and other former directors and officers of the Bank asserted claims for coverage under the Policy. Insurer has reserved its rights to deny coverage under the Policy for claims asserted by FDIC-R against Rosso and the other former directors and officers

of the Bank. Additionally, on March 21, 2012, Insurer filed a declaratory judgment action against Rosso and other former directors and officers of the Bank seeking a declaration of its rights and obligations under the Policy with regard to the claims asserted by the FDIC-R against them. That action is now pending before the United States District Court for the Eastern District of California in *Progressive Casualty Insurance Company v. Dalton, et al.* No. 2:12-cv-00713-MCE-CK ("Coverage Action").

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of further litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned Parties agree, each with the other, as follows:

**SECTION I: Payment to FDIC-R and to Rosso's Counsel**

A. As an essential covenant and condition to this Agreement, on or before thirty (30) calendar days following the date this Agreement is executed by all Parties, the Insurer, on behalf of Rosso, agrees to pay the FDIC-R the sum of THREE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$3,400,000.00) ("the Settlement Payment").

B. The Insurer, on behalf of Rosso, shall deliver the Settlement Payment to the FDIC-R by direct wire transfer in accordance with the wire instructions set forth in Section VIII below. No less than ten (10) days before payment is due, the FDIC-R shall provide the Insurer an executed Form W-9 for the designated account.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection A above, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:

1. Extend the period of time for the Settlement Payment, including interest accruing from the due date determined by subsection A above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(3); or

2. Enforce this Agreement, in which event Rosso and Insurer agree to jurisdiction in United States District Court for the Eastern District of California and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement, except liability for payment of reasonable attorneys' fees under this paragraph shall be apportioned severally between Rosso and Insurer based on the extent to which each party's action or inaction is determined to have caused the failure of timely payment in full hereunder; or

3. Terminate the Agreement, move to vacate any dismissal order to which Rosso and Insurer agree to consent, and institute and/or re-institute one or more lawsuits to assert the FDIC-R's claims. Rosso and Insurer further agree to waive and not assert objections, defenses, claims or counterclaims, including any defense based on any statute of limitations that bar any of the FDIC-R's claims, that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; and/or

4. Seek any other relief available to it in law or equity.

Any extension of time under Section I.C.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.C.2 through I.C.4 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

D. In addition to the Settlement Payment to the FDIC-R, Insurer agrees to timely pay Rosso's counsel, Albert M. Ellis, Esq., all reasonable and necessary fees and expenses in connection with Rosso's defense of the FDIC-R's claims against him, including such fees and expenses in connection with the mediation and finalization of this settlement.

#### **SECTION II: Stipulation and Dismissal**

Upon the FDIC-R's receipt of the Settlement Payment, counsel for the Parties shall execute and file a stipulation of dismissal with prejudice of the Coverage Action, in the form attached hereto as Exhibit A. In the event one or more litigants who are not Parties hereto fail to promptly execute the stipulation of dismissal, the Parties shall jointly move the Court for an order dismissing with prejudice all claims in the Coverage Action, each Party to bear its own

fees and costs. Absent a contrary order of the Court, the Parties agree to treat the Coverage Action as stayed until it is dismissed.

**SECTION III: Releases**

**A. The FDIC-R's Releases**

Upon receipt of the Settlement Payment in full and except as provided in Section III.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges:

1. Rosso and his heirs, executors, trustees, administrators, representatives, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of Rosso's functions, duties and actions as an officer and/or director of the Bank.

2. Insurer, its parents, subsidiaries, affiliates and reinsurers, and its and their respective employees, officers, directors, agents, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Policy. As part of this release of the Insurer, the FDIC-R agrees that any interest it may have under the Policy is extinguished.

3. All other former directors, officers, and employees of the Bank (collectively, the "Covered Persons") and their respective heirs, executors, trustees, administrators, representatives, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the Covered Persons' respective functions, duties and actions as directors, officers and/or employees of the Bank. This release shall be null and void as to any Covered Person if such Covered Person asserts any claim against the FDIC-R.

B. Rosso's Release

Effective simultaneously with the releases granted in Sections III.A. and C., Rosso, on behalf of himself and his heirs, executors, trustees, administrators, agents, representatives, attorneys, successors, and assigns, hereby release and discharge:

1. The FDIC-R, and its employees, officers, directors, representatives, attorneys, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of Rosso's functions, duties and actions as an officer and/or director of the Bank.

2. Insurer, its parents, subsidiaries, affiliates and reinsurers, and its and their respective employees, officers, directors, agents, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Policy, except for the Insurer's obligation to pay reasonable and necessary fees and expenses as set forth in Section I.D. As part of his release of the Insurer, Rosso agrees that (subject to the foregoing exception) any interest he has under the Policy is extinguished.

C. The Insurer's Release

Effective simultaneously with the releases granted in Sections III.A. and B above, Insurer, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby releases and discharges:

1. The FDIC-R, and its employees, officers, directors, agents, representatives, attorneys, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Policy.

2. Rosso and his heirs, executors, trustees, administrators, representatives, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the D&O

Action. Nothing in this release shall affect any defense to coverage Insurer may have with respect to any claim that may be asserted against it in the future, if any, in connection with the Policy or otherwise.

D. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action:

a. Against Rosso or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank; and

b. Against any person or entity not expressly released by the FDIC-R in this Agreement.

2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

3. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. §

6. In addition, the FDIC-R specifically reserves the right to seek court-ordered restitution pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 et. seq., if appropriate.



#### **SECTION IV: Waiver of Dividends and Proceeds from Litigation**

To the extent, if any, that Rosso is or was a shareholder of the Bank or its holding company and by virtue thereof is or may be entitled to a dividend, payment, or other distribution upon resolution of the receivership of the Bank or proceeds in any litigation that has been or could be brought against the Federal Deposit Insurance Corporation in any capacity or against the United States based on or arising out of, in whole or in part, the closing of the Bank, or any alleged acts or omissions by the Federal Deposit Insurance Corporation in any capacity, the United States government, or any agency or department of the United States government in connection with the Bank, its conservatorship, or receivership, Rosso hereby knowingly assigns to the FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, or other distributions, or proceeds.

#### **SECTION V: Representations and Acknowledgements**

A. Authorized Signatories. All of the undersigned persons represent and warrant that they are Parties hereto or are authorized to sign this Agreement on behalf of the respective Party, and that they have the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective heirs, executors, trustees, administrators, representatives, successors and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that he, she, or it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that Party by his or her counsel.

#### **SECTION VI: Reasonable Cooperation**

A. The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing, or causing their agents and attorneys to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to conclude the Coverage Action, and to otherwise perform the terms of this Agreement.

B. Rosso agrees to cooperate fully with the FDIC-R in connection with any action required under this Agreement. Such cooperation shall consist of:

1. Producing all documents requested by the FDIC-R, without the necessity of subpoena, as determined by the FDIC-R, in its sole discretion, to be relevant to the Bank;
2. Appearing as requested by the FDIC-R at reasonable times and places for interviews regarding facts, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank;
3. Testifying as requested by the FDIC-R, without the necessity of a subpoena, in any matter relevant to the Bank, as determined by the FDIC-R;
4. Signing truthful affidavits, regarding any matter, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank.

#### **SECTION VII: Other Matters**

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims and defenses, that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party except to enforce its terms.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Parties subscribed thereto upon the execution by all Parties to this Agreement.

C. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of California.

D. Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and by email, to the following:



If to the FDIC-R:

Howard B. Klein  
Legal Division,  
Federal Deposit Insurance Corporation  
3501 Fairfax Drive, VS-B-7016  
Arlington, VA 22226  
Email address:

(b)(6)

If to Rosso:

Albert M. Ellis  
Hakeem, Ellis & Marengo  
3414 Brookside Road, Suite 100  
Stockton, CA 95219  
Email address:

(b)(6)

If to Insurer:

Lewis K. Loss  
Loss, Judge & Ward, LLP  
1133 21<sup>st</sup> Street, N.W.  
Washington, DC 20036  
Email address:

(b)(6)

E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s), or other representative(s).

F. Titles and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

G. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirements.

**SECTION VIII: Wire Transfer Instructions**

BANK: Federal Home Loan Bank of New York

(b)(4) ROUTING #:

FOR CREDIT TO: FDIC National Liquidation Account

(b)(4) ACCOUNT #:

New York Main Office

101 Park Avenue

New York, NY 10178-0599

212-681-6000

212-441-6890 Fax

**OTHER BENEFICIARY INFORMATION (OBI):**

(b)(4) 1. Fund code:

2. Notify: Howard B. Klein, Esq. 703-516-5089

3. Pacific State Bank, Director and Officer settlement

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

FEDERAL DEPOSIT INSURANCE CORPORATION AS  
RECEIVER FOR PACIFIC STATE BANK

(b)(6) Date: 8/16/14

BY:

TITLE: Counsel

PRINT NAME: Howard B. Klein

(b)(6) Date: 8/15/2014

Steven A. Rosso

PROGRESSIVE CASUALTY INSURANCE COMPANY

(b)(6) Date: 8/18/14

BY:

TITLE: Claims Specialist Sr. / AH4

PRINT NAME: Lawrence D. Leeders