

RE 2/12/10

LIMS Nr [redacted]
DIF/Mortgage Fraud

ENTERED
2/12/10

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter referred to as the "Agreement") is entered into on this 30th day of November 2009 by and between the Federal Deposit Insurance Corporation, in its capacity as Receiver of IndyMac Bank, F.S.B. and Zurich American Insurance Company (hereinafter referred to as "Zurich") (collectively referred to hereinafter as the "Parties").

(b)(2)

RECITALS

WHEREAS Zurich issued Crime Policy Number [redacted] in favor of National Settlement Agency, Inc. ("NSA") as the Named Insured for the Policy Period April 15, 2005 to April 15, 2008 (hereinafter referred to as the "Zurich Policy");

(b)(4)

WHEREAS the Zurich Policy provides first party "Employee Dishonesty" Coverage, subject to, among other things, a \$1M Limit of Liability;

WHEREAS the term "Employee Dishonesty" is defined in the Zurich Policy as follows:

- a. "Employee Dishonesty" in paragraph A.2. means only dishonest acts committed by an "employee", whether identified or not, acting alone or in collusion with other persons, except you or a partner, with the manifest intent to:
 - (1) Cause you to sustain loss; and also
 - (2) Obtain financial benefit (other than employee benefits earned in the normal course of employment, including: salaries, commissions, fees, bonuses, promotions, awards, profit sharing or pensions) for:
 - (a) The "employee"; or
 - (b) Any person or organization intended by the "employee" to receive that benefit.

WHEREAS the term "you" is defined in the Zurich Policy to include NSA only;

WHEREAS IndyMac Bank, FSB (hereinafter referred to as "IndyMac") is designated as a "Loss Payee" under the Zurich Policy;

WHEREAS the Federal Deposit Insurance Corporation, in its capacity as Receiver of IndyMac Bank, F.S.B. (hereinafter, ("FDIC") was assigned all rights of IndyMac;

WHEREAS NSA was at all times relevant hereto in the business of conducting home loan refinancing closings in the capacity of settlement/closing agent for various mortgage companies and/or banks, including IndyMac;

WHEREAS at all times relevant hereto, NSA received loan funds via wire transfer from IndyMac, which funds were to be utilized by NSA for disbursement to borrowers and other designated payees at mortgage closings;

WHEREAS on August 17, 2007, NSA notified Zurich that funds wired to NSA by various mortgage companies and/or banks may have been misappropriated by Steven Leff;

WHEREAS IndyMac subsequently claimed that in excess of \$2 million transferred by IndyMac to NSA was lost as a result of misappropriation by Steven Leff (hereinafter referred to as the "IndyMac Loss");

WHEREAS Zurich contends that the documentation submitted in support of the IndyMac Loss fails to demonstrate that NSA incurred a loss of funds from IndyMac resulting directly from "Employee Dishonesty" as defined in the Zurich Policy;

WHEREAS FDIC disputes Zurich's contention;

WHEREAS FDIC filed a complaint in the United States District Court for the Southern District of New York in an action entitled *Federal Deposit Insurance Corporation v. Zurich American Insurance Company*, Case No. 09 CIV 6600, seeking a declaration that it is entitled to the Limit of Liability under the Zurich Policy for the IndyMac Loss (hereinafter referred to as the "Litigation");

WHEREAS Zurich disputes the allegations set forth in the complaint filed in the Litigation;

WHEREAS the Parties wish to resolve amicably the Litigation and all disputes between them directly or indirectly arising out of, concerning, involving or related in any way or manner whatsoever to the IndyMac Loss, the defalcations of Steven Leff, whether acting alone or in collusion with others, and coverage under the Zurich Policy for the IndyMac Loss so as to avoid the expense of litigation;

WHEREAS the Parties understand and agree that by executing this Agreement, neither is admitting any facts nor conceding any arguments whatsoever concerning the IndyMac Loss or the Zurich Policy;

NOW THEREFORE, for an in consideration of the mutual covenants and promises set forth and contained herein, the sufficiency and receipt of which is hereby acknowledged, the Parties, intending to be legally bound, do hereby covenant and agree as follows:

1. Within 15 business days of the Parties' execution of this Agreement, Zurich shall pay the sum of SIX HUNDRED THOUSAND UNITED STATES DOLLARS AND NO CENTS (U.S. \$600,000.00) to FDIC in good, available funds by check payable to "Weinstein Smith LLP, as escrowee" (the "Settlement Payment").
2. For and in consideration of the Settlement Payment, FDIC, on its own behalf and on behalf of IndyMac and each of their respective past, present and future directors, officers, members, shareholders, employees, agents, partners, representatives, attorneys, parent and affiliated corporations, direct and indirect affiliates of any form, subsidiaries, divisions, joint venturers, predecessors-in-interest, successors, beneficiaries, grantees, vendees, transferees and assigns, and all other persons or entities acting on their behalf with respect to the events, transactions,

or occurrences that are the subject of this Agreement does hereby irrevocably release, acquit and forever discharge Zurich and each of its past, present and future directors, officers, members, shareholders, employees, agents, partners, representatives, attorneys, parent and affiliated corporations, direct and indirect affiliates of any form, subsidiaries, divisions, joint venturers, predecessors-in-interest, successors, beneficiaries, grantees, vendees, transferees and assigns, and all other persons or entities acting on its behalf with respect to the events, transactions, or occurrences that are the subject of this Agreement, from any and all known and unknown, suspected or unsuspected, fixed or contingent, actions, arbitrations, causes of action, suits, debts, liabilities, obligations, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, at law or in equity, that it shall or may have for or had for, upon, or by reason of any matter, cause or thing whatsoever directly or indirectly arising out of, concerning, involving or related in any way or manner whatsoever to the IndyMac Loss, the Zurich Policy, the defalcations of Steven Leff, whether acting alone or in collusion with others, including the claim asserted or any claim that could have been asserted by FDIC in the Litigation, as well as any claims directly or indirectly arising out of, concerning, involving or related in any way whatsoever to the manner in which Zurich handled the IndyMac Loss under the Zurich Policy, whether based in contract or in tort, including, but not limited to, any claim for bad faith by Zurich in the payment, investigation, handling or consideration of the IndyMac Loss, and any claim for interest and/or attorneys' fees and costs, whether pursuant to statute, under the common law, or otherwise.

3. Upon receiving the Settlement Payment, FDIC will discontinue the Litigation with prejudice and file a Stipulation of Discontinuance with Prejudice in the form set forth in Exhibit A.
4. Upon full execution of this Agreement, FDIC will execute and deliver the Stipulation to Weinstein Smith LLP to be held in escrow. Upon receipt of the Settlement Payment, Weinstein Smith LLP will release the payment to FDIC and deliver the signed Stipulation to Zurich's counsel, who will file the Stipulation with the court in the Litigation.
5. Zurich hereby relinquishes any claim or right of subrogation or any other claim that it is entitled to by reason of its payment hereunder against any individual and/or entity responsible for the loss forming the basis for the IndyMac Loss, regardless of whether FDIC has collected or will collect on such claim.
6. The foregoing release is not intended to, and shall not extend to, or otherwise release or discharge any rights, privileges, benefits, duties or obligations of either of the Parties under this Agreement.
7. This Agreement shall be deemed to have fully and finally settled any and all known and unknown claims directly or indirectly arising out of, concerning, involving or related in any way or manner whatsoever to the IndyMac Loss, the Zurich Policy and/or the defalcations of Steven Leff, whether acting alone or in collusion with others, without regard to the subsequent discovery or determination by either of the Parties hereto of different or additional facts, claims, events or law.
8. This Agreement is without precedential value and it is not intended to be, nor shall it be construed as, an interpretation of any insurance policy. It shall not be used as evidence, or in any other manner, in any court or other dispute resolution proceeding to create, prove, or

interpret the obligations of Zurich under any insurance policy issued to NSA or to any other person or entity.

9. The Parties acknowledge that they were represented by experienced counsel and had a full and fair opportunity to review the terms of this Agreement. The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their intent, and no rule of construction for or against any of them shall apply to any term or condition of this Agreement. The Parties and their respective counsel acknowledge that neither they nor any of their representatives have made any representations or promises other than as set forth in this Agreement.
10. The Parties signing this Agreement represent and warrant to each other that they have authority and capacity to enter into and perform fully their respective obligations under this Agreement.
11. This Agreement constitutes the complete understanding between the Parties hereto and may not be changed, modified, amended or waived except by a writing signed by a duly authorized representative of each of the Parties. This Agreement supersedes any prior or contemporaneous oral or written releases, negotiations and discussions with respect to the subject matter of this Agreement.
12. This Agreement is binding upon and shall inure to the benefit of, the Parties, and their respective successors and assigns. This Agreement is not made for the benefit of, and may not be enforced by, any third party.
13. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement or caused it to be executed by their duly authorized officers or representatives.

SIGNATORIES

Dated:

FEDERAL DEPOSIT INSURANCE CORPORATION
In Its Capacity as Receiver of IndyMac Bank, F.S.B.

By: _____

Title: _____

(b)(6)

Dated: 12-14-09

ZURICH AMERICAN INSURANCE COMPANY

By:

Title:

Vice President

IN WITNESS WHEREOF, the Parties have executed this Agreement or caused it to be executed by their duly authorized officers or representatives.

SIGNATORIES

Dated: 12/10/09

FEDERAL DEPOSIT INSURANCE CORPORATION
In Its Capacity as Receiver of IndyMac Bank, F.S.B.

By: _____

Title: Cowse

Dated: _____

ZURICH AMERICAN INSURANCE COMPANY

By: _____

Title: _____

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA)
) ss:
 COUNTY OF ARLINGTON)

On this 10th day of December 2009, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Richard Gill, personally known to me or proved to me on the basis of satisfactory evidence to be the Counsel of the FEDERAL DEPOSIT INSURANCE CORPORATION, the entity that executed the foregoing SETTLEMENT AGREEMENT AND RELEASE, and known to me to be the person who executed the foregoing SETTLEMENT AGREEMENT AND RELEASE on behalf of said entity, and acknowledged to me that such entity executed the same.

(b)(6)



NOTARY PUBLIC



Susan Schwartzbart
 NOTARY PUBLIC
 Commonwealth of Virginia
 Reg. #7029579
 My Commission Expires
 November 30, 2010

ACKNOWLEDGMENT

STATE OF MARYLAND)
) ss:
COUNTY OF BALTIMORE)

On this 14 day of December 2009, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Robert L Lawrence, personally known to me or proved to me on the basis of satisfactory evidence to be the Vice President of ZURICH AMERICAN INSURANCE COMPANY, the entity that executed the foregoing SETTLEMENT AGREEMENT AND RELEASE, and known to me to be the person who executed the foregoing SETTLEMENT AGREEMENT AND RELEASE on behalf of said entity, and acknowledged to me that such entity executed the same.

(b)(6)



[Redacted Signature Box]

NOTARY PUBLIC