

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made as of this 10th day of July, 2014, by, between, and among the following undersigned parties:

The Federal Deposit Insurance Corporation as Receiver for United Commercial Bank (“FDIC-R”); and

St. Paul Mercury Insurance Company (“Travelers”), as issuer of Financial Institution

(b)(4) Bond No. [redacted] (the “Policy”) (individually, the FDIC-R and Travelers may be referred to herein as a “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to November 6, 2009, United Commercial Bank (“Bank”) was a depository institution organized and existing under the laws of California.

On or about September 20, 2009, the Bank provided notice under the Policy of a loss involving alleged dishonest and fraudulent activities of Bank officers James Chan (“Chan”) and Simon Pang (“Pang”).

On November 6, 2009, the Bank was closed by the California Department of Financial Institutions and the Federal Deposit Insurance Corporation was appointed as Receiver for the Bank. Under 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, including claims under the Policy.

On September 16, 2010, the FDIC-R submitted a Proof of Loss to Travelers in support of a claim under the Policy based on alleged dishonesty by Chan and Pang, who allegedly colluded with borrowers and their principals, including Soyo Group, Inc., causing the Bank to extend

more than \$85 million dollars in loans secured by non-existent or worthless inventory and accounts receivable, that caused losses totaling in excess of \$80 million (the "Bond Claim").

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. The Recitals above are incorporated herein by reference.

B. As an essential covenant and condition of this Agreement, Travelers agrees to pay to the FDIC-R the sum of \$6.3 million (the "Settlement Funds").

C. Not later than fourteen business days following the execution of a signed original, or signed originals in counterpart, of this Agreement by the undersigned Parties to this Agreement (the "Payment Due Date"), the Settlement Funds shall be delivered to the FDIC-R by direct wire transfer into the following designated account:

BANK: Federal Home Loan Bank of New York

ROUTING #:

FOR CREDIT TO: FDIC National Liquidation Account

ACCOUNT #:

(b)(4)

(b)(4)

OBI: FIN 10147; United Commercial Bank, San Francisco, CA, Contact: Michael R. Duncan (972) 761-8112; FDIC as Receiver for United Commercial Bank Travelers Bond Claim Settlement.

D. In the event that the Settlement Funds are not delivered in full to the FDIC-R by the Payment Due Date, interest shall accrue on all unpaid amounts at the compound rate of 5% per annum from such date until the date of payment in full.

E. In addition, in the event that all Settlement Funds are not received by the FDIC-R by the Payment Due Date, then the FDIC-R, in its sole discretion, shall have the right at any time

prior to receipt of all Settlement Funds (including all accrued interest) to declare this Agreement null and void, shall have the right to extend this Agreement for any period of time until it receives all Settlement Funds (including all accrued interest), and/or shall have the right to enforce this Agreement against Travelers, which agrees to pay all the FDIC-R's reasonable attorneys' fees expended in enforcing Travelers' obligation to pay the Settlement Funds or any part of them. Any decision by the FDIC-R to extend the terms of this Agreement or to accept a portion of the Settlement Funds shall not prejudice the FDIC-R's rights to declare this Agreement null and void if it does not receive all of the Settlement Funds by the Payment Due Date or to enforce the terms of this Settlement Agreement; provided however, that in the event the FDIC-R declares this Agreement null and void, the FDIC-R will return all amounts paid to it under this Agreement by Travelers.

SECTION II: Releases

A. Release of Travelers by FDIC-R.

Effective upon its receipt of the Settlement Funds, together with any accrued interest (as specified in Section I.D. above), the FDIC-R hereby releases and discharges Travelers, its 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 acts or omissions described in the Bond Claim and Travelers' handling, investigation, and adjustment of same.

B. Release of FDIC-R by Travelers.

Effective simultaneously with the release granted in Paragraph II.A. above, Travelers, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, successors and assigns, hereby releases and discharges 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 acts or omissions described in the Bond Claim.

C. California Civil Code § 1542 Release.

The parties hereby acknowledge their familiarity with the provisions of Section 1542 of the California Civil Code and hereby expressly waive and release any rights or benefits they have or may have thereunder. Section 1542 of the California Civil Code provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

D. Express Reservations From Releases.

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

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

b. against any person or entity not expressly released in this Agreement;

c. against Travelers for any other losses, claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, aside



from those arising from the Bond Claim, for which coverage may be provided under any other Travelers insurance policy issued to the Bank; and

d. that are not expressly released in Section II.A. and II.C above.

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 III: Additional Covenants

A. Assignment. The FDIC-R hereby assigns and transfers to Travelers, its successors and assigns, for their use and benefit, all rights, claims and actions that the FDIC-R may have against Chan and Pang based upon or arising from acts or omissions described in the Bond Claim, limited to the extent of the amount of the Settlement Funds. Excluded from the scope of this assignment are any rights, claims and actions that the FDIC-R may have that would compensate the FDIC-R for any losses arising from the Bond Claim that are not covered by the Policy or that are in excess of the Settlement Funds.

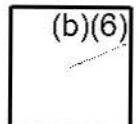
(b)(6)

B. Confidential Materials. Travelers may retain possession of any and all documents produced to it by the Bank and/or the FDIC-R in connection with the Bond Claim; however, Travelers shall not publish such documents or disclose them to any other person except as may be necessary in connection with any claim Travelers may pursue pursuant to the assignment in Section III.A and Traveler's shall continue to treat such documents as confidential. Upon the conclusion of any claim that Travelers may pursue pursuant to the assignment in Section III.A., or if Travelers decides not to pursue such a claim, Travelers shall continue to treat such documents and all information in or derived from such documents as confidential and shall not disclose that information except as may be necessary in the ordinary course of Travelers' business to its re-insurers, auditors and accountants or regulators (and counsel for such entities).

SECTION IV: Representations and Acknowledgments

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 a disputed claim, and that this Agreement is not an admission or evidence of liability by either of them regarding any claim nor is it intended to be, nor shall it be construed as, an interpretation of the Policy or any other insurance policy. This Agreement and its negotiation shall not be used as evidence, or in any other manner, before any court or any proceeding to create, prove, or interpret the obligations or alleged obligations of Travelers under the Policy to any Party or non-party to this Agreement; provided, however, the Parties may use the Agreement in any manner as may be necessary to enforce the terms of the Agreement and/or to establish the fact of payment by Travelers to the FDIC-R.

B. Cooperative Drafting. The Parties to this Agreement have participated jointly in the negotiation and preparation of this Agreement. Accordingly, each Party agrees not to assert that the other Party is the sole or principal drafter of the Agreement. The Parties also agree not to



assert that any canon of construction applicable to sole or principal drafters should be applied against any Party.

C. 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.

D. Binding Effect. Each of the undersigned persons represents and warrants that he or she is duly authorized to sign this Agreement on behalf of the respective Party, and has 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, directors, officers, employees, agents, attorneys, successors and assigns.

E. 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.

F. Construction. The descriptive headings of this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement.

G. Notices. If any Party gives notice to another Party under this Agreement, such notice shall be (i) delivered personally, (ii) sent by Federal Express (or another recognized overnight or two-day courier) requesting next or second business day delivery, or (iii) sent by United States certified or registered mail, postage prepaid, return receipt requested. Any such

notice shall be deemed given when (i) so delivered personally, (ii) if sent by express courier, one or two business days (as the case may be) following delivery to the courier, or (iii) if sent by certified or registered mail, three business days after the date of deposit in the United States mail to the respective address of the Party as set forth below:

If to the FDIC-R:

Andrew Nicely
Counsel
Federal Deposit Insurance Corporation
3501 North Fairfax Drive
Arlington, VA 22226
Telephone: (703) 516-5729

and

Kathleen M. Balderston
Nixon Peabody LLP
437 Madison Avenue
New York, NY 10022
Telephone: (212) 940-3041

If to Travelers:

Robert Flowers
2d Vice President
Travelers
One Tower Square/S104
Hartford, CT
Telephone: (860) 277-7632
Fax: (860) 277-5722

and

Lynda Jensen
Claims Counsel
350 Granite Street, Suite 1201
Braintree, MA 02184-3965
Telephone: (781) 817-8453
Fax: (866) 833-3197

or to such other address as the recipient Party has specified by prior written notice to the sending Party (or in the case of counsel, to such other readily ascertainable business address as such counsel may hereafter maintain). If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above shall control.

(b)(6)

II. 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.

I. 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).

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 UNITED COMMERCIAL BANK

Date: July 10, 2014

By:
Title: Counsel
Print Name: Andrew A. Nicely

(b)(6)

ST. PAUL MERCURY INSURANCE COMPANY

Date: _____, 2014

By: _____
Title: _____
Print _____ Name: _____

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FEDERAL DEPOSIT INSURANCE CORPORATION
AS RECEIVER FOR UNITED COMMERCIAL BANK

Date: _____, 2014

By: _____
Title: _____
Print Name: _____

ST. PAUL MERCURY INSURANCE COMPANY

(b)(6) _____
Date: July 8, 2014

By: 
Title: Claim Counsel
Print Name: Lynda Riisgo Jensen