

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 Frontier Bank ("FDIC-R"), and Michael J. Clementz, Randy E. DeKlyen, Lucille M. DeYoung, John J. Dickson, Robert J. Dickson, David A. Dorsey, William H. Lucas, James W. Ries, Robert W. Robinson, Lyle E. Ryan, Darrell J. Storkson, and Mark O. Zenger (collectively the "Settling Defendants") (Individually, the FDIC-R, and the Settling Defendants may each be referred to herein as "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

Prior to April 30, 2010, Frontier Bank of Everett, Washington ("Bank") was a depository institution organized and existing under the laws of Washington;

On April 30, 2010, the Washington Department of Financial Institutions closed the Bank and pursuant to 12 U.S.C. § 1821(c)(2)(A)(ii), the Federal Deposit Insurance Corporation was appointed Receiver.

On April 26, 2013, the FDIC-R filed a complaint for money damages against the Settling Defendants, each of whom is alleged to have 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 Western District of Washington in FDIC as Receiver for Frontier Bank of Everett, Washington v. Clementz, et al. Case No. 2:13-cv-00737 ("D&O Action"). The Settling Defendants have denied liability in the D&O Action.

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 employees of the Bank;

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 ninety (90) calendar days of the date that: 1. this Agreement has become fully executed; 2. this Agreement has been exchanged between the Parties, and; 3. the Settlement Defendants and their D&O Insurers have received from the FDIC-R wiring instructions and a completed form W-9 (the "Execution and Delivery Date"); the Settling Defendants agree to pay to the FDIC-R the sum of \$1,000,000 (the "Settling Defendants' Settlement Payment"), and to cause their D&O Insurers to pay the FDIC-R the sum of \$9,000,000 ("D&O Insurers' Settlement Payment") (the "Settling Defendants' Settlement Payment" and the "D&O Insurers' Settlement Payment" shall be collectively referred to herein as the "Settlement Payment").¹

B. The Settlement Payments shall be delivered to the FDIC-R by direct wire transfer into the following Bank Account:

BANK: Federal Home Loan Bank of New York
ROUTING No.: [REDACTED]
FOR CREDIT TO: FDIC National Liquidation Account
ACCOUNT No.: [REDACTED]

New York Main Office
101 Park Avenue

¹ The D&O Insurers' Settlement Payment is to be paid under the Policies Issued by them, \$4,000,000 of which will be paid under Lexington Policy No. [REDACTED] which is a claims made policy with a Policy Period of November 1, 2008 to November 1, 2009 (and an Extended Reporting Period of November 1, 2009 to November 1, 2010) and a \$5,000,000 Limit of Liability, which will be exhausted, as demanded by the FDIC, by payment of the Settlement and Defense Costs.

New York, NY 10178-0599
212-681-6000
212-441-6890 Fax

OTHER BENEFICIARY INFORMATION (OBI):

Fund code: [REDACTED]
Asset number: [REDACTED]
Notify: Aaron Forester (703) 516-5056
Description: 10228 Frontier Bank D&O Settlement

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C. If the FDIC-R does not receive the Settlement Payment in full on or before the Execution and Delivery 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 all accrued interest) to:

1. Extend the period of time for the Settlement Payment, in which event the Parties agree that interest shall accrue on all unpaid amounts at the rate of 5% per annum from the Execution and Delivery Date; or

2. Enforce this Agreement, in which event the Settling Defendants agree to jurisdiction in United States District Court in the Western District of Washington and agree that interest shall accrue on all unpaid amounts at the rate of 5% per annum from the Execution and Delivery Date; or

3. Terminate the Agreement, provide immediate notice of termination to the other Parties, return all previously paid Settlement Payments within 10 days of termination, and proceed with the claims asserted in the D&O Action;

4. Seek any other relief available to it in law or equity.

Notwithstanding the foregoing, in the event that the Settling Defendants fail to cause their D&O Insurers to pay the D&O Insurers' Settlement Payment, the Settling Defendants do not agree to pay, and shall not in any way be liable for, the D&O Insurers' Settlement Payment.

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 accrued interest) in full.

SECTION II: Stipulation and Dismissal

Within ten business days after the later of (1) full execution of this Agreement by all of the Parties, and (2) 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 Parties hereto, in the form attached hereto as Exhibit A, in the D&O Action.

SECTION III: Releases

A. The FDIC-R's Release.

Upon receipt of the Settlement Payment in full and except as provided in Section III.D., the FDIC-R, for itself and its employees, officers, directors, representatives, attorneys, successors and assigns, hereby releases and discharges:

The Settling Defendants and their respective marital communities, (to the extent the marital community has any liability for the acts of the Settling Defendants), heirs, executors, trustees, administrators, representatives, insurers, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, known or unknown, 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 employees, officers and/or directors of the Bank, including without limitation the causes of action alleged in the D&O Action.

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, administrators, representatives, insurers, successors, and assigns, hereby release and discharge 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, known or unknown, 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 employees, officers and/or directors of the Bank, including without limitation the causes of action alleged in the D&O Action.

C. 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 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 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.

C. Section 1542 Waiver: Each of the parties to this Agreement expressly waives the protection of Section 1542 of the California Civil Code, to the extent it applies, and expressly waives and releases any rights or benefits arising thereunder. Section 1542 of the California Civil Code states:

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.

The parties hereto acknowledge that she/he/it is aware that the parties may hereafter discover facts different from, or in addition to, those which she/he/it or her/his/its attorneys now know or believe to be true with respect to the matters released in Section III above, and agree that the releases so given in Section III above shall be and remain in effect as full and complete releases of the respective claims, notwithstanding any such different or additional facts.

SECTION VI: Reasonable Cooperation

A. 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 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. The Settling Defendants expressly deny each and every claim made against them, individually and collectively, but enter into this Agreement solely for the purpose of resolving the disputed claims, without the necessity of further litigation and expense, and without admission of liability.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties, including counterparts received by facsimile or email transmission, 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 Washington.

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:

Aaron M. Forester
FDIC | Legal Division
3501 Fairfax Drive
VS-B-7066
Arlington, VA 22226

(b)(6) [redacted]
Phone: 703.516.5056

Patrick J. Richard
NOSSAMAN LLP
50 California Street, 34th Floor
San Francisco, CA 94111

(b)(6) [redacted]
Phone: 415.398.3600

Matthew J. Poole
NOSSAMAN LLP
50 California Street, 34th Floor
San Francisco, CA 94111

(b)(6) [redacted]
Phone: 415.398.3600

if to Settling Defendants John J. Dickson, Robert J. Dickson, William H. Lucas, James W.

Ries, and Lyle Ryan:

Peter K. Rosen
LATHAM & WATKINS LLP
355 South Grand Avenue
Los Angeles, CA 90071-1560

(b)(6) [redacted]
Phone: 213.485.1234

If to Settling Defendants Michael J. Clementz, Randy E. DeKlyen, Lucille M. DeYoung,
David A. Dorsey, Robert W. Robinson, Darrell J. Storkson and Mark O. Zenger:

Juli E. Farris
Keller Rohrback L.L.P.
1201 Third Ave., Suite 3200
Seattle, WA 98101

Phone: 206.623.1900, ext. 2217

(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).

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 Settlement and Release 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 FRONTIER BANK OF EVERETT,
WASHINGTON

Date:

12/22/15

BY:

TITLE:

Counsel, FDIC-R

PRINT NAME:

Aaron Forester

Date:

MICHAEL J. CLEMENTZ:

If to Settling Defendants Michael J. Clementz, Randy E. DeKlyen, Lucille M. DeYoung,
David A. Dorsey, Robert W. Robinson, Darrell J. Storkson and Mark O. Zenger:

Juli E. Farris
Keller Rohrback L.L.P.
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FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR FRONTIER BANK OF EVERETT,
WASHINGTON

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

Date: 12/21/2015

MICHAEL J. CLEMENTZ:

(b)(6) _____
[Redacted Signature Box]

(b)(6)

Date: 11/21/15

RANDY E. DEKLYEN

Date: _____

LUCILLE M. DEYOUNG

Date: _____

JOHN J. DICKSON

Date: _____

ROBERT J. DICKSON

Date: _____

DAVID A. DORSEY

Date: _____

WILLIAM H. LUCAS

Date: _____

JAMES W. RIES

Date: _____

ROBERT W. ROBINSON

Date: _____

LYLE E. RYAN

Date: _____ RANDY E. DEKLYEN

Date: 12/21/15 LUCILLE M. DEYOUNG

(b)(6)

Date: _____ JOHN J. DICKSON

Date: _____ ROBERT J. DICKSON

Date: _____ DAVID A. DORSEY

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LUCILLE M. DEYOUNG

Date: 12/23/15

JOHN J. DICKSON

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Date: _____

ROBERT J. DICKSON

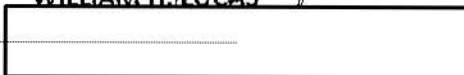
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Date: 12/23/15

WILLIAM H. LUCAS I

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DAVID A. DORSEY

Date: _____

WILLIAM H. LUCAS

Date: _____

JAMES W. RIES

Date: _____

ROBERT W. ROBINSON

Date: 12/22/2015


LYLE E. RYAN

(b)(6)





Date: 12-21-15

DARRELL J. STORKSON *[Signature]*

(b)(6)



Date: _____

MARK O. ZENGER

Date: _____

DARRELL J. STORKSON

Date: 12/22/15

MARK O. ZENGER

(b)(6)

