

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 12-62391-CIV-Cohn/Seltzer

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER
FOR AMTRUST BANK,

Plaintiff,

vs.

RED DOOR TITLE INSURANCE AGENCY,
INC., and K.E.L. TITLE INSURANCE
GROUP, INC.,

Defendants,

**JOINT STIPULATION OF SETTLEMENT, DISMISSAL WITH PREJUDICE,
AND REQUEST FOR ORDER APPROVING AND ADOPTING STIPULATION**

Plaintiff Federal Deposit Insurance Corporation as Receiver for AmTrust Bank (“FDIC-R-AMT”) and Defendant K.E.L. Title Insurance Group, Inc., through its Receiver (“KEL Receiver”), collectively referred to hereinafter as the “Parties,” by and through their respective attorneys, hereby stipulate and agree to the following:

1. The Parties agree to settle and compromise this action under the terms and conditions set forth herein.
2. FDIC-R-AMT filed this action against defendants Red Door Title Insurance Agency, Inc. (“Red Door”) and K.E.L. Title Insurance Group, Inc. (“KEL”) in this District pursuant to 28 U.S.C. § 1331 and 12 U.S.C. § 1819(b)(2)(A), which grant the Federal Deposit Insurance Corporation as receiver for a failed financial institution the right to litigate its claims in federal court (“Action”).

3. In a separate action before this Court styled *Federal Deposit Insurance Corporation as Receiver for BankUnited vs. Red Door Title Insurance Agency, et al.*, case number 12-CV-21876 Seitz/Simonton (the “BankUnited Action”), FDIC as Receiver for BankUnited, F.S.B. (“FDIC-R-BU”) asserted similar but separate claims against KEL.

4. Pursuant to a consent order entered on or about October 30, 2012, the Florida Department of Financial Services was appointed receiver for KEL in a state court action styled *In re: The Receivership of KEL Title Insurance Title Group*, case number 2012-CA-3514, currently pending in the Leon County Circuit Court (“KEL Action”). The KEL Action is an insurer rehabilitation proceeding under Florida Statutes section 631.051. In November 2012, KEL filed a Notice of Filing Order of Rehabilitation and Notice of Automatic Stay, pursuant to which this Court ordered that the Action against KEL be stayed. (DE 29.) On July 1, 2013, this Court entered a default judgment against Red Door, but not against KEL, in favor of FDIC-R-AMT. (DE 39.)

5. In consideration of Plaintiff FDIC-R-AMT’s agreement that this Action shall be dismissed with prejudice, the KEL Receiver agrees that the FDIC-R-AMT shall share and be joined as a joint claimant with the FDIC-R-BU’s previously validated proof of claim (“POC”) in the amount of \$501,786.38 (copy attached hereto as Exhibit A) solely and exclusively as a Class 4 claimant under Florida Statute section 631.271(1)(d) in an insurer liquidation proceeding under Florida Statute section 631.061 filed with respect to KEL Title Insurance Group (hereinafter “Insurer Liquidation Proceeding”).

6. In connection with the settlement of the BankUnited Action, on or about August 1, 2018 the KEL Receiver agreed and stipulated not to contest the POC or the amount of \$501,786.38 sought by FDIC-R-BU in the Insurer Liquidation Proceeding (the “BankUnited

Stipulation of Settlement”). (DE109.) On August 6, 2018, Judge Williams (on behalf of Judge Seitz) approved and adopted the BankUnited Stipulation of Settlement. (DE111.)

7. FDIC-R-AMT agrees that any recovery for the POC on behalf of itself and FDIC-R-BU shall be limited to funds available to Class 4 claimants in an Insurer Liquidation Proceeding.

8. FDIC-R-BU is fully informed regarding the aforesaid joining of its validated POC with that of FDIC-R-AMT in the Insurer Liquidation Proceeding and concurs with this Stipulation of Settlement and terms incorporated herein.

9. Execution of this Stipulation of Settlement by FDIC-R-AMT’s counsel and KEL Receiver’s counsel shall constitute a dismissal of this Action with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), except that the Court shall retain jurisdiction to enforce the terms of this Agreement. The parties request that the Court enter an Order Approving and Adopting this Stipulation.

10. Each Party shall bear its own fees and costs incurred in connection with the Action.

11. The Parties agree that an electronic or facsimile of the signature of the Parties and counsel will be the same as the original.

12. This Stipulation of Settlement may not be altered, modified, withdrawn, waived, rescinded or supplement except by written instrument executed by duly authorized representatives of both Parties.

13. The undersigned counsel represent that they are authorized to make this agreement on behalf of their clients

Executed on this 16th day of April, 2019.

Respectfully submitted,

<p>McDonald Hopkins, LLC Southeast Financial Center 200 South Biscayne Boulevard Suite 2600 Miami, Florida 33131-2310 Telephone: (305) 704-3990 Facsimile: (305) 704-3999 Primary E-Mail: rshanzer@mcdonaldhopkins.com Secondary E-Mail: lfouche@mcdonaldhopkins.com By: <u>/s/ Regen J. Shanzer</u> Florida Bar No. 51558</p>	<p>Mark, Migdal & Hayden, LLC 80 SW 8th Street, Suite 1999 Miami, FL 33130 Telephone: (305) 374-0440 Josh A. Migdal, Esq. (Fl. Bar No. 19136) josh@markmigdal.com George T. Breur, Esq. (Fl. Bar No. 33283) george@markmigdal.com Counsel for Plaintiff Federal Deposit Insurance Corporation as Receiver for AmTrust Bank By: <u>/s/ George T. Breur-----</u></p>
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For the undersigned FDIC, as receiver for BankUnited which concurs with paragraphs 5-8 above.

<p>Mark, Migdal & Hayden, LLC 80 SW 8th Street, Suite 1999 Miami, FL 33130 Telephone: (305) 374-0440 Josh A. Migdal, Esq. (Fl. Bar No. 19136) josh@markmigdal.com George T. Breur, Esq. (Fl. Bar No. 33283) george@markmigdal.com Counsel for Plaintiff Federal Deposit Insurance Corporation as Receiver for BankUnited By: <u>/s/ George T. Breur-----</u></p>
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