

December 15, 2014

**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 Community Bank of Arizona ("FDIC-R"); Edward M. Jamison, Stephen R. Curley, James E. Nelson, LeRoy R. Aman, Leanne B. Appeldorn-March, Rick L. Murphy, and Phillip B. Whitaker (collectively, the "Settling Defendants"); and Progressive Casualty Insurance Company ("Insurer"). The FDIC-R, the Settling Defendants, and Insurer may be referred to herein as "Party" and collectively as the "Parties."

**RECITALS**

**WHEREAS:**

Prior to August 14, 2009, Community Bank of Arizona ("Bank") was a depository institution organized and existing under the laws of Arizona;

On August 14, 2009, the Arizona Department of Financial Institutions 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), the FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets;

On May 28, 2010, Community Bancorp, the holding company of the Bank, filed a Chapter 7 bankruptcy petition in the District of Nevada (the "Bankruptcy Court"), styled *In re Community Bancorp*, Case No. BK-S-10-20038-LED ("the Bankruptcy"). The duly appointed Trustee for Community Bancorp in the Bankruptcy is Yvette E. Weinstein ("Trustee");

Among the assets to which the FDIC-R succeeded were 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, officers, and/or employees of the Bank;

On July 13, 2012, the FDIC-R filed a Complaint for money damages against the Settling Defendants, each of whom served at various times as directors and/or officers of the Bank. Those claims for damages are now pending in the United States District Court for the District of Arizona in *FDIC as Receiver for Community Bank of Arizona v. Jamison, et al.*, Case No. 12-cv-01508-PHX-SMM (D. Arizona) (“D&O Action”). The Settling Defendants have denied liability in the D&O Action;

Insurer issued a director and officer liability policy numbered [redacted] for the period [redacted] (b)(4) July 31, 2007 through July 31, 2010 (“Policy”), 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;

On February 4, 2013, Insurer filed a Complaint against the FDIC-R and the Settling Defendants seeking, among other things, a declaration that the D&O Action is not covered under the Policy (“Coverage Action”). The FDIC-R and the Settling Defendants have denied that the Insurer is entitled to the requested relief. This Coverage Action is pending in the United States District Court for the District of Arizona styled as *Progressive v. FDIC, et al.*, Case No. 13-cv-0232-IHRJ;

Settling Defendants Curley, Nelson, and Jamison (“the Indemnified Defendants”) filed (b)(4) Claim Nos. [redacted] and [redacted] respectively, in the Bankruptcy (“the Claims”), seeking, among other things, indemnification for any judgments or expenses incurred in connection with the D&O and Coverage Actions in the Bankruptcy;

The Insurer, the Settling Defendants, and the Trustee have agreed to a resolution of any claims, demands, obligations, damages, actions, and causes of action, that arise from or relate to the Claims, the Policy, the D&O Action or the Coverage Action as documented in Exhibit A hereto (the "Bankruptcy Agreement"); 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: Payments to FDIC-R**

A. As an essential covenant and condition to this Agreement, on or before February 10, 2015, Insurer agrees to pay to the FDIC-R the sum of \$6,000,000 (the "Settlement Payment"). The obligations to make the Settlement Payment are subject to the satisfaction of the following conditions (the "Conditions"): (i) Bankruptcy Court approval for the Insurer to use \$5,800,000 from the Policy towards payment of the Settlement Payment and (ii) the Trustee's payment of \$200,000 on the Claims to the trust account of Loss, Judge & Ward, LLP.

B. The Settlement Payment to the FDIC-R shall be paid by direct wire transfer into the following account:

Federal Home Loan Bank of New York

ABA Routing Number: [redacted]

For Credit to: [redacted]

Account Number: [redacted]

FIN 10101; Community Bank of Arizona

Contact: J.S. Tonkinson, 972-761-8105; Professional Liability [redacted] DIF Fund [redacted] (b)(4)

(b)(4)  
(b)(4)  
(b)(4)