

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement ("Agreement") is entered into by and between the Federal Deposit Insurance Corporation as Receiver of R-G Premier Bank of Puerto Rico ("FDIC-R") and Chubb Insurance Company of Puerto Rico, formerly named Ace Insurance Company ("Ace"). The FDIC-R and Ace may be referred to herein individually as "Party" and collectively as the "Parties."

**RECITALS**

**WHEREAS:**

Prior to April 30, 2010, R-G Premier Bank of Puerto Rico, Hato Rey, Puerto Rico ("R-G" or the "Bank") was a depository institution organized and existing under the laws of the Commonwealth of Puerto Rico.

Ace issued Management Protection Insurance Policy No. [redacted] which included a (b)(4) Financial Institution Bond Coverage Part effective for the bond period November 30, 2007, through November 30, 2008 (the "2007 Bond"). Subsequently, Ace issued Management Protection Insurance Policy No. [redacted] which included a Financial Institution Bond Coverage Part effective for the bond period November 30, 2008, through November 30, 2009 (the "2008 Bond" and, together with the 2007 Bond, the "Bonds"). The Bonds each provide coverage up to \$25,000,000 for loss resulting from employee fraud or dishonesty.

(b)(4)

On or about December 9, 2008, R-G provided notice (the "Notice") to Ace under the 2008 Bond seeking coverage for losses incurred by R-G that were caused by fraud or dishonesty by certain R-G employees.

On April 30, 2010, the Office of the Commissioner of Financial Institutions of the Commonwealth of Puerto Rico closed R-G, 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 R-G, including those with respect to R-G's assets.

Among the assets to which the FDIC-R succeeded were any and all claims, demands and causes of action against R-G's financial institution bond insurer(s), including against Ace under the Bonds.

On or about July 27, 2010, pursuant to the Notice, the FDIC-R submitted a sworn Proof of Loss (the "Proof of Loss") to Ace seeking coverage under Insuring Clauses A, H, and O of the 2008 Bond. Ace reserved all rights.

On April 25, 2016, the FDIC-R filed a complaint for money damages against Ace. Those claims for damages are now pending in the United States District Court for the District of Puerto Rico in *Federal Deposit Insurance Corporation as Receiver of R-G Premier Bank v. Ace Insurance Company*, No. 3:16-cv-01812-GAG (D.P.R.) (the "Action").

The 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 the FDIC-R**

A. As an essential covenant and condition to this Agreement, on or before August 31, 2017, Ace agrees to pay to the FDIC-R the sum of Nineteen Million Seven Hundred Fifty Thousand and 00/100 dollars (\$19,750,000.00) (the "Settlement Payment").

B. Based on FDIC-R's investigation and evaluation of loans at issue in the Action, the Settlement Payment shall be allocated to outstanding loan balances as set forth in Exhibit A, and Ace does not object to said allocation.

C. Ace shall deliver the Settlement Payment to the FDIC-R by direct wire transfer into the following account:

BANK: Federal Home Loan Bank of New York

(b)(4)

ROUTING #: [REDACTED]

FOR CREDIT TO: FDIC National Liquidation Account

(b)(4)

ACCOUNT #: [REDACTED]

New York Main Office

101 Park Avenue

New York, NY 10178-0599

212-681-6000

212-441-6890 Fax

OTHER BENEFICIARY INFORMATION (OBI):

(b)(4)

1. Fund code: [REDACTED] Asset No: [REDACTED]

2. Notify: Sandra M. Hagen - DRR Investigations (972) 761-4243

3. R-G Premier Bank of Puerto Rico - Ace Bond Settlement

D. If the FDIC-R does not receive the Settlement Payment in full on or before August 31, 2017, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full, to:

1. Extend the period of time for the Settlement Payment; or
2. Enforce this Agreement, in which event Ace agrees to jurisdiction in the United States District Court for the District of Puerto Rico and to pay all of the FDIC-R's reasonable attorneys' fees and costs expended in enforcing the terms of this Agreement; or
3. Terminate the Agreement, move to vacate any dismissal order, to which Ace agrees to consent, and re-institute an action on the FDIC-R's claims. Ace further agrees 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.D.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.D.2 through I.D.4 at any time prior to receipt of the Settlement Payment in full.

E. Ace, in its sole discretion, shall pay the Settlement Payment under either of the Bonds it determines is applicable.

#### **SECTION II: Stipulation of Dismissal**

Within ten (10) business days after the latter of (1) execution of this Agreement by the FDIC-R and Ace, and (2) receipt of the Settlement Payment by the FDIC-R, the FDIC-R shall file a stipulation of dismissal of the Action with prejudice, executed by the attorneys for all Parties hereto, in the form attached hereto as Exhibit B.

#### **SECTION III: Releases**

##### **A. The FDIC-R's Release of Ace.**

Upon receipt of the Settlement Payment in full as provided in Section I, and the dismissal described in Section II above, and except as provided in Section III.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Ace, its parents, subsidiaries, affiliates and reinsurers, and their respective 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 the Notice, the

Proof of Loss, the Bonds, the Action, and/or Ace's handling, investigation, and adjustment of same. The FDIC-R agrees that any interest it has or may have under the Bonds is extinguished.

B. Ace's Release of the FDIC-R.

Effective simultaneously with the release granted in Section III.A. above, Ace, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their respective agents, representatives, successors and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, agents, attorneys, 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 Notice, the Proof of Loss, the Bonds, and/or the Action.

C. Ace's Waiver of Subrogation.

Ace agrees to and hereby does irrevocably waive any rights of subrogation it may have relating to the Notice, the Proof of Loss, the Bonds, and/or the Action ("Rights of Recovery"). Ace agrees that the FDIC-R may retain, sell, transfer, or otherwise dispose of such Rights of Recovery as it sees fit, in its sole discretion, and retain the proceeds (if any) thereof. Any such present or future retention or disposition of such Rights of Recovery shall not modify, alter, or otherwise affect the consideration due under this Agreement or the amount of the Settlement Payment to be paid by Ace.

D. Express Exceptions to 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 rights, claims, or causes of action:

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

b. against the directors and/or officers, their respective spouses, and the conjugal partnerships formed between them that are named as defendants in *Federal Deposit Ins. Corp. v. Victor Galan-Alvarez, et al.*, No. 3:12-cv-1029-PAD, including without limitation the claims presently asserted or to be asserted therein;

c. against XL Specialty Insurance Company, including without limitation any claims asserted or to be asserted in *Federal Deposit Ins. Corp. v. Victor Galan-Alvarez, et al.*, No. 3:12-cv-01029-PAD and any claims or counterclaims asserted or to be asserted in *XL Specialty Ins. Co. v. Federal Deposit Ins. Corp., et al.*, No. 3:16-cv-02594-PAD;

d. under or relating to any policy of insurance issued by Ace (or any other insurer) other than the Bonds; and

e. 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 diminishing 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 or entity.

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, agency or instrumentality 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.

#### **SECTION IV: Representations and Acknowledgements**

A. Authorized Signatories. Each of the undersigned persons represents and warrants that he or she is authorized to sign this Agreement on behalf of the respective Party on behalf of whom he or she is signing, and that he or she has 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, administrators, representatives, successors, and assigns.

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

C. Reasonable Cooperation. 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.

D. 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, and that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that this Agreement shall not be offered or received in evidence by or against any Party except to enforce its terms.

E. 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. Signatures delivered via email shall be treated as original signatures for all purposes.

F. 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.

G. 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).

H. 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.



I. No Confidentiality. The Parties acknowledge and agree that this Agreement shall not be confidential, and nothing in this Agreement prohibits the FDIC-R or Ace from disclosing its terms.

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

If to FDIC-R:

Barbara Slott Pegg  
FDIC  
3501 Fairfax Drive, Room VS-B-70  
Arlington, VA 22226

(b)(6)

If to Ace:

Michael R. Goodstein  
Bailey Cavalieri LLC  
10 W. Broad Street, Suite 2100  
Columbus, Ohio 43215-3422

(b)(6)

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

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER OF  
R-G PREMIER BANK OF PUERTO

(b)(6)

Date: 7/27/2017

[Redacted Signature Box]

PRINT NAME: B Slott Pegg

CHUBB INSURANCE COMPANY OF  
PUERTO RICO, formerly named ACE  
INS

(b)(6)

Date: 7/28/2017

BY

TIT

PRINT NAME: Roberto Velazquez

**EXHIBIT A**

The Settlement Payment shall be allocated against the following loans in the following amounts leaving the following remaining principal balances:

Loan Number	Approval Date	Borrower	Allocated to Prejudgment Interest	Allocated to Principal	Remaining Principal Balance
(b)(4) (b)(6)			\$61,860.74	\$206,805.31	\$5,896.39
			\$1,379,095.43	\$4,610,424.01	\$131,451.41
			\$297,048.88	\$993,057.66	\$28,313.84
			\$126,512.50	\$422,941.19	\$12,058.81
			\$372,037.31	\$1,243,749.86	\$35,461.53
			\$1,977,906.76	\$6,612,297.17	\$188,528.38
			\$203,583.33	\$680,595.02	\$19,404.98
			\$87,250.00	\$291,683.58	\$8,316.42
			\$42,170.83	\$140,980.40	\$4,019.60
<b>TOTAL</b>			<b>\$4,547,465.80</b>	<b>\$15,202,534.20</b>	

**EXHIBIT B**

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

<b>FEDERAL DEPOSIT INSURANCE</b>	)	
<b>CORPORATION AS RECEIVER OF</b>	)	
<b>R-G PREMIER BANK OF PUERTO</b>	)	
<b>RICO</b>	)	
	)	<b>CIVIL NO.: 16-1812 (GAG)</b>
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	<b>Breach of Contract, Damages</b>
<b>ACE INSURANCE COMPANY</b>	)	
	)	
	)	
<b>Defendant.</b>	)	

**STIPULATION OF DISMISSAL WITH PREJUDICE**

Plaintiff Federal Deposit Insurance Corporation, as Receiver of R-G Premier Bank of Puerto Rico ("FDIC-R"), and Defendant Ace Insurance Company (collectively with FDIC-R, the "Parties"), by and through their respective undersigned attorneys, and pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), hereby stipulate to the dismissal of this action with prejudice, with the Parties to each bear their own attorney's fees, costs, and expenses incurred in this action.

Dated this \_\_\_\_ day of \_\_\_\_, 2017

**Counsel for Ace Insurance Co.**

s/ Francisco E. Colon-Ramirez  
**Colon & Colon, PSC**  
Francisco E. Colon-Ramirez, Bar No. 210510

P.O. Box 9023355  
San Juan, Puerto Rico 00902-3355  
173 O'Neill Street  
San Juan, Puerto Rico 00918-2404  
Telephone: (787) 758-6060 ex. 222  
Facsimile: (787) 753-1656

Email: [Redacted]

(b)(6)  
(b)(6)

**Bailey Cavaleri, L.L.C.**  
Michael R. Goodstein, Ohio Bar No. 80476,  
pro hac vice  
James M. Young, Ohio Bar No. 86733, pro  
hac vice

10 W. Broad Street, Suite 2100  
Columbus, Ohio 43221  
Telephone: (614) 229-3231  
Facsimile: (614) 221-0479

Email: [Redacted]  
Email: [Redacted]

(b)(6)

[Redacted]

(b)(6)

**Counsel for the FDIC as Receiver of R-G  
Premier Bank of Puerto Rico**

s/Jairo Mellado-Villarreal  
**MELLADO & MELLADO-  
VILLARREAL**  
Jairo Mellado-Villarreal, Bar No. 208112  
Héctor J. Orejuela-Dávila, Bar No. 301111  
Tessie Leal-Garabis, Bar No. 218408

165 Ponce de León Avenue, Suite 102  
San Juan, Puerto Rico 00917-1233  
Telephone: (787) 767-2600  
Facsimile: (787) 767-2645

Email: [Redacted]  
Email: [Redacted]  
Email: [Redacted]

**KEEGAN, DENICOLA, KIESEL,  
BAGWELL, JUBAN & LOWE, L.L.C.**

Kyle M. Keegan  
LSBA No. 19942, pro hac vice  
Christopher D. Kiesel  
LSBA No. 26360, pro hac vice  
Amber N. Robichaux  
LSBA No. 34061, pro hac vice

5555 Hilton Avenue, Suite 205  
Baton Rouge, LA 70808  
Telephone: (225) 364-3600  
Facsimile: (225) 364-3608

Email: [Redacted]  
Email: [Redacted]  
Email: [Redacted]