

AMENDMENT TO SETTLEMENT AND ASSIGNMENT AGREEMENT

This Amendment to Settlement and Assignment Agreement ("Amendment") is entered into as of June 15, 2015, between and among the Federal Deposit Insurance Corporation ("FDIC") in its capacity as Receiver for Omni National Bank ("FDIC-R"), and Progressive Casualty Insurance Company, Inc. ("Progressive" and collectively with FDIC-R, the "Amending Parties").

RECITALS

WHEREAS, the Amending Parties, along with the Settling Defendants entered into the SETTLEMENT AND ASSIGNMENT AGREEMENT dated December 6, 2013 (the "Agreement"); and

WHEREAS, Paragraph 11.c of the Agreement states, in part, that "[the] Agreement may . . . be amended or modified . . . 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);" and

WHEREAS, the Amending Parties are the only Parties to the Agreement to be bound by this Amendment; and

WHEREAS, this Amendment does not alter or affect the rights, duties, or obligations of any other Party to the Agreement or the rights, duties, or obligations of the Amending Parties with respect to any other Party to the Agreement; and

WHEREAS, pursuant to the Agreement, the Order entered by the Court in the Coverage Action on or about January 17, 2014 at Docket No. 127, and Rule 67 of the Local Rules of the United States District Court for the Northern District of Georgia, Progressive deposited into the Court Registry fund the Initial Settlement Amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000); and

WHEREAS, the Amending Parties desire to fully and finally resolve the Coverage Action;

NOW, THEREFORE, in consideration of and in reliance upon the recitals, mutual covenants, promises, obligations and undertakings contained in the Agreement and this Amendment, and other good and valuable consideration the sufficiency of which is hereby acknowledged, and intending to be legally bound thereby, FDIC-R and Progressive mutually agree as follows:

A. Terms used herein that are defined in the Agreement shall have the definitions ascribed to them in the Agreement unless a different definition is specifically ascribed to them in this Amendment;

B. The Recitals to this Amendment are incorporated into and made a part of this Amendment; titles of paragraphs are for convenience only and are not to be considered a part of this Amendment.

C. The Agreement is hereby modified with the addition of the following new Paragraph 18:

18. Disbursement of the Settlement Amount, Dismissal of the Coverage Action, and Releases. Notwithstanding anything in the Agreement to the contrary, Progressive and FDIC-R hereby agree to the full and final resolution and settlement of the Coverage Action on the following terms:

a. **Disbursement of the Settlement Amount.** Within ten (10) business days of the date this Amendment has been executed by all Amending Parties, the Amending Parties shall file in the Coverage Action a Joint Motion pursuant to Rule 67 of the Local Rules of the U.S. District Court for the Northern District of Georgia ("Rule 67") in the form attached hereto as Exhibit A requesting disbursement of the Settlement Amount as follows:

i. Out of the Initial Settlement Amount, the sum of Seven Million, Two Hundred and Sixty Two Thousand, Five Hundred Dollars (\$7,262,500) shall be disbursed to FDIC-R;

ii. Out of the Initial Settlement Amount, the sum of Two Hundred Thirty Seven Thousand, Five Hundred Dollars (\$237,500) shall be disbursed to Progressive;

iii. After subtracting any fees or costs payable to the Court or as required by Rule 67, 96.833% of any interest earned on the Initial Settlement Amount shall be disbursed to FDIC-R, and 3.167% of any interest earned on the Initial Settlement Amount shall be disbursed to Progressive.

b. **Dismissal of the Coverage Action.** Within five (5) business days following receipt by FDIC-R and Progressive of their respective portions of the disbursed Settlement Amount as set forth in Paragraph 18.a. above, the Amending Parties shall file in the Coverage Action a motion to dismiss with prejudice, executed by the attorneys for both Amending Parties, in the form attached hereto as Exhibit B.

c. **FDIC-R Release.** Upon receipt by FDIC-R and Progressive of their respective portions of the disbursed Settlement Amount as set forth in Paragraph 18.a above and dismissal of the Coverage Action with prejudice as set forth in Paragraph 18.b. above and except as provided in Paragraph 3.e. of the Agreement, FDIC-R, for itself and its successors and assigns, hereby releases and discharges 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 D&O Policy, the FDIC-R Action, or the Coverage Action. As part of this release, FDIC-R agrees that any interest it may have under the D&O Policy is extinguished.

d. **Progressive Release.** Effective simultaneously with the releases granted in Paragraph 18.c. 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 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 Policy, the FDIC-R Action, or the Coverage Action.

D. Except as expressly set forth in this Paragraph D, the Representations and Acknowledgments set forth in Paragraph 11 of the Agreement are adopted and incorporated herein by reference as if fully set forth in this Amendment.

1. Solely for purposes of this Amendment, all references to the "Agreement" in Paragraph 11 of the Agreement shall be understood as referencing this Amendment.

2. Solely for purposes of this Amendment, all references to a "Party" or the "Parties" in Paragraph 11 of the Agreement shall be understood as referencing the Amending Parties as that term is defined herein.

3. Solely for purposes of this Amendment, Paragraph 11.e of the Agreement is amended to read in its entirety as follows:

e. **Entire Agreement and Amendments.** The Agreement as modified by this Amendment constitutes the entire agreement and understanding between and among the undersigned Amending Parties concerning the matters set forth in the Agreement and Amendment. This Amendment may not be amended or modified except by another written instrument signed by the Amending Party or Parties to be bound thereby or by their respective authorized attorney(s) or other representative(s). A waiver of any right under this Amendment is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

With respect to the Agreement itself, Paragraph 11.e. of the Agreement remains unchanged.

E. Each Amending Party hereby acknowledges that it has consulted with and obtained the advice of its counsel prior to executing this Amendment, and that this Amendment has been explained to that Party by its counsel.

F. The undersigned each warrants and represents that they have the full right, power, and specific authority to enter into, execute, and consummate this Amendment.

G. The Amending Parties agree to cooperate in good faith to effectuate all the terms and conditions of the Agreement and this Amendment, 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 perform the terms of the Agreement and this Amendment.

H. Except as expressly set forth herein, the Agreement remains unmodified and in full force and effect.

I. The undersigned Amending Parties acknowledge and agree that the matters set forth in the Agreement and this Amendment constitute the settlement and compromise of disputed claims and defenses, that neither the Agreement nor this Amendment is an admission or evidence of liability or infirmity by either of them regarding any claim or defense, and that the Agreement and Amendment shall not be offered or received in evidence by or against any Party except to enforce its terms.

IN WITNESS WHEREOF, the Amending Parties have executed this Amendment to Settlement and Assignment Agreement, by and through their counsel, as of the Effective Date stated above.

**FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
OMNI NATIONAL BANK**

Date: June 16, 2015

By: (b)(6)
Its: Mark A. Blzck
Counsel - FDIC

**PROGRESSIVE CASUALTY
INSURANCE COMPANY**

Date: _____, 2015

By: _____
Its: _____

execution, filing, recording, and entry of any documents necessary to perform the terms of the Agreement and this Amendment.

H. Except as expressly set forth herein, the Agreement remains unmodified and in full force and effect.

I. The undersigned Amending Parties acknowledge and agree that the matters set forth in the Agreement and this Amendment constitute the settlement and compromise of disputed claims and defenses, that neither the Agreement nor this Amendment is an admission or evidence of liability or infirmity by either of them regarding any claim or defense, and that the Agreement and Amendment shall not be offered or received in evidence by or against any Party except to enforce its terms.

IN WITNESS WHEREOF, the Amending Parties have executed this Amendment to Settlement and Assignment Agreement, by and through their counsel, as of the Effective Date stated above.

**FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
OMNI NATIONAL BANK**

Date: _____, 2015

By: _____

Its: _____

**PROGRESSIVE CASUALTY
INSURANCE COMPANY**

Date: June 16, 2015

By: _____

(b)(6)

Its: Casualty Specialist Sr.

AMENDMENT TO SETTLEMENT AND ASSIGNMENT AGREEMENT
Exhibit "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

**PROGRESSIVE CASUALTY
INSURANCE COMPANY,**

Plaintiff,

vs.

**FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER OF
OMNI NATIONAL BANK, ET AL.,**

Defendants.

**CIVIL ACTION NO.
1:12-cv-01103-TCB**

**Consolidated, for Pre-trial and
Discovery Purposes, with
1:12-cv-00896-RLV
1:12-cv-01740-TCB
1:12-cv-01877-RLV**

UNOPPOSED JOINT MOTION FOR DISBURSEMENT OF FUNDS

Now into Court, through undersigned counsel, come Plaintiff Progressive Casualty Insurance Company ("Progressive") and Defendant Federal Deposit Insurance Corporation as Receiver for Omni National Bank ("FDIC-R"), for itself and as assignee, parties to the above captioned Civil Action No. 1:12-cv-01103-TCB (the "Progressive Case"), and respectfully move the Court for an order disbursing settlement funds on deposit in the Court Registry pursuant to the Amendment to Settlement and Assignment Agreement ("Amendment") attached hereto as Exhibit 1. In support of this Motion, the parties state as follows:

1. On or about December 6, 2013, Progressive, FDIC-R, and the Settling Defendants entered into a Settlement and Assignment Agreement (the "Agreement" (Dkt. No. 119-1)).¹

2. Pursuant to the terms of the Agreement, on December 16, 2013, Progressive filed a Motion to Dismiss Counts III and V Through X and for Final Judgment on Count IV (Dkt. No. 115). By order dated January 18, 2014, (Dkt. No. 123), the Court granted this Motion.

3. Pursuant to the terms of the Agreement, on December 16, 2013, Progressive and FDIC-R filed a Joint Motion to Substitute and Amend Case Caption (Dkt. No. 116). By order dated January 18, 2014, (Dkt. No. 124), the Court granted this Motion.

4. The sole remaining parties to this action are Progressive, FDIC-R, and defendants Benjamin J. Cohen, Constance E. Perrine, and Karim W. Lawrence. Counsel for Progressive has conferred with counsel for Mr. Cohen and Ms. Perrine, and they have not opposed the relief sought in this Motion.² Mr. Lawrence never filed an Answer or otherwise appeared in this action.

¹ Terms capitalized in this Motion, except as otherwise defined herein, have the meaning ascribed to them in the Agreement or Amendment.

² As reflected in the email exchange attached hereto as Exhibit 2, when given the opportunity to express opposition to this Motion, Mr. Cohen and Ms. Perrine did not do so. Further, pursuant to the Release and Agreement attached hereto as Exhibit 3, Mr. Cohen and Ms. Perrine have released all claims under the Progressive Policy related to this matter and have agreed to the dismissal of this action as to them with all parties to bear their own costs. As such, Mr. Cohen

5. Pursuant to the terms of the Agreement, on or about December 24, 2013, Progressive filed a Motion for Leave to Deposit Settlement Funds into Court Registry (the "Deposit Motion" (Dkt. No. 119)).

6. On or about January 17, 2014, the Court entered an order, (Dkt. No. 127), granting the Deposit Motion and ordering "that Progressive is granted leave to deposit the sum of Seven Million Five Hundred Thousand Dollars (\$7,500,000) into the Court Registry fund to be held as provided for in the [Agreement]." This sum is referred to in the Agreement and herein as the "Initial Settlement Amount."

7. Pursuant to the Court's January 17, 2014 Order, on January 22, 2014, Progressive deposited the Initial Settlement Amount into the Court Registry by wire transfer.

8. On or about June 15, 2015, Progressive and FDIC-R entered into the Amendment to effectuate the full and final resolution of this action.

9. Subject to all of the terms of the Agreement and Amendment, the Amendment provides for the disbursement of the Initial Settlement Amount and any interest earned on the Initial Settlement Amount as follows:

and Ms. Perrine have no interest in the funds that are the subject of this Motion. Following the disbursement of those funds, Progressive and FDIC-R will file a stipulation of dismissal as to all claims and remaining parties.

a. Out of the Initial Settlement Amount, the sum of Seven Million, Two Hundred and Sixty Two Thousand, Five Hundred Dollars (\$7,262,500) shall be disbursed to FDIC-R;

b. Out of the Initial Settlement Amount, the sum of Two Hundred Thirty Seven Thousand, Five Hundred Dollars (\$237,500) shall be disbursed to Progressive;

c. After subtracting any fees or costs payable to the Court or as required by Rule 67 [of the Local Rules of the U.S. District Court for the Northern District of Georgia], 96.833% of any interest earned on the Initial Settlement Amount shall be disbursed to FDIC-R, and 3.167% of any interest earned on the Initial Settlement Amount shall be disbursed to Progressive.

10. The parties therefore request that the Court enter the attached Order in accordance with the foregoing. Disbursement to FDIC-R should be by check made payable to Federal Deposit Insurance Corporation as Receiver for Omni National Bank³ and sent to:

³ Pursuant to Local Rule 67.1.D.(2), FDIC-R will provide its Tax Identification Number in a letter to the Court.

JPMorgan Chase (TX1-0006)
Attn: FDIC Receivership Lock Box #971774
14800 Frye Road 2nd Floor
Fort Worth, TX 76155

with notice to:

James A. Brown
Liskow & Lewis, PLC
701 Poydras Street, Suite 5000
New Orleans, Louisiana 70139-5099
Attorneys for Federal Deposit Insurance Corporation
as Receiver for Omni National Bank

Disbursement to Progressive should be by check made payable to Progressive Casualty Insurance Company⁴ and sent to:

Lewis K. Loss
Loss, Judge & Ward LLP
Two Lafayette Centre
1133 21st Street, NW, Suite 450
Washington, DC 20036
Attorneys for Progressive Casualty Insurance Company

11. Pursuant to Local Rule 67.1.A.(1)(b), prior to filing this Motion, the parties submitted the proposed Order attached hereto to a financial deputy clerk for certification of the amount of funds deposited in the registry of the court.

Based on all of the foregoing, the parties respectfully request that the Court enter the attached Order in accordance with this Motion.

⁴ Pursuant to Local Rule 67.1.D.(2), Progressive will provide its Tax Identification Number in a letter to the Court.

Respectfully submitted,

*ATTORNEYS FOR PLAINTIFF,
PROGRESSIVE CASUALTY
INSURANCE COMPANY*

*ATTORNEYS FOR DEFENDANT,
FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
OMNI NATIONAL BANK*

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701 Poydras Street, Suite 5000
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Telephone: (504) 581-7979
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(b)(6)

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[Redacted]

-and-

-and-

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171 17th Street NW, Suite 2100
Atlanta, GA 30363
(t) 404-873-8126
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Facsimile: (770) 587-0726

(b)(6)

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[Redacted]

CERTIFICATE OF SERVICE

I hereby certify that on June __, 2015, I electronically filed the foregoing document with the Clerk of the Court using the ECF System which will send notification of such filing to all attorneys of record.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**PROGRESSIVE CASUALTY
INSURANCE COMPANY,**

Plaintiff,

vs.

**FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER OF
OMNI NATIONAL BANK, ET AL.,**

Defendants.

CIVIL ACTION NO.

1:12-cv-01103-TCB

**Consolidated, for Pre-trial and
Discovery Purposes, with**

1:12-cv-00896-RLV

1:12-cv-01740-TCB

1:12-cv-01877-RLV

**ORDER OF DISBURSAL ON UNOPPOSED
JOINT MOTION FOR DISBURSEMENT OF FUNDS**

The Court has considered the Unopposed Joint Motion for Disbursement of Funds ("Motion") filed in this matter by Plaintiff Progressive Casualty Insurance Company ("Progressive") and Defendant Federal Deposit Insurance Corporation as Receiver for Omni National Bank ("FDIC-R"). For the reasons stated in the Motion, it is hereby ORDERED:

1. The sum of Seven Million, Five Hundred Thousand Dollars (\$7,500,000), which Progressive deposited in the registry of this Court by wire transfer on January 22, 2014, shall be disbursed as follows:

2. The clerk is authorized and directed to draw a check on the funds on deposit in the registry of this Court in the principal amount of \$7,262,500 plus

96.833% of all accrued interest, minus 96.833% of any statutory user fees, payable to Federal Deposit Insurance Corporation as Receiver for Omni National Bank and mail or deliver the check to:

JPMorgan Chase (TX1-0006)
Attn: FDIC Receivership Lock Box #971774
14800 Frye Road 2nd Floor
Fort Worth, TX 76155

with notice to:

James A. Brown
Liskow & Lewis, P.L.C.
701 Poydras Street, Suite 5000
New Orleans, Louisiana 70139-5099
Attorneys for Federal Deposit Insurance Corporation
as Receiver for Omni National Bank

3. The clerk is authorized and directed to draw a check on the funds on deposit in the registry of this Court in the principal amount of \$237,500 plus 3.167% of all accrued interest, minus 3.167% of any statutory user fees, payable to Progressive Casualty Insurance Company and mail or deliver the check to:

Lewis K. Loss
Loss, Judge & Ward, LLP
Two Lafayette Centre
1133 21st Street, NW, Suite 450
Washington, DC 20036
Attorneys for Progressive Casualty Insurance Company

DATED this day of _____, 2015

Honorable Timothy C. Batten, Sr.
District Judge

AMENDMENT TO SETTLEMENT AND ASSIGNMENT AGREEMENT
Exhibit "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

**PROGRESSIVE CASUALTY
INSURANCE COMPANY,**

Plaintiff,

vs.

**FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER OF
OMNI NATIONAL BANK, ET AL.,**

Defendants.

**CIVIL ACTION NO.
1:12-cv-01103-TCB**

**Consolidated, for Pre-trial and
Discovery Purposes, with
1:12-cv-00896-RLV
1:12-cv-01740-TCB
1:12-cv-01877-RLV**

**UNOPPOSED MOTION TO DISMISS ACTION WITH
PREJUDICE PURSUANT TO FED. R. CIV. P. 41(a)(2)**

Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, Plaintiff Progressive Casualty Insurance Company ("Progressive") and Defendant Federal Deposit Insurance Corporation as Receiver for Omni National Bank ("FDIC-R"), for itself and as assignee, parties to the above captioned Civil Action No. 1:12-cv-01103-TCB (the "Progressive Case"), respectfully move this Court for an order dismissing the Progressive Case with prejudice with each party to bear its own costs.

Pursuant to the Release and Agreement attached hereto as Exhibit 1, two of the remaining defendants in the Progressive Case, Benjamin Cohen and Constance

Perrine, have agreed not to oppose dismissal of this action with each party to bear its own costs. (Ex. 1, ¶ 3).

Defendant Karim W. Lawrence, the sole other remaining defendant in the Progressive Case, has not filed an Answer or otherwise appeared in this action. The dismissal of the Progressive Case as to Mr. Lawrence is, therefore, without prejudice.

The parties have agreed that each party is to bear its own fees and costs.

Based on all of the foregoing, the parties respectfully request that the Court enter the attached Order in accordance with this Motion.

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Respectfully submitted,

*ATTORNEYS FOR PLAINTIFF,
PROGRESSIVE CASUALTY
INSURANCE COMPANY*

*ATTORNEYS FOR DEFENDANT,
FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
OMNI NATIONAL BANK*

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(b)(6)

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[Redacted]

-and-

-and-

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Facsimile: (770) 587-0726

(b)(6)

[Redacted]

(b)(6)

[Redacted]

CERTIFICATE OF SERVICE

I hereby certify that on June __, 2015, I electronically filed the foregoing document with the Clerk of the Court using the ECF System which will send notification of such filing to all attorneys of record.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**PROGRESSIVE CASUALTY
INSURANCE COMPANY,**

Plaintiff,

vs.

**FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER OF
OMNI NATIONAL BANK, ET AL.,**

Defendants.

CIVIL ACTION NO.

1:12-cv-01103-TCB

**Consolidated, for Pre-trial and
Discovery Purposes, with**

1:12-cv-00896-RLV

1:12-cv-01740-TCB

1:12-cv-01877-RLV

ORDER OF DISMISSAL

The Court has considered the Unopposed Motion to Dismiss Action with Prejudice Pursuant to Fed. R. Civ. P. 41(a)(2) ("Motion") filed in this matter by Plaintiff Progressive Casualty Insurance Company ("Progressive") and Defendant Federal Deposit Insurance Corporation as Receiver for Omni National Bank ("FDIC-R"). For the reasons stated in the Motion, it is hereby ORDERED:

1. The above captioned Civil Action No. 1:12-cv-01103-TCB (the "Progressive Case") is dismissed with prejudice as to all parties other than Karim W. Lawrence;

2. The Progressive Case is dismissed as to Karim W. Lawrence without prejudice; and

3. Each party is to bear its own costs.

DATED this ____ day of _____, 2015

Honorable Timothy C. Batten, Sr.
District Judge