

SETTLEMENT AND RELEASE AGREEMENT

03-21-2014

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

The Plaintiff Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, F.S.B. ("FDIC-R"), Scott Van Dellen, Richard Koon, and Kenneth Shellem, (collectively, the "Settling Defendants"), and Those Certain Underwriters at Lloyd's, London and Lexington Insurance Company subscribing to Policy No. [REDACTED] (b)(4) Zurich American Insurance Company, Federal Insurance Company, AIG/National Union Fire Insurance Company of Pittsburgh, PA, XL Specialty Insurance Company, Arch Insurance Company, ACE American Insurance Company, AXIS Insurance Company, AXIS Reinsurance Company, Those Certain Underwriters at Lloyd's, London and Catlin Insurance Company (UK) Ltd. subscribing to Policy No. [REDACTED] Twin City Fire (b)(4) Insurance Company and Continental Casualty Company (collectively, the "Settling Insurers") (individually, the FDIC-R, the Settling Defendants and the Settling Insurers may be referred to herein as "Party" and, collectively, as the "Parties").

RECITALS

WHEREAS:

Prior to July 11, 2008, IndyMac Bank, F.S.B. ("Bank") was a depository institution organized and existing under the laws of the United States;

On July 11, 2008, the Office of Thrift Supervision closed the Bank and pursuant to 12 U.S.C. § 1821(e), the Federal Deposit Insurance Corporation was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets.

Among the assets to which the FDIC-R succeeded were all of the Bank's claims, demands and causes of action against the Bank's former directors, officers and

employees arising from the performance, nonperformance and manner of performance of their respective functions, duties and acts as directors, officers and employees of the Bank.

On July 2, 2010, the FDIC-R filed a complaint for money damages against, among others, the Settling Defendants, each of whom served at various times as an officer of the Bank at the Bank's Homebuilder Division ("HBD"). Those claims for damages are now pending in the United States District Court for the Central District of California, Case No. 2:10-cv-04915 DSF-CW (the "HBD Action"). Twenty-three of the sixty-six counts in the complaint in the HBD Action were tried to a jury verdict entered on December 7, 2012 for total damages of \$168,813,475. The remaining counts have not yet been tried.

On July 6, 2011, the FDIC-R filed a complaint for money damages against Michael Perry ("Perry"), former CEO and director of the Bank, in the United States District Court for the Central District of California, Case No. 2:11-cv-05561-ODW-MRW (the "Perry Action"). On December 12, 2012, the FDIC-R and Perry entered into a settlement and release agreement by which, among other things, Perry made a personal contribution to settlement and assigned his right to collect \$11 million from certain of the Policies (defined below). The Perry Action was dismissed on December 17, 2012 pursuant to the FDIC-R's and Perry's stipulation of dismissal.

The Settling Insurers issued to IndyMac Bancorp, Inc. ("IndyMac") directors' and

officers' liability policies numbered [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] collectively the "Policies"), which insured the directors and officers of the Bank according to the terms, provisions and conditions of the Policies. The Settling Defendants and the FDIC-R as an assignee pursuant to a prior settlement asserted claims for coverage under the

Policies. On March 10, 2011, some of the Settling Insurers filed a declaratory judgment action against the Settling Defendants and others seeking a declaration of their rights and obligations under certain of the Policies with regard to the HBD Action and other matters. That action (the "Coverage Action") resulted in a summary judgment finding no coverage for the HBD Action, the Perry Action and other matters under the Policies at issue in the Coverage Action (the "Judgment"). Timely appeals were filed by the Settling Defendants in the United States Court of Appeals for the Ninth Circuit, Case No. 12-56296 and Case No. 12-56347 (the "Settling Defendants' Appeals"). The FDIC-R was substituted into Case No. 12-56337, an appeal of the Judgment (the "FDIC-R's Appeal"). The Settling Defendants' Appeals, the FDIC-R's Appeal, and three other appeals of the Judgment were consolidated under the Lead Case, *XL Specialty Ins. Co. v. Perry*, Case No. 12-56275, and remain pending.

Some of the Settling Insurers also commenced an action on July 20, 2012 to interplead portions of the proceeds of some of the Policies. That action is now pending in the United States District Court for the Central District of California as *Arch Ins. Co. v. Perry*, Case No. 2:12-cv-06290-GW-FFM ("the Interpleader Action"). One of the claims at issue in the Interpleader Action is the FDIC-R's claim to \$11 million pursuant to the settlement and assignment that resolved the Perry Action. The Settling Defendants, some of the Settling Insurers, and the FDIC-R, among others, are parties to the Interpleader Action.

In early 2013, prior to the entry of judgment in the HBD Action, and prior to the filing of any of the HBD Defendants' post-trial motions or any appeal by the HBD Defendants of the verdict in the Action, the Parties entered into settlement discussions to resolve the HBD Action, together with the Coverage Action and the pending Appeals in that action, the Interpleader Action, and all other disputes among the Parties. Following a mediation in May 2013 before the Hon. Layn R. Phillips (Ret.), and after extensive discussions, the Parties reached a settlement of their disputes and agreed to

enter into this Agreement.

The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of further litigation.

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

#### **SECTION I: Payments to FDIC-R and Effective Date**

A. As an essential covenant and condition precedent to this Agreement, on or before ten (10) court days following the entry of a final order, no longer subject to appeal, from the United States Bankruptcy Court for the Central District of California in *In re IndyMac Bancorp, Inc.*, Case No. 2:08-bk-21752, authorizing the use of any relevant proceeds from the Policies consistent with this Settlement Agreement (the "Insurers' Payment Due Date"), the Settling Insurers severally and not jointly, will pay to the FDIC-R the total sum of \$41,750,000 (Forty-One Million, Seven-Hundred and Fifty-Thousand Dollars) (the "Insurers' Payments"). The Insurers' Payments will be made pursuant to the schedule attached hereto as Exhibit A. As a further essential covenant and condition precedent to this Agreement, the Settling Defendants, severally but not jointly, will, on or before the Insurers' Payment Due Date, pay into their respective attorneys' client trust accounts (the "Client Trusts") the total sum of \$225,000 (Two-Hundred, Twenty-Five Thousand Dollars) ("the Settling Defendants' Payments"). Once the Settling Defendants' Payments have been deposited into the Client Trusts, their counsel shall notify the FDIC and the Settling Insurers by email that the Settling Defendants' Payments have been made. The Settling Defendants' Payment shall be made within five court days after the Insurers' Payment Date.

B. If the Insurers' Payments and the Settling Defendants' Payments have all been made in full by their respective Payment Due Dates, then the FDIC-R will provide

notice to the Settling Insurers and the Settling Defendants to that effect the following business day, which date shall then be the "Effective Date" of the Agreement.

C. If the FDIC-R does not receive all of the Insurers' Payments and the Settling Defendants' Payments in full on or before the Payment Due Date, then the FDIC-R, in its sole discretion, shall have the right to:

1. Provide notice to the Parties declaring the first business day following the Payment Due Date to be the Effective Date of the Agreement and extend the period of time for any Party that had not made its share of the Settlement Payment, including interest accruing from the date determined by subsection A above, through the date such payment is actually made, at a rate of 10% simple interest per annum (such interest to accrue only with respect to unpaid amounts of any Individual Settling Insurer(s) or Settling Defendant(s) share of the Settlement Payments and to be payable only by such non-paying Settling Defendant(s) and/or Settling Insurer(s)); and/or

2. Provide notice to the Parties declaring the first business day after the Payment Due Date to be the Effective Date of the Agreement and enforce the Agreement against any individual Settling Insurer or Settling Defendant that has not paid his or its share of the Settlement Payments as well as pursue any claims against such Settling Insurer or Settling Defendant that remain unreleased as a result of such failure to pay, in which event each such non-paying Settling Defendant or Settling Insurer agrees to jurisdiction in the United States District Court for the Central District of California and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement.

D. Payment pursuant to Section I.A. of this Agreement shall be made to the FDIC-R by direct wire transfers to the Federal Home Loan Bank of New York, Routing #

(b)(4)  For Credit to: FDIC National Liquidation Account, Account #  (b)(4)

FDIC Contact Person: Richard S. Gill, Telephone (703) 562-2425.

**SECTION II: Entry of Judgment and Satisfaction.**

A. On or before two (2) court days following the entry of the final order described in Section I.A. of this Agreement, the Settling Defendants shall deliver to counsel for the FDIC-R an executed stipulation for entry of a final, non-appealable judgment and proposed judgment in the form attached hereto as Exhibit B ("HBD Judgment") on the counts of the complaint tried to the December 7, 2012 jury verdict in the HBD Action in the amount of \$168,813,475 as to Mr. Van Delian, \$121,838,240 as to Mr. Koon and \$145,559,819 as to Mr. Shelton.

B. The FDIC-R may not submit the stipulation for entry of the HBD Judgment until the Effective Date, but shall submit such stipulation within two (2) court days after the Effective Date. Once the HBD Judgment is entered in substantially the form attached hereto as Exhibit B, the FDIC-R shall file a satisfaction of judgment in the form attached hereto as Exhibit C (the "Satisfaction of Judgment") as soon as practicable but not later than one court day after the entry of the HBD Judgment. The FDIC-R will provide no release or dismissal of any claims covered by the HBD Judgment to the Settling Defendants but, upon the entry of the HBD Judgment, the FDIC-R covenants to the Settling Defendants not to execute on their assets based upon the HBD Judgment as follows. The FDIC-R hereby covenants and agrees not to execute on the assets of, or seek collection on the Judgment against all Settling Defendants who have paid their respective shares of the Settling Defendants' Payment, and such Settling Defendants' respective heirs, executors, administrators, representatives, successors and assigns.

**SECTION III: Stipulation and Dismissal**

A. Simultaneously with the FDIC-R's filing of the Satisfaction of Judgment in the form attached hereto as Exhibit C, the FDIC-R shall file a stipulation of dismissal with prejudice of the untried counts in the HBD Action executed by the attorneys for all parties to the HBD Action, along with a proposed order, in the form attached hereto as Exhibit D.

B. Within ten (10) court days after the filing of the Satisfaction of Judgment in the HBD Action, the FDIC-R shall file a stipulation of dismissal with prejudice of the FDIC-R's Appeal in the form attached hereto as Exhibit E.

C. Within ten (10) court days after the filing of the Satisfaction of Judgment in the HBD Action, the Settling Defendants shall file a stipulation of dismissal with prejudice of the Settling Defendants' Appeals in the form attached hereto as Exhibit E.

D. Within five (5) court days after the filing of the Satisfaction of Judgment in the HBD Action, the FDIC, as assignee of certain claims pursuant to Section I.D. of the December 12, 2012 Settlement and Release Agreement between the FDIC and Michael Perry (including but not limited to the \$11 million settlement in the FDIC v. Perry Action), along with other parties to the Interpleader Action, shall file a joint stipulation of dismissal with prejudice of their claims and/or counterclaims in the Interpleader Action, and accompanying proposed order, in the form attached hereto as Exhibit F.

E. All Parties will bear their own costs and attorney's fees in connection with the matters resolved herein.

#### SECTION IV: Releases

##### A. The FDIC-R's Releases.

Effective only upon the entry of the HBD Judgment, and except as provided in Sections IV. A.1, IV.D, and VI.D., below, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges:

1. all Settling Defendants who have paid their respective shares of the Settling Defendants' Payment, and such Settling Defendants' respective heirs, executors, administrators, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, however obtained, whether by virtue of the FDIC-R's appointment as receiver of the Bank, by assignment or otherwise, in law or in equity, belonging to the FDIC-R, that arise from or relate to the performance, nonperformance or manner of performance of

the Settling Defendants' respective functions, duties and actions as officers and/or employees of the Bank including but not limited to untried claims alleged by the FDIC-R in the HBD Action, excepting those claims, and only those claims, tried to the verdict rendered on December 7, 2012 in the HBD Action, which are the subject of the HBD Judgment and the Satisfaction of Judgment and are therefore expressly not released;

2. all Settling Insurers who have paid their share of the Insurers' Payment, and such Settling Insurers' respective parents, subsidiaries, affiliates, managing agents, reinsurers, employees, officers, directors, agents, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, however obtained, whether by virtue of the FDIC-R's appointment as receiver of the Bank, by assignment or otherwise, in law or in equity, that arise from or relate to (a) the Policies; (b) the HBD Action, the Perry Action, the Coverage Action, all appeals from the Coverage Action (including the FDIC-R's Appeal), or the Interpleader Action (collectively, the "Resolved Actions"); (c) the facts, circumstances, situations, transactions or events underlying the Resolved Actions; (d) any claims for coverage arising from the Resolved Actions or facts, circumstances, situations, transactions or events underlying the Resolved Actions; and (e) the performance, nonperformance or manner of performance of any functions, duties or actions as directors, officers or employees of IndyMac or the Bank by any individual subject to coverage under the Policies, including the Settling Defendants; and (f) any claims for misrepresentations, fraud, indemnity, contribution, breach of contract, bad faith, breach of duty, negligence, or damages of any kind whatsoever arising out of or related to the Policies, the Resolved Actions, the facts, circumstances, situations, transactions or events underlying the Resolved Actions, or any claims for coverage arising from the Resolved Actions or the facts, circumstances, situations, transactions or events underlying the Resolved Actions; and

3. all individuals subject to coverage under the Policies and their



respective heirs, executors, administrators, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R that arise from or relate to the facts, circumstances, situations, transactions or events underlying any matter previously tendered for coverage under the Policies, including, but not limited to, the Resolved Actions. Nothing in this Agreement is intended to modify in any manner settlements previously entered into with Perry or Richard Wohl.

B. The Settling Defendants' Releases.

1. Effective only upon filing of the Satisfaction of Judgment, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, attorneys, successors and assigns, hereby release and discharge the FDIC-R and the Settling Insurers and their respective parents, subsidiaries, affiliates, managing agents, reinsurers, employees, officers, directors, agents, representatives, successors and assigns, from any and all loss, claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, that arise from or relate to (a) the Policies; (b) the Resolved Actions; (c) the performance, nonperformance or manner of performance of any individual's functions, duties and actions as an officer or employee of the Bank; (d) the facts, circumstances, situations, transactions or events underlying the Resolved Actions; (e) any claims for coverage arising from the Resolved Actions or facts, circumstances, situations, transactions or events underlying the Resolved Actions; (f) any claims for misrepresentations, fraud, indemnity, contribution, breach of contract, bad faith, breach of duty, negligence, or damages of any kind whatsoever arising out of or related to the Policies, the Resolved Actions, the facts, circumstances, situations, transactions or events underlying the Resolved Actions; or any claims for coverage arising from the Resolved Actions or the facts, circumstances, situations, transactions or events underlying the Resolved Actions; and (g) any agreement with the Bank, including but

not limited to Mr. Shellem's purported agreement with the Bank that was the subject of efforts to assert defenses in the HSD Action, and any other alleged agreements of any kind whatsoever between any one or more of the Settling Defendants and the Bank or the FDIC-R. Each of the Settling Defendants represents and warrants that any interest he may have or may have had under the Policies is hereby extinguished and has not been assigned to any person or entity;

2. Notwithstanding any other provision of this Agreement, the Settling Defendants do not release, and expressly preserve fully and to the same extent as if this Agreement had not been executed, any claims or causes of action for the payment of Defense Costs under the 2007-08 Policies issued by ACE American Insurance Company, Arch Insurance Company and/or AXIS Reinsurance Company that are the subject of the Interpleader Action.

C. The Insurers' Releases.

1. Effective only upon the filing of the dismissal with prejudice set forth in Section III.B. of this Agreement, each Insurer, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby releases and discharges the FDIC-R, and the FDIC-R's employees, officers, directors, agents, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, that arise from or relate to (a) the Policies; (b) the Resolved Actions; (c) the performance, nonperformance or manner of performance of any individuals' functions, duties and actions as an officer or employee of the Bank; (d) the facts, circumstances, situations, transactions or events underlying the Resolved Actions; (e) any claims for coverage arising from the Resolved Actions or facts, circumstances, situations, transactions or events underlying the Resolved Actions; and (f) any claims for misrepresentations, fraud, indemnity, contribution, breach of contract, bad faith, breach of duty, negligence, or damages of any kind whatsoever arising out of

or related to the Policies, the Resolved Actions, the facts, circumstances, situations, transactions or events underlying the Resolved Actions, or any claims for coverage arising from the Resolved Actions or the facts, circumstances, situations, transactions or events underlying the Resolved Actions.

2. Effective only upon the filing of the dismissal with prejudice set forth in Section III.C. of this Agreement, each Insurer (other than Arch Insurance Company, ACE American Insurance Company, and AXIS Reinsurance Company), for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby releases and discharges the Settling Defendants from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Policies or the Resolved Actions a) the Policies; (b) the Resolved Actions; (c) the performance, nonperformance or manner of performance of any individuals' functions, duties and actions as an officer or employee of the Bank; (d) the facts, circumstances, situations, transactions or events underlying the Resolved Actions; (e) any claims for coverage arising from the Resolved Actions or facts, circumstances, situations, transactions or events underlying the Resolved Actions; and (f) any claims for misrepresentations, fraud, indemnity, contribution, breach of contract, bad faith, breach of duty, negligence, or damages of any kind whatsoever arising out of or related to the Policies, the Resolved Actions, the facts, circumstances, situations, transactions or events underlying the Resolved Actions, or any claims for coverage arising from the Resolved Actions or the facts, circumstances, situations, transactions or events underlying the Resolved Actions .

3. Effective only upon the filing of the dismissal with prejudice set forth in Section III.C. of this Agreement and the dismissal of the Settling Defendants from the Interpleader Action, Arch Insurance Company, ACE American Insurance Company, and AXIS Reinsurance Company, for themselves and their successors and assigns, and on

behalf of their parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby release and discharge the Settling Defendants from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Policies or the Resolved Actions.

D. Exceptions from Releases By FDIC-R.

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

a. against the Settling Defendants or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to FDIC-R, the Bank, other financial institutions or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than the Bank. The FDIC-R and the Settling Defendants are aware of no such indebtedness of the Settling Defendants; and

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

2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement or other proceedings seeking removal, prohibition or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

3. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through the Department of Justice, the United States

Attorney's Office for any federal judicial district or any other department or agency of the United States as defined by 18 U.S.C. § 6. ("the United States"). In addition, the FDIC-R 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.

#### **SECTION V: Waiver of Dividends and Proceeds from Litigation**

To the extent, if any, that Settling Defendants are or were shareholders of IndyMac or the Bank and by virtue thereof are or may be entitled to a dividend, payment or other distribution upon resolution of the receivership of the Bank or proceeds in any litigation that has been or could be brought against the United States based on or arising out of, in whole or in part, the closing of the Bank, or any alleged acts or omissions by the Federal Deposit Insurance Corporation, the FDIC-R, the United States government or any agency or department of the United States government in connection with the Bank, its conservatorship or receivership, the Settling Defendants hereby knowingly assign to the FDIC-R any and all rights, title and interest in and to any and all such dividends, payments or other distributions or proceeds.

#### **SECTION VI: Representations and Acknowledgements**

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

B. No Assignment. The Parties represent and warrant that they have not assigned to any other person or entity any claims released in this Agreement. If, contrary to this representation and warranty, a Party assigns or has assigned such rights to any other person or entity, that Party shall defend, indemnify and hold harmless

any other Party against whom any claim or action is brought by any assignee of any interest assigned contrary to this representation and warranty with respect to such claim or action.

C. Release of Unknown Claims. Each of the Parties understands and agrees that, subject to the express limitations on the scope of releases in this Agreement, including but not limited to those identified in Sections IV. A. 1 and IV. D., above and VI. E. below, the releases set forth in this Agreement extend to all claims of any nature and kind, known or unknown, suspected or unsuspected, anticipated or unanticipated, and in that regard each Party acknowledges that it has read, considered and understands the provisions and significance of Section 1542 of the California Civil Code, which reads as follows:

Section 1542 General Release-Claims Extinguished. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Each Party understands and acknowledges that a risk exists that it incurred or suffered or may incur or suffer, loss or damages as a result of the matters, facts, events, occurrences, transactions, causes and things referred to in this Agreement which were unknown, unsuspected or unanticipated at the time this Agreement was executed. Each Party assumes this risk, and agrees that the foregoing releases shall in all respects be effective and not subject to termination or rescission. Based upon the advice of its respective counsel, each Party voluntarily, and with full knowledge of its

significance, waives and relinquishes any and all rights that it may have under Section 1542 as well as under the provisions of all comparable, equivalent or similar statutes and principles of common law or other decisional law of any and all states of the United States.

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

E. Financial Disclosure Representation and Warranty. Each Settling Defendant has submitted financial information to the FDIC-R, including Richard Koon on April 5, 2013, Kenneth Sheilern on April 8, 2013 and Scott Van Dellen on May 8, 2013, and herein affirms that his financial information was true and accurate as of the respective dates this information was submitted to the FDIC-R and that there have been no material changes in that information as of the date of each Settling Defendants' execution of this Agreement. Each Settling Defendant expressly acknowledges that, in determining to settle the claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by the Settling Defendants. The FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information. If a Settling Defendant failed to disclose any material interest, legal, equitable or beneficial, in any asset, that Settling Defendant agrees to cooperate fully with the FDIC-R to provide updated financial information and to pay to the FDIC-R the lesser of the difference in value between the previously disclosed asset(s) and the later disclosed asset(s), or the amount of unpaid damages reflected against that Settling Defendant in the HBD Judgment. The Settling Defendants agree to this obligation notwithstanding the limited releases, dismissals and satisfaction of judgment provided for herein.

F. Effect of Settlement: The Parties agree that no collateral estoppel, res

judicata or preclusive effect of any kind whatsoever can arise against any other Party as a result of the Coverage Action in connection with any future matters unrelated to IndyMac or the Bank. Further, the Parties agree not to assert that the rulings in the Coverage Action collaterally estop or in any other way have a preclusive effect of any kind on any other Party in connection with any proceeding not involving IndyMac or the Bank. Notwithstanding the foregoing, nothing in this Agreement precludes any Party from citing or referring to the rulings in the Coverage Action in connection with future matters unrelated to IndyMac or the Bank.

#### **SECTION VII: Reasonable Cooperation**

The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing, or causing their agents and attorneys to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording and entry of any documents necessary to conclude the HBD Action and to otherwise perform the terms of this Agreement.

#### **SECTION VIII: Other Matters**

A. Not Evidence. The Parties each acknowledge and agree that this Agreement and the releases and dismissals herein shall not be offered or received in evidence by or against any Party except to enforce its terms.

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

C. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the substantive laws of the State of California, without reference to choice of law rules.



D. Authorship. The Parties and their counsel each have contributed to this Agreement. No provision of this Agreement shall be construed against any of the Parties by reason of authorship.

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

If to the FDIC-R: Michael J. Pollack, 3501 Fairfax Drive, Room VS- B-7060,  
(b)(6) Arlington, VA 22226-3500, (b)(6) with a copy to Thomas D. Long,  
Nossaman LLP, 34<sup>th</sup> Floor 777 S. Figueroa Street, Los Angeles, CA 90017,

(b)(6) (b)(6)  
If to the Settling Defendants: Richard Koon and/or Kenneth Shellem: Kirby S.  
Behre, Paul Hastings LLP, 875 15th Street, N.W., Washington, D.C. 20005,

(b)(6) (b)(6)  
If to the Settling Defendant Scott Van Dellen: Robert Corbin, Corbin Athey &  
Martinez LLP, 601 West Fifth Street, Suite 1160, Los Angeles, California 90071-2024,

(b)(6) (b)(6) or such subsequent address as to which Mr. Corbin notifies  
all Parties.

If to the Settling Insurers:

(b)(4) Those Certain Underwriters at Lloyd's London and Gallin Insurance Company (UK) Ltd. Subscribing to Policy No. (b)(6)	W. Joel Vander Vliet Boundas, Skarzynski, Walsh & Black LLC 200 E. Randolph Dr., Ste. 7200 Chicago, IL 60601 (312) 946-4219 (b)(6)
(b)(4) Those Certain Underwriters at Lloyd's London and Lexington Insurance Company Subscribing to Policy No. (b)(6)	W. Joel Vander Vliet Boundas, Skarzynski, Walsh & Black LLC 200 E. Randolph Dr., Ste. 7200 Chicago, IL 60601 (312) 946-4219 (b)(6)
Zurich American Insurance Company	Brian D. Harrison Sedgwick LLP 333 Bush Street, 28th Floor San Francisco, Ca 94104-2834 415-627-3454 (b)(6)

Twin City Fire Insurance Company	Michael R. Delhagen Tresstor LLP 1 Penn Plaza, Suite 4701 New York, NY 10119 [REDACTED]	(b)(6)
Continental Casualty Company	William E. Smith Wiley Rein LLP 1776 K Street, NW Washington, DC 20006 (202) 719-7000 [REDACTED]	(b)(6)
XL Specialty Insurance Company	Jason P. Cronin Wiley Rein LLP 1776 K Street, NW Washington, DC 20006 (202) 719-7000 [REDACTED]	(b)(6)
Arch Insurance Company	Kim W. West Clyde & Co 101 Second Street, 24th Floor San Francisco, CA 94105 (415) 385-9800 [REDACTED]	(b)(6)
ACE American Insurance Company	Edward Gibbons Walker Wilcox Matousek LLP One North Franklin Street, Suite 3200 Chicago, IL 60606 (312) 244-6744 [REDACTED]	(b)(6)
AXIS Insurance Company AXIS Reinsurance Company	Andrew W. Smith BatesCarey LLP 191 N. Wacker Ste. 2400 Chicago IL, 60606 (312) 762-3297 [REDACTED]	(b)(6)

F. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s) or other representative(s).

G. Titles and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not effect the interpretation of this

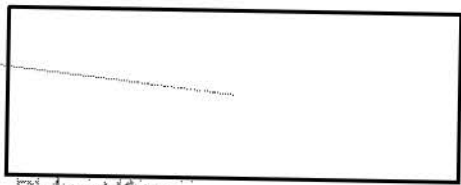
Agreement.

H. Costs and Fees. Notwithstanding any other provisions of this Agreement, all Parties shall bear their own costs and fees in connection with the HBD Action, the Coverage Action and the Interpleader Action.

I. Termination. If the United States Bankruptcy Court for the Central District of California in *In re IndyMac Bancorp, Inc.*, Case No. 2:08-bk-21752, declines to enter an order authorizing the use of any relevant proceeds from the Policies consistent with this Settlement Agreement, or if that order is overturned on appeal, this Agreement shall be null and void and the Parties shall revert, without prejudice to or waiver of any right, to their respective litigation positions immediately prior to the execution of this Agreement. All statutes of limitations and doctrines of laches are waived and will be tolled while an application for an order is pending until this Agreement is terminated pursuant to this provision.

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.

(b)(6)



Richard Koon

Kenneth Shelton

Scott Van Dellen

Federal Deposit Insurance Corporation as  
Receiver for IndyMac Bank, F.S.B.  
By: Michael J. Pollack  
Title: Supervisory Counsel, FDIC

Zurich American Insurance Company

By:

Title:

Twin City Fire Insurance Company

By:

Title:

Continental Casualty Company

By:

Title:

XL Specialty Insurance Company

By:

Title:

Arch Insurance Company

By:

Title:

ACE American Insurance Company

By:

Title:

AXIS Insurance Company

By:

Title:

AXIS Reinsurance Company

By:

Title:

Those Certain Underwriters at Lloyd's  
London and Catlin Insurance Company  
(UK) Ltd. Subscribing to Policy No.



By:

Title:

Those Certain Underwriters at Lloyd's  
London and Lexington Insurance Company  
Subscribing to Policy No.



By:

Title:

(b)(4)

(b)(4)

[Redacted]

(b)(6)

Richard Koon

Kenneth Sheltern

Scott Van Dellen

Federal Deposit Insurance Corporation as  
Receiver for IndyMac Bank, F.S.B.  
By: Michael J. Pollack  
Title: Supervisory Counsel, FDIC

Zurich American Insurance Company  
By:  
Title:

Twin City Fire Insurance Company  
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Continental Casualty Company  
By:  
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XL Specialty Insurance Company  
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Arch Insurance Company  
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ACE American Insurance Company  
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AXIS Insurance Company  
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Title:

AXIS Reinsurance Company  
By:  
Title:

Those Certain Underwriters at Lloyd's  
London and Catlin Insurance Company  
(UK) Ltd. Subscribing to Policy No.

By:  
Title:

[Redacted]

(b)(4)

Those Certain Underwriters at Lloyd's  
London and Lexington Insurance Company  
Subscribing to Policy No.

By:  
Title:

[Redacted]

(b)(4)

Richard Koon

Kenneth Shollem

(b)(6)



Scott Van Dellen

Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, F.S.B.  
By: Michael J. Pollack  
Title: Supervisory Counsel, FDIC

Zurich American Insurance Company  
By:  
Title:

Twin City Fire insurance Company  
By:  
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Continental Casualty Company  
By:  
Title:

XL Specialty Insurance Company  
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Arch Insurance Company  
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ACE American Insurance Company  
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AXIS Insurance Company  
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AXIS Reinsurance Company  
By:  
Title:

Those Certain Underwriters at Lloyd's London and Catlin Insurance Company (UK) Ltd. Subscribing to Policy No.

Those Certain Underwriters at Lloyd's London and Lexington Insurance Company Subscribing to Policy No.

By:  
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By:  
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(b)(4)

(b)(4)

Richard Koon

Kenneth Shellem

[Redacted]

(b)(6)

Scott Van Dellen

Federal Deposit Insurance Corporation as  
Receiver for IndyMac Bank, F.S.B.  
By: Michael J. Pollack  
Title: Supervisory Counsel, FDIC

Zurich American Insurance Company  
By:  
Title:

Twin City Fire Insurance Company  
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Continental Casualty Company  
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XL Specialty Insurance Company  
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Arch Insurance Company  
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ACE American Insurance Company  
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AXIS Insurance Company  
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AXIS Reinsurance Company  
By:  
Title:

Those Certain Underwriters at Lloyd's  
London and Catlin Insurance Company  
(UK) Ltd. Subscribing to Policy No.

Those Certain Underwriters at Lloyd's  
London and Lexington Insurance Company  
Subscribing to Policy No. [Redacted]

[Redacted]  
By:  
Title:

[Redacted]  
By:  
Title:

(b)(4)

(b)(4)

Richard Koon

Kenneth Shelton

Scott Van Dellen

Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, F.S.B.

By:  
Title:

(b)(6)



Zurich American Insurance Company

Twin City Fire Insurance Company

By: James J. Reel  
Title: Vice President, Claims

By:  
Title:

Continental Casualty Company

XL Specialty Insurance Company

By:  
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By:  
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Arch Insurance Company

ACE American Insurance Company

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AXIS Insurance Company

AXIS Reinsurance Company

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Those Certain Underwriters at Lloyd's London and Catin Insurance Company (UK) Ltd. Subscribing to Policy No.

Those Certain Underwriters at Lloyd's London and Lexington Insurance Company Subscribing to Policy No.

(b)(4)



By:  
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By:  
Title:

(b)(4)



Richard Koon

Kenneth Shalem

[Redacted]

(b)(6)

Scott Van Dellen

Federal Deposit Insurance Corporation as  
Receiver for IndyMac Bank, F.S.B.  
By: Michael J. Pollack  
Title: Supervisory Counsel, FDIC

(b)(6)

[Redacted]

Zurich American Insurance Company  
By:  
Title:

Twin City Fire Insurance Company  
By: DAVID A. BEN-REK  
Title: Authorized Agent

Continental Casualty Company  
By:  
Title:

XL Specialty Insurance Company  
By:  
Title:

Arch Insurance Company  
By:  
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ACE American Insurance Company  
By:  
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AXIS Insurance Company  
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AXIS Reinsurance Company  
By:  
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Those Certain Underwriters at Lloyd's  
London and Catlin Insurance Company  
(UK) Ltd. Subscribing to Policy No.

Those Certain Underwriters at Lloyd's  
London and Lexington Insurance Company  
Subscribing to Policy No. [Redacted]

(b)(4)

[Redacted]  
By:  
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By:  
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(b)(4)

Richard Koon

Kenneth Shellem

Scott Van Dellen

Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, F.S.B.  
By: Michael J. Pollack  
Title: Supervisory Counsel, FDIC

Zurich American Insurance Company  
By:  
Title:

Twin City Fire Insurance Company  
By:  
Title:

(b)(6)

Continental Casualty Company  
By: Veronica Odiermo  
Title: Claims Director

XL Specialty Insurance Company  
By:  
Title:

Arch Insurance Company  
By:  
Title:

ACE American Insurance Company  
By:  
Title:

AXIS Insurance Company  
By:  
Title:

AXIS Reinsurance Company  
By:  
Title:

Those Certain Underwriters at Lloyd's London and Callin Insurance Company (UK) Ltd. Subscribing to Policy No.

Those Certain Underwriters at Lloyd's London and Lexington Insurance Company Subscribing to Policy No.

(b)(4)

By:  
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(b)(4)

Richard Koon

Kenneth Shellem

[Redacted]

(b)(6)

Scott Van Dellen

Federal Deposit Insurance Corporation as  
Receiver for IndyMac Bank, F.S.B.  
By: Michael J. Pollack  
Title: Supervisory Counsel, FDIC

Zurich American Insurance Company  
By:  
Title:

Twin City Fire Insurance Company  
By:  
Title:

[Redacted]

(b)(6)

Continental Casualty Company  
By:  
Title:

XL Specialty Insurance Company  
By: *Justin Kudler*  
Title: *AVP, Claims XL Professional*

Arch Insurance Company  
By:  
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ACE American Insurance Company  
By:  
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AXIS Insurance Company  
By:  
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AXIS Reinsurance Company  
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Those Certain Underwriters at Lloyd's  
London and Catlin Insurance Company  
(UK) Ltd. Subscribing to Policy No.

Those Certain Underwriters at Lloyd's  
London and Lexington Insurance Company  
Subscribing to Policy No. [Redacted]

By:  
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Richard Koon

Kenneth Shellen

Scott Van Dellen

Federal Deposit Insurance Corporation as  
Receiver for IndyMac Bank, F.S.B.  
By:  
Title:

Zurich American Insurance Company  
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Twin City Fire Insurance Company  
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Continental Casualty Company  
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XL Specialty Insurance Company  
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Arch Insurance Company  
By: [Redacted]  
Title: *V.P.*

ACE American Insurance Company  
By:  
Title:

AXIS Insurance Company  
By:  
Title:

AXIS Reinsurance Company  
By:  
Title:

Those Certain Underwriters at Lloyd's  
London and Catin Insurance Company  
(UK) Ltd. Subscribing to Policy No. [Redacted]  
By:  
Title:

Those Certain Underwriters at Lloyd's  
London and Lexington Insurance Company  
Subscribing to Policy No. [Redacted]  
By:  
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(b)(6)

(b)(4)

(b)(4)

Richard Koon

Kenneth Shelton

Scott Van Dellen

Federal Deposit Insurance Corporation as  
Receiver for IndyMac Bank, F.S.B.  
By: Michael J. Pollack  
Title: Supervisory Counsel, FDIC

Zurich American Insurance Company  
By:  
Title:

Twin City Fire Insurance Company  
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Continental Casualty Company  
By:  
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XL Specialty Insurance Company  
By:  
Title:

[Redacted]

(b)(6)

Arch Insurance Company  
By:  
Title:

ACE American Insurance Company  
By: *KENNETH D. MILBAUER*  
Title: *VP - ACE USA Agent in Charge*

AXIS Insurance Company  
By:  
Title:

AXIS Reinsurance Company  
By:  
Title:

Those Certain Underwriters at Lloyd's  
London and Cofin Insurance Company  
(UK) Ltd. Subscribing to Policy No.

Those Certain Underwriters at Lloyd's  
London and Lexington Insurance Company  
Subscribing to Policy No.

By:  
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(b)(4)

[Redacted]

(b)(4)

Richard Koon

Kenneth Shellem

Scott Van Dellen

Federal Deposit Insurance Corporation as  
Receiver for indyMac Bank, F.S.B.  
By: Michael J. Pollack  
Title: Supervisory Counsel, FDIC

Zurich American Insurance Company  
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Twin City Fire Insurance Company  
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Continental Casualty Company  
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XL Specialty Insurance Company  
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Arch Insurance Company  
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ACE American Insurance Company  
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[Redacted]

AXIS Insurance Company  
By: Timothy Vasquez  
Title: AvP-Claims

AXIS Reinsurance Company  
By: Timothy Vasquez  
Title: AvP-Claims

Those Certain Underwriters at Lloyd's  
London and Catlin Insurance Company  
(UK) Ltd. Subscribing to Policy No.

Those Certain Underwriters at Lloyd's  
London and Lexington Insurance Company  
Subscribing to Policy No.

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[Redacted]

By:  
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Richard Koon

Kenneth Sholem

Scott Van Dellen

Federal Deposit Insurance Corporation as  
Receiver for IndyMac Bank, F.S.B.  
By: Michael J. Pollack  
Title: Supervisory Counsel, FDIC

Zurich American Insurance Company  
By:  
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Twin City Fire Insurance Company  
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Continental Casualty Company  
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XL Specialty Insurance Company  
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Those Certain Underwriters at Lloyd's  
London and Catin Insurance Company  
(UK) Ltd. Subscribing to Policy No.

Those Certain Underwriters at Lloyd's  
London and Lexington Insurance Company  
Subscribing to Policy No. [Redacted]

(b)(4)

By: W. JOEL VANDER VLIET  
Title: THEIR ATTORNEY

By: W. JOEL VANDER VLIET  
Title: THEIR ATTORNEY

(b)(4)





The Insurers' Payments, as defined by the attached Settlement and Release Agreement, shall be paid as follows, with each of the listed insurers being responsible only for its designated share, and with no insurer being jointly or severally liable for any other listed insurer's share:

Insurer	Share of Insurer's Payment
Those Certain Underwriters at Lloyd's, London subscribing to Policy No. [REDACTED]	\$3,726,562.50
Catlin Insurance Company (UK) Ltd.	\$1,242,187.50
Zurich American Insurance Company	\$4,968,750.00
Twin City Fire Insurance Company	\$4,968,750.00
Continental Casualty Company	\$4,968,750.00
XL Specialty Insurance Company	\$4,968,750.00
Arch Insurance Company	\$4,968,750.00
ACE American Insurance Company	\$4,968,750.00
AXIS Insurance Company	\$4,968,750.00
AXIS Reinsurance Company	\$2,000,000.00

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NOSSAMAN LLP  
THOMAS D. LONG (SBN 105987)

DAVID GRAELER (SBN 197836)

JENNIFER L. MEEKER (SBN 260138)

777 South Figueroa Street, 34th Floor  
Los Angeles, California 90017  
Telephone: 213.612.7800  
Facsimile: 213.612.7801

Attorneys for The Federal Deposit Insurance  
Corporation, as Receiver of IndyMac Bank, F.S.B.

[additional counsel and defendants on following page]

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
INDYMAC BANK, F.S.B.,

Plaintiff,

v.

SCOTT VAN DELLEN, et al.,  
Defendants.

Case No. CV 10-4915 DSF (CWx)

**STIPULATION FOR ENTRY OF  
JUDGMENT**

1 ROBERT L. CORBIN (SBN 75445)

(b)(6) [Redacted]

2 AMIR KALTGRAD (SBN 252399)

(b)(6) [Redacted]

3 CORBIN, ATHEY & MARTINEZ LLP

4 601 West Fifth Street, Suite 1150  
5 Los Angeles, California 90071-2024  
6 Telephone: (213) 612-0001  
7 Facsimile: (213) 612-0061

8 Attorneys for Defendant Scott Van Dellen

9 KIRBY D. BEHRE (*pro hac vice*)

(b)(6) [Redacted]

11 IGOR V. TIMOFEYEV (*pro hac vice*)

(b)(6) [Redacted]

12 ERIN E. KLISCH (*pro hac vice*)

(b)(6) [Redacted]

14 LAUREN E. BRIGGERMAN (*pro hac vice*)

(b)(6) [Redacted]

15 PAUL HASTINGS LLP

16 875 15<sup>th</sup> Street, N.W.  
17 Washington, D.C. 20005  
18 Telephone: (202) 551-1700  
19 Facsimile: (202) 551-1705

19 JOSHUA G. HAMILTON (SBN 199610)

(b)(6) [Redacted]

20 PAUL HASTINGS LLP

21 515 South Flower Street, 25<sup>th</sup> Floor  
22 Los Angeles, California 90071-2228  
23 Telephone: (213) 683-6000  
24 Facsimile: (213) 627-0705

25 Attorneys for Defendants Richard Koon and  
26 Kenneth Shellem

1 It is hereby stipulated by and among plaintiff The Federal Deposit Insurance  
2 Corporation as the Receiver for IndyMac Bank, F.S.B. and defendants Scott Van  
3 Dellen, Richard Koon and Kenneth Shellem that, pursuant to a settlement among  
4 the parties, judgment shall be entered in favor of plaintiff and against defendants in  
5 the form attached hereto as Exhibit A and lodged herewith. The parties' Settlement  
6 and Release Agreement is attached hereto as Exhibit B. Pursuant to that  
7 agreement, a Satisfaction of Judgment in the form attached hereto as Exhibit C will  
8 be filed immediately, but in no event later than one court day after entry of the  
9 Judgment.

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Dated: \_\_\_\_\_ 2014

NOSSAMAN LLP

By:           /s/ Thomas D. Long            
Thomas D. Long  
Attorneys for Plaintiff Federal Deposit  
Insurance Corporation, as Receiver for  
IndyMac Bank, F.S.B.

Dated: March 28, 2014

CORBIN, ATHEY & MARTINEZ LLP

By:           /s/ Robert L. Corbin            
Robert L. Corbin  
Attorneys for Defendant Scott Van  
Dellen

Dated: \_\_\_\_\_ 2014

PAUL HASTINGS LLP

By:           /s/ Kirby D. Behre            
Kirby D. Behre  
Attorneys for Defendants  
Richard Koon and Kenneth Shellem

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I hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing. Corbin, Athey & Martinez, LLP executed this Stipulation on March 28, 2014 prior to the termination date of its law practice.

Dated: \_\_\_\_\_, 2014

NOSSAMAN LLP

By:           /s/ Thomas D. Long            
Thomas D. Long  
Attorneys for Plaintiff Federal Deposit  
Insurance Corporation, as Receiver for  
IndyMac Bank, F.S.B.



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NOSSAMAN LLP  
THOMAS D. LONG (SBN 105987)

DAVID GRAELER (SBN 197836)

JENNIFER L. MEEKER (SBN 260138)

777 South Figueroa Street, 34th Floor  
Los Angeles, California 90017  
Telephone: 213.612.7800  
Facsimile: 213.612.7801

Attorneys for Plaintiff/Judgment Creditor  
Federal Deposit Insurance Corporation,  
as Receiver of IndyMac Bank, F.S.B.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
INDYMAC BANK, F.S.B.,

Plaintiff,

v.

SCOTT VAN DELLEN, et al.,

Defendants.

Case No. CV 10-4915 DSF (CWx)

**SATISFACTION OF JUDGMENT**



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FULL SATISFACTION OF JUDGMENT

A Judgment having been entered in the above-entitled action on March \_\_, 2014 in favor of Plaintiff Federal Deposit Insurance Corporation as the Receiver of IndyMac Bank, F.S.B. against Defendants Scott Van Dellen, Kenneth Shellem, and Richard Koon;

Plaintiff Federal Deposit Insurance Corporation as the Receiver of IndyMac Bank, F.S.B. hereby acknowledges that defendants Scott Van Dellen, Kenneth Shellem, and Richard Koon have fully satisfied the Judgment in this action.

Dated: \_\_\_\_\_, 2014      NOSSAMAN LLP

By: \_\_\_\_\_  
Thomas D. Long  
Attorneys for Plaintiff/Judgment Creditor  
Federal Deposit Insurance Corporation, as  
Receiver for IndyMac Bank, F.S.B.



1 NOSSAMAN LLP  
2 THOMAS D. LONG (CA 105987)

(b)(6) [REDACTED]  
3 DAVID GRAELER (CA 197836)

(b)(6) [REDACTED]  
4 JENNIFER L. MEEKER (CA 260138)

(b)(6) [REDACTED]  
5  
6 777 S. Figueroa Street, 34th Floor  
7 Los Angeles, CA 90017  
8 Telephone: 213.612.7800  
9 Facsimile: 213.612.7801

10 Attorneys for Plaintiff Federal Deposit Insurance Corporation,  
11 as Receiver for IndyMac Bank, F.S.B.

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA

14 FEDERAL DEPOSIT INSURANCE  
15 CORPORATION, AS RECEIVER FOR  
16 INDYMAC BANK, F.S.B.

17 Plaintiff,

18 vs.

19 SCOTT VAN DELLEN, RICHARD  
20 KOON AND KENNETH SHELLEM,

21 Defendants.

Case No: CV 10-4915 DSF (CWx)

**JOINT STIPULATION OF PARTIAL  
DISMISSAL WITH PREJUDICE  
PURSUANT TO FED. R. CIV. P.  
41(a)(1)(A)(ii)**

1 Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), IT IS HEREBY STIPULATED AND  
2 AGREED by and between Plaintiff the Federal Deposit Insurance Corporation as  
3 Receiver for IndyMac Bank, F.S.B. and Defendants Scott Van Dellen, Richard Koon and  
4 Kenneth Shellem that Counts 5, 6, 7, 8, 9, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 36, 38,  
5 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 59, 60, 61, 62, 63, 64, 65, 66, and  
6 67 of the Complaint filed on July 2, 2010 in the above-captioned action are hereby  
7 dismissed with prejudice in accordance with the parties' Settlement and Release  
8 Agreement, a copy of which is attached hereto as Exhibit A.

9 IT IS FURTHER STIPULATED AND AGREED that the parties shall bear their  
10 own attorney's fees and costs incurred in this action.  
11

12  
13 Dated: \_\_\_\_\_ 2014

NOSSAMAN LLP

14  
15 By:           /s/ Thomas D. Long            
16 Thomas D. Long  
17 Attorneys for Plaintiff Federal Deposit  
18 Insurance Corporation, as Receiver for  
IndyMac Bank, F.S.B.

19 Dated: March 28, 2014

CORBIN, ATHEY & MARTINEZ LLP

20  
21 By:           /s/ Robert L. Corbin            
22 Robert L. Corbin  
23 Attorneys for Defendant Scott Van  
Dellen

24 PAUL HASTINGS LLP

25 Dated: \_\_\_\_\_ 2014

26 By:           /s/ Kirby D. Behre            
27 Kirby D. Behre  
28 Attorneys for Defendants  
Richard Koon and Kenneth Shellem

1 I hereby attest that all other signatories listed, and on whose behalf the filing is  
2 submitted, concur in the filing's content and have authorized the filing. Corbin, Athey &  
3 Martinez, LLP executed this Stipulation on March 28, 2014 prior to the termination date  
4 of its law practice.

5 Dated: \_\_\_\_\_, 2014

NOSSAMAN LLP

6  
7  
8 By:           /s/ Thomas D. Long            
9 Thomas D. Long  
10 Attorneys for Plaintiff Federal Deposit  
11 Insurance Corporation, as Receiver for  
12 IndyMac Bank, F.S.B.  
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Case Nos. 12-56337, 12-56296, 12-56347

(Consolidated with Case Nos. 12-56311, 12-56275 and 12-56350)

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**In the United States Court of Appeals  
for the Ninth Circuit**

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XL Specialty Insurance Company, et al.,  
Appellees,

v.

Michael W. Perry, et al.,  
Appellants.

---

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE CENTRAL DISTRICT OF CALIFORNIA, NO. 2:11-CV-02078  
HON. R. GARY KLAUSNER, PRESIDING

---

**JOINT MOTION FOR DISMISSAL PURSUANT TO FED. R. CIV. P.  
42(b)**

---

COLLEEN J. BOLES  
Assistant General Counsel  
KATHRYN R. NORCROSS  
Senior Counsel  
JACLYN C. TANER  
Counsel  
FEDERAL DEPOSIT INSURANCE  
CORPORATION  
3501 Fairfax Drive, VS-D7006  
Arlington, VA 22226-3500  
Telephone: (703) 562-2373  
Facsimile: (703) 562-2496

THOMAS D. LONG  
DAVID GRAELER  
JENNIFER L. MEEKER  
NOSSAMAN LLP  
777 S. Figueroa Street  
34th Floor  
Los Angeles, California 90017  
Telephone: (213) 612-7800  
Facsimile: (213) 612-7801

*Attorneys for Appellant Federal Deposit Insurance Corporation as Receiver  
for IndyMac Bank, F.S.B.*

---

Pursuant to Fed. R. App. P. 42(b) and the terms of the parties' Settlement and Release Agreement, signed \_\_\_\_\_, 2014, a copy of which is attached hereto as Exhibit A, Appellant Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, F.S.B. and Appellees Scott Van Dellen, Richard Koon, Kenneth Shellem and William Rothman hereby move the Court for an order dismissing the above-captioned appeals (Case Nos. 12-56337, 12-56296 and 12-56347) with prejudice.

The parties have agreed that each side will bear its own costs and fees on appeal.

Respectfully submitted,

COLLEEN J. BOLES  
Assistant General Counsel  
KATHRYN R. NORCROSS  
Senior Counsel

\_\_\_\_\_, 2014

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\_\_\_\_\_, 2014

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## CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on \_\_\_\_\_, 2014.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

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13 *Attorneys for AXIS Reinsurance Company*

14 UNITED STATES DISTRICT COURT

15 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

16 ARCH INSURANCE COMPANY, ACE  
17 AMERICAN INSURANCE COMPANY,  
and AXIS REINSURANCE COMPANY

Case No. CV12-06290 GW (FFM)

18 Plaintiffs,

**JOINT STIPULATION OF  
DISMISSAL WITH PREJUDICE**

19 v.

20 MICHAEL W. PERRY, A. SCOTT KEYS,  
21 JOHN OLINSKI, S. BLAIR  
22 ABERNATHY, SAMIR GROVER,  
23 SIMON HEYRICK, VICTOR H.  
WOODWORTH, SCOTT VAN DELLEN,  
RICHARD KOON, KENNETH  
SHELLEM, WILLIAM ROTHMAN, JILL  
JACOBSON, and KEVIN CALLAN,

24 Defendants.

25 AND RELATED COUNTERCLAIMS

1 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiffs  
2 Arch Insurance Company, ACE American Insurance Company and AXIS  
3 Reinsurance Company, and Defendants/Counterclaimants Michael W. Perry,  
4 Richard Koon, Kenneth Shellem, Scott Van Dellen, William Rothman, and Federal  
5 Deposit Insurance Corporation (the "FDIC") as Receiver for IndyMac Bank F.S.B.  
6 and as assignee of certain claims of Defendant/Counterclaimant Michael W. Perry;  
7 that:

- 8 • the First Amended Complaint for Interpleader (Doc. 9);
- 9 • the Counterclaim filed by Michael W. Perry (Doc. 59);
- 10 • the Counterclaim filed by Scott Van Dellen and William Rothman (Doc.  
11 57); and
- 12 • the Counterclaims filed by Richard Koon and Kenneth Shellem (Doc. 53)

13  
14 are hereby dismissed with prejudice pursuant to settlement agreements between the  
15 parties to this action, resulting in the dismissal of this action in its entirety.

16 IT IS FURTHER STIPULATED AND AGREED that the parties shall bear  
17 their own attorney's fees and costs incurred in this action.

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19 The parties respectfully request that the Court enter the attached proposed  
20 order of dismissal.

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Dated: \_\_\_\_\_, 2014

BATESCAREY LLP

By: /s/ Andrew W. Smith

Attorneys for *AXIS Reinsurance Company*

Dated: \_\_\_\_\_, 2014

WALKER WILCOX MATOUSEK LLP

By: /s/ Tiffany S. Saltzman-Jones

Attorneys for *ACE American Insurance Company*

Dated: \_\_\_\_\_, 2014

CLYDE & CO.

By: /s/ Alec H. Boyd

Attorneys for *Arch Insurance Company*

Dated: March, 28, 2014

CORBIN, ATHEY & MARTINEZ LLP

By: /s/ Robert L. Corbin

Attorneys for Defendants  
*Scott Van Dellen and William Rothman*

Dated: \_\_\_\_\_, 2014

STEINBRECHER & SPAN LLP

By: /s/ Robert S. Span

Attorneys for Defendants  
*Richard Koon and Kenneth Shellem*

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Dated: \_\_\_\_\_, 2014

COVINGTON & BURLING LLP

By:  /s/ Dennis B. Auerbach

Attorneys for Defendant *Michael W. Perry*

Dated: \_\_\_\_\_, 2014

NOSSAMAN LLP

By:  /s/ Thomas D. Long

Attorneys for *Federal Deposit Insurance Corporation as Receiver for IndyMac Bank F.S.B. and as Assignee of Certain Claims of Defendant/Counterclaimant Michael W. Perry*

I hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing. Corbin, Athey & Martinez, LLP executed this Stipulation on March 28, 2014 prior to the termination date of its law practice.

Dated: \_\_\_\_\_, 2014

BATESCAREY LLP

By:  /s/ Andrew W. Smith

Attorneys for *AXIS Reinsurance Company*