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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
FRONTIER BANK,

Plaintiff,

v.

MICHAEL J. CLEMENTZ, RANDY E.  
DEKLYEN, LUCILLE M. DEYOUNG,  
JOHN J. DICKSON, ROBERT J. DICKSON,  
DAVID A. DORSEY, WILLIAM H. LUCAS,  
JAMES W. RIES, ROBERT W. ROBINSON,  
LYLE E. RYAN, DARRELL J. STORKSON,  
AND MARK O. ZENGER,

Defendants.

Case No.

**COMPLAINT AND  
JURY DEMAND**

Plaintiff, the Federal Deposit Insurance Corporation as Receiver for Frontier Bank of  
Everett, Washington ("FDIC-R"), for its Complaint, states as follows:

1 **I. INTRODUCTION**

2 1. The Federal Deposit Insurance Corporation (“FDIC”) brings this case in its capacity as  
3 Receiver for Frontier Bank (“Frontier” or “Bank”) pursuant to authority granted by 12 U.S.C.  
4 § 1821.

5 2. The FDIC-R seeks to recover damages in excess of \$46 million that former Frontier  
6 officers Randy E. DeKlyen (“DeKlyen”), John J. Dickson (“J. Dickson”), David A. Dorsey  
7 (“Dorsey”), James W. Ries (“Ries”), Robert W. Robinson (“Robinson”), and Lyle E. Ryan (“Ryan”)  
8 (collectively, the “Officers”); and non-officer directors Michael J. Clementz (“Clementz”),<sup>1</sup> Lucille  
9 M. DeYoung (“DeYoung”), Robert J. Dickson (“R. Dickson”), William H. Lucas (“Lucas”), Darrell  
10 J. Storkson (“Storkson”), and Mark O. Zenger (“Zenger”) (collectively, the “Non-Officer  
11 Directors”) (collectively, the Officers and the Non-Officer Directors are referenced herein as  
12 “Defendants”), caused the Bank to incur. The FDIC-R reserves the right to amend this Complaint  
13 to describe additional damages.

14 3. The Officers breached their fiduciary duties to Frontier and were negligent and grossly  
15 negligent by, among other things, recommending, presenting for approval, and/or approving, in  
16 violation of the Frontier Bank Loan Policy (“Loan Policy”) and prudent, safe, and sound lending  
17 practices, at least 11 loans between March 2007 and April 2008 (“Loans”). The Officers are liable  
18 for the damages that the Bank suffered as a result of their negligence, gross negligence, and  
19 breaches of fiduciary duties.

20 4. The Non-Officer Directors breached their fiduciary duties to Frontier and were grossly  
21 negligent by, among other things, approving the Loans in violation of the Loan Policy and prudent,  
22 safe, and sound lending practices. The Non-Officer Directors are liable for the damages that the  
23 Bank suffered as a result of their gross negligence and breaches of fiduciary duties.

24 \_\_\_\_\_  
25 <sup>1</sup> Although Clementz was an officer of Frontier from July 2000 to April 2003 and again from December  
2008 to December 2009, he was not an officer at the time of the transactions at issue in this case.



1 9. Defendant DeYoung is a former director of the Bank. She was a director from April  
2 1997 until the Bank closed and a member of the DLC from December 2004 to March 2010. Based  
3 on information and belief, DeYoung currently resides in Woodinville, Washington.

4 10. Defendant J. Dickson is a former officer and director of the Bank, and was CEO of the  
5 Bank when all of the Loans were approved. J. Dickson was Frontier's Senior Vice President  
6 ("SVP") and Cashier from 1993 to 1996, SVP of Financial Control from 1997 to 2003, CEO from  
7 May 2003 to December 2008, and President from December 2008 to March 2010. He also was a  
8 member of the ELC from April 2003 to March 2010 and a member of the DLC from April 2005 to  
9 March 2010. Based on information and belief, J. Dickson currently resides in Everett, Washington.

10 11. Defendant R. Dickson is a former officer and director of the Bank. He founded  
11 Frontier in 1978, was President and CEO of the Bank from 1978 to May 2003, and was a director  
12 and Chairman of the Board from 1978 to December 2008. R. Dickson also was a member of the  
13 DLC from December 2004 to December 2008, and was Chair of the DLC from 2006 to  
14 December 2008. Based on information and belief, R. Dickson currently resides in Everett,  
15 Washington.

16 12. Defendant Dorsey is a former officer of the Bank. Dorsey was Frontier's SVP and  
17 Manager from October 2001 to January 2009 and EVP of the Real Estate Division from February  
18 2009 until the Bank closed. Dorsey also was a member of the ELC from April 2004 to April 2010.  
19 Based on information and belief, Dorsey currently resides in Everett, Washington.

20 13. Defendant Lucas is a former director of the Bank. Lucas was a director from 1978 to  
21 January 2009 and a member of the DLC from December 2004 to December 2008. Based on  
22 information and belief, Lucas currently resides in Everett, Washington.

23 14. Defendant Ries is a former officer of the Bank. Ries was a member of the ELC from  
24 April 2003 to August 2009 and President of the Real Estate Division from May 2003 until the Bank  
25 closed. Based on information and belief, Ries currently resides in Everett, Washington.

1 15. Defendant Robinson is a former officer of the Bank. Robinson was Frontier's SVP for  
2 Credit Administration from August 2000 to May 2003 and Chief Credit Officer ("CCO") from May  
3 2003 until the Bank closed. Robinson also was a member of the ELC from April 2003 to April  
4 2010. Based on information and belief, Robinson currently resides in Bainbridge Island,  
5 Washington.

6 16. Defendant Ryan is a former officer of the Bank. Ryan was Frontier's EVP for Branch  
7 Administration from 2001 to 2002, President and Chief Operating Officer ("COO") from May 2003  
8 to January 2007, President and Chief Banking Officer from January 2007 to December 2008, EVP  
9 for Senior Branch Administration from December 2008 to October 2009, and EVP for Private  
10 Client Services from October 2009 until the Bank closed. Ryan also was a member of the ELC  
11 from April 2003 to July 2009. Based on information and belief, Ryan currently resides in Everett,  
12 Washington.

13 17. Defendant Storkson is a former director of the Bank. Storkson was a director from  
14 April 1997 until the Bank closed, and was a member of the DLC from December 2004 to December  
15 2009. Based on information and belief, Storkson currently resides in Mukilteo, Washington.

16 18. Defendant Zenger is a former director of the Bank. Zenger was a director from June  
17 2005 until the Bank closed, and was a member of the DLC from June 2005 to March 2010. Based  
18 on information and belief, Zenger currently resides in Edmonds, Washington.

### 19 **III. JURISDICTION AND VENUE**

20 19. This Court has subject matter jurisdiction for this action pursuant to 12 U.S.C. § 1811,  
21 *et seq.*, 12 U.S.C. § 1819(b)(1) and (2), and 28 U.S.C. §§ 1331 and 1345. The FDIC is a  
22 corporation organized and existing under the laws of the United States of America, and brings this  
23 action in its receivership capacity. Actions to which the FDIC is a party are deemed to arise under  
24 the laws of the United States. The FDIC, including in its capacity as Receiver, has the authority to  
25 sue and complain in any court of law. 12 U.S.C. § 1819.



1           **A. Defendants Knew that Frontier Was Concentrated in CRE and ADC Loans and**  
2           **Faced Risk of Losses in a Declining Real Estate Market**

3           25. During the time period in which the Defendants approved the Loans, they knew or  
4 should have known that Frontier's lending was concentrated in CRE and ADC loans. Because of  
5 this concentration and Frontier's potential exposure to large losses on its portfolio of CRE and ADC  
6 loans from a decline in the real estate market, Defendants needed to exercise more care when  
7 recommending, presenting for approval, and/or approving CRE and ADC loans, including the  
8 Loans.

9           26. For example, during a February 2006 meeting of Frontier's Board of Directors, R.  
10 Dickson expressed concerns regarding the Bank's increasing level of real estate construction loans.  
11 Director J. Dickson acknowledged that Frontier's loan growth continued to exceed the increase in  
12 deposits, and suggested that the Board consider whether to "close down the loan growth spigot."  
13 Rather than curtail lending by closing that "spigot," the Board simply approved an increase in the  
14 Bank's loan loss reserve and the Defendants continued to approve CRE and ADC loans.

15           27. Over the weekend of September 15 and 16, 2006, Frontier conducted a Directors  
16 Planning Session, during which the directors identified one of Frontier's "strengths" as a "[s]trong  
17 real estate niche." That niche consisted of making CRE and ADC loans. The directors identified  
18 two of Frontier's "weaknesses" to be: "We are thin – limited resources and time" and "We're  
19 getting bigger." During the September 2006 Directors Planning Session, the directors also  
20 expressly recognized that one of the "threats" to the Bank was "[t]he housing market." The  
21 directors also recognized another threat, "Regulation – new heat on commercial real estate lending.  
22 We may have to change the way we do business."

23           28. Frontier's Officers also had actual and constructive notice of warnings in banking and  
24 financial publications about the impending decline of the real estate market. For example, from  
25 2005 until the Bank failed, Frontier subscribed to a publication called "Real Estats," which provided  
Bank management, including certain Officers, with reports and "special letters" with county-by-

1 county data on the Washington real estate market and predictions of the future performance of that  
2 market. In February 2006, the publisher of Real Estats personally made a presentation to Robinson,  
3 Ries, and other Frontier personnel, warning them that the real estate market was going to have a  
4 serious decline and discussing appropriate steps that should be taken to prepare for the impending  
5 market decline. In a March 1, 2006, “special letter” to the Bank, Real Estats cautioned that “the  
6 first ‘domino’ to fall in our markets will be raw land . . . . [L]enders need to underwrite and  
7 determine risk most carefully or they, too, will end up with dirt.” Another “special letter” dated  
8 March 20, 2006 warned, “There is so much happening that will make housing falter tomorrow, that  
9 it is imperative you protect your business today.”

10 29. Over the weekend of September 22 and 23, 2007, Frontier conducted another  
11 Directors Planning Session. During this session, Robinson and Ries presented a Real Estats  
12 overview of current real estate statistics, and the Bank’s directors again highlighted as one of their  
13 “concerns” the fact that Frontier was “[h]ighly concentrated in real estate.”

14 30. The publisher of Real Estats also sent Bank management, including Robinson and  
15 Ries, periodic e-mails warning about the anticipated decline of the housing market, including the  
16 housing market in Washington. Communications by certain of the Defendants relating to Real  
17 Estats, however, were often dismissive. For example, in October 2007, Ries, the President of  
18 Frontier’s Real Estate Division, wrote to Real Estats, copying Robinson, Frontier CCO, stating,  
19 “[D]o you think that you could find any positive information out there to report, the doom and  
20 gloom is getting old[.]” Following this email, Robinson and Ries presented for approval and/or  
21 approved four of the ADC Loans discussed below.

22 31. The Defendants knew that the Bank was highly exposed in the area of CRE and ADC  
23 loans that would be negatively affected by a decline in the real estate market, and thus knew or  
24 should have known that they needed to exercise a heightened degree of care when approving such  
25 loans. Instead of exercising heightened care, however, the Defendants did just the opposite,



1 repeatedly failing to follow their own policies. Moreover, the Defendants incentivized the Bank's  
2 loan officers to make risky loans by tying those officers' bonus compensation to loan originations.  
3 This was another reason why the Defendants should have been especially cautious in reviewing and  
4 approving loans.

5 **B. Frontier's Loan Policy**

6 32. Throughout the time period relevant to the FDIC-R's claims, the Loan Policy provided  
7 guidelines and standards for underwriting, reviewing, and approving various categories of loans.  
8 All of the Loans described in this Complaint were categorized under the Loan Policy as  
9 "Construction Loans," which included: (1) loans for residential and/or commercial real estate  
10 development; (2) loans for residential and/or commercial real estate acquisition; and (3) working  
11 capital loans for real estate acquisition and/or development.

12 33. Because of the risk associated with Construction Loans, Frontier's Loan Policy  
13 included very stringent requirements for this type of loan. There were three separate levels of  
14 underwriting and approval requirements. The first level applied to all loans that the Bank extended,  
15 regardless of type; the second level applied to all real estate loans; and the third level applied  
16 specifically to Construction Loans. Requirements at each level of underwriting and approval that  
17 are relevant to the FDIC-R's claims are discussed below.

18 ***Requirements Applicable to All Loans***

19 34. The Loan Policy provided, among other things, the following primary areas of  
20 consideration for all loan applications:

- 21 a. borrower and/or guarantor creditworthiness;
- 22 b. the loan repayment ability of the borrower and/or guarantor, and primary and  
23 secondary repayment sources;
- 24 c. the purpose of the loan, including that the loan must be sound and not  
25 speculative;

- d. the nature and value of the collateral, properly margined;
- e. economic conditions and trends in the area, industry, and firm; and
- f. legal and regulatory requirements.

***Requirements Applicable to All Real Estate Loans***

35. The Loan Policy also established guidelines and standards for underwriting, reviewing, and approving all real estate loans. For every real estate loan application, the Loan Policy required a loan officer to evaluate the applicant's income relative to the applicant's financial obligations, verify sources of reported funds, evaluate the collateral, and analyze the loan terms. The loan officer would then present this information, along with additional details, in a loan memorandum ("Loan Memo") for the recommending and approving authorities to review. Among other things, the Loan Memo would state the purpose of the loan, the proposed pricing and term, the names of the borrower(s) and guarantor(s), a description of the collateral and its value, the total debt to the borrower(s), a summary of the balance sheets and gross incomes of the borrower(s) and guarantor(s), and other information as required by the Loan Policy. For any significant exceptions from the Bank's lending standards, policies, procedures, or controls in connection with a particular real estate loan, the DLC's minutes and/or the Loan Memo supporting the loan were required to note the following:

- a. the reasons for the departure from the Bank's policy;
- b. a detailed description of how such departure contrasted with the Bank's policy;
- c. suggestions for corrective action for any noted deficiencies; and
- d. additional information that would assist Frontier's directors and management to make an informed decision on the loan.

36. The Loan Policy also established guidelines for, among other things, minimum equity contributions and maximum loan-to-value ("LTV") ratios for real estate loans, including the following types of Construction Loans: raw land loans, land acquisition and development loans, and

1 other general Construction Loans. The guidelines for raw land acquisition loans included:  
 2 minimum hard equity<sup>2</sup> of 10% (35% if owned less than 12 months); minimum appraised equity<sup>3</sup> of  
 3 35%; maximum LTV ratio of 65%; and maximum supervisory LTV ratio<sup>4</sup> of 65%. The guidelines  
 4 for land acquisition and development loans were: minimum hard equity of 10%; minimum  
 5 appraised equity of 30%; maximum LTV ratio of 70%; and maximum supervisory LTV ratio of  
 6 75%. For other types of Construction Loans, the guidelines were: minimum hard equity of 10%;  
 7 minimum appraised equity of 30%; maximum LTV ratio of 70%; maximum LTV ratio of 90%  
 8 based on cost if the LTV ratio based on appraised value was greater than 70%; and maximum  
 9 supervisory LTV ratio of 80%. Loans in excess of their maximum supervisory LTV ratios required  
 10 special tracking by the Board of Directors and were subject to a strict aggregate limit. The  
 11 aggregate amount of all such loans was not to exceed 100% of total capital, and, within this amount,  
 12 the total amount of loans for commercial, agricultural, multi-family, and other non-1-4 family  
 13 residential properties was not to exceed 30% of total capital.

14 37. As a precondition to granting any real estate loan, the Loan Policy also required at  
 15 least one written appraisal of any property pledged as collateral that, among others:

- 16 a. was prepared by a qualified appraiser approved by the Bank;
- 17 b. was prepared for a federally insured financial institution;
- 18 c. was prepared in accordance with the Bank's Real Estate Appraisal and  
 19 Evaluation Policies and Procedures ("Appraisal Policy"); and

20 \_\_\_\_\_  
 21 <sup>2</sup> The Loan Policy did not define the term "hard equity." An example of "hard equity" in FDIC regulations  
 22 is "cash or unencumbered investment in the underlying property." Interagency Guidelines for Real Estate  
 23 Lending Policies, 12 C.F.R. pt. 365, subpt. A, app A.

24 <sup>3</sup> The Loan Policy did not define the term "appraised equity." In the context of construction lending, the  
 25 term "appraised equity" typically means the appraised value of the real property less the aggregate amount of  
 debt that is secured by the real property.

<sup>4</sup> The Loan Policy provided supervisory LTV ratio limits as an additional underwriting safeguard. If an  
 application for a loan indicated that the LTV would exceed the supervisory LTV limit, the loan officer was  
 required to document the reasons for the requested exception to the Loan Policy and offer a recommendation.

1 d. disclosed the market value of the security offered by the borrower along with  
2 sufficient information to substantiate the market value of the security.

3 38. Under Frontier's Appraisal Policy, an updated appraisal could be required if an  
4 internal evaluation indicated a deterioration in the value of the collateral.

5 39. In addition to evaluating the transaction-specific characteristics of loans, the Loan  
6 Policy also required the Bank's ELC and DLC to consider real estate market data gathered by the  
7 Bank's directors and officers when deciding whether to approve real estate loans. For example, the  
8 Loan Policy required the Bank's officers and directors to monitor and evaluate the real estate market  
9 conditions in the Bank's lending area including, but not limited to:

- 10 a. demographic indicators, including population and employment trends;
- 11 b. current and projected vacancy, construction, and absorption rates;
- 12 c. current and projected lease terms, rental rates, and sales prices;
- 13 d. current and projected operating expenses for different types of projects; and
- 14 e. economic indicators, including trends and diversification of the lending area;

15 40. The Loan Policy also required officers and directors to monitor and evaluate local,  
16 regional, and national real estate market conditions by reviewing available sources including, but  
17 not limited to:

- 18 a. newspapers and industry newsletters;
- 19 b. reports and press releases issued by universities and research organizations;
- 20 and
- 21 c. economic indicators, such as unemployment statistics, housing starts, building  
22 permits issued, vacancies, etc.

23 ***Requirements Applicable to All Construction Loans***

24 41. The Loan Policy required all Construction Loans to be secured by a first position  
25 mortgage or deed of trust.

1           42. For Construction Loans dependent upon third-party financing, the Loan Policy  
2 required a take-out commitment issued by the lender providing the third-party financing.

3           43. The Loan Policy required the following documentation, among others, for  
4 Construction Loans:

- 5           a. cost estimates, including land and construction costs, off-site expenses, legal  
6 and insurance expenses, and loan interest;
- 7           b. an appraisal report with a feasibility and marketability evaluation;
- 8           c. a copy of the officially approved plans and specifications;
- 9           d. an estimate of income and expenses for rental property; and
- 10           e. a construction loan agreement.

11           44. The Loan Policy also required consideration of, among others, the risks that:

- 12           a. the borrower was unable to complete construction or development on time  
13 and/or within projected cost;
- 14           b. the appraisal did not accurately reflect the true value of the appraised asset;
- 15           c. rents, vacancies, or operating expenses could exceed projected amounts;
- 16           d. the collateral was insufficient; and
- 17           e. the borrower was unable to service the debt.

18           45. Before an approval decision could be made, the Loan Policy required an appraisal with  
19 special emphasis on feasibility, marketability, construction costs, and adequacy of the plans and  
20 specifications.

21           ***Loan Approval Structure and Limits***

22           46. At all relevant times, Frontier had a tiered loan approval process. Primary lending  
23 authority was vested in the DLC, which could approve loans up to the Bank's legal lending limit.  
24 The DLC was comprised of the CEO and six other Bank directors. Four members of the DLC  
25 constituted a quorum for the committee's business. A majority vote of the present members was

1 required for approval. In addition, the CEO's vote was necessary to approve any loan presented to  
2 the DLC.

3 47. The DLC delegated its lending authority, up to specified limits, to the ELC, CEO,  
4 President, and CCO. The lending authority of the ELC was \$10 million. The ELC was comprised  
5 of the CEO, President, CCO, President of the Real Estate Division, and Senior Branch  
6 Administrator. A majority vote of these members was required for loan approval. In addition, any  
7 loan submitted to the ELC for approval required the CEO's vote of approval in order to be funded.  
8 Loans in excess of the ELC's lending authority were only considered by the DLC if the ELC first  
9 considered the loan and decided to present it to the DLC for approval.

10 48. The DLC and ELC generally received the following materials for purposes of  
11 evaluating whether to approve a loan: (a) the Loan Memo, as described in paragraph 35 above; and  
12 (b) standardized personal and business financial statements for the borrowers and guarantors. The  
13 DLC and ELC also had access to loan files, which contained the collateral appraisal, an appraisal  
14 review, borrower and/or guarantor tax returns, and other information.

15 **C. The Defendants' Negligent and/or Grossly Negligent Acts and Breaches of**  
16 **Fiduciary Duties**

17 49. As officers and/or directors of Frontier, the Defendants had duties to follow Frontier's  
18 Loan Policy and to exercise due care in recommending, presenting for approval, and/or approving  
19 the Loans.

20 50. Between March 2007 and April 2008, the Defendants left open the "loan growth  
21 spigot" and breached their duties by causing the Bank to approve loans that would not have been  
22 made had the Defendants complied with Frontier's Loan Policy, followed prudent, safe, and sound  
23 lending practices, and conducted and/or required the necessary due diligence, including basic loan  
24 review procedures.

25 51. The Defendants' repeated violations of Frontier's Loan Policy and prudent, safe, and  
sound lending practices occurred throughout the lending process. The Officers who recommended,

1 presented for approval, and/or approved the Loans were negligent and grossly negligent and  
2 breached their fiduciary duties. The Non-Officer Directors who approved the Loans were grossly  
3 negligent and breached their fiduciary duties.

4 52. But for the Defendants' wrongful conduct, Frontier would not have made the Loans on  
5 the terms presented, as alleged below.

6 ***Borrowers A-C***<sup>5</sup>

7 53. On or about October 22, 2007, on the recommendation of Dorsey, the ELC, including  
8 J. Dickson, Ries, Robinson, and Ryan, approved a \$5.5 million Construction Loan to three  
9 individual borrowers, Borrower A, Borrower B, and Borrower C, (the "Borrowers A-C loan").

10 54. On or about October 29, 2007, the Bank disbursed approximately \$5.0 million of the  
11 Borrowers A-C loan.

12 55. The Loan Memo for the Borrowers A-C loan stated that the purpose of the loan was to  
13 support the secured real estate lending activities of LLC A, which was a closely held entity that  
14 specialized in making bridge loans to large developers and which was partially owned by Borrowers  
15 A, B, and C. In particular, this \$5.5 million loan was to be used to provide a carry on other loans  
16 made by LLC A related to the development of the Streamline Tower in Las Vegas, Nevada. On the  
17 face of the Loan Memo, the purpose of the loan was speculative and unsound.

18 56. The Loan Memo provided that the primary and secondary repayment sources were to  
19 be, in order, investment income and sale of real estate investments.

20 57. The Loan Memo also provided that the Borrowers A-C loan would be secured by a  
21 first lien on one of the borrowers' single family residence in Kirkland, Washington and by 39 shares  
22

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23 <sup>5</sup> Borrowers A, B, C, and D referenced herein represent individual borrowers whose names have been  
24 withheld to protect their privacy. LLCs A, B, C, D, and E referenced herein were named after individual  
25 members of the LLCs or their memberships were transparent. The names of these LLCs have been withheld  
to protect the privacy of their individual members. The names of these LLCs and borrowers will be provided  
once an appropriate protective order is in place.

1 of O.D. Fisher Investment Company (“O.D. Fisher”) restricted stock that the Loan Memo stated  
2 would *not* be sold to repay the loan.

3 58. In recommending or approving the Borrowers A-C loan, Defendants J. Dickson,  
4 Dorsey, Ries, Robinson, and Ryan, among other things:

- 5 a. Failed to consider the inadequacy of the repayment sources. The Loan Memo  
6 described the only repayment sources as “Investment income and sale of RE  
7 investments,” stating “Monthly interest will be paid from investment income”  
8 and the “source of repayment for the remaining principal balance will come  
9 from the sale of the [Streamline Tower in Las Vegas, Nevada] where the funds  
10 are invested.” The Loan Memo provided that LLC A was to increase its  
11 ownership in the project in order to receive a draw of 30% of net profits that  
12 was supposedly to be paid out at an unspecified date during the fourth quarter  
13 of 2008, which LLC A would use to “repay the remaining loan balance at that  
14 time.” However, the term of the Borrowers A-C loan was only one year,  
15 ending on October 5, 2008, making it far from certain that LLC A would be  
16 able to repay the loan on schedule from the anticipated payment of profits  
17 relating to the Streamline Tower project. In addition, the Loan Memo failed to  
18 analyze the status of the Las Vegas condominium project and the Las Vegas  
19 real estate market, both of which were critically important to LLC A’s ability  
20 to receive profits that could be used to pay off the balance of the loan. To  
21 make matters worse, even though LLC A was the identified beneficiary of the  
22 loan and should have been a formal borrower or guarantor of the loan, the loan  
23 documents did not bind LLC A in any way as a borrower or guarantor. As a  
24 result, the Bank was left with no legal recourse against LLC A, whose  
25



1 investment income and sale of real estate assets was to serve as the primary  
2 repayment source for the loan.

3 b. Failed to monitor, evaluate, and consider market conditions. Although the  
4 repayment sources for the loan were investment income and LLC A's sale of  
5 real estate investments, the Loan Memo presented only limited information on  
6 market conditions that was focused on the sale of the residence that was  
7 pledged as collateral rather than on the repayment sources, including the  
8 Streamline Tower project and the Las Vegas real estate market.

9 c. Failed to consider the inadequacy of the collateral. The Loan Memo described  
10 the collateral as the former personal residence of one of the borrowers and  
11 \$4,602,000 in restricted shares in O.D. Fisher, a private investment company.  
12 The Loan Memo contained red flags showing that the proposed collateral was  
13 insufficient to secure the loan. For example, although the Loan Memo stated  
14 that the borrower had listed the house for sale for \$2,100,000, it showed that  
15 \$900,000 of the loan proceeds were to be used to pay off a mortgage held by  
16 Key Bank. The sale of the house, therefore, would only "net \$1,200,000." The  
17 Loan Memo also noted that the purchase price of the property in 2000 was only  
18 \$814,950 and the 2008 tax assessed value of the property was only \$1,112,000.  
19 In addition, the Loan Memo requested that an appraisal of the residence be  
20 waived, even though the residence was "in the process of being appraised."  
21 These statements in the Loan Memo were red flags that should have prompted  
22 further due diligence by the Defendants on this loan regarding the residence  
23 pledged as collateral. Had the Defendants on this loan performed or required  
24 even a minimal amount of due diligence into the residence, they would  
25 discovered that the borrower had not yet "listed the house with Windermere for

1 \$2,100,000” and that the “listed” price was, in fact, merely an anticipated  
2 asking price. As to the O.D. Fisher shares, the Loan Memo valued them at  
3 \$4,602,000, even though the shares were “restricted and w[ould] not be sold to  
4 repay the loan,” and thus were of no real value to the Bank. The Loan Memo  
5 acknowledged that a loan “[w]eakness” was “[c]losely held stock not liquid,”  
6 meaning that the shares, while having impressive value on paper, provided no  
7 real security for the loan. Other than acknowledging that the pledged shares  
8 would not be sold to repay the loan, the Loan Memo contained no analysis of  
9 the risks relating to that collateral or how those shares would contribute to  
10 adequately securing the loan. Notwithstanding these glaring red flags, the  
11 Loan Memo calculated the LTV ratio for the loan based on the *full* \$2,100,000  
12 anticipated asking price of the residence and the *full* \$4,602,000 purported  
13 value of the restricted stock, and the Defendants on this loan approved the loan  
14 without requiring additional collateral or analysis.

- 15 d. Failed to evaluate the inadequacy of the collateral for the loan, including the  
16 high LTV ratio for the loan, and recommended or approved the loan  
17 notwithstanding the inadequate collateral. The Loan Memo stated that the  
18 LTV ratio for this loan was 82%, which exceeded the 70% LTV ratio limit, but  
19 it failed to explain why an exception to the Loan Policy was warranted. As to  
20 the residence, the Loan Memo presented the anticipated asking price of \$2.1  
21 million and requested to waive an appraisal. An appraisal completed on  
22 October 26, 2007, four days after the ELC approved the Borrowers A-C loan  
23 but before it was disbursed, valued the residence at only \$1.55 million, which  
24 was \$550,000 less than the value presented in the Loan Memo. The LTV ratio  
25 for the loan was 82% based on the higher valuation of the residence presented

1 in the Loan Memo plus the O.D. Fisher stock, and 89.4% based on the lower  
2 appraised value of the residence plus the value of the O.D. Fisher stock. Both  
3 LTV ratios exceeded the Bank's LTV limit.

4 59. The deficient underwriting and credit analysis was apparent from the Loan Memo and  
5 supporting materials provided to the ELC. Had the Defendants on this loan insisted on the required  
6 underwriting and credit analysis, it would have demonstrated, among other things, that there was no  
7 adequate source of repayment, the repayment sources identified were speculative and vulnerable to  
8 a deteriorating housing market, the borrowers' creditworthiness did not support the loan amount, the  
9 collateral was illiquid and overvalued in the Loan Memo, the LTV ratio exceeded the Loan Policy  
10 limit, and the Borrowers A-C loan should not have been approved.

11 60. In or about February 2009, Borrowers A, B, and C defaulted on the loan. The  
12 supposed investment income and the sale of the real estate holdings were insufficient to repay the  
13 loan.

14 61. As a result of the actions and inactions of Defendants J. Dickson, Dorsey, Ries,  
15 Robinson, and Ryan with respect to the Borrowers A-C loan, Frontier incurred damages in an  
16 amount to be proved at trial.

17 ***LLC A (I)***

18 62. On or about April 9, 2008, on the recommendation of Dorsey, DLC members  
19 DeYoung and Zenger purported to approve a \$5.5 million Construction Loan for LLC A and  
20 Borrower C (the "LLC A (I) loan"). The LLC A (I) loan was not considered at a regularly-  
21 constituted DLC meeting or approved by a quorum of the DLC, as the Loan Policy required for all  
22 loans that required DLC approval. In addition, the LLC A (I) loan was closed and partially funded  
23 on or about March 31, 2008, which was nine days before DeYoung and Zenger purportedly  
24 approved the LLC A (I) loan.  
25

1 63. From about April 9, 2008 through March 2009, the Bank disbursed approximately  
2 \$3,252,979 of the LLC A (I) loan.

3 64. The Loan Memo for the LLC A (I) loan stated that the purpose of the loan was to  
4 provide contingency funds to LLC A for four development projects on which Frontier had first  
5 liens.

6 65. The Loan Memo provided that the primary and secondary repayment sources were to  
7 be, in order, the sale of real estate assets from all projects and Borrower C's personal investment  
8 income.

9 66. The Loan Memo also provided that the LLC A (I) loan would be unsecured.

10 67. In recommending or approving the LLC A (I) loan, Defendants DeYoung, Dorsey, and  
11 Zenger, among other things:

- 12 a. Failed to monitor, evaluate, and consider market conditions. For example,  
13 although the Loan Memo identified "Sale of real estate assets from all  
14 projects" (*i.e.*, real estate investment returns) as the primary source of  
15 repayment for the loan, the Loan Memo contained only cursory information  
16 regarding real estate market conditions and no real analysis. Indeed, the Loan  
17 Memo acknowledged that "the current flat market for sale of lots, which is the  
18 primary source of repayment from 3 of the related plats, *may delay repayment*.  
19 It is likely on completion of the Fenner plat[,] house construction may  
20 commence. House sales are moderately improving." (Emphasis added.)  
21 Beyond this acknowledgement that real estate investment returns were a risky  
22 source of repayment, the Loan Memo included no meaningful analysis of the  
23 "flat market," any basis for the lukewarm assertion that sales were "moderately  
24 improving," or any other analysis regarding market conditions, which directly  
25

1 affected the borrowers' ability to repay the loan. This lack of meaningful  
2 analysis in the Loan Memo was a red flag to DeYoung and Zenger.

3 68. The deficient underwriting and credit analysis was apparent from the Loan Memo and  
4 the lack of any collateral to secure this \$5.5 million Construction Loan. Had the Defendants on this  
5 loan insisted on the required underwriting and credit analysis, it would have demonstrated, among  
6 other things, that there was no adequate source of repayment, the repayment sources identified were  
7 speculative and vulnerable to a deteriorating housing market, there was no collateral securing the  
8 loan, and the LLC A (I) loan should not have been approved.

9 69. In or about March 2009, LLC A and Borrower C defaulted on the LLC A (I) loan.  
10 The sale of real estate was insufficient to repay the loan.

11 70. As a result of the actions and inactions of Defendants DeYoung, Dorsey, and Zenger  
12 with respect to the LLC A (I) loan, Frontier incurred damages in an amount to be proved at trial.

13 ***LLC A (II)***

14 71. On or about April 9, 2008, DeYoung and Zenger also purported to approve an  
15 additional \$2.0 million Construction Loan for LLC A (the "LLC A (II) loan"). The LLC A (II) loan  
16 was not considered at a regularly-constituted DLC meeting or approved by a quorum of the DLC, as  
17 the Loan Policy required for all loans that required DLC approval. In addition, the LLC A (II) loan  
18 was closed on or about March 31, 2008 and partially funded on or about April 1, 2008, which was  
19 eight days before DeYoung and Zenger purportedly approved the LLC A (II) loan.

20 72. On or about April 11, 2008, the Bank disbursed approximately \$500,000 of the LLC A  
21 (II) loan.

22 73. The Loan Memo for the LLC A (II) loan stated that the purpose of the LLC A (II) loan  
23 was to provide working capital for LLC A's real estate investment portfolio.  
24  
25

1           74. The Loan Memo provided that the primary and secondary repayment sources for the  
2 LLC A (II) loan were to be, in order, the refinance and sale of assets in LLC A's real estate portfolio  
3 and the guarantors' stock portfolios and incomes.

4           75. The Loan Memo also provided that the LLC A (II) loan would be unsecured.

5           76. In approving the loan, Defendants DeYoung and Zenger, among other things:

- 6           a. Failed to monitor, evaluate, and consider market conditions. Although the  
7 Loan Memo identified refinance and sale of real estate assets as the primary  
8 source of repayment for the loan, the Loan Memo only listed assets that were  
9 for sale without providing any analysis regarding local real estate market  
10 conditions, such as information or analysis regarding vacancy rates, permitting  
11 trends, valuation trends, or other economic indicators that were essential to  
12 evaluating whether the refinance and sale of real estate assets were viable  
13 repayment sources for the loan. This lack of meaningful analysis in the Loan  
14 Memo was a red flag to DeYoung and Zenger.

15           77. The deficient underwriting and credit analysis was apparent from the Loan Memo and  
16 the lack of any collateral to secure this \$2.0 million Construction Loan. Had the Defendants on this  
17 loan insisted on the required underwriting and credit analysis, it would have demonstrated, among  
18 other things, that there was no adequate source of repayment, the repayment sources identified were  
19 speculative and vulnerable to a deteriorating housing market, there was no collateral securing the  
20 loan, and the LLC A (II) loan should not have been approved.

21           78. In or about April 2009, LLC A defaulted on the LLC A (II) loan. The loan was not  
22 refinanced by a third party, and the assets in LLC A's real estate portfolio and the guarantors' stock  
23 portfolios and incomes were insufficient to repay the loan.

24           79. As a result of the actions and inactions of Defendants DeYoung and Zenger with  
25 respect to the LLC A (II) loan, Frontier incurred damages in an amount to be proved at trial.

1           ***Borrower D (I)***

2           80. On or about November 5, 2007, Dorsey recommended and the ELC, including  
3 DeKlyen, J. Dickson, Ries, Robinson, and Ryan, presented to the DLC for approval a \$3.8 million  
4 Construction Loan for LLC B, which was owned by Borrower D (the "Borrower D (I) loan"). On  
5 or about November 7, 2007, the DLC, including DeYoung, J. Dickson, Lucas, and Zenger,  
6 approved the Borrower D (I) loan. The DLC approved the loan to Borrower D, but the loan  
7 ultimately was made to LLC B with Borrower D as the guarantor. This loan was approved even  
8 though Borrower D already had total liabilities to Frontier in excess of \$28.4 million. Both the  
9 Loan Memo and the DLC minutes stated that Borrower D's total liabilities to Frontier, including the  
10 Borrower D (I) loan, exceeded \$32.2 million.

11           81. On or about December 5, 2007, the Bank disbursed approximately \$3,776,000 of the  
12 Borrower D (I) loan.

13           82. The Loan Memo for the Borrower D (I) loan stated that the purpose of the loan was to  
14 pay off an existing loan with Frontier, replenish Borrower D's cash flow, and provide Borrower D  
15 with working capital for various ongoing real estate projects. On the face of the Loan Memo, the  
16 purpose of this loan was speculative and unsound.

17           83. The Loan Memo provided that the primary, secondary, and tertiary repayment sources  
18 were to be, in order, "Payment from contract receivable," income or sale of other assets, and  
19 conversion of the collateral.

20           84. The Loan Memo also provided that the Borrower D (I) loan would be secured by two  
21 assigned notes and second deeds of trust on two commercial buildings known as the Willows in  
22 Kirkland, Washington. The first deeds of trust secured a \$10.7 million loan from G.E. Capital.

23           85. In recommending, presenting for approval, and/or approving the Borrower D (I) loan,  
24 Defendants DeKlyen, DeYoung, J. Dickson, Dorsey, Lucas, Ries, Robinson, Ryan, and Zenger,  
25 among other things:

- 1 a. Failed to require more than a vague and cursory analysis of the primary source  
2 of repayment – the “Payment from contract receivable.” The Loan Memo  
3 failed to even identify the specific contract upon which the receivables were  
4 due. If the “contract receivable” was the amount owed on the two notes for the  
5 two Willows commercial buildings that served as collateral for the loan, the  
6 Loan Memo provided only a minimal amount of information and analysis  
7 regarding those notes. The aggregate monthly payments receivable under the  
8 two notes was only \$131,000, and the notes did not mature until August and  
9 September 2015, respectively. The term of the Borrower D (I) loan, which was  
10 made in November 2007, was only 24 months. Even if every contract  
11 receivable was received on time, the primary source of repayment still would  
12 have been insufficient to repay the loan.
- 13 b. Failed to consider the guarantor’s, *i.e.*, Borrower D’s, lack of sufficient  
14 creditworthiness and his inability to support the loan, including, but not limited  
15 to, his limited liquidity and income and his high leverage. The Loan Memo  
16 stated that, although Borrower D had a self-reported net worth of \$306 million  
17 and liquid assets of \$33 million, he also had over \$100 million of liabilities  
18 described as “friends and family investments.” Even minimal diligence or  
19 requests for supporting information would have shown that these liabilities  
20 were notes that were payable on demand, meaning that the redemption of even  
21 one third of the outstanding value of these notes would have instantly rendered  
22 Borrower D insolvent. His illiquid assets, which consisted of notes  
23 receivables, “contracts owned,” real estate, and land held for development,  
24 would not really have been available to support the loan if LLC B defaulted.  
25 In addition, the Loan Memo stated that Borrower D had AGIs of *negative*



1 \$42,226,500 in 2006, *negative* \$72,565,100 in 2005, and *negative* \$81,995,500  
2 in 2004. The Loan Memo described Borrower D's negative AGIs as resulting  
3 from business losses and/or loss carryovers.

- 4 c. Failed to consider and evaluate the inadequacy of the collateral for the loan,  
5 including the high LTV ratio for the loan. Although the Loan Memo stated  
6 that the LTV ratio was 70% based on the "net margined equity" of \$3.776  
7 million, this loan was approved in the amount of exactly \$3.776 million, the  
8 precise amount of the "[t]otal margined collateral value" that was calculated  
9 and shown in the Loan Memo. Therefore, the real LTV ratio was 100%, which  
10 violated the applicable LTV limit.

11 86. The deficient underwriting and credit analysis was apparent from the Loan Memo and  
12 other materials provided to the ELC and DLC. Had the Defendants on this loan insisted on the  
13 required underwriting and credit analysis, it would have demonstrated, among other things, that  
14 there was no adequate source of repayment, the repayment sources identified were speculative and  
15 vulnerable to a deteriorating housing market, the contract receivables were insufficient to repay the  
16 loan, the guarantor could not support the loan, the LTV ratio exceeded the Loan Policy limit, and  
17 the Borrower D (I) loan should not have been approved.

18 87. In or about February 2009, LLC B defaulted on the Borrower D (I) loan. The contract  
19 receivables, Borrower D's income and other assets, and the collateral were insufficient to repay the  
20 loan.

21 88. As a result of the actions and inactions of Defendants DeKlyen, DeYoung, J. Dickson,  
22 Dorsey, Lucas, Ries, Robinson, Ryan, and Zenger with respect to the Borrower D (I) loan, Frontier  
23 incurred damages in an amount to be proved at trial.

1           ***Borrower D (II)***

2           89. On or about February 4, 2008, Dorsey recommended and the ELC, including  
3 DeKlyen, J. Dickson, Ries, Robinson, and Ryan, presented a \$3.0 million Construction Loan for  
4 Borrower D (the “Borrower D (II) loan”) to the DLC for approval. On or about February 13, 2008,  
5 the DLC, including Clementz, J. Dickson, R. Dickson, Lucas, and Zenger, approved the Borrower D  
6 (II) loan. This loan was approved even though the Loan Memo and the DLC minutes stated that  
7 Borrower D’s total liabilities to Frontier, including the Borrower D (II) loan, exceeded \$32.1  
8 million.

9           90. On or about March 3, 2008, the Bank disbursed essentially the entire Borrower D (II)  
10 loan.

11           91. The Loan Memo for the Borrower D (II) loan stated that the purpose of the loan was to  
12 fund improvements on recently acquired commercial real estate.

13           92. The Loan Memo provided that the primary, secondary, and tertiary repayment sources  
14 were to be, in order, rental income, other income or assets of the borrower, and conversion of the  
15 collateral.

16           93. The Loan Memo also provided that the Borrower D (II) loan would be secured by a  
17 second deed of trust on four office buildings in Bellevue, Washington.

18           94. In recommending, presenting for approval, and/or approving the Borrower D (II) loan,  
19 Defendants Clementz, DeKlyen, J. Dickson, R. Dickson, Dorsey, Lucas, Ries, Robinson, Ryan, and  
20 Zenger, among other things:

- 21           a. Failed to monitor, evaluate, and consider market conditions. Although the  
22 primary repayment source for the loan was to be rental income from the  
23 property, the Loan Memo was devoid of, and the Defendants on this loan failed  
24 to request, any analysis of market conditions, leasing trends in the area, or  
25 other issues that could affect the project or the likelihood that the Bank would

1 be repaid for the loan through rental income. According to the Loan Memo,  
2 the debt coverage ratio (“DCR”) was 1.0, which means that the property was  
3 generating barely enough income to pay its debt obligations, and was bordering  
4 on a negative cash flow. The Loan Memo requested approval of an exception  
5 to the Loan Policy for this low DCR. The Loan Memo identified Borrower D’s  
6 income as a justification for this exception, even though Borrower D had  
7 reported negative AGIs for the previous *three years*, as discussed in  
8 subparagraph 85(b) above.

9 b. Failed to consider the borrower’s lack of sufficient creditworthiness as  
10 described in subparagraph 85(b) above.

11 c. Failed to consider and evaluate the inadequacy of the collateral for the loan,  
12 including the high LTV ratio for the loan, and recommended or approved the  
13 loan notwithstanding the inadequate collateral. Under the Loan Policy, the  
14 LTV limit for this type of Construction Loan was 70%, but the Loan Memo  
15 disclosed that the LTV ratio for this loan based on the purchase price of the  
16 property was 91.9% and the LTV ratio based on the “as-is” value of the  
17 property was 80%. The LTV ratio based on an appraised value after  
18 improvements was 70.5%. Although the Loan Memo requested exceptions  
19 from the Loan Policy with respect to the LTV limit violations, there was no  
20 basis for granting these exceptions given the severe deficiencies in the  
21 borrower’s financial condition and the size of his total liabilities to Frontier, as  
22 discussed above.

23 95. The deficient underwriting and credit analysis was apparent from the Loan Memo and  
24 other materials provided to the ELC and DLC. Had the Defendants on this loan insisted on the  
25 required underwriting and credit analysis, it would have demonstrated, among other things, that

1 there was no adequate source of repayment, the repayment sources identified were speculative and  
2 vulnerable to a deteriorating real estate market, the borrower could not support the loan, an  
3 exception was not warranted for the LTV and debt coverage ratios, and the Borrower D (II) loan  
4 should not have been approved.

5 96. In or about February 2009, Borrower D defaulted on the Borrower D (II) loan. The  
6 rental income, Borrower D's other income and assets, and the collateral were insufficient to repay  
7 the loan.

8 97. As a result of the actions and inactions of Defendants Clementz, DeKlyen, J. Dickson,  
9 R. Dickson, Dorsey, Lucas, Ries, Robinson, Ryan, and Zenger with respect to the Borrower D (II)  
10 loan, Frontier incurred damages in an amount to be proved at trial.

11 ***Borrower D (III)***

12 98. On or about March 24, 2008, Dorsey recommended and the ELC, including J.  
13 Dickson, Dorsey, Ries, Robinson, and Ryan, presented a \$22.0 million Construction Loan for  
14 Borrower D (the "Borrower D (III) loan") to the DLC for approval. On or about March 26, 2008,  
15 the DLC, including Clementz, DeYoung, J. Dickson, Lucas, and Zenger, approved the Borrower D  
16 (III) loan. This loan was approved even though the Loan Memo and the DLC minutes stated that  
17 Borrower D's total liabilities to Frontier, including the Borrower D (III) loan, exceeded \$53.8  
18 million.

19 99. Between March 2008 and March 2009, the Bank disbursed approximately \$19,655,984  
20 of the Borrower D (III) loan.

21 100. The Loan Memo for the Borrower D (III) loan stated that the purpose of the loan was  
22 to finance the purchase of 13.53 acres and the construction costs of two two-story commercial  
23 buildings.  
24  
25

1           101. The Loan Memo provided that the primary, secondary, and tertiary repayment sources  
2 were to be, in order, the proceeds from permanent financing, income or sale of the borrower's  
3 assets, and conversion of the collateral.

4           102. The Loan Memo also provided that the Borrower D (III) loan would be secured by a  
5 first deed of trust on the Sammamish Ridge Tech Center in Redmond, Washington.

6           103. In recommending, presenting for approval, and/or approving the Borrower D (III)  
7 loan, Defendants Clementz, DeYoung, J. Dickson, Dorsey, Lucas, Ries, Robinson, Ryan, and  
8 Zenger, among other things:

- 9           a. Failed to consider the prospects for third-party financing. The Loan Memo  
10 described proceeds from permanent financing as the primary repayment  
11 source, however, it was devoid of any evaluation of refinancing prospects,  
12 challenges, or other relevant information. The Defendants on this loan,  
13 therefore, had no information upon which to judge the availability of third-  
14 party financing. The request in the Loan Memo also failed to include a take-  
15 out commitment from a third-party lender, as required by the Loan Policy.
- 16           b. Failed to consider the borrower's lack of sufficient creditworthiness as  
17 described in subparagraph 85(b) above.
- 18           c. Failed to consider and evaluate the inadequacy of the collateral for the loan,  
19 including the high LTV ratio for the loan, and recommended or approved the  
20 loan notwithstanding the inadequate collateral. For this type of Construction  
21 Loan, the Loan Policy established a 70% LTV ratio limit. Based on the  
22 appraised at-completion value of the collateral, the Loan Memo stated that the  
23 LTV ratio was 75%, which exceeded the Loan Policy LTV limit. Based on the  
24 other significant deficiencies in this loan identified above and the absence of  
25

1 any valid compensating factors, there was no basis warranting an exception to  
2 the Loan Policy for this LTV ratio violation.

3 104. The deficient underwriting and credit analysis was apparent from the Loan Memo and  
4 other materials provided to the ELC and the DLC. Had the Defendants on this loan insisted on the  
5 required underwriting and credit analysis, it would have demonstrated, among other things, that  
6 there was no adequate source of repayment, the repayment sources identified were speculative and  
7 vulnerable to a deteriorating housing market, there was no take-out commitment from a third-party  
8 lender, the borrower could not support the loan, the LTV ratio exceeded the Loan Policy limit, and  
9 the Borrower D (III) loan should not have been approved.

10 105. In or about March 2009, Borrower D defaulted on the Borrower D (III) loan. The loan  
11 was not financed by a third party, and Borrower D's income and other assets and the collateral were  
12 insufficient to repay the loan.

13 106. As a result of the actions and inactions of Defendants Clementz, DeYoung, J. Dickson,  
14 Dorsey, Lucas, Ries, Robinson, Ryan, and Zenger with respect to the Borrower D (III) loan,  
15 Frontier incurred damages in an amount to be proved at trial.

16 ***GMP***

17 107. On or about May 30, 2007, the ELC, including DeKlyen, J. Dickson, Ries, Robinson,  
18 and Ryan, presented a \$17.0 million Construction Loan for GMP Homes Zocalo, LLC (the "GMP  
19 loan") to the DLC for approval. On or about June 6, 2007, the DLC, including Clementz, J.  
20 Dickson, R. Dickson, Lucas, Storkson, and Zenger, approved the GMP loan.

21 108. Between June 2007 and May 2008, the Bank disbursed approximately \$15,438,778 of  
22 the GMP loan.

23 109. The Loan Memo for the GMP loan stated that the purpose of the loan was to enable  
24 GMP Homes Zocalo, LLC to complete the development of the Altura Townhomes project in  
25 Bothell, Washington, which was designed to be a 93-unit development to be built in three phases.

1 The loan was to fund the development of phases 2 and 3 of the project and to pay down a loan for  
2 phase 1 of the project, which encompassed 33 townhouse units.

3 110. The Loan Memo provided that the sole repayment source was to be the sale of the  
4 completed condominiums.

5 111. The Loan Memo also provided that the GMP loan would be secured by a first deed of  
6 trust on the Altura Townhomes property.

7 112. In approving and/or presenting for approval the GMP loan, Defendants Clementz,  
8 DeKlyen, J. Dickson, R. Dickson, Lucas, Ries, Robinson, Ryan, Storkson, and Zenger, among other  
9 things:

- 10 a. Failed to monitor, evaluate, and consider market conditions. Although the  
11 Loan Memo described the sole repayment source as the “sale of completed  
12 condo units,” it included only cursory references to market conditions that  
13 were relevant to the sale of those units, such as stating that “[t]his project is in  
14 a good location – and is in a marketable price range.” The Loan Memo was  
15 devoid of any meaningful analysis as to local market conditions, inventory, or  
16 other trends that would affect the sale of condominium units and the repayment  
17 of the loan.
- 18 b. Failed to consider and evaluate the inadequacy of the collateral for the loan,  
19 including the high LTV ratio. The LTV ratio for the loan exceeded the limit  
20 established by Frontier’s Loan Policy for this type of loan. The Loan Memo  
21 described the LTV ratio as 74.3% based on retail value and 83.6% based on  
22 discounted value at completion, both of which exceeded the applicable LTV  
23 limit of 70%. Although the Loan Memo identified the violation of the LTV  
24 limit as a requested exception to the Bank’s Loan Policy, the Loan Memo was  
25 devoid of any analysis of or support for that exception. Furthermore, the

1 discussions of this loan reflected in the minutes of the ELC and the DLC failed  
2 to identify any justification for this exception.

- 3 c. Failed to consider the guarantors' lack of sufficient creditworthiness and  
4 inability to support the loan, including, but not limited to, their limited liquidity  
5 and income and their high leverage. One guarantor was a principal of the  
6 borrower and the other was the principal's spouse. Minutes from the ELC and  
7 DLC meetings at which the GMP loan was approved stated that, including the  
8 \$17 million GMP loan, the total related liability in amounts owed to Frontier  
9 was more than \$57 million. The Loan Memo acknowledged the guarantors'  
10 high debt, stating: "We realize this is a high amount of debt for [one of the  
11 guarantors] . . . . We would like to accommodate [that guarantor] to continue  
12 on to the final two phases of this project." The minutes from the ELC and  
13 DLC meetings at which this loan was reviewed and approved also described  
14 "High debt level[s]" and "High debt concerns[,]" respectively. This debt  
15 dwarfed the amount of the guarantors' assets that would be available to support  
16 those loans. In fact, the guarantors' financial statements confirmed that they  
17 had very limited liquidity, with only \$79,500 in cash. The guarantors'  
18 remaining assets were in real estate and other illiquid assets. The guarantors'  
19 financial statement also evidenced a history of limited, and even negative,  
20 income. The financial statement showed that the guarantors' adjusted gross  
21 income ("AGI") was *negative* \$155,800 in 2005, \$282,800 in 2004, and  
22 \$123,000 in 2003. Even the guarantors' highest AGI in this period – \$282,800  
23 in 2004 – was only 1.66% of the \$17 million GMP loan and 0.496% of the  
24 guarantors' total \$57 million in total related liabilities to Frontier.  
25



1 113. The deficient underwriting and credit analysis was apparent from the Loan Memo and  
2 other materials provided to the ELC and DLC. Had the Defendants on this loan insisted on the  
3 required underwriting and credit analysis, it would have demonstrated, among other things, that  
4 there was no adequate source of repayment, the repayment source identified was speculative and  
5 vulnerable to a deteriorating housing market, the guarantors could not support the loan, and the  
6 GMP loan should not have been approved.

7 114. In or about May 2008, GMP Homes Zocalo, LLC defaulted on the GMP loan. The  
8 sale of the condominium units did not cover the loan.

9 115. As a result of the actions and inactions of Defendants Clementz, DeKlyen, J. Dickson,  
10 R. Dickson, Lucas, Ries, Robinson, Ryan, Storkson, and Zenger with respect to the GMP loan,  
11 Frontier incurred damages in an amount to be proved at trial.

12 ***IH High Street***

13 116. On or about May 8, 2007, the ELC, including DeKlyen, J. Dickson, Ries, and  
14 Robinson, presented a \$6.2 million Construction Loan for High Street 10 & 11, LLC (renamed IH  
15 High Street, LLC) (the "IH High Street loan") to the DLC for approval. On or about May 9, 2007,  
16 the DLC, including DeYoung, R. Dickson, Lucas, Storkson, and Zenger, approved the IH High  
17 Street loan. On or about August 18, 2008, the ELC, including DeKlyen, J. Dickson, Ries, and  
18 Robinson approved a \$442,115 increase to the IH High Street loan.

19 117. By January 2, 2009, the Bank had disbursed approximately \$6,510,720 of the IH High  
20 Street loan.

21 118. The original Loan Memo for the IH High Street loan (the "May 2007 Loan Memo")  
22 stated that the purpose of the loan was to enable IH High Street, LLC to acquire property and fund  
23 the development of 12 condominiums in Issaquah Highlands, Washington. The Loan Memo for the  
24 August 2008 modification of the IH High Street loan (the "July 2008 Loan Memo") was prepared in  
25

1 July 2008 and stated that the purpose of the modification was to enable IH High Street, LLC to  
2 complete construction on the IH High Street project.

3 119. The May 2007 Loan Memo provided that the sole repayment source was to be the sale  
4 of the completed condominium units. The July 2008 Loan Memo provided that the repayment  
5 sources were to be, in order, the net sales from the completed condominium units and the  
6 liquidation of the assets of the guarantors, which were the principal of the borrower and the  
7 principal's wholly owned limited liability company, LLC C, which was the developer of the  
8 property.

9 120. Both Loan Memos provided that the IH High Street loan would be secured by a first  
10 deed of trust on the IH High Street property.

11 121. In approving and/or presenting for approval the IH High Street loan, Defendants  
12 DeKlyen, DeYoung, J. Dickson, R. Dickson, Lucas, Ries, Robinson, Storkson, and Zenger, among  
13 other things:

- 14 a. Failed to monitor, evaluate, and consider market conditions. The sale of the  
15 completed condominium units was the primary repayment source for the loan.  
16 Even though only 2 of the 12 units in the IH High Street project were under  
17 contract for sale, the May 2007 Loan Memo stated, without explanation or  
18 analysis, that it was "anticipated that within the next 120 days virtually all of  
19 Frontier Bank's current loans [to the borrower] will be paid off." The May  
20 2007 Loan Memo also projected a seven-month construction period with sales  
21 completed within five months after construction, which, on its face, was  
22 unrealistic in light of the known softening of the local real estate market and  
23 violated the Loan Policy's requirement to consider the risk of completion date  
24 overruns. The May 2007 Loan Memo's cursory analysis of market conditions  
25 focused on LLC C's experience and success as a developer, but lacked any

1 meaningful analysis of market conditions related to the IH High Street project,  
2 such as sales trends, inventory, and other issues. Moreover, the May 2007  
3 Loan Memo's optimistic sales projections came three months after Robinson  
4 had received a report from Real Estats that, among other things, quoted a  
5 statement by *The Wall Street Journal* that "[v]acant U.S. homes for sale have  
6 climbed to their highest level in four decades, sparking fresh concerns about  
7 the housing market." Even though the project relied on real estate market  
8 stability, and despite indications of a downturn in the real estate market, the  
9 May 2007 Loan Memo failed to evaluate any risks associated with real estate  
10 market fluctuations, and the Defendants on this loan did not request or obtain  
11 revisions to the Loan Memo analyzing these issues. The dangers of these  
12 market risks were apparent by the time of the August 2008 loan modification,  
13 as reflected in the July 2008 Loan Memo, which revised the number of units  
14 under contract for sale from two to zero.

- 15 b. Failed to consider and evaluate the inadequacy of the collateral for the loan,  
16 including the high LTV ratio for the loan. The May 2007 Loan Memo stated  
17 that the LTV ratio was 74.7% based on an \$8,268,000 valuation of the  
18 collateral at completion by an appraiser who was not on the Bank's approved  
19 list. The May 2007 Loan Memo also calculated an LTV ratio of 84.1% based  
20 on the \$7,346,000 discounted value of the collateral at completion, and an LTV  
21 ratio of 90.0% based on the \$6,871,221 "cost value" of the collateral. All three  
22 of these LTV ratios exceeded the applicable LTV limit of 70%. The minutes  
23 from the ELC and DLC meetings at which this loan was reviewed and  
24 approved also stated, "LTV discussed." The May 2007 Loan Memo, however,  
25 was devoid of any assessment of real estate market conditions that would have

1 justified such an exception. The July 2008 Loan Memo listed the discounted  
2 value as \$6,100,000 and provided an LTV ratio of 109%.

3 c. Failed to consider the borrower's and guarantors' lack of sufficient equity in  
4 the project. The May 2007 Loan Memo stated that \$687,122 in borrower or  
5 guarantor equity was required for the loan, but also noted that the borrower and  
6 guarantors had in fact invested only \$284,067 in the IH High Street project,  
7 which was only 4% of the amount of the loan, well below the Loan Policy's  
8 requirement that the borrower or guarantor possess 10% equity in the project.

9 d. Failed to consider the borrower's and guarantors' lack of sufficient  
10 creditworthiness and inability to support the loan, including, but not limited to,  
11 their high leverage and concentration of assets in real estate. The minutes of  
12 the meeting at which the ELC approved the IH High Street loan for  
13 presentation to the DLC stated: "Borrower is leveraged. Financials discussed."  
14 The minutes showed "Total Related Liability (If Approved)" of \$18,128,598  
15 for the borrower and the two guarantors of the IH High Street loan, which were  
16 the principal of the borrower and LLC C. LLC C was identified as holding  
17 only approximately \$1 million in cash (about 16% of the loan amount) and was  
18 highly concentrated in real estate, making LLC C an unreliable guarantor in the  
19 event of a softening housing market. Excluding the principal's interest in LLC  
20 C, the principal's financial statement reflected a net worth of only \$289,750,  
21 which constituted only 1.6% of the \$18,128,598 in total related liabilities,  
22 including the IH High Street loan. Moreover, the principal's cash holdings  
23 were only \$10,100, which equaled only 0.056% of the \$18,128,598 total  
24 related liabilities. The combined cash holdings of LLC C and its principal  
25 were \$1,015,780, which equaled only 5.6% of the \$18,128,598 total related

1 liabilities, including the IH High Street loan. Due to their lack of liquidity, the  
2 guarantors could not sufficiently support the loan. By July 2008, the  
3 borrower's creditworthiness had deteriorated to the point that the July 2008  
4 Loan Memo recommended downgrading the IH High Street loan to a 6 "as the  
5 borrower[']s ability to continue making interest payments [wa]s in doubt."  
6 Under the Loan Policy, a grade of 6 meant the "possibility of loss [wa]s  
7 extremely high." The Loan Policy further described a grade-6 loan as a loan  
8 with "no liquidity, highly leveraged, lack of adequate guarantor support,  
9 questionable collateral coverage with liquidation likely."

10 122. The deficient underwriting and credit analysis was apparent from the Loan Memos and  
11 other materials provided to the ELC and DLC. Had the Defendants on this loan insisted on the  
12 required underwriting and credit analysis, it would have demonstrated, among other things, that  
13 there was no adequate source of repayment, the repayment sources identified were speculative and  
14 vulnerable to a deteriorating housing market, the guarantors could not support the loan, and the IH  
15 High Street loan should not have been approved.

16 123. In or about February 2009, IH High Street, LLC defaulted on the IH High Street loan.  
17 The sale of the condominium units and the assets of the guarantors were insufficient to repay the  
18 loan.

19 124. As a result of the actions and inactions of Defendants DeKlyen, DeYoung, J. Dickson,  
20 R. Dickson, Lucas, Ries, Robinson, Storkson, and Zenger with respect to the IH High Street loan,  
21 Frontier incurred damages in an amount to be proved at trial.

22 ***LLC D (I)***

23 125. On or about May 21, 2007, the ELC, including DeKlyen, J. Dickson, Ries, Robinson,  
24 and Ryan, presented a \$4.5 million raw land acquisition loan for LLC D (the "LLC D (I) loan") to  
25

1 the DLC for approval. On or about May 23, 2007, the DLC, including DeYoung, J. Dickson, R.  
2 Dickson, Lucas, Storkson, and Zenger, approved the LLC D (I) loan.

3 126. Between June 2007 and August 2008, the Bank disbursed almost all of the LLC D (I)  
4 loan.

5 127. The Loan Memo for the LLC D (I) loan stated that the purpose of the loan was to  
6 enable LLC D to acquire a 15-acre site in Bothell, Washington and to cover a portion of expenses  
7 already incurred for the development of that property.

8 128. The Loan Memo provided that the primary and secondary repayment sources were to  
9 be, in order, a separate acquisition and development loan from another lender and the sale of lots.

10 129. The Loan Memo also provided that the LLC D (I) loan would be secured by a first  
11 deed of trust on the LLC D (I) property.

12 130. In approving and/or presenting for approval the LLC D (I) loan, Defendants DeKlyen,  
13 DeYoung, J. Dickson, R. Dickson, Lucas, Ries, Robinson, Ryan, Storkson, and Zenger, among  
14 other things:

- 15 a. Failed to consider the prospects for third-party financing. The Loan Memo  
16 identified project refinancing (an "A & D loan") from a third-party as the  
17 primary repayment source, but no such refinancing had yet been secured and  
18 the Loan Memo was devoid of any evaluation of refinancing prospects,  
19 challenges, or other relevant information regarding whether refinancing was in  
20 fact available. The Defendants on this loan, therefore, had no information  
21 upon which to judge the availability of third-party financing. Analysis of  
22 refinancing prospects would have shown that, given the other deficiencies in  
23 the loan and the softening housing market, the borrower was unlikely to secure  
24 refinancing.  
25

- 1 b. Failed to monitor, evaluate, and consider market conditions. The ostensible  
2 secondary repayment source for the loan was “sale of lots to third party  
3 purchaser,” but the Loan Memo failed to identify any such purchaser and  
4 presented almost no information or analysis regarding the real estate market  
5 conditions in the lending area indicating that such sales were likely or at what  
6 prices. The Loan Memo stated only that it was “more than likely the site will  
7 be sold to a large builder who would do the actual installation of the  
8 infrastructure,” but was devoid of any analysis supporting that assertion.  
9 Furthermore, the lack of analysis of market conditions was particularly  
10 egregious because the Loan Memo failed to include an LTV ratio based on a  
11 completed appraisal.
- 12 c. Failed to consider and evaluate the inadequacy of the collateral for the loan,  
13 including the high LTV ratio for the loan. The Loan Memo acknowledged that  
14 no appraisal had been completed, but then estimated a 57% LTV ratio based  
15 only on an “anticipated value” of the collateral. The minutes from the ELC  
16 and DLC meetings at which this loan was reviewed and approved also stated,  
17 “Good LTV.” In reality, the LTV ratio based on the budgeted acquisition cost  
18 for this raw land loan exceeded 100%, in violation of the Loan Policy’s 65%  
19 LTV limit for raw land acquisition loans.

20 131. The deficient underwriting and credit analysis was apparent from the Loan Memo and  
21 other materials provided to the ELC and DLC. Had the Defendants on this loan insisted on the  
22 required underwriting and credit analysis, it would have demonstrated, among other things, that  
23 there was no adequate source of repayment, the repayment sources identified were speculative and  
24 vulnerable to a deteriorating housing market, the project was unlikely to be refinanced, the local real  
25

1 estate market was deteriorating, the collateral was insufficient to secure the loan, and the LLC D (I)  
2 loan should not have been approved.

3 132. In or about November 2008, LLC D defaulted on the LLC D (I) loan. The loan was  
4 not refinanced by a third party, and the sale of the lots was insufficient to repay the loan.

5 133. As a result of the actions and inactions of Defendants DeKlyen, DeYoung, J. Dickson,  
6 R. Dickson, Lucas, Ries, Robinson, Ryan, Storkson, and Zenger with respect to the LLC D (I) loan,  
7 Frontier incurred damages in an amount to be proved at trial.

8 ***LLC D (II)***

9 134. On or about November 15, 2007, the ELC, including J. Dickson, Ries, and Robinson,  
10 approved and presented to the DLC a \$3,107,500 Construction Loan for LLC D (the "LLC D (II)  
11 loan"). On or about November 28, 2007, the DLC, including Clementz, DeYoung, R. Dickson,  
12 Lucas, and Zenger, approved the LLC D (II) loan.

13 135. Between November 2007 and August 2008, the Bank disbursed the entire \$3,107,500  
14 of the LLC D (II) loan.

15 136. The Loan Memo for the LLC D (II) loan stated that the purpose of the loan was to  
16 provide an interest reserve for other Frontier-financed real estate loans to LLC D. On the face of the  
17 Loan Memo, the purpose of this loan was speculative and unsound.

18 137. The Loan Memo provided that the primary and secondary repayment sources were to  
19 be, in order, development and/or construction loans from third parties and the sale of properties  
20 securing a second deed of trust.

21 138. The Loan Memo also provided that the LLC D (II) loan would be secured by a second  
22 deed of trust on three properties on which Frontier already had first deeds of trust.

23 139. In approving and/or presenting for approval the LLC D (II) loan, Defendants  
24 Clementz, DeYoung, J. Dickson, R. Dickson, Lucas, Ries, Robinson, and Zenger, among other  
25 things:



- 1 a. Failed to consider the prospects for third-party financing. The Loan Memo  
2 identified development and/or construction loans as the primary repayment  
3 source, but was devoid of any evaluation of refinancing prospects, challenges,  
4 or other relevant information regarding whether third-party loans were  
5 available. The Defendants on this loan, therefore, had no information upon  
6 which to judge the availability of third-party financing. Analysis of  
7 refinancing prospects would have shown that, given the other deficiencies in  
8 the loan and the softening housing market, the borrower was unlikely to secure  
9 loans from third parties.
- 10 b. Failed to monitor, evaluate, and consider market conditions. Despite the  
11 importance of lot sales as the secondary repayment source, the Loan Memo  
12 failed to offer any quantitative analysis of relevant market conditions, instead  
13 offering only anecdotal references to likely housing trends. Furthermore, the  
14 Loan Memo acknowledged that “qualified home buyers have been reluctant to  
15 buy at this time.” The 75% LTV ratio on the LLC D (II) project exceeded the  
16 applicable 70% LTV limit. Moreover, the minutes of the meeting at which the  
17 DLC approved the LLC D (II) loan acknowledged that “[l]ot prices are coming  
18 down due to extremely slow sales. Builders are delaying new projects. . . .  
19 Need to watch all existing projects very closely.” In addition, less than one  
20 month prior to approving the LLC D (II) loan, Ries wrote to the publisher of  
21 Real Estats, “do you think that you could find any positive information out  
22 there to report, the doom and gloom is getting old.” The day before the DLC  
23 approved the LLC D (II) loan, an email from Real Estats to Ries included a  
24 comment that the areas in and around Seattle where LLC D was active  
25 “show[ed] continued deceleration in returns.” Despite these warnings about

1 the declining real estate market and the fact that lot sales were essential to the  
2 repayment of the loan, the DLC approved the LLC D (II) loan without  
3 conducting the required diligence regarding the impact of market conditions on  
4 the loan.

5 140. The deficient underwriting and credit analysis was apparent from the Loan Memo and  
6 other materials provided to the ELC and DLC. Had the Defendants on this loan insisted on the  
7 required underwriting and credit analysis, it would have demonstrated, among other things, that  
8 there was no adequate source of repayment, the repayment sources identified were speculative and  
9 vulnerable to a deteriorating housing market, the borrower was unlikely to obtain third-party  
10 financing, and the LLC D (II) loan should not have been approved.

11 141. In or about November 2008, LLC D defaulted on the LLC D (II) loan. The loan was  
12 not refinanced by a third party, and the collateral was insufficient to repay the loan.

13 142. As a result of the actions and inactions of Defendants Clementz, DeYoung, J. Dickson,  
14 R. Dickson, Lucas, Ries, Robinson, and Zenger with respect to the LLC D (II) loan, Frontier  
15 incurred damages in an amount to be proved at trial.

16 ***LLC E***

17 143. On or about March 12, 2007, the ELC, including J. Dickson, Ries, Robinson, and  
18 Ryan, presented a \$10.3 million Construction Loan for LLC E (the "LLC E loan") to the DLC for  
19 approval. On or about March 14, 2007, the DLC, including DeYoung, J. Dickson, R. Dickson,  
20 Lucas, and Zenger, approved the LLC E loan.

21 144. Between June 2007 and November 2009, the Bank disbursed approximately  
22 \$6,030,247 of the LLC E loan.

23 145. The Loan Memo for the LLC E loan stated that the purpose of the loan was to enable  
24 LLC E to purchase approximately 20.9 acres of land and develop 75 residential real estate lots as  
25

1 part of the Harvest Hills and Harvest Pond real estate projects in Marysville, Washington. Harvest  
2 Hills contained 71 lots, and Harvest Pond contained the remaining 4 lots.

3 146. The Loan Memo provided that the primary, secondary, and tertiary repayment sources  
4 were to be, in order, the proceeds from the sale of the lots in 2008, third-party refinancing for the  
5 project, and the liquid assets of the personal guarantors, who were principals of the borrower.

6 147. The Loan Memo provided that the LLC E loan would be secured by a first deed of  
7 trust on the LLC E property.

8 148. In approving and/or presenting for approval the LLC E loan, Defendants DeYoung, J.  
9 Dickson, R. Dickson, Lucas, Ries, Robinson, Ryan, and Zenger, among other things:

10 a. Failed to monitor, evaluate, and consider market conditions. While the Loan  
11 Memo stated that “[t]he appraisal was found to be acceptable to the bank,” it  
12 omitted any evaluation of real estate market conditions in Marysville, even  
13 though the primary repayment source was to be the sale of the lots in 2008.  
14 Moreover, the Loan Memo described a 78% LTV ratio based on the appraised  
15 discounted value at completion of \$13,165,000. The 78% LTV ratio exceeded  
16 the applicable LTV limit of 70%. Although the Loan Memo requested an  
17 exception from the Loan Policy for the high LTV ratio, the Loan Memo was  
18 devoid of any assessment of real estate market conditions that would have  
19 justified such an exception. The Loan Memo stated only that “[t]his  
20 authorization is requesting an advance exception of 78%, which is over the  
21 supervisory limit for the bank.”

22 b. Failed to consider or analyze the prospects for third-party financing for the  
23 project even though “Refinance of Project” was the ostensible secondary  
24 repayment source. The Loan Memo was devoid of any evaluation of  
25 refinancing prospects, options, challenges, or other relevant information or

1 analysis regarding whether refinancing was in fact available. The Defendants  
2 on this loan, therefore, had no information upon which to judge the availability  
3 of third-party financing.

- 4 c. Failed to consider the guarantors' lack of sufficient creditworthiness and  
5 inability to support the loan, including, but not limited to, their limited income  
6 and liquidity and their high leverage. The guarantors had adjusted gross  
7 incomes in 2005 of only \$191,800 and \$113,300, respectively, and combined  
8 cash assets of only \$2,020,800. In addition, the guarantors had personal and  
9 business liabilities in excess of \$3 million, which significantly exceeded their  
10 combined cash assets.

11 149. The deficient underwriting and credit analysis was apparent from the Loan Memo and  
12 supporting materials provided to the ELC and the DLC. Had the Defendants on this loan insisted on  
13 the required underwriting and credit analysis, it would have demonstrated, among other things, that  
14 there was no adequate source of repayment, the repayment sources identified were speculative and  
15 vulnerable to a deteriorating housing market, third-party financing was unlikely, the guarantors  
16 could not support the loan, and the LLC E loan should not have been approved.

17 150. In or about July 2009, LLC E defaulted on the LLC E loan. The project was not  
18 refinanced by a third party, and the proceeds from the sale of the lots and the assets of the personal  
19 guarantors were insufficient to repay the loan.

20 151. As a result of the actions and inactions of Defendants DeYoung, J. Dickson, R.  
21 Dickson, Lucas, Ries, Robinson, Ryan, and Zenger with respect to the LLC E loan, Frontier  
22 incurred damages in an amount to be proved at trial.

V. CAUSES OF ACTION

COUNT I – BREACH OF FIDUCIARY DUTIES  
(All Defendants)

1  
2  
3 152. The FDIC-R re-alleges and incorporates by reference the allegations contained in  
4 paragraphs 1-151 above as if fully set out in this Count.

5 153. As officers and/or directors of the Bank, at all times, the Defendants owed to Frontier  
6 the fiduciary duties of care and loyalty, which required them to exercise their powers in good faith  
7 and in a manner reasonably believed to be in the best interests of the Bank.

8 154. Defendants' fiduciary duties included, among other things: conducting the business of  
9 Frontier in a manner consistent with safe and sound lending practices; using prudent procedures for  
10 recommending, presenting for approval, and/or approving loans; recommending, presenting for  
11 approval, and/or approving loans in accordance with Frontier's Loan Policy; acting with the  
12 requisite care in the discharge of their duties; and informing themselves, prior to making business  
13 decisions, of all the material information reasonably available to them.

14 155. For each loan, the material information reasonably available to the Defendants  
15 included, among other things, information regarding the reliability and adequacy of the repayment  
16 sources, the value and sufficiency of the collateral, the creditworthiness of the borrowers and  
17 guarantors, the LTV ratio, the risks associated with the downturn in the real estate market, and any  
18 other information necessary to ensure that the proposed loan complied with Frontier's Loan Policy  
19 and prudent, safe, and sound lending practices.

20 156. Frontier reasonably reposed trust and confidence in each of the Defendants and  
21 believed they would exercise the trust and confidence reposed in them with great care.

22 157. The Defendants each knew or should have known that the Bank was placing its trust  
23 and confidence in them, and the Bank did place its trust and confidence in each of them, as  
24 demonstrated by the fact that each of the Defendants was an officer and/or a director of the Bank  
25 and had the responsibility to recommend, present for approval, and/or approve loans. Trust and

1 confidence was also placed in the Defendants either because they assisted in preparing, publicizing,  
2 and enforcing the terms of the Bank's Loan Policy, or because each of them read and agreed to  
3 follow the Bank's Loan Policy.

4 158. With respect to the Loans, each of the Defendants possessed significant access to  
5 relevant knowledge and facts due to each Defendant's special position of power at the Bank and the  
6 confidence each Defendant invited others to repose in him or her with respect to such Loans, based  
7 on the fact that each Defendant actively engaged in the recommendation, presentation for approval,  
8 and/or approval of the Loans.

9 159. As officers and/or directors of the Bank, and as individuals recommending, presenting  
10 for approval, and/or approving the Loans, each of the Defendants was in a special position of  
11 influence and power, and each of them exercised that influence and power in a manner that directly  
12 caused harm to the Bank.

13 160. The Defendants breached their fiduciary duties to the Bank by committing the acts and  
14 omissions alleged above.

15 161. As a direct and proximate result of the Defendants' breaches of their fiduciary duties,  
16 Plaintiff has suffered damages in excess of \$46 million. Plaintiff reserves the right to amend this  
17 Complaint to describe additional damages.

18 **COUNT II – GROSS NEGLIGENCE**  
19 **(All Defendants)**  
20 **(Pleaded in the Alternative to Count I)**

21 162. The FDIC-R re-alleges and incorporates by reference the allegations contained in  
22 paragraphs 1-151 above as if fully set out in this Count.

23 163. Under Washington law and 12 U.S.C. § 1821(k), as officers and/or directors of the  
24 Bank, the Defendants can be held personally liable for damages to Frontier caused by their gross  
25 negligence.

1 164. As officers and/or directors of the Bank, at all times, the Defendants owed to Frontier  
2 a duty to use care, skill, and diligence in the performance of their duties as officers and/or directors  
3 of Frontier.

4 165. The Defendants' duty of care to Frontier included, among other things: conducting the  
5 business of Frontier in a manner consistent with safe and sound lending practices; using prudent  
6 procedures for recommending, presenting for approval, and/or approving loans; recommending,  
7 presenting for approval, and/or approving loans in accordance with Frontier's Loan Policy; and  
8 informing themselves, prior to making business decisions, of all the material information reasonably  
9 available to them.

10 166. For each loan, the material information reasonably available to the Defendants  
11 included, among other things, information regarding the reliability and adequacy of the repayment  
12 sources, the value and sufficiency of the collateral, the creditworthiness of the borrowers and  
13 guarantors, the LTV ratio, the risks associated with the downturn in the real estate market, and any  
14 other information necessary to ensure that the proposed loan complied with Frontier's Loan Policy  
15 and prudent, safe, and sound lending practices.

16 167. The Defendants breached their duties and were grossly negligent by committing the  
17 acts and omissions alleged above.

18 168. As a direct and proximate result of the Defendants' gross negligence, Plaintiff has  
19 suffered damages in excess of \$46 million. Plaintiff reserves the right to amend this Complaint to  
20 describe additional damages.

21 **COUNT III – NEGLIGENCE**  
22 **(Officers DeKlyen, J. Dickson, Dorsey, Ries, Robinson, and Ryan)**

23 169. The FDIC-R re-alleges and incorporates by reference the allegations contained in  
24 paragraphs 1-151 above as if fully set out in this Count.

25 170. Under Washington law, as officers of the Bank, the Officers can be held personally  
liable for damages to Frontier caused by their negligence.

1 171. As officers of the Bank, at all times, the Officers owed to Frontier a duty to use care,  
2 skill, and diligence in the performance of their duties as officers of Frontier.

3 172. The Officers' duty of care to Frontier included, among other things: conducting the  
4 business of Frontier in a manner consistent with safe and sound lending practices; using prudent  
5 procedures for recommending, presenting for approval, and/or approving loans; recommending,  
6 presenting for approval, and/or approving loans in accordance with Frontier's Loan Policy; and  
7 informing themselves, prior to making business decisions, of all the material information reasonably  
8 available to them.

9 173. For each loan, the material information reasonably available to the Defendants  
10 included, among other things, information regarding the reliability and adequacy of the repayment  
11 sources, the value and sufficiency of the collateral, the creditworthiness of the borrowers and  
12 guarantors, the LTV ratio, the risks associated with the downturn in the real estate market, and any  
13 other information necessary to ensure that the proposed loan complied with Frontier's Loan Policy  
14 and prudent, safe, and sound lending practices.

15 174. The Officers breached their duties and were negligent by committing the acts and  
16 omissions alleged above.

17 175. As a direct and proximate result of the Officers' negligence, Plaintiff has suffered  
18 damages in excess of \$46 million. Plaintiff reserves the right to amend this Complaint to describe  
19 additional damages.

20 **VI. RELIEF REQUESTED**

21 WHEREFORE, the FDIC-R demands a trial by jury and judgment in its favor and against  
22 the Defendants as follows:  
23  
24  
25



