

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 Charter Bank ("FDIC-R"); John W. Brown, Ronald Brown, Andrew Feld, Paul Goblet, Joyce Godwin, Shirley Scott, Bruce Seligman, Stephen M. Walker, R. Glenn Wertheim, and the Estate of Robert Wertheim (collectively the "Settling Defendants"); and Progressive Casualty Insurance Company ("Insurer"). Individually, the FDIC-R, the Settling Defendants and the Insurer may be referred to herein as "Party," and collectively they may be referred to as "Parties."

RECITALS

Prior to January 22, 2010, Charter Bank of Santa Fe ("Bank") was a depository institution organized and existing under the laws of New Mexico.

On January 22, 2010, the Office of Thrift Supervision ("OTS") 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 the Bank's assets.

Among the assets to which the FDIC-R succeeded were all of the Bank's claims, demands, and causes of action against any of its former directors, officers, and employees arising from the performance, nonperformance, and/or manner of performance of their respective functions, duties and acts as directors, officers, and employees of the Bank.

On January 13, 2013, 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. The complaint was filed in an action now pending in the United States District Court for the District of New Mexico ("Court") entitled *FDIC v. Wertheim, et al*, number 1:13 cv-00050 ("D&O Action").

The Settling Defendants have denied liability for the claims asserted in the D&O Action.

Insurer issued a director and officer liability policy numbered for the period (b)(4)

June 14, 2006 through June 14, 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 has reserved its rights to deny coverage under the Policy for the claims asserted by FDIC-R against the Settling Defendants.

The undersigned Parties deem it in their best interests to enter into this Agreement to resolve the D&O Action and 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 thirty (30) calendar days following the later of (i) the date this Agreement has been executed by all Parties and (ii) the date the notice described in Section I.B, below, have been provided, (the "Settlement Payment Date"), the Settling Defendants agree to pay the FDIC-R the sum of \$100,000, and the Insurer agrees to pay the FDIC-R the sum of \$2,900,000, for a total payment to the FDIC-R of \$3,000,000 ("the Settlement Payment").

B. The Settling Defendants and Insurer shall deliver the Settlement Payment to the FDIC-R by direct wire transfer into an account designated by FDIC-R by notice to the attorneys for the Settling Defendants and Insurer.

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

1. Extend the period of time for the Settlement Payment, including interest accruing on the unpaid amount against the nonpaying Party from the date determined by Section I.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 any Party whose portion of the Settlement Payment remains outstanding agrees to jurisdiction in United States District Court in New Mexico and 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 this Agreement, return to the paying Party any portion of the Settlement Payment it has received, 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, but such vacation or re-institution shall be limited to the assertion or reassertion only of the specific claims currently contained in the Amended Complaint filed in the D&O Action. In that event, the Settling Defendants and Insurer further agree to waive and not assert any objections, defenses, claims or counterclaims, including any defense based on any statute of limitations that would bar any of the FDIC-R's claims, that did not exist or were unavailable as of the date the D&O Action was filed ; and/or

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

D. 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 all accrued interest) in full.

SECTION II: Stipulation and Dismissal

The attorneys for the Parties agree to promptly execute a stipulation for dismissal with prejudice of the D&O Action. Within ten business days after the full execution of this Agreement by all of the Parties, and the FDIC-R's receipt of the Settlement Payment (including any accrued interest), the FDIC-R shall file the stipulation for dismissal with the Court and FDIC-R shall file pleadings in the New Mexico District Court for the County of Bernalillo, Second Judicial District, *In the Matter of the Estate of Robert Wertheim, Deceased* (No. D-202-PB-2013-00170), requesting the entry of a Stipulated Order vacating the previous Stipulated Order For Supervised Administration of the Estate and dismissing with prejudice (a) the FDIC-R

petition for Supervised Administration, and (b) all claims asserted therein by FDIC-R.

SECTION III: Releases

A. The FDIC-R's Releases.

Upon receipt of the 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, insurers, 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. Insurer, 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 Policy or the D&O Action. As part of this release of the Insurer, the FDIC-R agrees that any interest it may have under the Policy is extinguished.
3. 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' Releases.

Effective simultaneously with the releases granted in Section III.A. and C., the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, attorneys, successors, and assigns, hereby release and discharge:

1. The FDIC-R, and its employees, officers, directors, 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, 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. Insurer, 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 Policy or the D&O Action. Upon the complete performance of this Agreement by all Parties, the Settling Defendants agree that any interest they have in the Policy is extinguished except with regard to unreimbursed defense fees and costs in the D&O Action.

3. 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 Policy or the D&O Action.

C. The Insurer's Releases.

Effective simultaneously with the releases granted in Section III.A. and B., 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:

1. 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 the Policy or the D&O Action.

2. 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, that arise from or relate to the Policy or the D&O Action. Nothing in this release shall limit any defense to coverage in connection with any future request for coverage under the Policy, if any.

D. 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.

SECTION VI: 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 to conclude the D&O Action, and to 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.

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 New Mexico.

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:

Stephen Lemmon
Husch Blackwell, LLP
111 Congress Avenue, Suite 1400
Austin, TX 78701-4093

(b)(6)

And

Kevin W. Wheelwright
FDIC Legal Division
3501 Fairfax Drive, Suite VS-B 7022
Arlington, VA 22226

(b)(6) [Redacted]

If to the Settling Defendants:

William Frank Carroll
Dykema Cox Smith
1201 Elm Street, Suite 3300
Dallas, TX 75270

(b)(6) [Redacted]

If to Insurer:

Lewis K. Loss
Loss, Judge & Ward, LLP
Two Lafayette Centre
1133 21st Street, NW, Suite 450
Washington, DC 20036

(b)(6) [Redacted]

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, intending same to be effective as of the date of the latest signature date below.

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR CHARTER BANK

(b)(6)

Date: 8/27/2015

BY:
PRINT NAME: ~~Kevin~~ W. Wheelwright
TITLE: Counsel

JOHN W. BROWN

Date: _____

RONALD BROWN

Date: _____

ANDREW FELD

Date: _____

PAUL GOBLET

Date: _____

JOYCE GODWIN

Date: _____

SHIRLEY SCOTT

Date: _____

BRUCE SELIGMAN

Date: _____

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR CHARTER BANK

Date: _____

BY: _____
PRINT NAME: Kevin W. Wheelwright
TITLE: Counsel

JOHN W. BROWN

(b)(6) Date: 25 AUG 15



RONALD BROWN

Date: _____

ANDREW FELD

Date: _____

PAUL GOBLET

Date: _____

JOYCE GODWIN

Date: _____

SHIRLEY SCOTT

Date: _____

BRUCE SELIGMAN

Date: _____

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR CHARTER BANK

Date: _____

BY: _____
PRINT NAME: Kevin W. Wheelwright
TITLE: Counsel

JOHN W. BROWN

Date: _____

RONALD BROWN

(b)(6)

Date: *Aug 26, 2015*

[Redacted Signature]

ANDREW FELD

Date: _____

PAUL GOBLET

Date: _____

JOYCE GODWIN

Date: _____

SHIRLEY SCOTT

Date: _____

BRUCE SELIGMAN

Date: _____

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR CHARTER BANK

Date: _____

BY: _____
PRINT NAME: Kevin W. Wheelwright
TITLE: Counsel

JOHN W. BROWN

Date: _____

RONALD BROWN

Date: _____

ANDREW FELD

(b)(6) Date: 8/25/15

PAUL GOBLET

Date: _____

JOYCE GODWIN

Date: _____

SHIRLEY SCOTT

Date: _____

BRUCE SELIGMAN

Date: _____

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR CHARTER BANK

Date: _____

BY: _____
PRINT NAME: Kevin W. Wheelwright
TITLE: Counsel

JOHN W. BROWN

Date: _____

RONALD BROWN

Date: _____

ANDREW FELD

Date: _____

(b)(6)

PAUL GOBLET


Date: *26 Aug 2015*

JOYCE GODWIN

Date: _____

SHIRLEY SCOTT

Date: _____

BRUCE SELIGMAN

Date: _____

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR CHARTER BANK

Date: _____

BY: _____
PRINT NAME: Kevin W. Wheelwright
TITLE: Counsel

JOHN W. BROWN

Date: _____

RONALD BROWN

Date: _____

ANDREW FELD

Date: _____

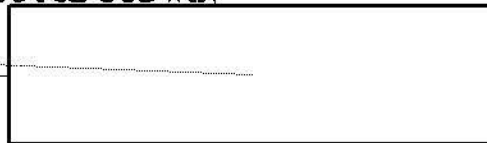
PAUL GOBLET

Date: _____

JOYCE GODWIN

(b)(6)

Date: 8/26/15



SHIRLEY SCOTT

Date: _____

BRUCE SELIGMAN

Date: _____

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR CHARTER BANK

Date: _____

BY: _____
PRINT NAME: Kevin W. Wheelwright
TITLE: Counsel

JOHN W. BROWN

Date: _____

RONALD BROWN

Date: _____

ANDREW FELD

Date: _____

PAUL GOBLET

Date: _____

JOYCE GODWIN

Date: _____

SHIRLEY SCOTT

Date: 8/25/15

[Redacted Signature]

BRUCE SELIGMAN

Date: _____

(b)(6)

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR CHARTER BANK

Date: _____

BY: _____
PRINT NAME: Kevin W. Wheelwright
TITLE: Counsel

JOHN W. BROWN

Date: _____

RONALD BROWN

Date: _____

ANDREW FELD

Date: _____

PAUL GOBLET

Date: _____

JOYCE GODWIN

Date: _____

SHIRLEY SCOTT

Date: _____

BRUCE SELIGMAN

(b)(6)

Date: 8/26/15



[Redacted]

STEPHEN M. WALKER

(b)(6)

Date: 8/25/15

[Redacted]

R. GLENN WERTHEIM

Date: _____

ESTATE OF ROBERT WERTHEIM

Date: _____

BY: _____
PRINT NAME:
TITLE:

PROGRESSIVE CASUALTY INSURANCE COMPANY

Date: _____

BY: _____
PRINT NAME:
TITLE:

STEPHEN M. WALKER

Date: _____

R. GLENN WERTHEIM

(b)(6)

Date: August 25, 2015

ESTATE OF ROBERT WERTHEIM

Date: _____

BY: _____

PRINT NAME:

TITLE:

PROGRESSIVE CASUALTY INSURANCE COMPANY

Date: _____

BY: _____

PRINT NAME:

TITLE:

STEPHEN M. WALKER

Date: _____

R. GLENN WERTHEIM

Date: _____

ESTATE OF ROBERT WERTHEIM

(b)(6) Date: 8/25/15

BY:
PRINT NAME: ELIZABETH WERTHEIM
TITLE: PERSONAL REPRESENTATIVE

PROGRESSIVE CASUALTY INSURANCE COMPANY

Date: _____

BY: _____
PRINT NAME:
TITLE:

STEPHEN M. WALKER

Date: _____

R. GLENN WERTHEIM

Date: _____


ESTATE OF ROBERT WERTHEIM

Date: _____
BY: _____
PRINT NAME:
TITLE:

PROGRESSIVE CASUALTY INSURANCE COMPANY

(b)(6)

Date: 8/25/15

BY: 
PRINT NAME: Lawrence D. Leeders
TITLE: Claims Specialist Sr.