

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made by, between, and among the following undersigned parties:

The Federal Deposit Insurance Corporation as Receiver for First Heritage Bank ("FDIC-R"), Stovall, Grandey & Allen, LLP ("SGA"), and XL Insurance ("Insurer"). Each of the parties hereto may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS:

Prior to May 27, 2011, First Heritage Bank ("FHB" or "Bank") was a depository institution organized and existing under the laws of the State of Washington;

On May 27, 2011, the Washington State Department of Financial Institutions closed FHB 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.

Among the assets to which the FDIC-R succeeded were all of the Bank's claims, demands, and causes of action, including as against the Bank's accountants and/or auditors arising from the performance, nonperformance, and manner of performance of their respective functions, duties, and acts as accountants and/or auditors of the Bank;

The FDIC-R has asserted claims against SGA, which served at various times as an accountant and/or auditor of the Bank, as stated in a demand letter from the FDIC-R to SGA dated on or about July 31, 2014 (the "Claims"). SGA denies liability for the Claims.

Insurer issued an accountants and consultants professional liability insurance policy (b)(4) _____ numbered for the period September 7, 2013 to September 7, 2014 ("Policy"), which insured the SGA according to the terms, provisions, and conditions of the Policy. SGA asserted claims for coverage under the Policy. Insurer has reserved its rights to deny coverage under the Policy for claims asserted by the FDIC-R against SGA.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of 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 the FDIC-R

A. As an essential covenant and condition to this Agreement, on or before thirty (30) calendar days following the date all Parties execute this Agreement, SGA and Insurer, jointly and severally, agree to pay the FDIC-R the sum of Seven Hundred Thirty Five Thousand Dollars (\$735,000) (“the Settlement Payment”).

B. SGA shall deliver the Settlement Payment to the FDIC-R by check payable to FDIC-R or a party designated by the FDIC-R by notice to the attorneys for SGA and Insurer.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection A above, 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, 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)(3); or

2. Enforce this Agreement, in which event SGA and Insurer agree to jurisdiction in the United States District Court in the Western District of Washington 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 the Agreement, and institute an action on the FDIC-R’s claims. SGA 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 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: Releases

A. The FDIC-R's Releases.

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

1. SGA and its respective members, employees, officers, directors, agents, 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, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the SGA's respective functions, duties, and actions as accountants and/or auditors of the Bank.

2. 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, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Policy. As part of this release of the Insurer, the FDIC-R agrees that any interest it may have under the Policy on claims related to FHB is extinguished.

B. SGA's Release.

1. Effective simultaneously with the release granted in Section II.A. above, SGA, on behalf of itself and its members, employees, officers, directors, agents, representatives, successors, and assigns, hereby releases and discharges the FDIC-R, and its

employees, officers, directors, representatives, attorneys, agents, 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 SGA's respective functions, duties, and actions as accountants and/or auditors of the Bank.

C. Insurer's Release.

Effective simultaneously with the releases granted in Section II.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 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.

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 SGA 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 the 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 III: 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 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 its counsel.

C. 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 perform the terms of this Agreement.

D. 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.

E. 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.

F. 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.

G. 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:

Robert J. Gibson, Esq.
Federal Deposit Insurance Corporation
1601 Bryan Street, ENG-35002
Dallas, Texas 75201

[Redacted]

(b)(6)

Kathy Balderston
Nixon Peabody LLP
437 Madison Avenue
New York, New York, 10022

[Redacted]

(b)(6)

If to SGA:

[name, address, and email]

If to Insurer:

[name, address, and email]

H. 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).

I. 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.

J. 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 FIRST HERITAGE BANK

(b)(6)

Date: 10/1/15

BY:

TITLE: Counsel

PRINT NAME: Robert J. Gibson

Date: 9/30/15

STOVALL, GRANDEY & ALLEN, LLP

(b)(6)

BY:

TITLE: PARTNER

PRINT NAME: DAVID G. STOVALL

XL INSURANCE

Date: _____

BY: _____

TITLE: _____

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FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR FIRST HERITAGE BANK

Date: _____

BY: _____

TITLE:

PRINT NAME:

Date: _____

STOVALL, GRANDEY & ALLEN, LLP

BY: _____

TITLE:

PRINT NAME:

XL INSURANCE

(b)(6)

Date: 9/24/15

BY: 

TITLE:

*Senior Claims Counsel
Tracy Tucker*