

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the following undersigned parties: Federal Deposit Insurance Corporation as Receiver for Sun West Bank (“FDIC-R”); Jackie K. Delaney, Larry E. Carter, Mark A. Stout, Kenneth Templeton, John Shively, Steven C. Kalb, Jerome F. Snyder, Hugh Templeton, and Rick Dreschler (collectively the “Settling Defendants”); and Progressive Casualty Insurance Company (“Progressive”) (individually, the FDIC-R, the Settling Defendants, and Progressive may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to May 28, 2010, Sun West Bank (“Bank”) was a depository institution organized and existing under the laws of the United States of America;

On May 28, 2010, the Nevada Department of Business and Industry, Financial Institutions Division 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), 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;

On May 24, 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.

Those claims for damages are now pending in the United States District Court for the District of Nevada in *FDIC-R v. Delaney, et al.*, No. 2:13-cv-00924-JCM-VCF (“D&O Action”). The Settling Defendants have denied, and continue to deny, liability in the D&O Action;

Progressive issued a director and officer liability policy numbered (the (b)(4) “Policy”) under which the directors and officers of the Bank were insureds according to the terms, provisions, and conditions of the Policy. The Settling Defendants asserted claims for coverage under the Policy. Insurer has reserved its rights to deny coverage under the Policy for claims asserted by the FDIC-R against the Settling Defendants. Additionally, Insurer filed a declaratory judgment action against Settling Defendants 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 District of Nevada in *Progressive Casualty Insurance Company v. Delaney, et al.*, No. 2:11-cv-00678-LRH-PAL (“Coverage Action”). The FDIC-R intervened as an additional defendant in the Coverage Action; and

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, on or before the 30th calendar day following the date this Agreement is executed by all the Parties (“Payment Date”),

Progressive, on behalf of Progressive and the Settling Defendants, agrees to pay to the FDIC-R the sum of ONE MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$1,700,000) (“the Settlement Payment”).

B. The Settlement Payment shall be delivered to FDIC-R by direct wire transfer into an account designated by FDIC-R by notice to the attorneys for Progressive. Such notice, along with an executed IRS Form W-9 for the designated account, shall be provided no fewer than ten (10) days before the Payment Date.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the Payment Date, 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 any interest accruing pursuant to Section I(C)(1) of this Agreement) to:

1. Extend the period of time for the Settlement Payment, including interest, which shall accrue after the Payment Date through the actual date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(2);

2. Enforce this Agreement, in which event the Settling Defendants and Progressive agree to jurisdiction in the United States District Court for the District of Nevada and to pay all of the FDIC-R’s reasonable attorney’s fees and costs expended in enforcing the terms of this Agreement;

3. Terminate the Agreement, move to vacate any dismissal order (to which motion or stipulation to vacate such dismissal order the Settling Defendants and Progressive agree to consent), and re-institute an action on the FDIC-R’s claims. The Settling Defendants and Progressive further covenant and agree to waive and not assert any objections, defenses, claims, or counterclaims that (i) did not exist or were otherwise

unavailable as of the date this Agreement was fully executed, and (ii) which later came into existence and became available only because the FDIC-R chose to enter into this Agreement. Specifically included within this waiver is any defense based on any statute of limitations that would bar any of the FDIC-R's claims; 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 any interest accruing pursuant to Section I(C)(1) of this Agreement) in full.

SECTION II: Stipulation and Dismissal

Within ten (10) business days after the latter of (1) full execution of this Agreement by all of the Parties, or (2) receipt of the Settlement Payment, plus any interest accruing pursuant to Section I(C)(1) of this Agreement, the FDIC-R shall file a stipulation of dismissal with prejudice, executed by the attorneys for all the Settling Defendants, in the form attached hereto as Exhibit A, in the D&O Action.

Within ten (10) business days after the latter of (1) full execution of this Agreement by all of the Parties, or (2) receipt of the Settlement Payment, plus any interest accruing pursuant to Section I(C)(1) of this Agreement, Progressive shall file a stipulation of dismissal with prejudice, executed by the attorneys for all Parties in the form attached hereto as Exhibit B, in the Coverage Action.

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. The Settling Defendants and their respective heirs, executors, trustees, trusts, 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, directors, and/or employees of the Bank including without limitation the causes of action alleged in the D&O Action and the Coverage Action.

2. Progressive, 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 Coverage Action, the D&O Action, the Bank, the Policy, 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. As part of this release of Progressive, the FDIC-R agrees that any interest it may have under the Policy is extinguished.

3. All former directors, officers, and employees of the Bank other than the Settling Defendants (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 Person if such Covered Person asserts any claim against the FDIC-R.

B. The Settling Defendants' Release.

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, trusts, administrators, agents, representatives, attorneys, successors, and assigns, hereby release and discharge:

1. 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 D&O Action, 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. Progressive, its parents, subsidiaries, affiliates, and reinsurers, and its and their respective 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, the D&O Action or the Coverage Action.

3. Each other and each other's respective heirs, executors, trustees, administrators, agents, representatives, insurers, 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 or the Coverage Action.

C. Progressive's Release.

Effective simultaneously with the releases granted in Section III.A. above, Progressive, 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. FDIC-R 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 Coverage Action, the D&O Action, the Bank, the Policy, 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.

2. Each of the Settling Defendants and their respective heirs, executors, trustees, trusts, administrators, agents, representatives, insurers, 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 performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties, and action as employees, officers and/or directors of the Bank or 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 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 if 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 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 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

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 and Coverage Action, 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, fault, wrongdoing, 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 Nevada.

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:

John C. Letteri
FEDERAL DEPOSIT INSURANCE CORPORATION

3501 Fairfax Drive
Arlington, VA 22226-3500

(b)(6)

[Redacted]

If to Settling Defendants

Phillip S. Aurbach
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145

(b)(6)

[Redacted]

&

Kevin D. Hughes
Linda J. Kim
2029 Century Park East, Suite 900
Los Angeles, CA 90067

(b)(6)

[Redacted]

(Counsel for Kenneth Templeton)

Kevin R. Stolworthy
Tracy A. DiFillippo
Conor P. Flynn
Armstrong Teasdale, LLP
3770 Howard Hughes Pkwy.,
Suite 200
Las Vegas, NV 89169

(b)(6)

[Redacted]

(Counsel for Jackie Delaney)

Aaron L. Snyder, Esq.
Law Offices of Aaron L. Snyder
212 Lessin Lane, Unit A
Austin, TX 78704
8628 Scarsdale Drive
Las Vegas, NV 89117

(b)(6)

[Redacted]

(Counsel for Larry Carter, Steven Kalb, Jerome Snyder, Mark Stout, and Hugh Templeton)

David T. Duncan
Duncan Law Firm
6200 Stoneridge Mall Road, Suite 300
Pleasanton, CA 94588

(b)(6)

(Counsel for John Shively and Rick Dreschler)

If to Progressive:

Lewis K. Loss
Loss, Judge & Ward, LLP
1133 21st Street, NW
Washington, DC 20036

(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.

<p>Date: <u>February 26, 2015</u></p>	<p>FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR SUN WEST BANK By: TITLE: Counsel PRINT NAME: John Letteri</p>
<p>Date: _____</p>	<p>_____ Jackie K. Delaney</p>
<p>Date: _____</p>	<p>_____ Larry E. Carter</p>
<p>Date: _____</p>	<p>_____ Mark A. Stout</p>
<p>Date: _____</p>	<p>_____ Kenneth Templeton</p>
<p>Date: _____</p>	<p>_____ John Shively</p>

(b)(6)

<p>Date: _____</p>	<p>FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR SUN WEST BANK</p> <p>By: _____</p> <p>TITLE: Counsel</p> <p>PRINT NAME: John Letteri</p>
<p>Date: <u>2-25-15</u></p>	<div data-bbox="816 697 1372 840" style="border: 1px solid black; width: 342px; height: 70px; margin-bottom: 5px;"></div> <p>Jackie K. Delaney</p>
<p>Date: _____</p>	<p>_____</p> <p>Larry E. Carter</p>
<p>Date: _____</p>	<p>_____</p> <p>Mark A. Stout</p>
<p>Date: _____</p>	<p>_____</p> <p>Kenneth Templeton</p>
<p>Date: _____</p>	<p>_____</p> <p>John Shively</p>

(b)(6)



Date: _____	FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR SUN WEST BANK By: _____ TITLE: Counsel PRINT NAME: John Letteri
Date: _____	_____ Jackie K. Delancy
Date: <u>2-23-15</u>	<div data-bbox="820 976 1372 1071" style="border: 1px solid black; width: 100%; height: 45px; margin-bottom: 5px;"></div> Larry E. Carter
Date: _____	_____ Mark A. Stout
Date: _____	_____ Kenneth Templeton
Date: _____	_____ John Shively

(b)(6)

Date: _____

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR SUN
WEST BANK

By: _____

TITLE: Counsel

PRINT NAME: John Letteri

Date: _____

Jackie K. Delaney

Date: _____
(b)(6)

Larry E. Carter

Date: 2/23/15

Mark A. Stout

Date: _____

Kenneth Templeton

Date: _____

John Shively

Date: _____	FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR SUN WEST BANK By: _____ TITLE: Counsel PRINT NAME: John Letteri
Date: _____	_____ Jackie K. Delaney
Date: _____	_____ Larry E. Carter
Date: _____	_____ Mark A. Stout
Date: <u>2/23/15</u>	<div data-bbox="852 1287 1234 1417" style="border: 1px solid black; width: 235px; height: 62px; margin-bottom: 5px;"></div> _____ Kenneth Templeton
Date: _____	_____ John Shively

(b)(6)

Date: _____	FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR SUN WEST BANK By: _____ TITLE: Counsel PRINT NAME: John Letteri
Date: _____	_____ Jackie K. Delaney
Date: _____	_____ Larry E. Carter
Date: _____	_____ Mark A. Stout
Date: _____	_____ Kenneth Templeton
Date: <u>3/23/15</u>	<div data-bbox="841 1472 1130 1598" style="border: 1px solid black; width: 178px; height: 60px; display: inline-block;"></div> John Shively

(b)(6)

Date: <u>2/23/2015</u>	<div style="border: 1px solid black; width: 150px; height: 40px; margin-bottom: 5px;"></div> Steven C. Kalb
Date: _____	Jerome F. Snyder
Date: _____	Hugh Templeton
Date: _____	Rick Dreschler
Date: _____	PROGRESSIVE CASUALTY INSURANCE COMPANY By: _____ TITLE: _____ PRINT NAME: _____

(b)(6)

Date: _____	Steven C. Kalb
(b)(6) Date: <u>2/23/15</u>	<div style="border: 1px solid black; width: 100%; height: 40px; background-color: black;"></div> Jerome F. Snyder
Date: _____	Hugh Templeton
Date: _____	Rick Dreschler
Date: _____	PROGRESSIVE CASUALTY INSURANCE COMPANY By: _____ TITLE: _____ PRINT NAME: _____

Date: _____	_____ Steven C. Kalb
Date: _____	_____ Jerome F. Snyder
Date: <u>2-24-2015</u>	<div data-bbox="812 676 1315 808" style="border: 1px solid black; width: 310px; height: 63px; margin-bottom: 5px;"></div> Hugh Templeton
Date: _____	_____ Rick Dreschler
Date: _____	PROGRESSIVE CASUALTY INSURANCE COMPANY By: _____ TITLE: _____ PRINT NAME: _____

(b)(6)

Date: _____

Steven C. Kalb

Date: _____

Jerome F. Snyder

Date: _____

Hugh Templeton

Date: 2/10/15 _____



Rick Dreschler

Date: _____

PROGRESSIVE CASUALTY INSURANCE
COMPANY

By: _____

TITLE: _____

PRINT NAME: _____

(b)(6)

Date: _____	_____ Steven C. Kalb
Date: _____	_____ Jerome F. Snyder
Date: _____	_____ Hugh Templeton
Date: _____	_____ Rick Dreschler
Date: <u>February 26, 2015</u>	PROGRESSIVE CASUALTY INSURANCE COMPANY By (b)(6) TITLE: <u>Claims Specialist AHY</u> PRINT NAME: <u>Lawrence D. Leeds</u>