UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v. CASE NO.: 8:08-cr-441-T-17MAP

PHILIP WILLIAM COON
_____/

MOTION TO BE CONSIDERED CRIME VICTIMS PURSUANT TO
TITLE 18, UNITED STATES CODE, SECTION 3771

The persons listed on the attached Exhibit "A" (the "Borrowers") move this Court pursuant to Rule 3.01 of the Local Rules for the Middle District of Florida and the Crime Victims' Rights Act ("CVRA"), Title 18, U.S.C., §3771, for an order finding they qualify as victims of the crimes to which Philip William Coon ("Coon") has pled guilty:

1. The Borrowers each entered into certain loan and mortgage agreements with Coast Bank of Florida ("Coast Bank," now known as First Bank by merger) when Coon was Coast Bank's vice-president and Home Mortgage Loan supervisor.

2. On November 5, 2008, Coon pled guilty to this Court to conspiring to commit wire fraud and money laundering in violation of 18 U.S.C. §371, as part of an October 8, 2008 plea agreement with the United States (the Plea).

3. As part of his Plea, Coon admitted that he committed the following crimes while acting as Coast Bank's vice-president and Home Mortgage Loan supervisor: He conspired with John Robert Miller ("Miller"), the president of a mortgage brokerage company (now dissolved) called American Mortgage Link Company of Tampa ("AML"), to charge an excessive mortgage brokerage fee in the form of one additional point on each loan the Borrowers received from

Coast Bank. Coon and Miller funneled the overcharge into the bank account of a Florida company they created called Solutions Processing, whose sole purpose was to receive and hold these overcharges. (*See attached* Exhibit "B," which shows how these excessive fees were documented on the Borrowers' loan documents). Coon admitted in the Plea that he took monies from the Solutions Processing account for his own purposes and personal gain.

4. The Plea concludes that the Borrowers were not affected by the fee overcharge skimmed by Coon and Miller from their loan amounts because "the builder/seller was responsible for the payment of all closing costs." (*See* the Plea at ¶18). This is factually incorrect under each Coast Bank construction loan agreement the Borrowers were required to pay all costs in closing the loan. In furtherance of this obligation, the Borrowers were made to execute authorizations so that Coast Bank could pay the closing costs from their loan proceeds.

5. Indeed, the excessive fees taken by Coon and Miller were paid directly from amounts the Borrowers financed from Coast Bank using Coast's higher-than-market-value loans that had high interest rates, not by the builder/seller. (*See* attached Exhibit "B," where the two percent mortgage brokerage fee can be found on Line 801, and the fees received by Coast Bank can be found on Line 808, of the Borrowers' HUD-1 Closing Statements).

6. Although Coon represented to the Borrowers that the builder/seller would pay all closing costs, he knew or should have known that the builder/seller was incapable of paying these costs due to the high number of loans and that the loan documents were structured such these costs would be taken from the Borrowers Coast Bank loan proceeds. This fact is made obvious by First Bank's efforts to collect amounts due under the Borrowers' Coast Bank loans, which include the mortgage brokerage overcharge. First Bank is now pursing the Borrowers for repayment of their Coast Bank loans and in many instances has sued the Borrowers seeking to

foreclose on their Coast Bank mortgages so as to recover *all* of the amounts due on these loans, including the excessive fees taken by Coon and Miller.

7. It was the Borrowers' money—albeit loaned to them by Coast Bank—that Coon took in his illegal scheme with Miller and it is the Borrowers who are now being pursued and even foreclosed against by First Bank to pay back the amounts they took.

WHEREFORE, Borrowers request the Court find they are victims of Coon's crimes under the Crime Victims' Rights Act, 18 U.S.C. §3771.

MEMORANDUM OF LAW IN SUPPORT OF THE BORROWERS BEING CONSIDERED VICTIMS UNDER THE CVRA

1. The Crime Victims' Rights Act, 18 U.S.C. §3771(e), states in part, "[f]or the purposes of this chapter, the term 'crime victim' means a person directly and proximately harmed as a result of the commission of a Federal offense . . ." In this case, the Borrowers have been directly and proximately harmed by Coon's illegal acts because they are the persons from whom Coon and Miller took their excessive fee, as their Coast loan documents demonstrate, and who are now either paying their Coast Loans or are being pursued by Coast Bank's successor, First Bank, to pay them through collection and foreclosure actions. They are the parties who suffered the most direct harm from Coon's crimes. *United States v. Hunter*, 2008 WL 53125 (D. Utah) (holding that ". . . a person must be directly harmed as a result of the offense and the harm must be proximate to the crime."). Under the plain language of the CVRA the Borrowers are victims of Coon's crimes and should thus be afforded the rights and protections of the CVRA. *United States v. Sharp*, 463 F. Supp. 2d 556 (E.D. Va. 2006) (providing that the purpose of the CVRA is to give crime victims ". . . direct standing to vindicate their procedural and substantive rights in criminal cases.").

2. As victims, the Borrowers should be provided the rights and protections afforded by 18 U.S.C. §3771(a), which states that a crime victim has the right to confer with the attorney for the United States in the case, the right to full and timely restitution, the right to be treated with fairness, and the right to be heard at public proceedings, including sentencing. *Kenna v. United States District Court For C.D. Cal*, 435 F. 3rd 1011 (9th Cir. 2006).

3. Coon pled guilty to illegal actions that resulted in the Borrowers being held responsible under their Coast Bank loans and mortgages for the sums he and Miller misappropriated. Therefore, they should be entitled to restitution from Coon for all of the amounts he overcharged them and for which they have been held accountable or made to pay. *United States v. Bunn*, 277 Fed. Appx. 25, 2008 WL 1984258 (2nd Cir., May 6, 2008). Here, the amounts the Borrowers were charged (and overcharged) are quantifiable and are directly reflected on their HUD-1 Closing Statements making a restitution figures easy to identify and calculate. *Contra In re W.R. Huff Asset Management Co., LLC,* 409 F. 3rd 555 (2nd Cir. 2005) (declining restitution where the number of victims identified was too large and the amounts too complicated to determine to make restitution practicable).

4. The United States considers Coast Bank (which has ceased to exist) a victim in this case ostensibly because Coast Bank received a concentration of loans in one geographic area and with one particular builder. (*See* the Plea at ¶19). Ignoring the impossible assumption that Coast Bank as a company was ignorant of how it was loaning many millions of dollars to several hundred people, First Bank, as Coast Bank's successor, nonetheless paid what can only be considered a fair merger price for the bank. This was a price that already took into account and reflected these serious lending inadequacies, which were clearly disclosed to First Bank in Coast Bank's pre-merger SEC Form 8-K filing, which stated:

> The Bank is in the process of reviewing the full residential construction loan portfolio and, as of the date of this report, has determined that the Builder and affiliates . . . have construction contracts with approximately 482 Borrowers for which the Bank has committed $110 million to fund the construction of such Borrower's homes. More than half of the committed funds have been disbursed to date. *The Bank's loans are directly with the Borrowers, and it is the Borrowers who are responsible for completing the construction of their single family dwellings repaying the debt obligations. The failure of the Builder Group to complete construction, however, may materially adversely impact the ability of the Borrowers to satisfy their obligations under the residential construction loan and, in turn, may adversely affect the value of the Bank's collateral.*

(*See attached* Exhibit "C") (emphasis added). From this disclosure it is hard to imagine how First Bank did not known the risks of its merger with Coast Bank—risks that were reflected in the bank's cut-rate stock valuation and purchase price. Further extinguishing any possible victimization by Coon to Coast/First Bank is the fact that First Bank is actively pursuing collecting Coast Bank loans from the Borrowers, in many cases through foreclosure, seeking to receive the very amounts taken by Coon and Miller from the Borrowers' loan proceeds. For these reasons it is hard to see how Coast Bank is found a victim when the people who money was taken in Coon's illegal scheme are not.

CONCLUSION

For the reasons stated above, the Court should enter an order finding that the Borrowers are victims of Coon's crimes pursuant to 18 U.S.C. §3771(d)(3) and are thus entitled to appropriate restitution under section (B)(1) of Coon's October 8, 2008 plea agreement.

Respectfully submitted,

/s/George R. Baise Jr._____
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CERTIFICATE OF SERVICE

On December 3, 2008, I mailed copies of this motion to the following:

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