

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the following undersigned parties: The Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank (“FDIC-R”), and United General Title Insurance Company (the “Settling Defendant”) (individually, the FDIC-R and the Settling Defendant may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to September 25, 2008, Washington Mutual Bank (“Bank”) was a depository institution organized and existing under the laws of the State of Nevada.

On September 25, 2008, the Office of Thrift Supervision closed the Bank 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 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 third parties who caused damage to the Bank.

On September 22, 2011, the FDIC-R filed a complaint for money damages against, among others, the Settling Defendant. Those claims for damages are now pending in the United States District Court for the Eastern District of New York in the action entitled *Federal Deposit Insurance Corporation as Receiver of Washington Mutual Bank v. United General Title Insurance Company, et al.*, 11-CV-4610 (ENV) (RML) (the “Action”). The Settling Defendant has denied liability in the Action.

The undersigned 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 undersigned Parties agree, each with the other, as follows:

SECTION I: Payment to FDIC-R

A. As an essential covenant and condition to this Agreement, on or before thirty (30) calendar days following the date the FDIC-R executes this Agreement, the Settling Defendant agrees to pay the FDIC-R the sum of Seventy One Thousand Dollars (\$71,000.00) (“the Settlement Payment”).

B. The Settling Defendant shall deliver the Settlement Payment to the FDIC-R by direct wire transfer into the following account:

BANK: Federal Home Loan Bank of New York

(b)(4) ROUTING #:

FOR CREDIT TO: FDIC National Liquidation Account

(b)(4) ACCOUNT #:

OBI: FIN 10015; Washington Mutual Bank, Henderson, NV

CONTACT: Aaron Forester; 703-516-5056; Professional Liability Unit

(b)(4) (37100); DIF Fund; Asset no.

In the event that the Settlement Payment is not delivered to the FDIC-R (or its counsel) by the aforementioned agreed-upon date, interest shall accrue on all unpaid amounts at the rate of 5% per annum from such date until the date of payment.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection A above, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:

1. Extend the period of time for the Settlement Payment, including interest accruing from the date determined by subsection A above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(2); or

2. Enforce this Agreement, in which event the Settling Defendant agrees to jurisdiction in the United States District Court for the Eastern District of New York and to 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, move to vacate any dismissal order, to which

the Settling Defendant agrees to consent, and re-institute an action on the FDIC-R's claims. The Settling Defendant further agrees to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims, except as to any claim(s) which are or were barred by the relevant statute of limitations at the time the Action was commenced; and/or

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

Any extension of time under Section I.C.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.C.2 through I.C.4 at any time prior to receipt of the Settlement Payment (including all accrued interest) in full.

SECTION II: Stipulation and Dismissal

Within ten (10) business days after the latter of (1) full execution of this Agreement by all of the Parties, and (2) receipt of the Settlement Payment, plus accrued interest, if any, the FDIC-R shall file a stipulation of dismissal with prejudice of the Settling Defendant, executed by the attorneys for all Parties hereto, in the form attached hereto as Exhibit A, in the Action.

SECTION III: Releases

A. The FDIC-R's Release.

Upon receipt of the Settlement Payment in full and except as provided in Section III.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Settling Defendant, its parents, subsidiaries, affiliates and reinsurers and their respective trustees, administrators, representatives, employees, officers, directors, attorneys, 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 causes of action alleged in the Action.

B. The Settling Defendant's Release.

Effective simultaneously with the release granted in Section III.A. above, the Settling Defendant, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates, reinsurers, trustees, administrators, employees, directors, representatives, successors,

and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, representatives, attorneys, 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, the causes of action alleged in the Action or the bringing of the Action.

C. 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 Defendant 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; and

b. Against any person or entity not expressly released by the FDIC-R in this Agreement, including but not limited to each of the other defendants named in the Action.

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. In addition, the FDIC-R specifically reserves the right to seek court-ordered restitution pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322

and 3663 et. seq., if appropriate.

SECTION IV: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that Settling Defendant is or was a shareholder of the Bank or its holding company and by virtue thereof is 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 Federal Deposit Insurance Corporation in any capacity or 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 in any capacity, the United States government, or any agency or department of the United States government in connection with the Bank, its conservatorship, or receivership, Settling Defendant hereby knowingly assigns to the FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, or other distributions, or proceeds

SECTION V: 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 undersigned Parties and their respective heirs, executors, trustees, administrators, representatives, successors and assigns.

B. 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 or her counsel.

SECTION VI: Reasonable Cooperation

A. 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 as to the Settling Defendant and to

otherwise perform the terms of this Agreement.

SECTION VII: 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, that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that the Agreement 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. Signatures and acknowledgments appearing hereon transmitted via electronic means or facsimile shall be deemed original and enforceable as such.

C. 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 New York.

D. 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:

Alan T. Gallanty
Kantor Davidoff Mandelker Twomey Gallanty & Olenick, P.C.
415 Madison Avenue, 16th Floor
New York, New York 10017
(T) 212-682-8383

(b)(6)

and

Aaron M. Forester
Counsel
Professional Liability Unit
Federal Deposit Insurance Corporation
3501 Fairfax Drive, Room VS-B-7066
Arlington, Virginia 22226-3500
(T) 703-516-5056

(b)(6)

If to the Settling Defendant:

Michael J. Schwarz
DelBello Donnellan Weingarten Wise & Wiederkehr, LLP
One North Lexington Avenue, 11th Floor
White Plains, New York 10601
(T) 914-681-0200

(b)(6)

and

G. Randolph Comstock
Claims Center - Northwest Region
First American Title Insurance Company
8310 South Valley Highway, Suite 130
Englewood, CO 80112
(T) 720-264-8700

(b)(6)

E. 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).

F. 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.

G. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the Federal Deposit Insurance

Corporation's applicable policies, procedures, and other legal requirements.

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.

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR WASHINGTON MUTUAL BANK

(b)(6)

Date: Dec 9, 2014

BY:
TITLE: Counsel
PRINT NAME: Aaron M. Forester

Date: _____

UNITED GENERAL TITLE INSURANCE COMPANY

BY: _____
TITLE:
PRINT NAME: G. Randolph Comstock

Corporation's applicable policies, procedures, and other legal requirements.

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.

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR WASHINGTON MUTUAL BANK

Date: _____

BY: _____
TITLE: Counsel
PRINT NAME: Aaron M. Forester

Date: 12/15/2014

UNITED GENERAL TITLE INSURANCE COMPANY

(b)(6)

BY:
TITLE: VICE PRESIDENT; Sr. CLAIMS COUNSEL
PRINT NAME: G. Randolph Comstock

Commonwealth of
STATE OF Virginia)
)
COUNTY OF Arlington)

On the 9th day of December in the year 2014 before me, the undersigned, a notary public in and for said state, personally appeared Aaron M. Forester, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public (b)(6)

STATE OF _____)
)
COUNTY OF _____)



On the ___ day of December in the year 2014 before me, the undersigned, a notary public in and for said state, personally appeared G. Randolph Comstock, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

Exhibit "A"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FEDERAL DEPOSIT INSURANCE CORPORATION, as
Receiver for WASHINGTON MUTUAL BANK,

Plaintiff,

-against-

UNITED GENERAL TITLE INSURANCE COMPANY,
CLEAR VIEW ABSTRACT LLC, TED DOUMAZIOS,
and THOMAS F. CUSACK III,

Defendants.

Case No. 11-CV-04610 (ENV)
(RML)

Stipulation of Dismissal

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned attorneys for the parties herein, that whereas no party hereto is an infant, incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, that the above-captioned action is hereby dismissed with prejudice as against Defendant United General Title Insurance Company only, pursuant to FRCP 41(a)(1)(A)(ii), without costs to any one party against the other. This stipulation may be executed in one or more counterparts and may be filed with the Clerk of Court without further notice.

Dated: White Plains, New York
December __, 2014

Kantor, Davidoff, Mandelker, Twomey
Gallantry & Olenick, P.C.

DeBello, Donnellan, Weingarten
Wise & Wiederkehr, LLP

Alan T. Gallanty, Esq.
415 Madison Ave., 16th Floor
New York, New York 10017
(212) 682-8383
Attorneys for Plaintiff

Michael J. Schwarz, Esq.
1 North Lexington Avenue
White Plains, New York 10601
(914) 681-0200
Attorneys for Defendant United General Title
Insurance Company

Thomas F. Cusack, III, *pro se*
