

(b)(4)

SETTLEMENT AND RELEASE AGREEMENT

(b)(4) This Settlement and Release Agreement ("Agreement") is entered into by and between the Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank ("FDIC-R") and Arch Insurance Company ("Arch"), National Union Fire Insurance Company of Pittsburgh, PA, ("National Union"), Lloyd's Syndicate Nos. (b)(4) (b)(4) and (b)(4) and Wuerttembergische Versicherung A. G. (b)(4) as subscribers to the Lloyd's Policy No. (b)(4) ("Underwriters") (collectively the "Settling Defendants" or individually a "Settling Defendant"). The FDIC-R and the Settling Defendants may be referred to herein individually as "Party" and collectively as the "Parties."

RECITALS

WHEREAS:

Prior to September 25, 2008, Washington Mutual Bank ("WaMu" or the "Bank") was a depository institution with its corporate executive offices located in Seattle, Washington.

The Settling Defendants respectively issued the following insurance policies for the Policy Period incepting May 1, 2007 and expiring May 1, 2008:

(b)(4) 1) **Excess Policy**

Carrier: Arch
Policy Number: (b)(4)

(b)(4) 2) **Excess Policy**

Carrier: National Union
Policy Number: (b)(4)

(b)(4) 3) **Excess Policy**

Carriers: Underwriters
Policy Number: (b)(4)

These policies included Section 1A-Financial Institution Bond Coverage Part, and these policies are collectively referred to herein as the "2007 Bond." National Union also issued a fidelity bond incepting May 1, 2004 and expiring May 1, 2005, bond number [REDACTED] (the "2004 Bond").

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The Settling Defendants also respectively issued other fidelity bonds on which WaMu was an insured ("Other Fidelity Bonds").

On or about November 21, 2007, WaMu provided notice (the "Notice") to the Settling Defendants about losses allegedly incurred by WaMu that were allegedly caused by a fraud scheme perpetrated by CIP Mortgage Corporation, Coastal Capital, Thomas Kontogiannis, and others (collectively "CIP Mortgage") which scheme will be referred to in this Agreement as the "Fraud Scheme".

On September 25, 2008, the Office of Thrift Supervision closed WaMu, and pursuant to 12 U.S.C. § 1821(c), 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 WaMu, including those with respect to WaMu's assets.

Under the Second Amended and Restated Settlement Agreement dated February 7, 2011, by and among Washington Mutual, Inc., WMI Investment Corp., JPMorgan Chase Bank, N.A., Federal Deposit Insurance Corporation, in its corporate capacity and as FDIC-R, and the Official Committee of Unsecured Creditors agreed that the FDIC-R's property includes any and all claims, demands and causes of action against the Settling Defendants under the 2004 Bond, the 2007 Bond or Other Fidelity Bonds arising from harm or loss to WaMu which arose or was discovered, in whole or in part, on or prior to September 25, 2008, including but not limited to claims arising from the Fraud Scheme.

On or about July 18, 2008, WaMu submitted a sworn Proof of Loss (the "Proof of Loss") to the Settling Defendants seeking coverage under the 2007 Bond for the Fraud Scheme. Settling Defendants reserved all rights to the claims. WaMu also notified the Settling Defendants about other claims and submitted proofs of loss to the Settling Defendants relating to other claims, but the Parties are unaware that the FDIC-R is seeking coverage from the Settling Defendants for any claim concerning WaMu other than for the Fraud Scheme.

On April 14, 2014, the FDIC-R filed a complaint for money damages and declaratory judgment against Settling Defendants. The litigation is now pending in the United States District Court for the Western District of Washington at Seattle in *Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank v. Arch Insurance Company, et al*, No. 2:14-cv-00545-RSL (the "Action").

The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of further litigation. In doing so, the Parties make no admission of liability, and the positions taken by the Parties relating to the negotiation, performance or participation of this Agreement shall be without prejudice, precedential value or precedential effect, and shall not be used as a standard by which any other matter may be evaluated or judged.

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

SECTION I: Payment to the FDIC-R

A. As an essential covenant and condition to this Agreement, the Settling Defendants respectively and severally agree to pay the FDIC-R the sum of Seventeen Million Seven Hundred Fifty Thousand and 00/100 dollars (\$17,750,000.00) as follows:

Arch \$8,800,000.00 (Eight Million Eight Hundred Thousand Dollars)
National Union \$8,800,000.00 (Eight Million Eight Hundred Thousand Dollars)
Underwriters \$150,000.00 (One Hundred Fifty Thousand Dollars)

(respectively and severally, the "Settlement Payments").

B. Each Settling Defendant shall make its Settlement Payment to the FDIC-R either by check made payable to Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank by check drawn upon a depository institution acceptable to the FDIC-R or by direct wire transfer into the following account:

(b)(4) BANK: Federal Home Loan Bank of New York
(b)(4) ROUTING #: [REDACTED]
FOR CREDIT TO: FDIC National Liquidation Account
ACCOUNT #: [REDACTED]
New York Main Office
101 Park Avenue
New York, NY 10178-0599
212-681-6000
212-441-6890 Fax

(b)(4) OTHER BENEFICIARY INFORMATION (OBI):

1. Fund code: [REDACTED] - Asset No. [REDACTED]
2. Notify: William C. Smith - DRR Investigations (972) 761-2659
3. Washington Mutual Bank – Fidelity Bond Settlement

C. Each Settling Defendant shall make their respective Settlement Payments within 30 days of receipt of a fully executed copy of this Agreement. The Settling Defendants' liability to the FDIC-R for the Settlement Payments shall be several for their respective individual settlement payment amount only, and not joint. The failure of one or more Settling Defendants to make their individual settlement payment shall not nullify or otherwise impact the FDIC-R's release under Section III.A below as to any Settling Defendant who does timely make their individual payment and for whom the FDIC-R does not return the Settlement Payment pursuant to Section I.D below.

D. If the FDIC-R does not receive the Settlement Payments in full on or before the date determined by Section I.C above, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payments in full to:

1. Extend the period of time for the Settlement Payments through the date of payment at a rate calculated in accordance with 26 U.S.C § 6621(a)(2); or

2. Enforce this Agreement against any non-paying Settling Defendant, in which event the Settling Parties agree to jurisdiction in the United States District Court for the Western District of Washington. The Settling Parties also agree that the non-paying Settling Defendant shall pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or

3. Terminate the Agreement and institute an action on the FDIC-R's claims. The Settling Defendants agree to waive all statute of limitations defenses that would bar any of the FDIC-R's claims, to the extent that such defenses arise after the date this Agreement was fully executed. The Settling Defendants further agree to waive all objections, defenses, claims or counterclaims, and covenant and agree not to assert any objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed. In the event the FDIC-R elects to terminate the Agreement under this Section I.D.3, the FDIC-R agrees to return any and all portions of the Settlement Payments already paid to the FDIC-R to the Settling Defendant that made such payment(s); and/or

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

Any extension of time under Section I.D.1 for delivery of the Settlement Payments or acceptance of a portion of the Settlement Payments shall not prejudice the FDIC-R's rights to take

any of the actions set forth in Section I.D.2 through I.D.4 at any time prior to receipt of the Settlement Payments in full.

SECTION II: Stipulation of Dismissal

Within ten (10) business days of the FDIC-R's receipt of the Settlement Payments due under Section I.A., the FDIC-R shall file a stipulation of dismissal of the Action with prejudice, executed by the attorneys for all Parties hereto, in the form attached hereto as Exhibit A.

SECTION III: Releases

A. The FDIC-R's Release of Settling Defendants.

Upon receipt of the Settlement Payments, and except as provided in Section III.D. below, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the paying Settling Defendant, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, successors, and assigns (collectively, "the Released Parties"), from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, that (i) arise under the 2007 Bond, the 2004 Bond, or the Other Fidelity Bonds; and/or (ii) arise from or relate to the Notice, CIP Mortgage, the Fraud Scheme, the Proof of Loss, the Action, and/or the paying Settling Defendant's (and their claims-handling representative's) handling, investigation, and adjustment of same. The FDIC-R agrees that any right that it has or may have to seek insurance coverage under (i) the 2007 Bond, the 2004 Bond or the Other Fidelity Bonds and/or (ii) for the Notice, CIP Mortgage, the Fraud Scheme, the Proof of Loss and/or the Action is released and extinguished.

B. Settling Defendants' Release of the FDIC-R.

Effective simultaneously with the release granted in Section III.A. above, the Settling Defendants, for themselves, and their successors and assigns, and on behalf of their parents,

subsidiaries, affiliates and reinsurers, and their respective agents, representatives, successors and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, agents, attorneys, 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 (i) arise from claims under the 2007 Bond, the 2004 Bond, or the Other Fidelity Bonds and/or (ii) arise from or relate to the Notice, CIP Mortgage, the Fraud Scheme, the Proof of Loss, and/or the Action. The release provided in the preceding sentence is limited to claims arising from the 2007 Bond, the 2004 Bond, or the Other Fidelity Bonds and does not release any claims arising from any other policy issued by any Settling Defendant.

C. Settling Defendants' Waiver of Subrogation.

Settling Defendants agree to and hereby do irrevocably waive any rights of subrogation they may have that arise from the 2007 Bond, the 2004 Bond, or the Other Fidelity Bonds and relate to the Notice, WaMu, CIP Mortgage, the Fraud Scheme, the Proof of Loss, and/or the Action ("Rights of Recovery"). Settling Defendants agree that the FDIC-R may retain, sell, transfer, or otherwise dispose of such Rights of Recovery as it sees fit, in its sole discretion, and retain the proceeds (if any) thereof. Any such present or future retention or disposition of such Rights of Recovery shall not modify, alter, or otherwise affect the consideration due under this Agreement or the amount of the Settlement Payments to be paid by the Settling Defendants.

D. Express Exceptions to 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 rights, claims, or causes of action:

- a. against 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 the FDIC-R, WaMu, other financial institutions, or any other person or entity: including without limitation any such claims acquired by the FDIC-R as successor in interest to the Bank or any person or entity other than the Bank;
- b. under or relating to any policy of insurance issued by the Settling Defendants (or any other insurer) other than (i) claims that arise under the 2007 Bond, 2004 Bond, and the Other Fidelity Bonds; and/or (ii) claims that arise from or relate to the Notice, CIP Mortgage, the Fraud Scheme, the Proof of Loss, the Action, and/or the Settling Defendant's (and their claims-handling representative's) handling, investigation, and adjustment of the same, which are expressly released herein.
- c. 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 diminishing 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 or entity.

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, agency or instrumentality of the United States as defined by 18 U.S.C. § 6.

In addition, the FDIC-R specifically reserves the right to seek court ordered restitution against any person or entity other than the Settling Defendants pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 et seq., if appropriate.

SECTION IV: Representations and Acknowledgements

A. Cooperation. The FDIC-R acknowledges and agrees that the FDIC-R will respond to any such properly served subpoena concerning this Agreement and will not take a position inconsistent with this Agreement (including, specifically, the sixth Whereas clause concerning the FDIC-R's property).

B. Authorized Signatories. Each of the undersigned persons represents and warrants that he or she is authorized to sign this Agreement on behalf of the respective Party on behalf of whom he or she is signing, and that he or she has the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective heirs, executors, administrators, representatives, successors, and assigns.

C. 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 the Party by its counsel.

D. 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 Action and to otherwise perform the terms of this Agreement.

D. 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, and 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 except to enforce its terms.

E. 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. Signatures delivered via email shall be treated as original signatures for all purposes.

F. Choice of Law. This Agreement shall be interpreted, construed, and enforced according to applicable federal law, or in its absence, the laws of the State of Washington.

G. Entire Agreement and Amendments. 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. 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).

H. Interpretation and Construction. Each of the Parties is sophisticated, has had an adequate opportunity to read and review (and to consider with its own retained counsel), the effect of the language of this Agreement, has agreed to its terms, and has participated in the drafting of all provisions of this Agreement. The Parties agree that in any interpretation or construction of this Agreement, each Party will be deemed to have equally participated in the negotiation and

drafting of the Agreement and each of its parts, and the rule of *contra proferentem*, or construction against the drafter, shall not apply to any Party.

I. Titles 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. Confidentiality. The Settling Defendants agree that, as between the Settling Defendants, the existence and terms of this Agreement are strictly confidential, and that they will not disclose nor authorize the disclosure of the existence of this Agreement or the terms thereof to any third party, except: (a) to a legal or tax consulting person or service as necessary for the provision of such services, after advising that the existence and terms of the settlement are confidential; (b) as required under compulsion of valid subpoena or pursuant to court order; or (c) as necessary to report to auditors, reinsurers or regulators. The Parties acknowledge that the FDIC-R will disclose this Agreement pursuant to the Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirements.

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

If to FDIC-R:

(b)(6) Andrew R. Shoemaker
Shoemaker Ghiselli & Schwartz, LLC
1811 Pearl Street
Boulder, CO 80302
Email: [REDACTED]

If to Arch:

(b)(6) Kim W. West
101 Second Street, 24th Floor
San Francisco, CA 94105
Email: [REDACTED]

(b)(6)

Jeremy Moen
Vice President
Executive Assurance Claims - Arch Insurance Group
PO Box 542033
Omaha, NE 68154
Email: [redacted]

If to National Union:

(b)(6)

Everett W. Jack Jr.
Davis Wright Tremain LLP
1300 SW Fifth Ave., Suite 2300
Portland, OR 97201
Email: [redacted]

If to Underwriters:

(b)(6)

Ralph A. Guirgis
Clyde & Co US LLP
2020 Main Street, Suite 1100
Irvine, California 92614
E-mail: [redacted]

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

Date: 7/26/2018

**FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER FOR
WASHINGTON MUTUAL BANK**

(b)(6)

BY: [redacted]

TITLE: Counsel

PRINT NAME: John V. Church

Date: 07/17/18

ARCH INSURANCE COMPANY

BY: _____

TITLE: _____

PRINT NAME: _____

VP, EA Claims

Jeremy Moen

(b)(6)

Date: 7/31/18

AIG Claims, Inc., as authorized representative
of NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA

BY: _____

TITLE: AUP

PRINT NAME: _____

Maureen Conboy

Underwriters

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

(b)(6)

ARCH INSURANCE COMPANY

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

**AIG Claims, Inc., as authorized representative
of NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA**

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

Underwriters

Date: 30th July 2018

BY: _____

TITLE: CLAIMS MANAGER LLOYDS SYN. 2987

PRINT NAME: DAVID GILLIS

(b)(6)

EXHIBIT A

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

**FEDERAL DEPOSIT INSURANCE)
CORPORATION, AS RECEIVER FOR)
WASHINGTON MUTUAL BANK)**

Plaintiff,

v.

ARCH INSURANCE COMPANY, et al.,)

Defendants.)

CIVIL ACTION NO. C14-0545RSL

STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff Federal Deposit Insurance Corporation, as Receiver for Washington Mutual Bank, ("FDIC-R"), and Defendants Arch Insurance Company, National Union Fire Insurance Company of Pittsburgh, PA., Lloyd's Syndicate Nos. [redacted], [redacted] and [redacted] and Wuerttembergische Versicherung A. G. [redacted] as subscribers to the Lloyd's Policy No. [redacted] (collectively with FDIC-R, the "Parties"), by and through their respective undersigned attorneys, and pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), hereby stipulate to the dismissal of this action with prejudice, with the Parties to each bear their own attorney's fees, costs, and expenses incurred in this action.

Dated this ___ day of ___, 2018