

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made as of this 30th day of January, 2013, by, between, and among the Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, f/k/a Ohio Savings Bank ("FDIC-R"); MHS CONTRACTING, INC. ("MHS"), and BEST TRUSS COMPANY ("BEST") (Individually, the FDIC-R, MHS, and BEST and may be referred to herein as a "Party," and collectively as the "Parties").

WHEREAS:

Prior to December 4, 2009, AmTrust Bank, Cleveland, Ohio, previously known as Ohio Savings Bank ("Bank"), was a depository institution organized and existing under the laws of the United States.

On December 4, 2009, the Office of Thrift Supervision closed the Bank and appointed the Federal Deposit Insurance Corporation as its receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers, and privileges of the Bank, including those with respect to its assets.

A dispute has arisen between the Parties with respect to claims by the FDIC-R related to the Defendants' MHS, BEST, ALL MIAMI CONSTRUCTION, INC. ("ALL MIAMI") and REMBERTO CONTRERAS ("CONTRERAS") (collectively referred to as "DEFENDANTS") services and construction of a bank branch building in Sunrise, Florida, as alleged in the Circuit Court action in the 17th Judicial Circuit, in and for Broward County, Florida, Case No. 08-054859-04 (the "Claims").

FDIC-R has represented that it is the exclusive holder of all Claims, notwithstanding its sale of the Bank's assets to New York Community Bank, and that there are no other unasserted causes of action or claims related to the Sunrise Bank branch building owned or claimed by

AmTrust Bank that have not been assigned to FDIC-R and that have not been asserted in the instant action.

The Parties engaged in settlement negotiations as a result of the Circuit Court action. The Parties now deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of litigation, without the admission of any wrongdoing.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned Parties agree, each with the other, as follows:

SECTION I: Payment to FDIC-R.

A. As an essential covenant and condition to this Agreement, MHS, by and through its insurance carrier, shall pay to the FDIC-R the total sum of Sixty-Two Thousand Five Hundred Dollars (\$62,500) (the "MHS Settlement Payment"). MHS shall satisfy its payment obligation by rendering its payment on or before 30 days after the signing of this Settlement and Release Agreement.

B. In addition, also as an essential covenant and condition to this Agreement, on or before 30 days after the signing of this Settlement and Release Agreement, BEST, by and through its insurance carriers, shall pay to the FDIC-R the total sum of Three Hundred Thirty-Seven Thousand Five Hundred Dollars (\$337,500) (the "BEST Settlement Payment"). (The MHS Settlement Payment and the BEST Settlement Payment are referred to collectively herein as the "Settlement Payment"). The Settlement Payment shall be made by a check made payable to "FDIC as Receiver of AmTrust Bank" and shall include reference to "Sunrise Bank Branch" in the memorandum.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the dates determined by subparagraphs A and B above ("Settlement Payment Due Date"), then the FDIC-R, in its sole discretion, shall have the right as to the defaulting settling party(ies) only:

1. extend the period of time for payment, including interest accruing from the Settlement Payment Due Date through the date of payment at a rate calculated in accordance with § 55.03, Florida Statutes; or

2. enforce this Agreement and, in such event, Defendants agree to jurisdiction in the 17th Judicial Circuit, in and for Broward County, Florida and the prevailing party in any such action shall be entitled to attorney's fees and costs expended in enforcing the terms of this Agreement; or

3. declare this Agreement null and void, move to vacate any dismissal order, to which Defendants agree to consent, and institute an action on the FDIC-R's Claims; and/or

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

Any extension of time for delivery of the Settlement Payment shall not prejudice the FDIC-R's right to take other action or seek any relief during or after such period of extension, including the right to bring an action to enforce the Agreement, or declare the Agreement null and void.

SECTION II: Releases.

Each Party acknowledges that this Agreement applies to all claims for injuries, damages, or losses of any type or nature (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, patent or latent) which that Party may have against another Party arising from the Claims.

A. The FDIC-R's Release.

Upon receipt of the Settlement Payment, and except as provided in PARAGRAPH II.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Defendants and their respective employees, officers, directors, representatives, insurers, re-insurers, heirs, executors, administrators, agents, attorneys, successors and assigns, from any and all claims, demands, contracts, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity belonging to the FDIC-R, arising out of or relating to the facts and circumstances giving rise to the Claims, including but not limited to those actually brought or those that could have been brought in Case Number 08-054859-04.

B. MHS's Release.

Effective simultaneously with the release in PARAGRAPH II.A. above, MHS, on behalf of itself, and its respective employees, officers, directors, representatives, insurers, re-insurers, heirs, executors, administrators, successors and assigns, hereby releases and discharges the FDIC-R and BEST, and their employees, officers, directors, representatives, agents, attorneys, successors and assigns, from any and all claims belonging to MHS or its insurers, arising out of or relating to the facts and circumstances alleged by the Claims, including but not limited to those actually brought or those that could have been brought in Case Number 08-054859-04.

C. BEST's Release.

Effective simultaneously with the release in PARAGRAPH II.A. above, BEST, on behalf of itself, and its respective employees, officers, directors, representatives, insurers, re-insurers, heirs, executors, administrators, successors and assigns, hereby releases and discharges the FDIC-R and MHS, and their employees, officers, directors, representatives, agents, attorneys, successors and assigns, from any and all claims belonging to BEST or its insurers, arising out of

or relating to the facts and circumstances alleged by the Claims, including but not limited to those actually brought or those that could have been brought in Case Number 08-054859-04.

D. Exceptions to Release by FDIC-R.

1. Notwithstanding any other provision of this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action:

a. against Defendants or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank;

b. against any person or entity not expressly released by the FDIC-R in this Agreement; or

c. which are not expressly released in PARAGRAPH II.A. above.

2. Notwithstanding any other provision of this Agreement, nothing herein limits, waives, releases, diminishes or compromises the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority to institute administrative enforcement or other proceedings seeking removal, prohibition, civil penalties, restitution or other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person, or which may arise by operation of law, rule, or regulation, that the FDIC has jurisdiction over. Nothing in these documents or the subject litigation is intended to submit the Defendants, or signatories to this settlement and release agreement, to the supervisory or regulatory authority of the FDIC.

3. Notwithstanding any other provision of this Agreement, this Agreement does not waive any claims which could be brought by the United States through the Department of Justice, or the United States Attorney's Office for any federal judicial district. In addition, the FDIC specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, et. seq., if appropriate.

E. Dismissal of Action. Upon the timely receipt and clearance of all payments due pursuant to Paragraph 1 above, counsel for Plaintiff shall thereupon file a Motion for Final Order of Dismissal, which the parties hereto stipulate should be granted without necessity of a hearing, and providing for the entry of a Final Order of Dismissal of this action, approving this Agreement, and dismissing the action with prejudice, with each party to bear its respective attorneys' fees and costs. In relation to the Final Order of Dismissal, the parties hereto acknowledge and agree that any unasserted claims, if any, including claims for attorney's fees, by Defendants which did not participate in mediation or this Agreement shall also be deemed dismissed, with prejudice, based upon the lack of record activity by such Defendants, and failure to appear at mediation as ordered by the Court.

SECTION III: Insolvency.

A. Insolvency.

MHS warrants as to payments made on its behalf by its insurer, that at the time of such payment MHS' insurer is not insolvent nor will the payment made by or on its behalf render it insolvent within the meaning and/or for the purposes of the United States Bankruptcy Code. This warranty is made by MHS and its insurer, and not by its counsel.

BEST warrants as to payments made on its behalf by its insurers, that at the time of such payment BEST's insurers are not insolvent nor will the payment made by or on its behalf render

it insolvent within the meaning and/or for the purposes of the United States Bankruptcy Code. This warranty is made by BEST and its insurers, and not by its counsel.

B. Preferences.

In the event that the FDIC-R is required to return any portion of the Settlement Payment due to a final order by a court that the transfer of the Settlement Payment or any portion thereof constituted a preference, voidable preference, fraudulent transfer or similar transaction, then, in its sole discretion, the FDIC-R may, without waiver of any other rights it may have in law or equity, pursue any of the rights and remedies set forth in paragraph I(C) above, and/or otherwise permitted by law.

SECTION IV: Termination.

In the event the FDIC-R exercises its right to declare this Agreement null and void as provided herein, then, for the purposes of any statute of limitations or other time-based defense to any of the Claims of the FDIC-R, the parties to this Agreement shall be deemed to have reverted to their respective status as of 5:00 p.m. Eastern Time on the date this Settlement Agreement was executed.

SECTION V: Notices.

Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and may also be sent by email, to the following:

If to the FDIC-R:

William J. Cea, Esq.
Mark J. Stempler, Esq.
Becker & Poliakoff, P.A.
625 N. Flagler Drive, 7th FL
West Palm Beach, Florida 33401
(561)655-5444

(b)(6)

If to MHS:

Jeffrey W. Johnson, Esq.
Michael Wargo, Esq.
Johnson Law Group
1900 N.W. Corporate Boulevard, Suite 450
Boca Raton, Florida 33431
Telephone: 561-994-9433

(b)(6)

[Redacted]

to BEST:

Robert Fitzsimmons, Esq.
Rumberger, Kirk & Caldwell, P.A.
Brickell Bayview Centre
80 Southwest 8th Street, Suite 3000
Miami, Florida 33130-3037
Telephone: 305-995-5425

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[Redacted]

And,

Jed Frankel, Esq.
Eisinger Brown, Lewis & Frankel, P.A.
Presidential Circle, Suite 265-S
4000 Hollywood Boulevard
Hollywood, Florida 33021
Telephone: 954-894-8000

(b)(6)

[Redacted]

SECTION VI: Other Matters.

A. No Admission of Liability.

The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed Claims and defenses, that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party hereto, except to enforce its terms.

B. Execution in Counterparts.

This Agreement may be executed in counterparts by one or more of the Parties named herein and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties hereto; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Party or Parties subscribed thereto upon the execution by all Parties to this Agreement.

C. Binding Effect.

All of the undersigned persons represent and warrant that they are a Party hereto or are authorized to sign this Agreement on behalf of the respective Party, and that they have the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective heirs, executors, administrators, representatives, attorneys, successors and assigns.

D. Entire Agreement.

This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. No representations, warranties or inducements have been made to or relied on by any Party concerning this Agreement and its exhibits other than those contained therein.

E. Amendments.

This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing by the Party or Parties bound thereby, or by their respective authorized attorney(s) or other representative(s).

F. Choice of Law.

This Agreement shall be interpreted, construed and enforced according to the internal laws of the State of Florida.

G. Advice of Counsel.

Each Party hereby acknowledges that he or it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that Party by his or its counsel.

H. Title and Captions.

All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

I. Authorship/Construction.

This Agreement sets forth terms and agreements jointly negotiated by the Parties. It is expressly agreed that this Agreement shall not be construed for or against any party by reason of which party drafted it.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

**FDIC as Receiver for AmTrust
Bank, Cleveland, Ohio**

**Counsel for FDIC-R (approval as
to form)**

(b)(6)
By:

[Redacted Signature Box]

By:

[Redacted Signature Box] (b)(6)

Name: Patrick M. McGwire

Name: William J. Con

Title: Counsel

Date: 1/23/2013

Date: January 14, 2013

(b)(6)

MHS CONTRACTING, INC.
Corporation

By:

Name: Scott T. Kravick

Title: Dir

Date: 1/29/13

BEST TRUSS COMPANY

By: _____

Name: _____

Title: _____

Date: _____

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(b)(6)

Counsel for MHS (approval as to form)

By:

Name: Johnson

Date: 1/29/13

(b)(6)

Counsel for BEST (approval as to form)

By: _____

Name: _____

Date: _____

(b)(6)

BEST TRUSS COMPANY

By:

Name:

Title:

Date:

M. J. MENENDEZ

GEN. MGR.

1/30/13

(b)(6)

Counsel for BEST (approval as to form)

By:

Name:

Date:

Adilia C. Hedges

2/4/13

(b)(6)

(b)(6)



DAMARIS RUIZ
MY COMMISSION # EE048214
EXPIRES April 06, 2015
FloridaNotaryService.com

1/30/2013 Sworn to and subscribed before me by Manuel J. Menendez who is personally known to me.