PRESS RELEASE

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Tenth Circuit Upholds FDIC Ownership of Tax Refunds in Cases of Failed Banks

WASHINGTON — In a case remanded by the U.S. Supreme Court, the U.S. Court of Appeals for the Tenth Circuit yesterday issued a favorable decision holding tax refunds generated by a failed bank belonged to the FDIC as receiver rather than the bankruptcy trustee for the failed bank's parent company.

The dispute arose from the 2011 failure of United Western Bank in Denver, Colorado. Shortly after the failure, the Bank's parent company, United Western Bancorp, Inc., filed for bankruptcy. Both the FDIC as receiver for the Bank and the parent company's bankruptcy trustee, Simon Rodriquez, claimed ownership of the $4.1 million tax refund. The bankruptcy trustee filed suit in bankruptcy court and prevailed. The FDIC as receiver appealed and, after the bankruptcy court's decision was overturned, the case eventually made its way to the U.S. Supreme Court.

The Supreme Court rejected the Bob Richards Rule, a federal common law rule that the Tenth Circuit had referred to in its initial decision, and then vacated the judgment and remanded the case back to the Tenth Circuit to decide how it should be resolved under state law. Yesterday, the Tenth Circuit reaffirmed its initial decision in favor of the FDIC and held that the outcome under state law is the same as it was under the Bob Richards rule.