



1 preferred interpretation is consistent with other provisions of the contract (most notably the  
2 discovery provision) and is, at the very least, reasonable. In light of this ambiguity, the Court  
3 construed the phrase “against the insurer and in favor of the insured” as provided by Washington  
4 law. Holden v. Farmers Ins. Co. of Wash., 169 Wn.2d 750, 757 (2010). Defendants’ suggestion  
5 that the Court misapprehended the record regarding how the insuring agreement was drafted is  
6 unsupported. The record was clear on this point.

7 With regards to the third argument, defendants offer new evidence showing that the FDIC  
8 has no idea what its predecessor, Washington Mutual (“WaMu”), paid the loan originators for  
9 the fraudulent loans and argue that plaintiff must, therefore, be seeking to recover the amounts  
10 paid to repurchase the loans from third parties. Thus, the argument goes, Universal Mortg. Corp.  
11 v. Württembergische Versicherung AG, 651 F.3d 759, 763 (7th Cir. 2014), compels the  
12 conclusion that the loss for which the FDIC seeks coverage arose out of WaMu’s contractual  
13 obligation to repurchase fraudulent loans and did not arise “directly” from the loan originators’  
14 dishonest or fraudulent acts.

15 For the reasons stated in the Court’s previous order, a common sense understanding of the  
16 risks for which WaMu negotiated coverage and the relationships between the entities shows that  
17 WaMu suffered a loss the moment it delivered funds to CIP Mortgage Corporation and Coastal  
18 Capital and received worthless paperwork in return. Dkt. # 184 at 8. Under Washington law, a  
19 loss generally occurs under a fidelity bond when the money or other covered property is  
20 misappropriated through employee dishonesty or fraud. See Fireman’s Fund Ins. Co. v. Puget  
21 Sound Escrow Closers, Inc., 96 Wn. App. 227, 234-35 (1999). The amount of the original loss  
22 did not remain static over time, however. The fraudsters made payments on some of the loans,  
23 and the FDIC would be hard-pressed to justify pursuing a claim for losses that have already been  
24 recovered. The fact that the amount at issue corresponds to the unpaid principal balances of the  
25 loans originated by CIP and Coastal Capital reflects the reality of plaintiff’s actual loss and does  
26

1 not resolve the “directly resulting” issue. If the FDIC were attempting to collect penalties WaMu  
2 was contractually obligated to pay when the loans were repurchased or other types of  
3 consequential damages arising from the fraudulent loans, those damages would arguably be  
4 indirect: but defendants offer no evidence of such payments or demand for recovery. Construing  
5 the record in the light most favorable to plaintiffs, the unpaid principal balance on the fraudulent  
6 loans corresponds to the outstanding losses directly attributable to the loan originators’ fraud. In  
7 addition, the Seventh Circuit’s interpretation of “directly resulting” is not dispositive. Under  
8 Washington law, policy provisions requiring that a loss result directly from fraudulent or  
9 dishonest acts means that the acts must have been the proximate cause of the loss. See Hanson  
10 PLC v. Nat’l Union Fire Ins. of Pittsburgh, PA, 58 Wn. App. 561, 572-73 (1990). Defendants’  
11 reliance on Universal Mortgage is unavailing as a matter of fact and law.

12 The Court acknowledges National Union’s reservation of the right to contest factual  
13 statements that were not disputed in the context of this motion.

14  
15 For all of the foregoing reasons, defendants’ motions for reconsideration are DENIED.

16  
17 Dated this 1st day of December, 2017.

18 

19 \_\_\_\_\_  
20 Robert S. Lasnik  
21 United States District Judge