

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made as of October 11, 2012, by, between, and among the Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, Cleveland, Ohio ("FDIC-R"); 1st National Title Insurance Agency, LLC, a Utah limited liability company ("1st National"); and Westcor Land Title Insurance Company, a California corporation ("Westcor") (individually, the FDIC-R, 1st National and Westcor may be referred to herein as a "Party" and collectively as the "Parties").

RECITALS

1. On or about October 29, 2008, AmTrust Bank, Cleveland, Ohio, previously known as Ohio Savings Bank ("Bank"), purchased a loan originated by PrimeLending, A PlainsCapital Company ("PrimeLending") to borrower Magdalena Lozano ("Lozano") in the amount of \$1.5 million (the "Loan") in connection with Lozano's purchase of a residential property located at 12463 North Timberline Drive, Highland, Utah (hereinafter the "Lozano Transaction"). In connection with the Lozano Transaction, 1st National served as the closing agent and Westcor furnished a policy of title insurance and a closing protection letter.

2. Prior to December 4, 2009, Bank was a depository institution organized and existing under the laws of the United States.

3. 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 the claims which are the subject of this Agreement.

4. FDIC-R asserted certain claims against 1st National and Westcor, and Westcor cross-claimed against 1st National, in that certain lawsuit presently pending in the United States District Court for the District of Utah, Central Division, as Case No. 2:10cv01084 ("Lawsuit").

5. The Parties conducted a mediation on October 11, 2012 before the Honorable Judge Timothy Hanson. The parties resolved their claims that have been or could have been asserted between the Parties in the Lawsuit. The Parties documented the terms of settlement in a signed document dated October 11, 2012 ("Term Sheet").

6. The Parties now deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble and expense of continued litigation.

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

L. SETTLEMENT PAYMENT TO FDIC-R

A. As an essential covenant and condition to this Agreement, on or before thirty days following the date all Parties execute this Agreement (“Settlement Payment Due Date”), 1st National shall pay the FDIC-R the total sum of \$375,000 (the “1st National Payment”) and Westcor shall pay the FDIC-R the total sum of \$125,000 (the “Westcor Payment”). (The 1st National Payment and the Westcor Payment are referred to collectively herein as the “Settlement Payment.”) The Settlement Payment shall be made by check payable to “Mortgage Recovery Law Group Client Trust Account” and delivered to 700 N. Brand Boulevard, Suite 830, Glendale, California 91203, Attention Paul Levin, Esq.

B. If the FDIC-R does not receive the Settlement Payment by the Settlement Payment Due Date, then the FDIC-R, in its sole discretion, shall have the right to:

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 26 U.S.C. § 6621(b)(3);
2. Enforce this Agreement and, in such event, 1st National and Westcor agree to jurisdiction in Federal District Court in Utah and the defaulting party agrees to pay all of the FDIC-R’s reasonable attorneys’ fees and costs expended in enforcing the terms of this Agreement;
3. Declare this Agreement null and void as to either or both of Westcor and 1st National, and move to vacate any dismissal order, in which case FDIC-R shall return to a non-defaulting payer (Westcor, 1st National, or 1st National’s insurer, as the case may be) any portion of the Settlement Payment that has been paid; 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 this Agreement, or declare this Agreement null and void. Although FDIC-R shall have the right to declare this Agreement null and void if the full Settlement Payment is not received, neither Westcor nor 1st National (nor 1st National’s insurer) shall be liable for the default of the other party in paying its share of the Settlement Payment.

C. The Parties are to bear their own respective costs and attorneys’ fees in the negotiation, mediation and settlement of the Lawsuit.

D. After receipt and collection of the Settlement Payment checks by Mortgage Recovery Law Group, the Parties shall cause their respective counsel to file with the Court a Stipulated Motion to Dismiss all of Plaintiff’s Claims and Westcor’s Cross-Claims with Prejudice (“Stipulated Motion”) and a proposed Order dismissing with prejudice the FDIC-R’s Complaint and Westcor’s Cross-Claim against 1st National. The form of the Stipulated Motion

and the proposed Order are attached hereto as **Exhibits A and B**. If a bankruptcy petition or a receivership or similar action has been filed against Westcor, 1st National or their insurer, the Lawsuit shall be dismissed only after any Preference claim or action has been resolved to the effect that the FDIC-R retains the full Settlement Amount.

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 out of or relating to the subject matter of the Lawsuit.

A. The FDIC-R's Release. Upon receipt of the Settlement Payment, plus any accrued interest, and except as provided in Section II.D. below, the FDIC-R, for itself and its predecessors, successors and assigns, hereby releases and discharges 1st National and Westcor and their respective employees, managers, members, officers, directors, agents, insurers, lawyers, predecessors, 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 subject matter of the Lawsuit.

B. 1st National's Release. Effective simultaneously with the release in Section II.A. above, 1st National, for itself and its predecessors, successors and assigns, hereby releases and discharges the FDIC-R and Westcor, and their respective employees, managers, members, officers, directors, agents, insurers, lawyers, predecessors, 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 1st National, arising out of or relating to the subject matter of the Lawsuit.

C. Westcor's Release. Effective simultaneously with the release in Section II.A. above, Westcor, for itself and its predecessors, successors and assigns, hereby releases and discharges the FDIC-R and 1st National, and their respective employees, managers, members, officers, directors, agents, insurers, lawyers, predecessors, 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 Westcor, arising out of or relating to the subject matter of the Lawsuit.

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 1st National, Westcor, 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 any claims not related to the Lawsuit acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank, provided, however, that the claims specifically described in Section II.A. above are hereby released;

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

c. Which are not expressly released in Section 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.

3. It being the intent of the parties that the release by the FDIC-R shall be limited to the matters described in Section II.A above, it is agreed that this Agreement does not waive any claims brought on behalf of another failed institution or any claims which 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 governmental entity. 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.

E. Reservation of Claims. Except as expressly set forth herein, nothing in this Agreement shall be construed as a waiver or release by any Party of any claim or cause of action against any other entity or person not released in Section II.A, B or C above. Without limiting the foregoing, all claims against the Third Party Defendants in the Lawsuit are hereby expressly reserved.

III. **INSOLVENCY**

A. Insolvency.

1. 1st National warrants that the 1st National Payment is not made from the property of 1st National or of a bankruptcy estate that would result from a bankruptcy filing of 1st National within the meaning and/or for the purposes of the United States Bankruptcy Code. This warranty is made by 1st National and not by its counsel.

2. Westcor warrants as to payments made by or on its behalf that at the time of such payment, it 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 Westcor and not by its counsel.

B. Preferences. If 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 claim or legal action (collectively "Preference"), 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 Section I.B. above, and/or otherwise permitted by law, but only with respect to the entity whose payment was determined to be a Preference. In no event shall Westcor or 1st National (or 1st National's insurer) be liable for any Preference arising from the payment of the other Party, nor shall FDIC-R be entitled to any remedy as to the Party whose payment is not the subject of a Preference.

IV. TERMINATION

If the FDIC-R exercises its right to declare this Agreement null and void as provided in Section II 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, October 10, 2012, and the Mediation Settlement Term Sheet is agreed to be void.

V. NOTICES

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

If to the FDIC-R:

Gary Doctorman
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, UT 84111
(801) 536-6780

(b)(6)

[Redacted]

If to 1st National:

Matthew C. Barneck
Richards Brandt Miller Nelson
Wells Fargo Center, 15th Floor
299 South Main Street
Salt Lake City, UT 84111
(801) 531-2000

(b)(6)

If to Westcor:

Bryce D. Panzer
Blackburn & Stoll, LC
257 East 200 South, Suite 800
Salt Lake City, UT 84111
(801) 578-3520

(b)(6)

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 raised in the Lawsuit, that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that this Agreement shall not be offered or received in evidence by or against any Party hereto, except to enforce its terms.

B. Execution in Counterparts – Electronic Copies. 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. Email or facsimile transmissions of a Party's signed counterpart shall be deemed to constitute the delivery of a signed original counterpart.

C. Binding Effect. All of the undersigned persons represent and warrant that they 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 representatives, predecessors, 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, including but not limited to the Term Sheet. 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. Reasonable Cooperation.

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

2. Further, 1st National and Westcor agree to cooperate fully with the FDIC-R in connection with any action required under this Agreement. Any such cooperation that involves any out-of-pocket costs is subject to reasonable reimbursement by the FDIC-R pursuant to its internal guidelines and policy for such reimbursement.

G. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the internal laws of the State of Utah, without regard to its conflicts of laws.

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

I. 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.

J. 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 their duly authorized representatives as of October 11, 2012.

FDIC as Receiver for AmTrust Bank,
Cleveland, Ohio

(b)(6)

By:

Name: Patrick M. McGuirk

Title: Counsel

Date: 1/4/2013

1st National Agency, LLC, a Utah limited
liability company

(b)(6)

By:

Name: Sax Petter

Title: Manager

Date: 1-9-13

Westcoast Land Title Insurance Company, a
California corporation

By: _____

Name: _____

Title: _____

Date: _____

FDIC as Receiver for AmTrust Bank,
Cleveland, OH

(b)(6)

By:

Name: Patrick M. McGuirk

Title: Counsel

Date: 1/4/2013

1st National Agency, LLC, a Utah limited
liability company

By:

Name:

Title:

Date:

Westcor Land Title Insurance Company, a
California corporation

By:

(b)(6)

Name: PETER A. WALTHER

Title: CADRE ADMIN

Date: 01/15/13

GARY E. DOCTORMAN (0895)
DAVID K. HEINHOLD (11165)
PARSONS BEHLE & LATIMER
Attorneys for Plaintiff
One Utah Center
201 South Main Street, Suite 1800
Salt Lake City, UT 84111
Telephone: (801) 532-1234
Facsimile: (801) 536-6111

(b)(6)

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
AMTRUST BANK,

Plaintiff,

vs.

1ST NATIONAL TITLE INSURANCE
AGENCY, LLC, a Utah limited liability
company, and WESTCOR LAND TITLE
INSURANCE COMPANY, a California
corporation,

Defendants.

**STIPULATED MOTION TO DISMISS
ALL OF PLAINTIFF'S CLAIMS AND
WESTCOR'S CROSS-CLAIMS WITH
PREJUDICE**

Case No. 2:10CV01084

Judge Bruce S. Jenkins

1ST NATIONAL TITLE INSURANCE AGENCY, LLC, a Utah limited liability company, and WESTCOR LAND TITLE INSURANCE COMPANY, a California corporation,

Third-Party Plaintiffs,

v.

MAGDALENA LOZANO, FIDELIS CAPITAL GROUP, LLC, a revoked limited liability company, BRIAN ZIMMERMAN, PAUL HILL, RUSSELL BLACK, RICK WELLS, PEGGY MCKENZIE, DENNIS BERRETT, and DOES 1-20, persons unknown,

Third-Party Defendants.

Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, Plaintiff, Federal Deposit Insurance Corporation as Receiver of AmTrust Bank ("FDIC-R"), and Defendants, 1st National Title Insurance Agency, LLC ("1st National") and Westcor Land Title Insurance Company ("Westcor"), through counsel, respectfully request this Court enter the Stipulated Order submitted herewith, which dismisses with prejudice all claims filed by FDIC-R against 1st National and Westcor and the cross-claims of Westcor against 1st National in this lawsuit with each party bearing its own attorneys' fees and costs.

1st National and Westcor do not dismiss any of their respective claims against the Third Party Defendants herein, and all such claims are hereby expressly reserved.

DATED this __ day of January, 2013.

/s/

Gary E. Doctorman
David K. Heinhold
PARSONS BEHLE & LATIMER
Attorneys for the Federal Deposit Insurance
Corporation as Receiver of AmTrust Bank

/s/

Bryce D. Panzer
Brett N. Anderson
Scott R. Taylor
BLACKBURN & STOLL, LC
Attorneys for Westcor
(Signed with authority of Scott R. Taylor)

/s/

Matthew C. Barneck
Chad E. Funk
RICHARDS BRANDT MILLER NELSON
Attorneys for 1st National
(Signed with authority of Matthew C. Barneck)

CERTIFICATE OF SERVICE

I hereby certify that on January __, 2013, I electronically filed the foregoing **Stipulated Motion To Dismiss All Of Plaintiff's Claims And Westcor's Cross-Claims With Prejudice** with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

Matthew C. Barneck
Chad E. Funk
RICHARDS BRANDT MILLER NELSON
299 South Main Street, 15th Floor
Salt Lake City, Utah 84110-2465

(b)(6) [Redacted]

Attorneys for Westcor Land Title

Bryce D. Panzer
Brett N. Anderson
BLACKBURN & STOLL
257 East 200 South, Suite 800
Salt Lake City, Utah 84111-2142

(b)(6) [Redacted]

Attorneys for 1st National Title Insurance Agency

John J. Brannelly, Jr. Esq.,
VANGUARD LEGAL, PLLC
59 West 9000 South
Sandy, Utah 84070

(b)(6) [Redacted]

Attorneys for Third-Party Defendant Fidelis Capital Group, LLC

And that I caused to be mailed the same pleading by first-class mail, postage prepaid, to the following:

Dennis Berrett
3768 Bari Way
South Jordan, Utah 84095
Third Party Defendant

Magdalena Lozano
6125 Copper Crest Drive
Las Vegas, NV 89130-1999
Third Party Defendant

Peggy McKenzie
2833 Lance Circle
Heber, Utah 84032
Third Party Defendant

/s/ Gary E. Doctorman

GARY E. DOCTORMAN (0895)
DAVID K. HEINHOLD (11165)
PARSONS BEHLE & LATIMER
Attorneys for Plaintiff
One Utah Center
201 South Main Street, Suite 1800
Salt Lake City, UT 84111
Telephone: (801) 532-1234
Facsimile: (801) 536-6111

(b)(6)

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
AMTRUST BANK,

Plaintiff,

vs.

1ST NATIONAL TITLE INSURANCE
AGENCY, LLC, a Utah limited liability
company, and WESTCOR LAND TITLE
INSURANCE COMPANY, a California
corporation,

Defendants.

**[PROPOSED] ORDER GRANTING
STIPULATED MOTION FOR
DISMISSAL OF ALL PLAINTIFF'S
CLAIMS AND WESTCOR'S CROSS-
CLAIMS WITH PREJUDICE**

AND

**RESERVATION OF CLAIMS AGAINST
THIRD-PARTY DEFENDANTS**

Case No. 2:10CV01084

Judge Bruce S. Jenkins

1ST NATIONAL TITLE INSURANCE AGENCY, LLC, a Utah limited liability company, and WESTCOR LAND TITLE INSURANCE COMPANY, a California corporation,

Third-Party Plaintiffs,

v.

MAGDALENA LOZANO, FIDELIS CAPITAL GROUP, LLC, a revoked limited liability company, BRIAN ZIMMERMAN, PAUL HILL, RUSSELL BLACK, RICK WELLS, PEGGY MCKENZIE, DENNIS BERRETT, and DOES 1-20, persons unknown,

Third-Party Defendants.

Based on the Stipulated Motion to Dismissal All of Plaintiff's Claims and Westcor's Cross Claims With Prejudice (the "Motion"), and pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure, filed by Federal Deposit Insurance Corporation as Receiver for AmTrust Bank ("FDIC-R"), 1st National Title Insurance Agency, LLC ("1st National") and Westcor Land Title Insurance Company ("Westcor"), and for good cause appearing:

IT IS ORDERED that:

1. The Motion is GRANTED.
2. All of FDIC-R's claims against 1st National and Westcor in this lawsuit are dismissed with prejudice.

3. All of Westcor's cross-claims against 1st National in this Lawsuit are dismissed with prejudice.

4. 1st National and Westcor do not dismiss any of their respective claims against the Third Party Defendants herein, and all such claims are expressly reserved.

5. Each party will bear its own attorneys' fees and costs incurred in connection with the prosecution and defense of FDIC-R's claims.

DATED this ___ day of January, 2013.

HONORABLE JUDGE BRUCE S. JENKINS
UNITED STATES DISTRICT COURT JUDGE

Approved as to form this ___ day of January, 2013.

/s/ _____
Bryce D. Panzer
Brett N. Anderson
Scott R. Taylor
BLACKBURN & STOLL, LC
Attorneys for Westcor
(Signed with authority of Scott R. Taylor)

/s/ _____
Matthew C. Barneck
Chad E. Funk
RICHARDS BRANDT MILLER NELSON
Attorneys for 1st National
(Signed with authority of Matthew C. Barneck)

CERTIFICATE OF SERVICE

I hereby certify that on January __, 2013, I electronically filed the foregoing **[Proposed] Order Granting Stipulated Motion For Dismissal Of All Plaintiff's Claims And Westcor's Cross-Claims With Prejudice And Reservation Of Claims Against Third-Party Defendants** with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

Matthew C. Barneck
Chad E. Funk
RICHARDS BRANDT MILLER NELSON
299 South Main Street, 15th Floor
Salt Lake City, Utah 84110-2465

(b)(6) [Redacted]

Attorneys for Westcor Land Title

Bryce D. Panzer
Brett N. Anderson
BLACKBURN & STOLL
257 East 200 South, Suite 800
Salt Lake City, Utah 84111-2142

[Redacted]

Attorneys for 1st National Title Insurance Agency

John J. Brannelly, Jr. Esq.,
VANGUARD LEGAL, PLLC
59 West 9000 South
Sandy, Utah 84070
[Redacted]
*Attorneys for Third-Party Defendant Fidelis
Capital Group, LLC*

And that I caused to be mailed the same pleading by first-class mail, postage prepaid, to:

Dennis Berrett
3768 Bari Way
South Jordan, Utah 84095
Third Party Defendant

Magdalena Lozano
6125 Copper Crest Drive
Las Vegas, NV 89130-1999
Third Party Defendant

Peggy McKenzie
2833 Lance Circle
Heber, Utah 84032
Third Party Defendant

/s/ Gary E. Doctorman