

## 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 Manager of the FSLIC Resolution Fund ("FDIC"), and Edgar W. Casey ("Settling Defendant") (individually, the FDIC and the Settling Defendant may be referred to herein as "Party" and collectively as the "Parties").

### RECITALS

WHEREAS:

Prior to March 2, 1989, Elmwood Federal Savings and Loan Association ("Bank") was a depository institution organized and existing under the laws of the United States;

On March 2, 1989, the Bank was closed and the Resolution Trust Corporation ("RTC") was appointed Receiver;

On February 28, 1992, the RTC filed a complaint for money damages against, among others, the Settling Defendant, who served as a director and/or officer of the Bank. That action was filed in the United States District Court for the Eastern District of Louisiana in *RTC v. Cangemi*, Civ. No. 92-0762 ("D&O Action").

On March 15, 1994, the RTC and Settling Defendant entered into a settlement agreement ("Settlement Agreement") in relation to the D&O Action. On March 23, 1994, the United States District Court for the Eastern District of Louisiana entered a consent judgment ("Consent Judgment") in relation to the RTC's claims against the Settling Defendant in the D&O Action.

In accordance with 12 U.S.C. § 1441a(m), the FDIC statutorily succeeded to the RTC with respect to all rights, titles, powers and privileges of the Bank, including those with respect to its assets. Among the assets to which the FDIC 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 is the current owner

and holder of the Settlement Agreement and the Consent Judgment.

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

A. As an essential covenant and condition to this Agreement, on or before March 10, 2014, the Settling Defendant agrees to pay the FDIC the sum of \$20,000.00 ("the Settlement Payment").

B. The Settling Defendant shall deliver the Settlement Payment to the FDIC by direct wire transfer into an account designated by FDIC by notice to the attorneys for the Settling Defendant or by certified or cashier's check drawn upon a depository institution acceptable to FDIC.

C. If the FDIC does not receive the Settlement Payment in full on or before the date determined by subsection A above, then the FDIC, 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)(3); or
2. Enforce this Agreement, in which event the Settling Defendant agrees to jurisdiction in United States District Court in Louisiana and to pay all of the FDIC's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or
3. Terminate the Agreement, move to vacate any dismissal order, to which the Settling Defendant agrees to consent, and re-institute an action on the FDIC's claims. The Settling Defendant further agrees to waive any defense based on any statute of limitations that would bar any of the FDIC's claims and waive all objections, defenses, claims or counterclaims,

and covenants and agrees not to assert any objections, defenses, claims or counterclaims 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'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 in full.

### SECTION III: Releases

#### A. The FDIC's Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section III.D., the FDIC, for itself and its successors and assigns, hereby releases and discharges the Settling Defendant and his 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, that arise from or relate to: (1) the performance, nonperformance, or manner of performance of the Settling Defendant's functions, duties and actions as an officer and/or director of the Bank including without limitation the causes of action alleged in the D&O Action; or (2) the Settlement Agreement dated March 15, 1994.

#### B. The Settling Defendant's Release.

Effective simultaneously with the release granted in Section III.A. above, the Settling Defendant, on behalf of himself individually, and his heirs, executors, trustees, administrators, agents, representatives, attorneys, successors, and assigns, hereby releases and discharges the FDIC, 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: (1) the Bank (2) the performance, nonperformance, or manner of performance of the Settling Defendant's functions, duties and actions as an officer and/or director of the Bank including without limitation the causes of action

alleged in the D&O Action; or (3) the Settlement Agreement dated March 15, 1994.

D. Exceptions from Releases by FDIC.

1. Notwithstanding any other provision of this Agreement, the FDIC 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 Defendant 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 him to FDIC, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC as successor in interest to the Bank or any person or entity other than Bank, unrelated to the Settlement Agreement and Consent Judgment in the D&O Action; and

b. Against any person or entity not expressly released by the FDIC 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 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 Settling Defendant was a shareholder 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 Defendant hereby knowingly assigns to the FDIC 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.

C. Financial Disclosure Representation. Settling Defendant has submitted a personal financial statement to the FDIC and herein affirms that his financial information is true and accurate as of the date of this agreement. Settling Defendant expressly acknowledges that, in determining to settle the claims released herein, the FDIC has reasonably and justifiably relied upon the accuracy of the financial information submitted by the Settling Defendant. The FDIC has no obligation to independently verify the completeness or accuracy of that financial

information. If the FDIC establishes via a final adjudication in an appropriate judicial forum that the Settling Defendant failed to disclose any material interest, legal, equitable, or beneficial, in any asset, the Settling Defendant agrees to cooperate fully with the FDIC to provide updated financial information and to pay to the FDIC 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 the 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 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 Louisiana.

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:

Geoffrey M. Long  
Counsel, Legal Division  
3501 Fairfax Drive, Room VS-B-7055  
Arlington, VA 22226-3500

(b)(6)

If to the Settling Defendant:

Leonard W. Levenson  
Weigand & Levenson  
427 Gravier Street  
New Orleans, LA 70130

(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.

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

Date: 3/14/2014

BY:

[Redacted Signature]

(b)(6)

TITLE:

Counsel

PRINT NAME: Geoffrey M. Long

EDGAR W. CASEY

Date: 02/27/2014

BY:

[Redacted Signature]

(b)(6)

PRINT NAME: Edgar W. Casey