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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

**FEDERAL DEPOSIT  
INSURANCE CORPORATION,  
AS RECEIVER FOR FIRST  
NATIONAL BANK OF  
NEVADA,**

**Plaintiff,**

**v.**

**GARY A. DORRIS, an  
individual; and PHILIP A.  
LAMB, an individual,**

**Defendants.**

**Case No. 2:11-cv-01652-PHX-GMS**

**JOINT MOTION FOR ENTRY  
OF JUDGMENT**

This case arises out of the failure of First National Bank of Nevada. The Federal Deposit Insurance Corporation, as receiver of First National Bank of Nevada (“FDIC Receiver”) has filed herein its complaint alleging breaches of fiduciary duty and acts of negligence and gross negligence in connection with the defendants’ roles as officers and directors of First National Bank of Arizona and First National Bank of Nevada (“Complaint”).<sup>1</sup>

Defendants have filed an answer herein in which they deny the allegations in the Complaint.

Lloyds of London Catlin Syndicate 2003 (“Catlin”) has denied coverage, refused to defend, to advance defense costs, to indemnify, or to consider settlement of the claims brought against defendants in this action. Plaintiff and defendants have therefore entered into a Settlement Agreement, Assignment, Release, and Covenant Not to Execute under the authority of *Damron v. Sledge*, 105 Ariz. 151, 460 P.2d 997 (1969), and related cases. Even though in their answer defendants have denied any liability to FDIC Receiver, defendants consent to the entry of the judgments described below for the purpose of compromising disputed claims.

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<sup>1</sup> First National Bank of Arizona was merged into First National Bank of Nevada on or about June 30, 2008, less than thirty days before First National Bank of Nevada failed.

Pursuant to the parties' settlement agreement, FDIC Receiver, Philip A. Lamb, and Gary A. Dorris have stipulated to entry of the following several judgments (both such judgments hereinafter collectively "Final Judgment"): a judgment in the amount of TWENTY MILLION DOLLARS (\$20,000,000) (plus post-judgment interest) against defendant Philip A. Lamb, and a judgment in the amount of TWENTY MILLION DOLLARS (\$20,000,000) (plus post-judgment interest) against defendant Gary A. Dorris. FDIC Receiver, Philip A. Lamb, and Gary A. Dorris agree that the amounts stipulated in the Final Judgments are reasonable calculations of what a jury might reasonably award plaintiff as damages based on the allegations of the Complaint.

As part of the parties' settlement, defendants have agreed that once the Final Judgment is entered herein, defendants will assign to FDIC Receiver all of defendants' rights, claims, and causes of action against Catlin and its agents, brokers, employees, officers, and all other persons or entities relating to or arising out of (i) any applicable insurance policy or policies, (ii) the claims made by FDIC Receiver against certain former directors and/or officers of FNB Arizona and FNB Nevada up through and including July 25, 2008, and/or (iii) this lawsuit (all as more fully described in the parties' settlement agreement) ("Assigned Claims"). In consideration for

these assignments, and effective after such assignments have been delivered to plaintiff, said plaintiff has agreed not to take any action of any kind to assign, document, record, register as a lien, or collect against defendants, the Final Judgment; save and except for each of the defendant's assets consisting of any and all right, title, and interest in the Catlin Policy, together with all of their respective rights, claims, and causes of action in the Assigned Claims. FDIC Receiver will thereafter dismiss this suit with prejudice.

Because Catlin has denied coverage, it cannot intervene in this lawsuit to challenge the terms of the stipulated judgment. *Mora v. Phoenix Indem. Ins. Co.*, 196 Ariz. 315, 319-20, 996 P.2d 116, 120-21 (App. 1999)(when an insurer denies coverage, it asserts that the policy does not apply to the litigation and therefore “no policy reason justifies allowing it to intervene and help determine the outcome of the litigation”). Indeed, Catlin is not entitled to notice of the *Damron* settlement. *Holt v. Utica Mut. Ins. Co.*, 157 Ariz. 477, 483, 759 P.2d 623 (1988); *State Farm Mut. Auto. Ins. Co. v. Paynter*, 122 Ariz. 198, 202, 593 P.2d 948, 952 (App. 1979).<sup>2</sup> Catlin can assert any objections to the judgment in response to plaintiff's effort to

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<sup>2</sup> Defendants and others provided Catlin with timely notice of the director and officer claims being made by FDIC Receiver in connection with First National Bank of Arizona and First National Bank of Nevada. Defendants and others gave Catlin at least two opportunities to provide a defense to the FDIC Receiver's claims. On both occasions, Catlin rejected the insureds' request for coverage and a defense, and reaffirmed its denial of coverage.

collect the judgment. *Parking Concepts, Inc. v. Tenney*, 207 Ariz. 19, 22 fn. 3, 83 P.3d 19, 22 fn. 3 (2004). This Court can, therefore, enter the stipulated Final Judgment in the form attached. The proposed Final Judgment is a complete and final judgment addressing all claims against all defendants. Plaintiff and the Defendants, by joining in this motion, agree to the form of the accompanying judgment.

The parties stipulate to the entry of judgment on the following terms:

(1) In favor of plaintiff and against defendant Gary A. Dorris on plaintiff's first and second claims for relief set forth in the Complaint, in the amount of TWENTY MILLION DOLLARS (\$20,000,000), to bear post-judgment interest (beginning from the date judgment is entered until payment) pursuant to 28 U.S.C. § 1961(a).

(2) In favor of plaintiff and against defendant Philip A. Lamb on plaintiff's first and second claims for relief set forth in the Complaint, in the amount of TWENTY MILLION DOLLARS (\$20,000,000), to bear post-judgment interest (beginning from the date judgment is entered until payment) pursuant to 28 U.S.C. § 1961(a).

(3) The judgments against the defendants are several and no amount recovered by plaintiff on the judgment against one of the defendants shall be credited on the judgment against the other defendant.

(4) Plaintiff will bear the costs of court.

Respectfully submitted September 2, 2011.

By: /s/ John M. Brown

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CORPORATION**

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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

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**GARY A. DORRIS, an  
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**FINAL JUDGMENT**

On this date the Court considered the Joint Motion for Entry of Judgment (“Motion”) filed herein by Plaintiff and Defendants. Having considered the pleadings and evidence before the Court, the Court finds as follows:

1. The Federal Deposit Insurance Corporation, as receiver of First National Bank of Nevada (“FDIC Receiver”), has filed herein its complaint alleging breaches of fiduciary duty and acts of negligence and gross negligence in connection with Defendants’ roles as officers and directors of

First National Bank of Arizona and First National Bank of Nevada  
("Complaint").

2. Defendants have filed an answer herein in which they deny the allegations in the Complaint.

3. Lloyds of London Catlin Syndicate 2003 ("Catlin") has denied coverage, refused to defend, to advance defense costs, to indemnify, or to consider settlement of the claims brought against Defendants in this action.

4. Plaintiff and Defendants have entered into a settlement agreement pursuant to which, the Defendants' answer notwithstanding, the Defendants consent to the entry of the following several judgments for the purpose of compromising disputed claims: a judgment in the amount of TWENTY MILLION DOLLARS (\$20,000,000) (plus post-judgment interest) against defendant Philip A. Lamb, and a judgment in the amount of TWENTY MILLION DOLLARS (\$20,000,000) (plus post-judgment interest) against defendant Gary A. Dorris (such judgments are hereinafter collectively referred to as the "Stipulated Judgments").

5. The amounts of the Stipulated Judgments are reasonable calculations of what a jury might reasonably award Plaintiff as damages based on the allegations of the Complaint.

6. Further, as part of the parties' settlement, Defendants have agreed that once the Stipulated Judgments are entered herein, Defendants will assign to Plaintiff all of their rights, claims, and causes of action against Catlin and its agents, brokers, employees, officers, and all other persons or entities relating to or arising out of (i) any applicable insurance policy or policies, (ii) the claims made by FDIC Receiver against certain former directors and/or officers of First National Bank of Arizona and First National Bank of Nevada up through and including July 25, 2008, and/or (iii) this lawsuit (all as more fully described in the parties' settlement agreement) ("Assigned Claims"). In consideration for these assignments, and effective after such assignments have been delivered to Plaintiff, said Plaintiff has agreed not to take any action of any kind to assign, document, record, register as a lien, or collect against the Defendants, the Stipulated Judgments; save and except for each of the Defendant's assets consisting of any and all right, title and interest in the Catlin Policy together with all of their respective rights, claims, and causes of action in the Assigned Claims ("FDIC Covenant"). Plaintiff will thereafter dismiss this suit, which includes all of the Plaintiff's claims against Defendants related to their conduct as former directors and/or officers of First National Bank of Arizona

and First National Bank of Nevada up through and including July 25, 2008, with prejudice.

7. The parties' settlement is reasonable.

8. The Stipulated Judgments will be complete and final judgments addressing all claims against all defendants.

9. The Motion is well taken and should be GRANTED.

IT IS THEREFORE ORDERED and ADJUDGED as follows:

A. Judgment is entered in this matter in favor of Plaintiff against Defendant Gary A. Dorris on Plaintiff's first and second claims for relief set forth in the Complaint, in the amount of TWENTY MILLION DOLLARS (\$20,000,000), to bear post-judgment interest (beginning from the date this judgment is entered until payment) pursuant to 28 U.S.C. § 1961(a).

B. Judgment is entered in this matter in favor of Plaintiff against Defendant Philip A. Lamb on Plaintiff's first and second claims for relief set forth in the Complaint, in the amount of TWENTY MILLION DOLLARS (\$20,000,000), to bear post-judgment interest (beginning from the date this judgment is entered until payment) pursuant to 28 U.S.C. § 1961(a).

C. The judgments against Defendants are several, and no amount recovered by Plaintiff on the judgment against one of the Defendants shall be credited on the Judgment against the other Defendant.

D. Plaintiff FDIC shall not assign or, upon the FDIC Covenant becoming effective, execute on the Stipulated Judgment except as to each of the Defendant's assets consisting of any and all right, title and interest in the Catlin Policy together with all of the Defendants' respective rights, claims, and causes of action in the Assigned Claims.

E. Upon the assignment of the Assigned Claims to Plaintiff by Defendants, the FDIC Covenant shall become effective.

F. Within ten (10) days after the FDIC Covenant becomes effective, Plaintiff shall file herein its motion for order of dismissal of this case with prejudice.

G. This Judgment is subject to the further jurisdiction of this Court pending the Plaintiff's resolution of the Assigned Claims against Catlin.

H. Plaintiff shall pay all court costs.

SIGNED and ENTERED this \_\_\_\_ day of \_\_\_\_\_, 2011.

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United States District Judge