

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 Pacific Coast National Bank (“FDIC-R”), Defendants David L. Adams, Stanley M. Cruse, Colin M. Forkner, Richard W. Grinyer, Michael S. Hahn, and Michael V. Cummings (collectively the “Settling Defendants”), and St. Paul Mercury Insurance Company (“Insurer”) (individually, the FDIC-R, the Settling Defendants, and the Insurer may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to November 13, 2009, Pacific Coast National Bank (“Bank”) was a depository institution organized and existing under the laws of the United States.

On November 13, 2009, the Office of the Comptroller of the Currency closed the Bank and pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver.

On November 6, 2012, 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 Central District of California in the case styled *FDIC as Receiver for Pacific Coast National Bank v. Hahn et al.*, Case No. 12-cv-01938 (“D&O Action”). The Settling Defendants have denied liability in the D&O Action.

Insurer issued a director and officer liability policy numbered EC06100102 for the period June 5, 2008 to May 5, 2009 (“Policy”), which insured the directors and officers of the Bank according to the terms, provisions, and conditions of the Policy. The Settling Defendants asserted claims for coverage under the Policy. Insurer issued a reservation of rights in response

to the D&O Action, stating it would advance defense costs subject to a full reservation of rights, including the rights to deny coverage under the Policy for claims asserted by the FDIC-R against the Settling Defendants and to seek reimbursement of advanced defense costs. Additionally, on March 12, 2013, Insurer filed a declaratory judgment action against the FDIC-R and the Settling Defendants seeking a declaration of its rights and obligations under the Policy with regard to the claims asserted by the FDIC-R in the D&O Action. That action was filed in the United States District Court for the Central District of California in the case styled *St. Paul Mercury Ins. Co. v. Hahn et al.*, Case No. 13-cv-00424 (“Coverage Action”), and it is now pending in the United States Court of Appeals for the Ninth Circuit.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of further litigation of the D&O Action.

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 the FDIC-R

A. As an essential covenant and condition to this Agreement, on or before thirty (30) calendar days following the date the Parties fully execute this Agreement and the FDIC-R provides wire transfer instructions (whichever occurs last) (“First Settlement Payment Date”), the Insurer agrees to pay the FDIC-R the sum of one million dollars (\$1,000,000.00) (“the First Settlement Payment”). Further, if it is determined by the Ninth Circuit Court of Appeals in the current appeal of the Coverage Action or in a non-appealable final order after remand in the Coverage Action that there is coverage under the Policy for the D&O Action and/or this Settlement, within thirty (30) calendar days of such an order and when the FDIC-R provides wire transfer instructions (whichever occurs last) (“Second Settlement Payment Date”), Insurer agrees to pay the FDIC-R an additional six hundred and fifty thousand dollars (\$650,000.00) (“Second Settlement Payment”). In the event of a procedural dismissal of the Coverage Action that does not reach the merits of the coverage issues and that is final and non-appealable, Insurer shall pay

the FDIC-R three hundred and twenty-five thousand dollars (\$325,000.00) as the Second Settlement Payment within thirty (30) days of such a final and non-appealable order and receipt of wire transfer instructions from the FDIC-R (whichever comes last). However, if it is determined in a non-appealable final order in the Coverage Action that there is not coverage under the Policy for the D&O Action and/or this Settlement, Insurer would have no additional obligation to the FDIC-R under the Policy. Insurer will not seek to recover any portion of the First Settlement Payment from the FDIC-R at any time. Insurer and the Settling Defendants agree that they will not in any forum contend that the FDIC-R is subject to any claim in the nature of reimbursement or recoupment of defense costs or any claim for any amounts that are contended or found to be not covered by the Policy.

B. The Insurer shall deliver the First Settlement Payment, and if applicable the Second Settlement Payment, to the FDIC-R by direct wire transfer into an account designated by the FDIC-R by notice to the attorneys for the Settling Defendants and Insurer or by certified or cashier's check drawn upon a depository institution acceptable to the FDIC-R. In the event that the First Settlement Payment is not delivered to the FDIC-R (or its counsel) by the First Settlement Payment Date, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the First Settlement Payment Date until the date of payment. In the event that the Second Settlement Payment is not delivered to the FDIC-R (or its counsel) by the Second Settlement Payment Date, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the Second Settlement Payment Date until the date of payment. Any interest owed due to the failure to timely make the First Settlement Payment or the Second Settlement Payment shall be solely the responsibility of the Insurer.

C. If the FDIC-R does not receive the First Settlement Payment in full on or before the First Settlement Payment Date, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the First Settlement Payment in full (including all accrued interest) to:

1. Extend the period of time for the First Settlement Payment, including

interest accruing from the date determined by subsection A above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(2); or

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

3. Terminate the Agreement, return all previously paid Settlement Payments (including any interest paid), move to vacate any dismissal order, to which the Settling Defendants and Insurer agree to consent, and re-institute an action on the FDIC-R's claims. The Settling Defendants and Insurer further agree to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims and waive all objections, defenses, claims or counterclaims, and covenant and agree not to assert any objections, defenses, claims or counterclaims, that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; 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 First Settlement Payment or acceptance of a portion of the First 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 First Settlement Payment (including all accrued interest) in full.

D. The Settling Defendants hereby assign only their right, if any, to recover the \$1,650,000 (the aforementioned First and Second Settlement Payment amounts) under the Policy, but not their obligations under the Policy, to the FDIC-R.

SECTION II: Stipulation and Dismissal

A. Within ten business days after the latter of (1) full execution of this Agreement by all of the Parties, and (2) receipt of the First 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 and Insurer shall file

a stipulation of dismissal of the Settling Defendants, with prejudice with the Settling Defendants bearing their own fees and costs, executed by the attorneys for all Parties hereto in the form attached hereto as Exhibit B, in the Coverage Action.

B. The Parties acknowledge that this Agreement does not resolve the Coverage Action. The Parties acknowledge and agree that there remains a case or controversy among the Parties with respect to the Coverage Action, and the Parties agree that they will not contest the standing of any party to the appeal of the Coverage Action, raise the issue of whether the United States Court of Appeals or the United States District Court for the Central District of California (collectively, the “Courts”) have jurisdiction to decide the Coverage Action on its merits, or contend that this Agreement has rendered the Coverage Action moot in any forum. The Parties reserve all of their rights to continue the Coverage Action through the appeal and to a final, non-appealable judgment. If the Courts or anyone else raises the issue of jurisdiction or mootness in the Coverage Action, the Parties will affirmatively argue that this Settlement has no impact on the Coverage Action. The Parties agree that Travelers’ complaint (*St. Paul Mercury Ins. Co. v. Hahn et al.*, Case No. 13-cv-01866, which was consolidated with the Coverage Action) was timely filed and in accordance with 12 U.S.C. § 1821(d)(6), which properly confers jurisdiction on the Courts. If the Courts question jurisdiction under 12 U.S.C. § 1821, the Parties agree to argue that jurisdiction is proper under that statute.

SECTION III: Releases

A. The FDIC-R’s Releases.

Upon receipt of the First 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, 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 and/or directors of the Bank including without limitation the causes of action alleged in the D&O Action.

2. All other former directors, officers, and employees of the Bank (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.

1. 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, agents, representatives, 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, 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 and/or directors of the Bank including without limitation the causes of action alleged in the D&O Action.

2. 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, agents, 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 and/or directors of the Bank.

3. Effective simultaneously with the release granted in Section III.A. above and after Insurer pays all of the Settling Defendants' Defense Costs for the D&O Action subject to the limitation that no additional payments will be made once the Policy's original \$6 million limits of liability are at \$1.65 million (excluding from this calculation of remaining limits any payment made to the FDIC-R pursuant to this Agreement), the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, successors, and assigns, hereby release and discharge Insurer, 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, fees, costs, interest, actions and causes of action (contractual, extra-contractual, statutory, or regulatory), direct or indirect, in law or in equity, that arise from or relate to the Policy, the D&O Action, and/or the Coverage Action. The sole exception to this Release is the Settling Defendants' claims for coverage for the \$1.65 million combined potential Settlement Payments which are assigned to the FDIC-R pursuant to Section I.D. above.

C. The Insurer's Release.

Effective simultaneously with the releases granted in Section III.A. above, Insurer, 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 Settling Defendants 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, related to the Policy or that arise from or relate to, the claims or causes of action alleged in the D&O Action, including any rights of reimbursement or recoupment of defense costs, the First Settlement Payment, and/or the Second Settlement Payment.

D. Exceptions from Releases by the 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 the FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by the 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: California Civil Code Section 1542

The Parties acknowledge that they are familiar with California Civil Code Section 1542, which reads that: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

Each of the Parties acknowledges that such Party may have sustained damages in connection with the Claims that are presently unknown and unsuspected, and that such damages as the Party may have sustained in connection with the Claims might give rise to additional damages in the future. Nevertheless, each of the Parties acknowledges that this Agreement has been negotiated and agreed upon in light of such possible damages and each Party expressly waives any and all rights under California Civil Code Section 1542 and under any other federal or state statute or law of similar effect in connection with the Claims. Each Party acknowledges and agrees that this waiver is an essential and material term of this Agreement, and that, without such waiver, this Agreement would not have been entered.

SECTION VI: 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. Financial Disclosure Representation. Each Settling Defendant has submitted financial information to the FDIC-R including verified personal financial statements and herein affirms that his financial information is true and accurate as of the date of this Agreement. Each Settling Defendant expressly acknowledges that, in determining to settle the claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by the Settling Defendants. The FDIC-R has no obligation to independently verify the completeness and accuracy of that financial information.

SECTION VII: 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 in the D&O Action, the Coverage Action, and to otherwise perform the terms of this Agreement.

SECTION VIII: Other Matters

A. No Admission of Liability or Coverage. 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, insurance coverage, 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 California.

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:

Bryce Quine, Counsel
Federal Deposit Insurance Corporation
1601 Bryan Street
Dallas, TX 75201
[REDACTED]
(972) 761-8520

(b)(6)

If to the Settling Defendants:

Peter K. Rosen
Latham & Watkins LLP
355 South Grand Avenue
Los Angeles, CA 90071-1560
[REDACTED]
(213) 891-8778
(Attorney for Mr. Adams, Mr. Cruse,
Mr. Forkner, and Mr. Cummings)

(b)(6)

Alan A. Greenberg
Greenberg Gross LLP
650 Town Center Drive, Suite 1750
Costa Mesa, CA 92626
[REDACTED]
(949) 383-2800
(Attorney for Mr. Grinyer and Mr. Hahn)

(b)(6)

If to the Insurer:

Thomas J. Judge
Thompson, Loss & Judge, LLP
Two Lafayette Centre
1133 21st Street, NW, Suite 450
Washington, DC 20036
[REDACTED]
(202) 778-4065

(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.

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR PACIFIC COAST NATIONAL BANK

(b)(6)

Date: 8/27/15

[Redacted Signature Box]

By: Bryce Quine
Title: Counsel, Legal Division

SETTLING DEFENDANTS:

Date: _____

David L. Adams

Date: _____

Stanley M. Cruse

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FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR PACIFIC COAST NATIONAL BANK

Date: _____

By: Bryce Quine
Title: Counsel, Legal Division

SETTLING DEFENDANTS:

(b)(6)

Date: 8-28-15

David L. Adams

Date: _____

Stanley M. Cruse

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FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR PACIFIC COAST NATIONAL BANK

Date: _____


By: Bryce Quine
Title: Counsel, Legal Division

SETTLING DEFENDANTS:

Date: _____

David L. Adams

Date: 8/26/15


Stanley M. Cruse

(b)(6)

(b)(6)

Date: 8/26/15



Colin M. Forkner

Date: _____

Richard W. Grinyer

Date: _____

Michael S. Hahn

Date: _____

Michael V. Cummings

ST. PAUL MERCURY INSURANCE COMPANY

Date: _____

By:
Title:

Date: _____

Colin M. Forkner

(b)(6)

Date: 08/26/2015

Richard W. Grinyer

Date: _____

Michael S. Hahn

Date: _____

Michael V. Cummings

ST. PAUL MERCURY INSURANCE COMPANY

Date: _____

By:
Title:

Date: _____

Colin M. Forkner

Date: _____

Richard W. Grinyer

(b)(6)

Date: 8/26/2015

Michael S. Hahn

Date: _____

Michael V. Cummings

ST. PAUL MERCURY INSURANCE COMPANY

Date: _____

By:
Title:

Date: _____

Colin M. Forkner

Date: _____

Richard W. Grinyer

Date: _____

Michael S. Hahn

(b)(6)

Date: 8-26-15

Michael V. Cummings

ST. PAUL MERCURY INSURANCE COMPANY

Date: _____

By:
Title:

Date: _____

Colin M. Forkner

Date: _____

Richard W. Grinyer

Date: _____

Michael S. Hahn

Date: _____

Michael V. Cummings

ST. PAUL MERCURY INSURANCE COMPANY

(b)(6)

Date: 8.25.15



By: Cathy Powell
Title: senior claim counsel
Bond & Specialty Insurance