

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the following undersigned parties:

The Plaintiff-Intervenor Federal Deposit Insurance Corporation as Receiver for Doral Bank (“FDIC-R”); and

Defendants Echandi, Guzman & Associates, Inc., and Efrain Echandi Otero (collectively, the “Engineer Defendants”); and

Defendants Nydia Rosa Guzmán Colón, and the Conjugal Partnership of Efrain Echandi Otero and Nydia Rosa Guzmán Colón (collectively, the “Spouse Defendants”); and

Defendant ACE Insurance Company, presently named Chubb Insurance Company of Puerto Rico (“Insurer”).

Collectively, the Engineer Defendants, the Spouse Defendants, and the Insurer are referred to herein as the “Settling Defendants.” The FDIC-R and the Settling Defendants may be individually referred to herein as “Party” and collectively as the “Parties.”

RECITALS

WHEREAS:

Prior to February 27, 2015, Doral Bank (“Bank”) was a depository institution organized and existing under the laws of the Commonwealth of Puerto Rico;

On February 27, 2015, the Commissioner of Financial Institutions of Puerto Rico closed the Bank and pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets;

Among the assets to which the FDIC-R succeeded were all of the Bank’s claims, demands, and causes of action against engineers and other professionals arising from the performance, nonperformance, and manner of performance of their contractual and professional functions, duties and acts owed to the Bank;

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On October 7, 2009, the Bank instituted the Action (as defined below) by filing a complaint for money damages against the Settling Defendants in the Court of First Instance, San Juan Division, Commonwealth of Puerto Rico, and on February 11, 2010, the Engineer Defendants filed a counterclaim for money damages against the Bank in the lawsuit in the Court of First Instance, San Juan Division, Commonwealth of Puerto Rico. On December 16, 2015, the FDIC-R intervened in and removed the state court lawsuit to federal court. Those claims for damages are now pending in the United States District Court for the District of Puerto Rico in *FDIC as Receiver for Doral Bank v. Fichandi, Guzman & Associates, Inc., et al.*, Case No. 3:15-cv-03090-CCC ("Action"). The Settling Defendants have denied liability in the Action, and the FDIC-R has denied liability for the counterclaim against the Bank in the Action.

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Insurer issued a professional liability policy numbered [redacted] for the period April 27, (b)(4) 2009, to April 27, 2010 ("Policy"), which insured the Engineer Defendants and the Spouse Defendants according to the terms, provisions, and conditions of the Policy. The Engineer Defendants and the Spouse Defendants asserted claims for coverage under the Policy. Insurer has reserved its rights to deny coverage under the Policy for claims asserted by FDIC-R against the Engineer Defendants and the Spouse Defendants.

This Agreement is entered into by and among the Parties, each represented by their respective counsels. The Parties have agreed to settle all matters pending in the Action in the interests of justice without conceding or admitting liability, negligence, or error by any Party. The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of further litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned Parties agree, each with the other, as follows:

SECTION I: Payment to FDIC-R

A. As an essential covenant and condition to this Agreement, on or before thirty (30) calendar days following the later of the date the FDIC-R executes this Agreement or the date the

Engineer Defendants execute this Agreement, the Insurer agrees to pay the FDIC-R the full sum of \$100,000.00 ("the Settlement Payment") without any contribution from any of the Engineer Defendants or Spouse Defendants. The responsibility for the payment of the settlement amounts will be exclusively of the Insurer, who directly negotiated the agreement with the FDIC-R with the consent of the Engineer Defendants and Spouse Defendants.

B. The Insurer shall deliver the Settlement Payment to the FDIC-R by direct wire transfer into an account designated by FDIC-R by notice to the attorneys for the Insurer or by certified or cashier's check drawn upon a depository institution acceptable to FDIC-R.

In the event that the Settlement Payment is not delivered to the FDIC-R (or its counsel) by the date determined by Subsection A above, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the date determined by Subsection A above until the date of payment. However, if said Settlement Payment is not delivered to the FDIC-R by the date determined by Subsection A above as a result of the FDIC-R's failure to execute this Agreement, no interest shall accrue until five days after the FDIC-R executes the Agreement.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection A above, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:

1. Extend the period of time for the Settlement Payment, including interest accruing from the date determined by subsection A above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(2); or
2. Enforce this Agreement, in which event the Settling Defendants agree to jurisdiction in United States District Court in Puerto Rico and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or
3. Terminate the Agreement, move to vacate any dismissal order, to which the Settling Defendants agree to consent, and re-institute an action on the FDIC-R's claims. The Settling Defendants further agree to waive any defense based on any statute of limitations that

would bar any of the FDIC-R's claims and waive all objections, defenses, claims or counterclaims, and covenant and agree not to assert any objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; and/or

4. Seek any other relief available to it in law or equity.

Any extension of time under Section I.C.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.C.2 through I.C.4 at any time prior to receipt of the Settlement Payment (including all accrued interest) in full.

SECTION II: Stipulation and Dismissal

Within ten business days after the latter of (1) full execution of this Agreement by all of the Parties, and (2) receipt of the Settlement Payment, plus any accrued interest, the FDIC-R and the Engineer Defendants shall file a joint stipulation of dismissal with prejudice, executed by the attorneys for all Parties hereto, in the form attached hereto as Exhibit A, in the Action.

SECTION III: Releases

A. The FDIC-R's Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section III.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges:

1. The Engineer Defendants, the Spouse Defendants, and their respective heirs, executors, trustees, administrators, representatives, attorneys, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R, including any claim the FDIC-R could have asserted against the Engineer Defendants, that arise from or relate to, the performance, nonperformance, or manner of performance of the Engineer Defendants' respective functions, duties and acts as professional engineers engaged by the Bank, including without limitation the causes of action alleged in the Action, including in the counterclaim.

2. Insurer, its parents, subsidiaries, affiliates and reinsurers, and their

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respective employees, officers, directors, agents, representatives, attorneys, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Policy, the Action, or any matter for which the FDIC-R herein releases the Engineer Defendants, including the counterclaim. As part of this release of the Insurer, the FDIC-R agrees that any interest it may have under the Policy is extinguished.

B. The Engineer Defendants' and the Spouse Defendants' Release.

Effective simultaneously with the releases granted in Section III.A. above, the Engineer Defendants and the Spouse Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, successors, and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to, the Bank, the Bank's filing and prosecution of the Action or the FDIC-R's continuation of the Action, or to the performance, nonperformance, or manner of performance of the Engineer Defendants' respective functions, duties and acts as professional engineers engaged by the Bank, including without limitation the causes of action alleged in the counterclaim or otherwise alleged in the Action.

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C. The Insurer's Release.

Effective simultaneously with the releases granted in Section III.A. above, Insurer, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, agents, representatives, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to (a) the Policy; (b) the Action, including the counterclaim; and (c) the facts, circumstances, transactions or events underlying the Action.

D. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action:

a. Against the Settling Defendants or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or instrument of indebtedness payable or owed by them to the FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank; and

b. Against any person or entity not expressly released by the FDIC-R in this Agreement.

2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

3. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. § 6. In addition, the FDIC-R specifically reserves the right to seek court-ordered restitution pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 *et seq.*, if appropriate.

E. Releases among Settling Defendants.

Effective simultaneously with the releases granted in Section III.A. above, the Engineer Defendants deem satisfied in full any and all obligations owed by Insurer to Engineer Defendants

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as a result of the Action.

SECTION IV: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that the Engineer Defendants or the Spouse Defendants are or were shareholders of the Bank or its holding company and by virtue thereof are or may be entitled to a dividend, payment, or other distribution upon resolution of the receivership of the Bank or proceeds in any litigation that has been or could be brought against the Federal Deposit Insurance Corporation in any capacity or against the United States based on or arising out of, in whole or in part, the closing of the Bank, or any alleged acts or omissions by the Federal Deposit Insurance Corporation in any capacity, the United States government, or any agency or department of the United States government in connection with the Bank, its conservatorship, or receivership, the Engineer Defendants and the Spouse Defendants hereby knowingly assign to the FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, or other distributions, or proceeds.

SECTION V: Representations and Acknowledgements

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A. Authorized Signatories. All of the undersigned persons represent and warrant that they are Parties hereto or are authorized to sign this Agreement on behalf of the respective Party, and that they have the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective heirs, executors, trustees, administrators, representatives, successors and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that he, she, or it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that Party by his or her counsel.

SECTION VI: Reasonable Cooperation

A. The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing, or causing their agents and attorneys to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording,

and entry, of any documents necessary to conclude the Action, and to otherwise perform the terms of this Agreement.

SECTION VII: Other Matters

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims and defenses, that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party except to enforce its terms.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Parties subscribed thereto upon the execution by all Parties to this Agreement.

C. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the Commonwealth of Puerto Rico.

D. Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and by email, to the following:

If to the FDIC-R:

Richard E. Elsea
FDIC Dallas Regional Office
1601 Bryan Street, 15th Floor
Dallas, Texas 75201
Telephone: (972) 761-2847
Email:

and

Manuel Fernandez-Bared
Toro, Colón, Mullet, Rivera & Sifre, P.S.C.
P.O. Box 195383
San Juan, Puerto Rico 00919-5383

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(b)(6) Telephone: (787) 751-8999
Email: [redacted]
and

James A. Brown
LISKOW & LEWIS, PLC
One Shell Square
701 Poydras Street, Suite 5000
New Orleans, Louisiana 70139
Telephone: (504) 581-7979

(b)(6) Email: [redacted]

If to the Engineer Defendants and/or the Spouse Defendants:

Juan J. Vilella-Janeiro
VILELLA-JANEIRO LAW OFFICE
PMB 291
1353 Road 19
Guaynabo, Puerto Rico 00966-2700
Telephone: (787) 781-7777

(b)(6) [redacted]
(b)(6) Email: [redacted]

Attorney for Echandi, Guzman & Associates, Inc., Efrain Echandi Otero, Nydia Rosa Guzmán Colón, and the Marital Property of Efrain Echandi Otero and Nydia Rosa Guzmán Colón

If to Insurer:

Francisco E. Colón-Ramirez
Colón & Colón, P.S.C.
P.O. Box 9023355
San Juan, Puerto Rico 00902-3355
Telephone: (787) 758-6060

(b)(6) Email: [redacted]

E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s), or other representative(s).

F. Titles and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

G. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirements.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR DORAL BANK

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

Date: 5 APR 17

ECHANDI, GUZMAN & ASSOCIATES, INC.

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BY: _____

TITLE: PARTNER

PRINT NAME: EFRAÍO ECHANDI OTERO

Date: 5 APR 17

EFRAIN ECHANDI OTERO

(b)(6)

BY: _____

TITLE: _____


PRINT NAME: EFRAÍO ECHANDI OTERO

Date: 5 APR. 17

NYDIA ROSA GUZMÁN COLÓN

(b)(6)

BY: 

TITLE: 

PRINT NAME: NYDIA R. GUZMÁN COLÓN

Date: 5 APR 17

THE MARITAL PROPERTY OF EFRAIN ECHANDI
OTERO AND NYDIA ROSA GUZMÁN COLÓN

(b)(6)

BY: 

TITLE:

PRINT NAME: NYDIA R. GUZMÁN COLÓN
EFRAÍN ECHANDI OTERO

Date: 5 APR 17

ACE INSURANCE COMPANY

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BY: 

TITLE:  Claims Manager

PRINT NAME: José María Benito González

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