



ORDERED in the Southern District of Florida on May 12, 2014.

A handwritten signature in black ink, appearing to read "Erik P. Kimball".

Erik P. Kimball, Judge  
United States Bankruptcy Court

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

IN RE: Case No.: 12-30081-BKC-EPK  
CLSF III IV, Inc., *et al.*, Chapter 7  
Debtor. (Substantively Consolidated)

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**ORDER GRANTING TRUSTEE'S MOTION TO APPROVE MEDIATED  
SETTLEMENT AGREEMENT BETWEEN (I) TRUSTEE; AND (II) FIRST POLICY  
TRUST, AN OHIO BUSINESS TRUST, WITH RESPECT  
TO ADVERSARY NO.: 13-01727-EPK**

**THIS CASE** having come before the Court upon the *Trustee's Motion to Approve Mediated Settlement Agreement Between (I) Trustee; and (II) First Policy Trust, an Ohio Business Trust, With Respect to Adversary No.: 13-01727-EPK* (the "Motion") [ECF No. 748]. The Court, having considered the Motion, the Court file and the *Mediated Settlement Agreement* (the "Settlement Agreement") attached to the Motion as Exhibit "A," having noted that no objections to the Motion were filed as evidenced by the *Certificate of No Response or Settlement and Request for Entry of Order* filed on May 9, 2014 [ECF No. 785], and being otherwise fully advised in the premises, does thereupon

1. The Motion is **GRANTED**.
2. The Settlement Agreement<sup>1</sup> is **APPROVED** in its entirety.
3. The Trustee shall have the exclusive right to market and sell the Rosenberg Policy, to the highest and best bidder for cash, subject to the sale requirements of the Settlement Agreement.

4. First Policy Trust (“First Policy”) shall, on or before 28 days after execution of the Settlement Agreement (but sooner if in First Policy’s possession), provide to the Trustee (to the extent it has them) any and all documents relating to the Rosenberg Policy, including but not limited to the following: (a) documentation showing that First Policy is currently recognized by the insurer of the Rosenberg Policy as the legal owner of the Rosenberg Policy, (b) any documentation or information that it has regarding the health or medical conditions of the insured of the Rosenberg Policy, (c) any life expectancy reports from any source obtained for the Rosenberg Policy, (d) any medical records relating to the insured under the Rosenberg Policy, (e) all HIPPA forms and other documentation which would allow a release of medical records of the insured of the Rosenberg Policy, (f) any and all documentation relating to the purchase of the Rosenberg Policy by First Policy, (g) all correspondence with the insurer of the Rosenberg Policy and documentation received, including but not limited to any annual statements, premium payment history, record of premium payments made, (h) any other documentation relating to the Rosenberg Policy, (h) a copy of all transaction documents relating to the initial or subsequent change of ownership or beneficiary, and (i) a collateral assignment of the Rosenberg Policy in favor of the Trustee pending sale. First Policy shall immediately, upon execution of the Settlement Agreement by all parties, provide documentation sufficient to establish that the Rosenberg Policy is in full force, not in grace or lapse, and that all required premiums have been

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed in the Motion.

paid. First Policy shall immediately execute any reasonable documentation that the Trustee requests First Policy to execute that would permit the Trustee or her advisors to communicate and obtain documentation from the insured or the insurer of the Rosenberg Policy, including the execution of a Third Party Authorization in a form satisfactory to the insurer of the Rosenberg Policy.

5. The deadline for the Trustee to file a motion to approve a sale of the Rosenberg Policy with the Bankruptcy Court shall be 180 days after execution of the Settlement Agreement by all parties (the "Sale Deadline"). The closing shall take place when the insurer transfers the legal title to the Rosenberg Policy to the purchaser (the "Closing" or "Closing Date").

6. The Trustee shall not sell the Rosenberg Policy for an amount less than the First Policy Trust Reimbursement Amount (as defined in the Settlement Agreement).

7. In the event the Trustee sells the Rosenberg Policy in a transaction which meets all the requirements of the Settlement Agreement for such a sale, (a "Qualified Third Party Sale"), then at the Closing of such Qualified Third Party Sale, First Policy shall execute such documentation as is required by the insurer on the Rosenberg Policy to transfer the ownership and beneficiary status to the purchaser or its designees. Prior to such Closing, ownership of the Rosenberg Policy, subject to the terms of the Settlement Agreement, shall remain status quo.

8. In the event the Trustee closes on a Qualified Third Party Sale, at the Closing of such sale (and any Court order approving such sale shall so provide), the Trustee shall disburse to First Policy the sum of \$875,000 (the "First Policy Reimbursement Amount").

9. In the event the Trustee is unable to close on a Qualified Third Party Sale of the Rosenberg Policy, then First Policy shall buy from the Trustee all of the estate's right, title, and interest in and to the Rosenberg Policy for a total sum equal to any premium payments made directly by the Trustee or reimbursed to First Policy by the Trustee after the date of the

Settlement Agreement.

10. Upon the entry of this Order approving the Settlement Agreement, then First Policy shall be entitled to file a Proof of Claim in this bankruptcy case in the sum of \$320,153, which shall be allowed as a timely general unsecured claim (“GUC Claim”). In the event that the Trustee is unable to file a motion to sell the Rosenberg Policy by the Sale Deadline pursuant to the terms of the Settlement Agreement, and First Policy retains legal title to the Rosenberg Policy, then the GUC Claim shall be withdrawn.

11. First Policy shall continue to timely pay all premiums at a level necessary to keep the Rosenberg Policy in full force and effect, and the Trustee shall promptly reimburse such premium payments made after the date of the Settlement Agreement to First Policy. First Policy shall provide the Trustee with any and all notices received with regard to premiums due on the Rosenberg Policy from the date of the Settlement Agreement until the Closing Date, with such notices to be provided within 3 days of receipt via email to the Trustee at [dmenotte@gmail.com](mailto:dmenotte@gmail.com).

12. In the event the insured on the Rosenberg Policy dies, the Trustee shall be entitled to the receipt of the full death benefit. In the event that the insured dies prior to the Sale Deadline, the Trustee shall pay First Policy out of the death benefit proceeds the sum of \$1,195,153, representing out of pocket payments made by First Policy with regard to the purchase of the Rosenberg Policy, plus interest at 10% per annum dating back to the date such payments were made. A schedule of these payments is attached to the Motion as Exhibit “B.”

13. The Parties shall jointly request that the pretrial conference in the Adversary Proceeding and any applicable deadlines relating to the Trustee’s pending Motion for Summary Judgment be continued for a period of sixty days to allow the Bankruptcy Court to consider approval of the Settlement Agreement.

14. Upon the full compliance by the Parties of the Settlement Agreement and provided the Settlement Agreement is approved by the Bankruptcy Court, the Trustee shall cause the dismissal of the Adversary Proceeding, subject to compliance with the terms of the Settlement Agreement and First Policy, and its members, shareholders, agents and managers shall be automatically, fully and finally released from all claims, causes of action, damages, costs, losses, expenses, and demands of any kind or nature whatsoever, known or unknown, arising in, under, or related to the Rosenberg Policy and the Trustee shall automatically be released by First Policy to the same degree and scope, except that such releases shall not act to release any of the obligations under the Settlement Agreement.

15. The Parties are authorized to execute all documents and take all actions necessary to effectuate the settlement.

16. The Court retains jurisdiction to enforce the terms of the Settlement Agreement between the Parties, and the Parties are directed to comply with the terms thereof.

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Submitted by:

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Copy furnished to:

Leslie Gern Cloyd, Esq.  
*(Attorney Cloyd is directed to serve a conformed copy of this Order upon all interested parties, and to file a Certificate of Service with the Court).*