

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 6th day of September, 2013, by, between, and among the following undersigned parties:

The Federal Deposit Insurance Corporation, as receiver of Mainstreet Bank ("FDIC"), and Bruce Soma, David B. Chichila, David C. Coen, Kelly Dunn, James E. Friend, Patrick T. Stead and Barbara L. Toy (collectively, the "Settling Defendants"), and Federal Insurance Company ("Federal"). Individually, the FDIC, the Settling Defendants and Federal may be referred to herein as "Party" and collectively as the "Parties."

RECITALS

WHEREAS:

Prior to August 28, 2009, Mainstreet Bank ("Bank") was a depository institution organized and existing under the laws of Minnesota;

On August 28, 2009, the Bank was closed by the Minnesota Department of Commerce ("MDC") and pursuant to 12 U.S.C. § 1821(c), the FDIC was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC as receiver 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 as receiver succeeded were any and all of the Bank's claims, demands, and causes of actions 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 and/or officers of the Bank;

The FDIC has asserted claims against the Settling Defendants, who had each served at various times as officers and/or directors of the Bank. The Settling Defendants have denied

liability for the FDIC's claims;

Federal issued directors' and officers' liability policy number (the "Policy"), (b)(4) which insured the directors and officers of the Bank according to the terms, provisions and conditions of the Policy. The Settling Defendants have asserted claims for coverage under the Policy. Federal has reserved its rights to deny coverage under the Policy for claims asserted by FDIC against the Settling Defendants;

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

NOW, THEREFORE, in consideration of the promises, undertakings, payment, 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, Federal agrees to pay the FDIC the sum of Three Million Dollars (\$3,000,000) (the "Settlement Payment").

B. The Settlement Payment shall be delivered to FDIC on or before thirty (30) days after Federal's receipt of this Agreement executed by the FDIC and the Settling Defendants (the "Due Date").

C. In addition, and without waiving any other rights that the FDIC may have, in the event that the Settlement Payment is not received by the FDIC on or before the Due Date, then the FDIC shall have the right to enforce this Agreement. In such event, Federal agrees to pay all of the FDIC's reasonable attorney's fees expended in enforcing the terms of this Agreement.

SECTION II: Releases

A. Release by the FDIC.

Effective upon receipt in full of the Settlement Payment described in SECTION I above, and except as provided in PARAGRAPH II.H. below, the FDIC, for itself and its successors and assigns, hereby releases and discharges each of the Settling Defendants, all directors and officers of BancMidwest Corp. (“Holding Company”), all directors and officers of the Bank, and all other employees of the Bank and the Holding Company (collectively, the “Releasees”), and the Releasees’ heirs, executors, 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, their performance, nonperformance, or manner of performance in their respective functions, duties and actions as officers, directors, and/or employees of the Bank.

B. Release of the FDIC by the Settling Defendants.

Effective simultaneously with the release granted in PARAGRAPH II.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge the FDIC, 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 Bank or to the performance, nonperformance, or manner of performance of the Settling Defendants’ respective functions, duties and actions as officers, directors, and employees of the Bank.

C. Release by Settling Defendants of Each Other.

Effective simultaneously with the releases granted in Paragraph II.B. above, the Settling

Defendants and their respective heirs, executors, administrators, representatives, successors and assigns, hereby release and discharge each other 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 performance, nonperformance, or manner of performance of their respective functions, duties and actions as officers, directors, and employees of the Bank.

D. Release of Federal by the FDIC.

Effective simultaneously with the releases granted in Paragraphs II.A. and II.B. above, the FDIC, for itself and its successors and assigns, hereby releases and discharges Federal, its parents, subsidiaries, affiliates and reinsurers, 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 FDIC agrees that any interest or claim it may have under the Policy is extinguished.

E. Release of Federal by Settling Defendants.

Effective simultaneously with the releases granted in Paragraphs II.A. and II.B. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge Federal, its parents, subsidiaries, affiliates and reinsurers, 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 claims being released by the FDIC under paragraph II.A above.

F. Release of the FDIC by Federal.

Effective simultaneously with the release granted in Paragraph II.D. above, Federal, 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 the FDIC and its 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.

G. Release of Settling Defendants by Federal

Effective simultaneously with the releases granted in Paragraph II.E. above, Federal, 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 each of the Settling Defendants, and their respective heirs, executors, administrators, 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 claims being released by the FDIC under paragraph II.A. above.

H. Reservations From Releases

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

a. against the Settling Defendants 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 the FDIC, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC as successor in interest to the

Bank or any person or entity other than Bank;

- b. against any person or entity not released in this Agreement; and
- c. which are not released in Paragraphs II.A. or II.D. above.

2. Notwithstanding any other provision, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction and authority of the FDIC in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition or any other administrative enforcement action which may arise by operation of law, rule or regulation.

3. Notwithstanding any other provision, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice, the United States Attorney's Office for the District of Minnesota or any other federal judicial district. In addition, the FDIC specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et. seq.*, if appropriate.

4. Notwithstanding any other provision in this Agreement, David Coen and others do not release the claim made to Federal to recover unpaid deferred compensation that is (b)(4) the subject of Federal claim number [redacted] Federal makes no representation with respect to coverage of such claim but acknowledges and agrees that the request for coverage under claim (b)(4) number [redacted] is not included in the releases above.

I. Express Reservation of Rights of Bond Carrier.

1. Notwithstanding any other provision, nothing in this Agreement shall release or prejudice the rights of Federal or any of its affiliates or any other underwriter of any financial institution bond, fidelity bond, or banker's blanket bond on which the Bank is an insured, to

bring any claims by way of subrogation to the claims of the FDIC, against a) any directors, officers, or employees of the Bank, including but not limited to the Settling Defendants, in their capacity as directors, officers, or employees of the Bank or in any other capacity or b) any other individual or entity, for dishonest or fraudulent conduct that directly caused any losses to the Bank.

2. Nothing herein shall be construed to admit the existence of, or to establish, any claim or cause of action on the part of Federal or any of its affiliates or any other bond underwriter by way of subrogation to claims of the FDIC, that would not exist had this Agreement not been executed.

SECTION III: Waiver of Dividends

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 have been entitled to a dividend, payment, or other pro rata distribution upon resolution of the receivership of the Bank, they hereby knowingly assign to the FDIC any and all rights, titles and interest in and to any and all such dividends, payments or other pro rata distributions.

SECTION IV: Other Terms

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 that this Agreement is not an admission or evidence of liability by any of them regarding any claim, and that this Agreement shall not be offered or received in evidence for or against any Party hereto except to enforce its terms.

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

C. Binding Effect. Each of the undersigned persons represents and warrants that they are a Party 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, administrators, representatives, successors and assigns.

D. 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 Minnesota.

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. This Agreement may not be amended or modified except by another written instrument signed by the Party or Parties to be bound thereby, or by their respective authorized attorney(s) or other representative(s).

F. Specific Representations Warranties and Disclaimer. Each Settling Defendant has submitted to the FDIC financial information, including a signed Financial Disclosure Form (FDIC form 7600/01). Each Settling Defendant 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 that Settling Defendant to the FDIC. The Settling Defendants severally, but not jointly, swear and affirm that all financial information in the Financial Disclosure Forms prepared by them and provided to the FDIC was true and accurate at the time of submission. The FDIC has no obligation to independently verify the completeness and accuracy of that financial information. If the FDIC establishes via a final adjudication in an appropriate judicial forum that, in his or her Financial Disclosure Form, a Settling Defendant has intentionally or negligently failed to disclose a material interest, legal, equitable, or beneficial, in any material asset, that Settling Defendant agrees to cooperate fully with the FDIC to transfer his or her interest in that asset to the FDIC and to sign any and all documents necessary to effectuate that transfer.

G. Reasonable Cooperation.

1. The undersigned Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including but not limited to 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.

2. Further, the Individual Defendants agree to cooperate fully with the FDIC in connection with any action required under this Agreement, and specifically with regard to the FDIC's claims as set forth in Paragraph II.I.1. Any such cooperation that involves any out of pocket costs is subject to reasonable reimbursement by the FDIC pursuant to its internal guidelines and policy for such reimbursement. Such cooperation shall consist of:

a. producing all documents requested by the FDIC, without the necessity of subpoena, as determined by the FDIC, in its sole discretion, to be relevant to the Bank;

b. making themselves available upon request by the FDIC at reasonable times and places for interviews regarding facts, as determined by the FDIC in its sole discretion, to be relevant to the Bank;

c. appearing to testify, upon request by the FDIC, in any matter determined by the FDIC in its sole discretion, to be related to the Bank, without the necessity of subpoena;

d. signing truthful affidavits upon request by the FDIC, regarding any matter, as determined by the FDIC in its sole discretion, to be relevant to the Bank.

H. Forum. Any legal action brought to enforce this Agreement shall be brought in the United States District Court for the District of Minnesota, unless that Court lacks jurisdiction, in which event, upon a final order determining a lack of jurisdiction, the Parties agree to jurisdiction in Hennepin County District Court, Minnesota.

I. 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, her, or its counsel.

J. Severability. If any provision of this Agreement is held unenforceable, then such provision will, if possible, be modified to be enforceable but still reflect the Parties' intentions. In any event, the remaining provisions of this Agreement shall remain in full force and effect.

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

K. Authorship/Construction. This Agreement sets forth terms and agreements jointly negotiated by the Parties. It is expressly agreed that this Agreement shall not be construed for or against any Party by reason of which Party drafted it.

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 Mainstreet Bank

(b)(6)
By _____
Christine P. Hsu
Its: Counsel
Date: 9/6/13

BRUCE SOMA, an individual

(b)(6)
Sept, 4, 2013
Dated: _____

DAVID CHICHILA, an individual

Dated: _____

DAVID C. COEN, an individual

Dated: _____

KELLY DUNN, an individual

Dated: _____

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FEDERAL DEPOSIT INSURANCE CORPORATION
As Receiver for Mainstreet Bank

By: _____

Christine P. Hsu

Its: Counsel

Date: _____

BRUCE SOMA, an individual

Dated:

~~DAVID CHICHILA, an individual~~

(b)(6)

Dated:

9/3/13

DAVID C. COEN, an individual

Dated:

KELLY DUNN, an individual

Dated:

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FEDERAL DEPOSIT INSURANCE CORPORATION
As Receiver for Mainstreet Bank

By: _____

Christine P. Hsu

Its: Counsel

Date: _____

BRUCE SOMA, an individual

Dated:

DAVID CHICHILA, an individual

Dated:

DAVID C. COEN, an individual

(b)(6)

Dated: 9/5/2013

KELLY DUNN, an individual

Dated:

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As Receiver for Mainstreet Bank

By: _____

Christine P. Hsu

Its: Counsel

Date: _____

BRUCE SOMA, an individual

Dated:

DAVID CHICHILA, an individual

Dated:

DAVID C. COEN, an individual

Dated:

KELLY DUNN, an individual

(b)(6)

Dated: 9-4-13

JAMES E. FRIEND, an individual

(b)(6)

[Redacted]

Dated: 9/5/13

PATRICK STEAD, an individual

Dated: _____

BARBARA TOY, an individual

Dated: _____

FEDERAL INSURANCE COMPANY

By: _____

Print Name: _____

Title: _____

Date: _____

JAMES E. FRIEND, an individual

Dated:

PATRICK STEAD, an individual

(b)(6)

Dated: 9-3-13

BARBARA TOY, an individual

Dated:

FEDERAL INSURANCE COMPANY

By: _____

Print Name: _____

Title: _____

Date: _____

JAMES F. FRIEND, an individual

Dated: _____

PATRICK STEAD, an individual

Dated: _____

BARBARA TOY, an individual

(b)(6)

Dated: *Sept. 4, 2013*

FEDERAL INSURANCE COMPANY

(b)(6)

By: _____

Print Name: *Brownyn DeWitt*

Title: *Asst. V.P.*

Date: *9/6/13*