

April 10, 2015

**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 Vantus Bank ("FDIC-R"); Michael W. Dosland, Michael S. Moderski, Arlene T. Curry, Barry E. Backhaus, Gary L. Evans, Ronald A. Jorgensen, Jon G. Cleghorn, and Charles D. Terlouw (collectively, the "Settling Defendants"); and Progressive Casualty Insurance Company ("Insurer"). The FDIC-R, the Settling Defendants, and Insurer may be referred to herein as "Party" and collectively as the "Parties."

**RECITALS**

WHEREAS:

Prior to September 4, 2009, Vantus Bank of Sioux City, Iowa ("Bank") was a federal savings bank:

On September 4, 2009, the Office of Thrift Supervision closed the Bank and pursuant to 12 U.S.C. § 1821(e), 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/or employees of the Bank;

On May 20, 2013, the FDIC-R filed a Complaint for money damages against the Settling Defendants, each of whom served at various times as a director and/or officer of the Bank.

(Settling Defendant Ronald A. Jorgensen was incorrectly identified in the Complaint as Jorgenson.) Those claims for damages are now pending in the United States District Court for the Northern District of Iowa in *FDIC as Receiver for Vantus Bank v. Dosland, et al.*, Case No. 5:13-CV-04046-MWB (N.D. Iowa) (“D&O Action”). The Settling Defendants have denied liability in the D&O Action;

Insurer issued Directors and Officers Liability Insurance Policy for Financial Institutions No.  for the period April 13, 2006 through May 13, 2009 (“Policy”), which insured the directors and officers of the Bank according to the terms, provisions, and conditions of the Policy. The Policy contains a Discovery Period that ran from May 13, 2009 to May 13, 2010. The Settling Defendants asserted claims for coverage under the Policy.

On April 25, 2012, Insurer filed a declaratory judgment action against the FDIC-R and the Settling Defendants seeking, among other things, a declaration of its rights and obligations under the Policy with regard to the claims asserted by the FDIC-R in the D&O Action including that the Policy does not cover claims asserted by the FDIC-R (“Coverage Action”). The FDIC-R and the Settling Defendants have denied that the Insurer is entitled to the requested relief. While pending in the United States District Court for the Northern District of Iowa, the case was styled as *Progressive v. FDIC, et al.*, Case No. 5:12-CV-04041-MWB (N.D. Iowa). On January 23, 2015, the United States District Court for the Northern District of Iowa filed its Order ruling on the parties’ cross motions for judgment in the Coverage Action (“Order”) and entered Judgment in accordance therewith (“Judgment”). On March 13, 2015, Progressive filed a Notice of Appeal to the United States Court of Appeals for the Eight Circuit from the Order and Judgment in the Coverage Action with the United States District Court for the Northern District of Iowa (“Coverage Appeal”).

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**

A. As an essential covenant and condition to this Agreement, within fourteen days of the date this Agreement has been executed by all parties, Insurer agrees to pay to the FDIC-R the sum of \$6,500,000 (the "Settlement Payment").

B. The Settlement Payment to the FDIC-R shall be paid by direct wire transfer into the following account:

Federal Home Loan Bank of New York

(b)(4) ABA Routing Number:

For Credit to: FDIC National Liquidation Account

(b)(4) Account Number:

OBI: FIN 10116; Vantus Bank, Sioux City, Iowa;

Contact: Robert L. Wainess, 703-516-5285; Professional Liability (37100); DIF Fund;

(b)(4) Asset No.

C. If the FDIC-R does not timely receive the Settlement Payment as set forth 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 date determined by Subsection A above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(2), or;

2. Enforce this Agreement, in which event the Settling Defendants and Insurer agree to jurisdiction in United States District Court for the Northern District of Iowa and any defaulting party agrees to pay all of the FDIC-R's reasonable attorney's fees and costs expended

in enforcing the terms of this Agreement; or

3. Terminate the Agreement and move to vacate any stipulation of dismissal or lift any stay of the D&O Action, to which the Settling Defendants agree to consent, and reinstitute or resume any action on the FDIC-R's claims. The Settling Defendants further agree not to assert any objections, defenses, claims, or counterclaims, including any defense based on any statute of limitations that would 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. In the event the FDIC-R terminates this Agreement and reinstates the D&O action, the Insurer in its sole discretion may move to vacate any dismissal of the Coverage Appeal, to which the FDIC-R and the Settling Defendants agree to consent, and reinstitute or resume any action on the Insurer's claims.

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.

#### **SECTION II: Stipulation of Dismissal**

Within five business days after receipt of the Settlement Payment, plus any accrued interest, the FDIC-R shall file a stipulation of dismissal with prejudice, executed by the attorneys for all Settling Defendants in the form attached hereto as Exhibit A, in the D&O action. Within five business days after the Court's entry of an Order of dismissal with prejudice in the D&O Action, the Insurer shall file an agreed Voluntary Dismissal pursuant to FRAP 42, each party to bear its own costs, in the form attached hereto as Exhibit B, in the Coverage Appeal. The FDIC-R and the Settling Defendants shall cooperate in the filing of the necessary notice under FRAP 42.

### **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 below, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges:

1. The Settling Defendants 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 Settling Defendants' respective functions, duties and actions as officers and/or directors of the Bank, including, without limitation, the causes of action alleged in the D&O Action and the Coverage Action.

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, the D&O Action, the Coverage Action or the Coverage Appeal. As part of this release of 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 including without limitation the causes of action alleged in the D&O

Action. This release shall be null and void as to any Covered Persons if such Covered Persons assert any claim against the FDIC-R.

B. The Settling Defendants' Releases.

Effective simultaneously with the release granted in Section III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective 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 the Settling Defendants' respective functions, duties and actions as officers and/or directors of the Bank, including, without limitation, the causes of action alleged in the D&O Action and the Coverage Action.

2. Insurer, its parents, subsidiaries, affiliates, and reinsurers, and its and their respective employees, officers, directors, agents, attorneys, representatives, successors, and assigns, from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or equity, that arise from or relate to the Policy, the D&O Action, the Coverage Action or the Coverage Appeal. As part of this release, the Settling Defendants agree that any interest they may have under the Policy is extinguished.

C. Insurer's Releases.

Effective simultaneously with the releases granted in Section III.A. 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, 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, the D&O Action, the Coverage Action or the Coverage Appeal.

2. Each of the Settling Defendants, and their respective heirs, executors, administrators, 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, or that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as employees, officers and/or directors of the Bank or in any other capacity including, without limitation, the causes of action alleged or which could have been alleged in the D&O Action, the Coverage Action, or any other legal proceeding.

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 the Settling Defendants, Insurer, 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 the 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 Victim and Witness Protection Act and/or 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 Settling Defendants are or were shareholders of the Bank or its holding company and by virtue thereof are 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, Settling Defendants hereby knowingly assign 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 Acknowledgement**

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, trustee, 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.

C. Financial Disclosure Representation. Each Settling Defendant has submitted financial information to the FDIC-R including Personal Financial Statements and herein affirms that his or her financial information was true and accurate as of the date of the submission and further affirms that there have been no material changes since the date of the submission to the date of this Agreement. Each Settling Defendant expressly acknowledges that, in determining to settle the claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by the Settling Defendants. The FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information. If the FDIC-R establishes via a final adjudication in an appropriate judicial forum that a Settling Defendant failed to disclose any material interest, legal, equitable, or beneficial, in any asset, that Settling Defendant agrees to cooperate fully with the FDIC-R to provide updated financial information and to pay to the FDIC-R the lesser of (1) the value of the Settling Defendant's undisclosed material interest in such asset(s); or (2) the amount of unpaid damages alleged against that Settling Defendant.

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

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 D&O Action, the Coverage Action and the Coverage Appeal and to otherwise perform the terms of this Agreement.

**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 Iowa.

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:

Robert L. Wainess  
Federal Deposit Insurance Corporation  
3501 Fairfax Dr., Room VS-B-7034  
Arlington, VA 22226-3500

(b)(6)

and

Antony Burt  
Schiff Hardin LLP  
233 South Wacker Drive  
Chicago, Illinois 60606

(b)(6) \_\_\_\_\_ [Redacted]

If to the Settling Defendants:

David A. Tank  
Dorsey & Whitney LLP  
801 Grand Avenue, Suite 4100  
Des Moines, IA 50309-2790

(b)(6) \_\_\_\_\_ [Redacted]

If to the Insurer:

Lewis K. Loss  
Loss, Judge & Ward LLP  
Two Lafayette Centre  
1133 21st Street, NW  
Suite 450  
Washington, DC 20036

(b)(6) \_\_\_\_\_ [Redacted]

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. All 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.

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 VANTUS BANK

Date: \_\_\_\_\_

By:  (b)(6)

Title: Counsel

Print Name: Robert L. Wainess

Date: \_\_\_\_\_

MICHAEL W. DOSLAND

\_\_\_\_\_

Date: \_\_\_\_\_

MICHAEL S. MODERSKI

\_\_\_\_\_

Date: \_\_\_\_\_

ARLENE T. CURRY

\_\_\_\_\_

Date: \_\_\_\_\_

BARRY E. BACKHAUS

\_\_\_\_\_

Date: \_\_\_\_\_

GARY L. EVANS

\_\_\_\_\_

Date: \_\_\_\_\_

RONALD A. JORGENSEN

\_\_\_\_\_

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 VANTUS BANK

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: Counsel

Print Name: Robert L. Wainess

Date: 4/10/15

MICHAEL W. DQSLAND

[Redacted Signature]

(b)(6)

Date: \_\_\_\_\_

MICHAEL S. MODERSKI

\_\_\_\_\_

Date: \_\_\_\_\_

ARLENE T. CURRY

\_\_\_\_\_

Date: \_\_\_\_\_

BARRY E. BACKHAUS

\_\_\_\_\_

Date: \_\_\_\_\_

GARY L. EVANS

\_\_\_\_\_

Date: \_\_\_\_\_

RONALD A. JORGENSEN

\_\_\_\_\_

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FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR VANTUS BANK

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: Counsel

Print Name: Robert L. Wainess

Date: \_\_\_\_\_

MICHAEL W. DOSLAND

Date: 4-9-15

MICHAEL S. MODERSKI

[Redacted Signature]

(b)(6)

Date: \_\_\_\_\_

ARLENE T. CURRY

Date: \_\_\_\_\_

BARRY E. BACKHAUS

Date: \_\_\_\_\_

GARY L. EVANS

Date: \_\_\_\_\_

RONALD A. JORGENSEN

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by each of them or their duly authorized representatives on the dates hereinafter subscribed.

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
VANTUS BANK

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: Counsel

Print Name: Robert L. Wainess

Date: \_\_\_\_\_

MICHAEL W. DOSLAND

Date: \_\_\_\_\_

MICHAEL S. MODERSKI

Date: 4-10-15

ARLENE T. CURRY,

Date: \_\_\_\_\_

BARRY E. BACKHAUS

Date: \_\_\_\_\_

GARY L. EVANS

Date: \_\_\_\_\_

RONALD A. JORGENSEN

(b)(6)



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FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
VANTUS BANK

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: Counsel

Print Name: Robert L. Wainess

Date: \_\_\_\_\_

MICHAEL W. DOSLAND

Date: \_\_\_\_\_

MICHAEL S. MODERSKI

Date: \_\_\_\_\_

ARLENE T. CURRY

Date: 04-10-15

BARRY E. BACKHAUS

\_\_\_\_\_ (b)(6)

Date: \_\_\_\_\_

GARY L. EVANS

Date: \_\_\_\_\_

RONALD A. JORGENSEN



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 VANTUS BANK

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: Counsel

Print Name: Robert L. Wainess

Date: \_\_\_\_\_

MICHAEL W. DOSLAND

Date: \_\_\_\_\_

MICHAEL S. MODERSKI

Date: \_\_\_\_\_

ARLENE T. CURRY

Date: \_\_\_\_\_

BARRY E. BACKHAUS

Date: April 10 2015

GARY L. EVANS / *[Signature]*



(b)(6)

Date: \_\_\_\_\_

RONALD A. JORGENSEN

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 VANTUS BANK

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: Counsel

Print Name: Robert L. Wainess

Date: \_\_\_\_\_

MICHAEL W. DOSLAND

\_\_\_\_\_

Date: \_\_\_\_\_

MICHAEL S. MODERSKI

\_\_\_\_\_

Date: \_\_\_\_\_

ARLENE T. CURRY

\_\_\_\_\_

Date: \_\_\_\_\_

BARRY E. BACKHAUS

\_\_\_\_\_

Date: \_\_\_\_\_

GARY L. EVANS

\_\_\_\_\_

Date: 4/10/15

RONALD A. JORGENSEN

[Redacted Signature Box]

(b)(6)

Date: April 10, 2015

JON G. CLEGGHORN



(b)(6)

Date: \_\_\_\_\_

CHARLES D. TERLOUW

PROGRESSIVE CASUALTY INSURANCE  
COMPANY

By: \_\_\_\_\_

Title \_\_\_\_\_

Print Name: \_\_\_\_\_

0101 09021 010

Date: \_\_\_\_\_

JON G. CLEGHORN

Date: April 10, 2015

CHARLES D. TERLOUW

\_\_\_\_\_

(b)(6)

PROGRESSIVE CASUALTY INSURANCE  
COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

CH2-16162111 4

Date: \_\_\_\_\_

JON G. CLEGHORN

\_\_\_\_\_

Date: \_\_\_\_\_

CHARLES D. TERLOUW

\_\_\_\_\_

PROGRESSIVE CASUALTY INSURANCE  
COMPANY

By:  (b)(6)

Title: Claims Specialist Sr./AH

Print Name: Lawrence P. Lee

CH2-163621314

Exhibit A

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER OF  
VANTUS BANK,

Plaintiff,

v.

MICHAEL W. DOSLAND, MICHAEL S.  
MODERSKI, ARLENE T. CURRY, BARRY  
E. BACKHAUS, GARY L. EVANS,  
RONALD A. JORGENSEN, JON G.  
CLEGHORN, AND CHARLES D.  
TERLOUW,

Defendants.

MICHAEL W. DOSLAND, MICHAEL S.  
MODERSKI, ARLENE T. CURRY, BARRY  
E. BACKHAUS, GARY L. EVANS,  
RONALD A. JORGENSEN, JON G.  
CLEGHORN, AND CHARLES D.  
TERLOUW,

Third-Party Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Third-Party Defendant.

Case No. 5:13-CV-04046-MWB

Hon. Mark W. Bennett, USDJ

**JOINT STIPULATION TO DISMISS  
WITH PREJUDICE PLAINTIFF'S  
CLAIMS AGAINST DEFENDANTS AND  
THIRD-PARTY PLAINTIFFS' CLAIMS  
AGAINST THIRD-PARTY DEFENDANT**

Plaintiff Federal Deposit Insurance Corporation as Receiver of Vantus Bank, Defendants and Third-Party Plaintiffs Michael W. Dosland, Michael S. Moderski, Arlene T. Curry, Barry E. Backhaus, Gary L. Evans, Ronald A. Jorgensen, John G. Cleghorn, and Charles D. Terlouw, and Third-Party Defendant The United States of America, hereby file this stipulation to dismiss with

prejudice all claims in this action pursuant to Local Rule 41(a)(2). Each party is to bear its own costs.

Dated: \_\_\_\_\_, 2015      Respectfully submitted,

David A. Tank (AT0007732)  
William J. Miller (AT0005414)  
Megan Flynn (AT0010000)  
DORSEY & WHITNEY LLP  
801 Grand Avenue, Suite 4100  
Des Moines, Iowa 50309-2790  
Tel: (515) 283-1000  
Fax: (515) 283-1060  
Email: \_\_\_\_\_

(b)(6)  
(b)(6)  
(b)(6)

Daniel L. Hartnett  
(AT0003363)  
Crary, Huff, Inkster, Sheehan,  
Riggenberg,  
Hartnett & Storm, PC  
614 Pierce Street  
P.O. Box 27  
Sioux City, Iowa 521102-0027  
Tel: (712) 277-4561  
Fax: (712) 277-4605  
Email: \_\_\_\_\_

(b)(6)

*Attorneys for Defendants and  
Third-Party Plaintiffs Michael  
W. Dosland, Michael S.  
Moderski, Arlene T. Curry,  
Barry E. Backhaus, Gary L.  
Evans, Ronald A. Jorgensen,  
John G. Cleghorn, and Charles  
D. Terlouw*

Stephen D. Marso  
WHITFIELD & EDDY, P.L.C.  
317 Sixth Avenue, Suite 1200  
Des Moines, IA 50309-4195  
Telephone (515) 288-6041  
Email: \_\_\_\_\_ (b)(6)

Antony S. Burt  
Andrew C. Porter  
Michael W. Ott  
SCHIFF HARDIN, LLP  
233 S. Wacker Drive, Suite 6600  
Chicago, Illinois 60606  
Telephone: 312-258-5762  
Email: \_\_\_\_\_ (b)(6)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (b)(6)

*Attorneys For Plaintiff, Federal  
Deposit Insurance Corporation,  
As Receiver For Vantus Bank*

KEVIN W. TECHAU  
United States Attorney

By: \_\_\_\_\_

JACOB A. SCHUNK  
Assistant United States Attorney  
111 7<sup>th</sup> Avenue SE  
Box 1  
Cedar Rapids, IA 52401-2101  
(319) 363-6333  
\_\_\_\_\_ (b)(6)

*Attorneys For Third-Party  
Defendant United States of  
America*

**CERTIFICATE OF SERVICE**

I hereby certify that on \_\_\_\_\_, 2015, I electronically filed the foregoing with the Clerk of Court using the ECF system which will send notification of such filing to the parties or attorneys of record.

\_\_\_\_\_  
Antony S. Burt



**Exhibit B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

<p>PROGRESSIVE CASUALTY INSURANCE COMPANY</p> <p>Plaintiff,</p> <p>v.</p> <p>FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER OF VANTUS BANK; ARLENE T. CURRY; GARY L. EVANS; DAVID M. ROEDERER; BARRY E. BACKHAUS; RONALD A. JORGENSEN; CHARLES D. TERLOUW; JON G. CLEGHORN; ALLEN J. JOHNSON; MICHAEL W. DOSLAND; and MICHAEL S. MODERSKI.</p> <p>Defendants.</p>	<p>Case No. 5:12-cv-04041-MWB</p> <p><b>JOINT STIPULATION OF DISMISSAL OF APPEAL</b></p>
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Now comes Plaintiff Progressive Casualty Insurance Company (“Progressive”), Defendant Federal Deposit Insurance Corporation as Receiver for Vantus Bank (“FDIC-R”), and Defendants Arlene T. Curry, Gary L. Evans, David M. Roederer, Barry E. Backhaus, Ronald A. Jorgensen, Charles D. Terlouw, Jon G. Cleghorn, Allen J. Johnson, Michael W. Dosland, and Michael S. Moderski (the “Ds & Os”), by and through their undersigned counsel and pursuant to Rule 42(a) of the Federal Rules of Appellate Procedure, and hereby stipulate to the dismissal of the Appeal filed by Progressive in this matter on March 13, 2015.

1. On March 13, 2015, Progressive filed a Notice of Appeal in this matter, (Dkt. No. 191), notifying the Court and parties of Progressive’s appeal to the United States Court of Appeals for the Eighth Circuit from the Order (Dkt. No. 189) and Judgment (Dkt. No. 190) entered by the Court in this matter on January 23, 2015 (the aforementioned “Appeal”).

2. The Appeal has not been docketed by the circuit clerk in the United States Court of Appeals for the Eight Circuit.

3. Pursuant to Rule 42(a) of the Federal Rules of Appellate Procedure, Progressive, the FDIC-R, and the Ds & Os hereby stipulate and agree to the dismissal of the Appeal with each party to bear its own fees and costs.

**So Stipulated.**

Respectfully submitted this \_\_\_ day of April, 2015.

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**Certificate of Service**

The undersigned hereby certifies that on this \_\_\_ day of April, 2015, I caused a copy of the foregoing **Joint Stipulation of Dismissal of Appeal** to be electronically served upon all attorneys of record in this action via the Court's ECF system.

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Charles W. Chotvaes