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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

MID CENTURY INSURANCE CO.,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

No. C 10-3228 SC

**STIPULATION AND AGREEMENT OF  
 COMPROMISE AND [PROPOSED]  
 ORDER**

IT IS HEREBY STIPULATED by and between the undersigned plaintiff, Mid Century Insurance Company, and the United States of America, by and through their respective attorneys, as follows:

WHEREAS, plaintiff filed the above-captioned action under the Federal Tort Claims Act, 28 U.S.C. §§ 2671 *et seq.*;

STIPULATION AND AGREEMENT OF COMPROMISE AND [PROPOSED] ORDER  
 No. C 10-3228 SC

1 WHEREAS, plaintiff and defendant wish to avoid any further litigation and controversy  
2 and to settle and compromise fully any and all claims and issues that have been raised, or could  
3 have been raised in this action, which have transpired prior to the execution of this Agreement;

4 WHEREAS, plaintiff represents that it submitted an administrative claim with the United  
5 States Postal Service dated October 27, 2009, for claim number 099 SUB 1014788153-1 (USPS  
6 File No. TC200949005);

7 WHEREAS, plaintiff represents that it provided insurance coverage to Javier Sanchez,  
8 insuring his 2002 Toyota Land Cruiser, California License 5ANK918, on or about August 10,  
9 2009; and

10 NOW, THEREFORE, in consideration of the mutual promises contained in this  
11 Agreement, and other good and valuable consideration, receipt of which is hereby acknowledged,  
12 the parties agree as follows:

13 1. The parties hereby agree to settle and compromise each and every claim of any  
14 kind, whether known or unknown, arising directly or indirectly from the acts or omissions that  
15 gave rise to *Mid Century Insurance Co. v. United States of America*, United States District Court  
16 for the Northern District of California Case Number C10-3228 SC (the "Lawsuit"), under the  
17 terms and conditions set forth herein.

18 2. The United States of America agrees to pay the sum of Three Hundred Fifty  
19 Dollars and Zero Cents (\$350.00) (the "Settlement Amount"), which sum shall be in full  
20 settlement and satisfaction of any and all claims, demands, rights, and causes of action of  
21 whatsoever kind and nature, whether known or unknown, foreseen or unforeseen, for damage to  
22 property arising from the same subject matter that gave rise to the Lawsuit, for which plaintiff or  
23 its guardians, heirs, executors, administrators, or assigns, and each of them, now have or may  
24 hereafter acquire against the United States of America, its agencies, agents, servants, and  
25 employees.

26 3. Plaintiff and its guardians, heirs, executors, administrators, and assigns hereby  
27 agree to accept the Settlement Amount in full settlement and satisfaction of any and all claims,  
28 demands, rights, and causes of action of whatsoever kind and nature, whether known or

1 unknown, foreseen or unforeseen, for damage to property arising from the same subject matter  
2 that gave rise to the Lawsuit, for which plaintiff or its heirs, executors, administrators, or assigns,  
3 and each of them, now have or may hereafter acquire against the United States of America, its  
4 agencies, agents, servants, and employees. Plaintiff and its guardians, heirs, executors,  
5 administrators, or assigns further agree to reimburse, indemnify, and hold harmless the United  
6 States of America, its agencies, agents, servants, and employees from and against any and all  
7 such causes of action, claims, liens, rights, or subrogated or contribution interests incident to or  
8 resulting from further litigation or the prosecution of claims by plaintiff or its guardians, heirs,  
9 executors, administrators, or assigns against any third party or against the United States of  
10 America. Plaintiff and its guardians, heirs, executors, administrators, and assigns agree to  
11 defend, reimburse, and indemnify the United States of America, its agencies, agents, servants,  
12 and employees from and against any and all such causes of action, claims or lawsuits by a party  
13 insured by plaintiff asserting a claim or right that is the subject matter of the subrogation claim in  
14 the Lawsuit, including, but not limited to, claims for the insured's deductible amount.

15 4. This Agreement is not, is in no way intended to be, and should not be construed  
16 as, an admission of liability or fault on the part of the United States, its agents, servants, or  
17 employees, and it is specifically denied that they are liable to the plaintiff. This Agreement is  
18 entered into by all parties for the purpose of compromising disputed claims and avoiding the  
19 expenses and risks of further litigation.

20 5. This Agreement may be pled as a full and complete defense to any subsequent  
21 action or other proceeding involving any person or party which arises out of the claims released  
22 and discharged by this Agreement.

23 6. The Settlement Amount represents the entire amount of the compromise  
24 settlement. The parties will each bear their own costs, attorneys' fees, and expenses, and any  
25 attorneys' fees or liens owed by plaintiff will be paid out of the Settlement Amount and not in  
26 addition thereto.

27 7. It is also understood by plaintiff that, pursuant to Title 28 , Section 2678 of the  
28 United States Code, attorneys' fees for services rendered in connection with this Lawsuit shall

1 not exceed 25 percent of the Settlement Amount.

2 8. Payment of the Settlement Amount will be made by check made payable to  
3 plaintiff, Mid Century Insurance Company, and plaintiff's attorney, Susan M. Benson &  
4 Associates, LLP. The check will be mailed to plaintiff's attorney at the following address: Susan  
5 M. Benson & Associates, LLP, 6345 Balboa Blvd., Suite 384, Building IV, Encino, CA 91316.  
6 Plaintiff's attorney agrees to distribute the settlement proceeds to plaintiff.

7 9. In consideration of the payment referred to in Paragraph 2, plaintiff agrees that,  
8 immediately upon execution of this Agreement, it will execute a Stipulation of Dismissal, which  
9 shall dismiss, with prejudice, all claims asserted in the Lawsuit or any claims that could have  
10 been asserted in the Lawsuit, which is captioned *Mid Century Insurance Co. v. United States of*  
11 *America*, C10-3228 SC. The fully executed Stipulations of Dismissal will be held by counsel for  
12 the defendant and will be filed with the Court upon receipt by plaintiff's counsel of the  
13 settlement sum described in Paragraph 2.

14 10. Plaintiff and its attorney have been informed that payment of the Settlement  
15 Amount may take sixty days or more from the date that the Court "so orders" this Agreement to  
16 process.

17 11. If any withholding or income tax liability is imposed upon plaintiff based on  
18 payment of the settlement sum as set forth herein, plaintiff shall be solely responsible for paying  
19 any such liability. Plaintiff, and its attorneys, will indemnify and hold harmless the defendant  
20 from any liability the defendant may incur from any government agency arising out of any failure  
21 by plaintiff to pay any tax liability it might be responsible for from any government agency.

22 12. The parties agree that should any dispute arise with respect to the implementation  
23 of the terms of this Agreement, plaintiff shall not seek to rescind the Agreement and pursue its  
24 original causes of action. Plaintiff's sole remedy in such a dispute is an action to enforce the  
25 Agreement in the United States District Court. The parties agree that the United States District  
26 Court will retain jurisdiction over this matter for purposes of resolving any dispute alleging a  
27 breach of this Agreement.

28 13. In consideration of payment of the Settlement Amount and this Agreement,

1 plaintiff hereby releases and forever discharges the United States of America and any and all of  
2 its past and present officials, employees, agencies, agents, attorneys, successors, and assigns from  
3 any and all obligations, damages, liabilities, actions, causes of action, claims, and demands of  
4 any kind and nature whatsoever, whether suspected or unsuspected, at law or in equity, known or  
5 unknown, arising out of the allegations set forth in the pleadings in the Lawsuit.

6 14. California Civil Code Section provides as follows:

7 A general release does not extend to claims which the creditor does  
8 not know or suspect to exist in his or her favor at the time of  
9 executing the release, which if known by him or her must have  
10 materially affected his or her settlement with the debtor.

11 Plaintiff, having been apprised of the statutory language of Civil Code Section 1542 by its  
12 attorneys, and fully understanding the same, nevertheless elects to waive the benefits of any and  
13 all rights it may have pursuant to Section 1542 and any similar provisions of federal law.

14 Plaintiff understands that, if the facts concerning its injuries and the liability of the defendant for  
15 damages pertaining thereto are found hereinafter to be other than or different from the facts now  
16 believed to be true, this Agreement shall be and remain effective notwithstanding such  
17 difference.

18 15. Each party hereby stipulates that it has been represented by and has relied upon  
19 independent counsel in the negotiations for the preparation of this Agreement, that it has had the  
20 contents of the Agreement fully explained to it by such counsel, and is fully aware of and  
21 understands all of the terms of the Agreement and the legal consequences thereof. For purposes  
22 of construction, this Agreement shall be deemed to have been drafted by all parties to this  
23 Agreement and shall not, therefore, be construed against any party for that reason in any  
24 subsequent dispute.

25 16. The persons signing this Agreement warrant and represent that they possess full  
26 authority to bind the persons on whose behalf they are signing to the terms of the settlement.

27 17. Plaintiff warrants and represents that it has been assigned all of the rights, title,  
28 and interest for the deductible paid by the insured, Javier Sanchez, arising from the subject  
incident of August 10, 2009 and the same subject matter that gave rise to the Lawsuit.

1 18. If any provision of this Agreement shall be invalid, illegal, or unenforceable, the  
2 validity, legality, and enforceability of the remaining provision shall not in any way be affected  
3 or impaired thereby.

4 19. This instrument shall constitute the entire agreement between the parties, and it is  
5 expressly understood and agreed that this Agreement has been freely and voluntarily entered into  
6 by the parties with the advice of counsel, who have explained the legal effect of this Agreement.  
7 The parties further acknowledge that no warranties or representations have been made on any  
8 subject other than as set forth in this Agreement. This Agreement may not be altered, modified,  
9 amended, or otherwise changed in any respect except by writing, duly executed by all parties and  
10 their authorized representatives.

11 April 18<sup>th</sup>  
12 Dated: March 18, 2011

Maurice M. Schult  
MID CENTURY INSURANCE CO.  
Plaintiff

14 Dated: March 31, 2011

Susan M. Benson  
SUSAN M. BENSON  
Attorney for Plaintiff

MELINDA HAAG  
United States Attorney

18 May 5  
19 Dated: March 5, 2011

Jennifer S. Wang  
JENNIFER S. WANG  
Assistant United States Attorney  
Attorneys for Defendant

22 [PROPOSED] ORDER

23 THE ABOVE SETTLEMENT AGREEMENT IS APPROVED, AND IT IS SO  
24 ORDERED.

26 Dated: May 9, 2011



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