

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

FIDELITY AND DEPOSIT  
COMPANY OF MARYLAND,  
ZURICH AMERICAN LIFE  
INSURANCE COMPANY

Plaintiffs

vs.

THE GOVERNMENT  
DEVELOPMENT BANK FOR  
PUERTO RICO

Defendants

CASE NO. 18-1561

PROMESA  
Title VI

The deposition of:

MR. PAUL W. EAVES

taken on Tuesday, September 25, 2018, at the law  
offices of Pietratoni Méndez & Álvarez, LLC,  
located on Popular Center Building, 208 Ponce de  
León Avenue, San Juan, Puerto Rico 00918, starting  
at 9:50 a.m.

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I N D E X

DEPONENT:

Paul W. Eaves

EXAMINATION BY:

Ms. López.....6

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AT SAN JUAN, PUERTO RICO  
TUESDAY, SEPTEMBER 25, 2018  
P R O C E E D I N G S

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MS. LÓPEZ: We're here for the deposition of -- it's a 30(b)(6) deposition -- of Fidelity and Deposit Company of Maryland and Zurich American Life Insurance Company, in the case of The Government Development Bank of Puerto Rico, a Title VI case, case number 18-1561, before the United States District Court for the District of Puerto Rico.

Notary will take the oath of the deponent and the court reporter. We've agreed that she's excused to leave the room once she's done that.

MS. CARRASQUILLO: Erika Carrasquillo, notary public.

Let's start with the court reporter.

Can you please raise your right hand and state your name and last name for the record?

THE COURT REPORTER: (Raises his right hand.) Pablo Álvarez-Rodríguez.

MS. CARRASQUILLO: Do you solemnly swear to make a faithful transcript of all of what

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1 is said during the taking of this deposition?

2 THE COURT REPORTER: Yes, I do.

3 MS. CARRASQUILLO: You are dully sworn.

4 May I proceed with the deponent?

5 Please, raise your right hand and state  
6 your name and last name for the record.

7 THE DEPONENT: My name is Paul W. Eaves.

8 MS. CARRASQUILLO: Do you solemnly swear  
9 to say the truth and nothing but the truth  
10 during the taking of this deposition?

11 THE DEPONENT: Yes, I do.

12 MS. CARRASQUILLO: You are dully sworn.

13 May I be excused?

14 MS. LÓPEZ: Yes, thank you.

15 MS. CARRASQUILLO: Thank you.

16 (Whereupon, a brief recess  
17 transpires.)

18 MS. LÓPEZ: Good morning. My name is  
19 Giselle López. I'm the attorney for The  
20 Government Bank for Puerto Rico in the matter  
21 of the Title VI -- and other matters, but  
22 we're here for the Title VI under PROMESA.

23 We've notified a deposition, and it's a  
24 deposition duces tecum, which, assuming you  
25 may not know, is a deposition where we ask

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1 you to bring documents or documentary  
2 evidence that relates to your claim.

3 THE DEPONENT: Yes.

4 MS. LÓPEZ: I would like to start by  
5 marking -- before I ask your name or  
6 anything, I would like to start by marking  
7 the notice of deposition an exhibit to the  
8 deposition, so that we have it as part of the  
9 record. That would be Exhibit 1.

10 (Whereupon, deposition's Exhibit 1  
11 is marked for identification.)

12 WHEREUPON,

13 -----

14 PAUL W. EAVES

15 -----

16 having been duly sworn by a notary public, was  
17 examined and declared as follows:

18 E X A M I N A T I O N

19 BY MS. LÓPEZ:

20 Q. And I ask you, can you state your name for  
21 the record, please?

22 A. My name is Paul W. Eaves.

23 Q. Okay. I'm sorry, Paul...

24 A. Paul W. Eaves.

25 Q. Eaves. Okay.

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1           And is this the first time you've been  
2           deposed? You've been deposed before?

3           A. I've been deposed before.

4           Q. Okay. So, are you familiar with what a  
5           deposition is? Do you need me to explain it?

6           A. No, ma'am. I don't believe so.

7           Q. Okay. Just -- I asked you that question,  
8           and now I'm going to proceed to explain it anyway.

9           A. I knew you would.

10          Q. Okay. So, I'll just explain very briefly.

11          A deposition is nothing other than your  
12          testimony under oath, it's an interview that's  
13          transcribed. You are under oath, so you are  
14          expected to tell the truth.

15          I'd rather hear what you know about. If you  
16          don't know something, I'd rather you don't  
17          speculate or assume. I'd rather you tell me "I  
18          don't know."

19          If you don't understand the question, you can  
20          ask me, and I'll repeat it. If you think the  
21          question is confusing, please say so, and I'll  
22          repeat it. I just want to make sure that the  
23          transcript captures your testimony, and that it's  
24          correct.

25          I'm sorry, you had a question?

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1 A. No.

2 Q. Okay. If you need a break, you let me  
3 know and -- there's no problem, we can go off the  
4 record and we can take a break.

5 The deposition gets transcribed. So, your  
6 testimony will be in writing, and we'll furnish it  
7 out to your attorney. After that, you will have  
8 30 days to comment on whether there are any errors  
9 on the transcription. If you do have an error,  
10 you let us know. Otherwise, we'll assume that  
11 you're okay with the transcript.

12 We've agreed on stipulations regarding  
13 objections that are just ordinary for the  
14 attorneys, where we're going to reserve all the  
15 objections to an evidentiary hearing -- if it gets  
16 to that -- other than objections to form and  
17 privilege.

18 A. Okay.

19 Q. If it's an objection as to form, I'm going  
20 to ask you to answer the question. If it's an  
21 objection as to privilege, we'll talk about it and  
22 we'll see where we're at.

23 A. Okay.

24 Q. So, Mr. Eaves, can you tell me where you  
25 work?

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1           A. Yes, ma'am. I work for Zurich American  
2 Insurance Company. I serve as Claims Counsel in  
3 their Surety & Financial Claims Unit.

4           Q. And is Zurich related to Fidelity?

5           A. Yes, ma'am. Zurich Inc. owns Fidelity and  
6 Deposit Company of Maryland.

7           Q. So, Fidelity is a subsidiary of Zurich?

8           A. Yes.

9           Q. What is a claims counsel? What do you do?

10          A. Zurich issues performance and payment  
11 bonds on behalf of its customers. Those bonds  
12 guarantee the performance of construction projects  
13 or many other matters. The payment bond  
14 guarantees the payment of labor and materials.

15          There are times when contractors fail, or get  
16 in default, or fall behind, and when that occurs,  
17 project owners will contact the surety and make  
18 claims under the performance bond or perhaps  
19 unpaid suppliers, or subcontractors will contact  
20 the surety and make claims against the payment  
21 bond, and Zurich assign those matters to people  
22 like me.

23          Q. Okay. And, so, you can get a claim either  
24 from the owner or from a subcontractor?

25          A. Yes.

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1 Q. Or from both, for the same thing?

2 A. That is correct.

3 Q. Okay. Before we continue, did you bring  
4 any documents today to this deposition?

5 A. I did not bring any, no.

6 Q. Okay. I'm going to ask your attorney,  
7 during the course of this deposition, to provide  
8 certain documents, and we can sort of list them at  
9 the end, and we'll get back to you on -- you'll  
10 get back to us with the documents.

11 MR. FERNÁNDEZ: Just for your benefit,  
12 since we have already produced to GDB the  
13 basis for your claimant's documents, we took  
14 the position that -- you know, we had to  
15 produce everything that had not already been  
16 produced.

17 MS. LÓPEZ: Right. Okay.

18 MR. FERNÁNDEZ: But, whatever you need,  
19 let us know and we'll produce it again.

20 MS. LÓPEZ: Okay. Well, I have here what  
21 we have, so, we'll go through it at least  
22 quickly and see if there's anything missing.

23 (Towards the deponent) Then, through your  
24 attorney, you can send us whatever it is we  
25 are missing.

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1 MR. FERNÁNDEZ: All right.

2 BY MS. LÓPEZ:

3 Q. Okay. And what -- I just want to ask you  
4 generally, what is your knowledge regarding  
5 Zurich's claim against GDB?

6 A. Well, it's a complicated answer, but -- I  
7 was assigned to handle claims related to Las  
8 Piedras Construction. Initially, those claims  
9 involved the Administración de Vivienda Pública,  
10 but as time went on, I received claims involving  
11 the Río Bayamón infrastructure project from unpaid  
12 subcontractors.

13 Q. Okay. You mentioned the Administración de  
14 Vivienda Pública, is that a different project than  
15 the Río Bayamón project?

16 A. Yes, it is.

17 Q. Okay. And what is that project's name?

18 A. It was called Renovation and Construction  
19 of Manuel A. Pérez.

20 Q. Okay. And then, you mentioned the Río  
21 Bayamón project. I asked you what was your  
22 knowledge about the claim against GDB, and you  
23 mentioned both. So, I want to ask you, why do you  
24 think both claims are against GDB?

25 A. Well, I've said it was a long history.

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1 The claim against GDB arises as the result of  
2 payment bond claims asserted against the payment  
3 bond we issued for the Río Bayamón project.

4 Q. Okay. Do you have any performance bond  
5 claims against GDB for the Río Bayamón project?

6 A. Not at this time. No.

7 Q. Okay. Do you foresee that there could be  
8 any performance bond claims against GDB for that  
9 project?

10 A. It's possible, but I don't know.  
11 Potentially, GDB could assert a claim. I'm not  
12 aware of one, but they are the bond obligee, and  
13 it is possible.

14 Q. Okay. I guess my question is, then, is  
15 the project completed, the Río Bayamón project?

16 A. To my knowledge, yes.

17 Q. Okay. And GDB has not asserted a claim  
18 under the performance bond?

19 A. No.

20 Q. Okay. Has GDB asserted a claim under the  
21 payment bond?

22 A. No.

23 Q. So, when you say there's a claim under the  
24 payment bond, I presume you refer to  
25 subcontractors that have made claims against the

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1 surety.

2 A. Yes.

3 Q. Okay. I want to go into each one of those  
4 subcontractors' claims, but before that, I want to  
5 make sure I have the document straight.

6 MS. LÓPEZ: So, I'm going to give you  
7 what I'd like to mark as Exhibit 2.

8 (Whereupon, deposition's Exhibit 2  
9 is marked for identification.)

10 BY MS. LÓPEZ:

11 Q. Before we go into that, I want to ask you  
12 a question. Are you here speaking on behalf of  
13 Zurich, or are you here speaking on behalf of  
14 Fidelity, or both?

15 A. Both.

16 Q. Both, okay.

17 But, are you an employee of Zurich?

18 A. Yes.

19 Q. You are.

20 So, you are not an employee of Fidelity?

21 A. To my knowledge, Fidelity doesn't have  
22 separate employees. We're all Zurich American  
23 Insurance Company.

24 Q. Okay, but since we notified what's called  
25 a 30(b)(6) deposition, I just want to make sure

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1 that you would be the representative for Zurich  
2 and Fidelity in these proceedings.

3 A. I consider it as one and the same.

4 Q. Okay. So, let's go into that document I  
5 showed you. It's Exhibit 2. I believe there's  
6 actually three documents that have been stapled  
7 together, one is called the Performance Bond,  
8 another is called a Payment Bond, and a third one  
9 called, Bond to Guarantee Payments of Salaries.

10 Have you seen these documents before?

11 A. Yes.

12 Q. And are these the payment and performance  
13 bonds that you were describing earlier?

14 A. These are the obligations I was describing  
15 earlier.

16 Q. Okay. So, is it your position that these  
17 are the documents that made you liable or  
18 responsible to -- strike the question.

19 Are these the reasons why you received claims  
20 from subcontractors related to the Río Bayamón  
21 project?

22 A. Yes.

23 Q. Okay. I'm not sure if I asked you this  
24 before, did GDB make a payment bond claim?

25 A. No. And you did not ask, but my opinion

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1 would be that they're not a proper party under the  
2 payment bond.

3 Q. Okay. The proper parties would be  
4 subcontractors and material suppliers?

5 A. Yes.

6 Q. Okay. If GDB were to receive a claim from  
7 a subcontractor, though, would they just have to  
8 refer that to you and make a claim, or...

9 A. Well, they could. Under their contract  
10 with Las Piedras, Las Piedras has an obligation to  
11 pay for the labor and materials. Arguably, GDB  
12 could assert that there's been a breach by Las  
13 Piedras, and they could assert a claim under the  
14 performance bond. I think that would be the  
15 proper way for them to address that claim.

16 Q. So, to your knowledge, has GDB asserted  
17 that the contractor defaulted in the project?

18 A. No.

19 Q. With respect to this Performance Bond, the  
20 Payment Bond, and the Bond to Guarantee Payment of  
21 Salaries, are these documents that are -- notified  
22 to GDB at any point in time?

23 A. These documents are provided to the owner  
24 upon execution. The owner gets the original.

25 Q. So, GDB would have gotten the original of

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1 these documents when they were executed. Is that  
2 your position?

3 A. Presumably, yes.

4 Q. Why do you say "presumably"?

5 A. Because they are the bond obligee, meaning  
6 all of my obligations under the performance bond  
7 would go to GDB.

8 Q. Okay. But do you not know that they were  
9 sent to GDB?

10 A. I don't know. I do not know that.

11 Q. Okay. It's customary to send it to the  
12 owner, but you don't know if they're actually  
13 sent. Is that correct?

14 A. It is customary. These documents  
15 typically are required by statute of public  
16 owners. They're the ones that require them; we  
17 issue the bond obligation. Presumably, the owner  
18 has it in a file somewhere.

19 Q. And is it correct to say that the  
20 performance bond, the payment bond, and the bond  
21 to guarantee payment of salaries relate only to  
22 the Comunidad Río Bayamón project?

23 A. Yes, that is correct.

24 MR. FERNÁNDEZ: You mean the ones marked  
25 as Exhibit 2?

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1 MS. LÓPEZ: Yes. The ones we were  
2 discussing, the ones marked as Exhibit 2.

3 BY MS. LÓPEZ:

4 Q. I just want to make sure that your  
5 position is that these relate only to that  
6 project. Is that correct?

7 A. Yes, that's correct.

8 Q. Would it be correct to say then, that if  
9 GDB had a claim with respect to a different  
10 project, they put an asserted claim under these  
11 documents?

12 A. Not against this bond. No, ma'am.

13 Q. Not against this bond.

14 Not against the performance payment or the  
15 salary bonds that we've discussed in Exhibit 2?

16 A. That would be my position, yes. The bonds  
17 are typically project-specific.

18 MS. LÓPEZ: Okay. Let me give you what I  
19 would like to mark as Exhibit 3.

20 (Whereupon, deposition's Exhibit 3  
21 is marked for identification.)

22 THE DEPONENT: (Reviews the document.)

23 BY MS. LÓPEZ:

24 Q. If you want to go off the record, we can  
25 go off the record for you to review it, or are you

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1 familiar with the document?

2 A. Yes, ma'am. I'm familiar with the  
3 document.

4 Q. Okay. So, what we've marked as Exhibit 3  
5 is called an Agreement of Indemnity. And I asked  
6 you, "Have you seen this document before?" And  
7 you say you are familiar, correct?

8 A. Yes.

9 Q. What is this Agreement of Indemnity?

10 A. Well, the purpose of the Agreement of  
11 Indemnity is to give the surety certain rights and  
12 to give our indemnitor certain obligations with  
13 respect to the bonds that we issue on their  
14 behalf.

15 Q. So, is it correct to say that this  
16 agreement binds the surety and the contractor?

17 A. Yes.

18 Q. It wouldn't bind the owner, correct?

19 A. No.

20 Q. Do you have any knowledge -- and we're  
21 talking about the indemnity agreement now -- do  
22 you have any knowledge as to whether this  
23 agreement of indemnity would have been notified to  
24 the owner of a particular project?

25 A. Yes. Sometimes they are.

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1 Q. Do you have any knowledge whether this  
2 Agreement of Indemnity was actually notified to  
3 GDB?

4 A. Yes, I do.

5 Q. And do you know by who and when, please?

6 A. We met with representatives of GDB  
7 approximately two years ago, where we discussed  
8 the status of the project, the claims that the  
9 surety had received from subcontractors and  
10 suppliers, and that the surety had rights as well  
11 as an assignment to the funds that were held by  
12 GDB with respect to the Río Bayamón project.

13 Q. And do you remember the date of that  
14 meeting?

15 A. No, ma'am, I don't.

16 Q. Was that meeting prior to you paying for  
17 any materials for the subcontractors relating to  
18 the Río Bayamón project, or was it after?

19 A. My recollection is it was after.

20 Q. After payment?

21 A. After we had made a payment to a  
22 subcontractor, yes.

23 Q. Do you know who was present at that  
24 meeting?

25 A. Myself and my attorneys, and at one

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1 meeting with GDB there were approximately eight  
2 people with eight different representatives of  
3 GDB. And then, at the second meeting, we had --I  
4 believe it was myself, my legal counsel, and  
5 either two or three representatives or outside  
6 counsels for GDB.

7 Q. Prior to that meeting, do you have any  
8 knowledge as to whether the Agreement of Indemnity  
9 was notified to GDB?

10 MR. FERNÁNDEZ: We object to the form of  
11 the question, only with respect to the word  
12 "notified."

13 MS. LÓPEZ: Okay.

14 MR. FERNÁNDEZ: "Filing" I assume is the  
15 thing that I notice.

16 MS. LÓPEZ: But that's what I mean.

17 I want -- I wanted it in the -- in broader  
18 sense.

19 BY MS. LÓPEZ:

20 Q. I mean including a filing...

21 A. If you mean including -- when you say  
22 "filing," I assume that -- for me, that signifies  
23 the recording of...

24 Q. Right.

25 A. As a UCC-1.

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1 Q. Right.

2 A. Yes. I recorded this document as a UCC-1  
3 shortly after the default involving the Manuel A.  
4 Pérez project.

5 Q. And what's the date of that default?

6 A. I don't remember. I don't remember. I  
7 could guess.

8 Q. What type of evidence do you have that you  
9 recorded this Agreement of Indemnity as a UCC  
10 file?

11 A. None with me this morning. I assume we  
12 were given a file stamped copy at some point.

13 MR. FERNÁNDEZ: I can provide it to you  
14 after the deposition if you want.

15 MS. LÓPEZ: Okay. So, we'll ask that we  
16 be provided with the evidence of recordation.

17 MR. FERNÁNDEZ: Sure.

18 Can we go off the record one second?

19 MS. LÓPEZ: Sure.

20 (Whereupon, a brief recess  
21 transpires.)

22 BY MS. LÓPEZ:

23 Q. Before we went off the record you were  
24 explaining that you had recorded the indemnity  
25 agreement, and I asked you to provide evidence of

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1 the recordation, and your counsel said you would.  
2 And I ask you, were the payment and performance  
3 bonds recorded anywhere?

4 A. Not to my knowledge.

5 Q. So, to your counsel's point on the  
6 notification, I just want to make sure we have  
7 that clear. Before, you said you had a meeting  
8 where you notified GDB of the indemnity agreement  
9 during that meeting. From what I understand, you  
10 recorded the indemnity agreement as well, and that  
11 indemnity agreement is from 2004. So, I ask you,  
12 between 2004 and the meeting you had with the GDB  
13 representatives, were there any notifications to  
14 the GDB of the existence of the indemnity  
15 agreement?

16 A. I do not know.

17 Q. Okay.

18 A. Not for me, I can answer that.

19 Q. Would there be someone at Zurich that  
20 would know the answer to that?

21 A. No. I mean, may I elaborate?

22 Q. Sure. Please.

23 A. This document -- this agreement of  
24 indemnity is something that Zurich treats as  
25 non-public information. We have valid reasons for

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1 not recording these, until there's been an actual  
2 default, either under the indemnity agreement  
3 itself, or under one of the bonds that we issue.

4 Q. Okay, right. Right, you had explained  
5 that you recorded it when Las Piedras defaulted,  
6 leaving the Manuel A. Pérez project, correct?

7 A. That's correct.

8 Q. And what was the date of that default?

9 A. May I give an approximate date?

10 Q. Yes.

11 A. My memory is not quite as sharp. It would  
12 have been late 2015, or early 2016.

13 Q. Okay. Other than your testimony today, do  
14 you have any evidence of the default -- of  
15 Las Piedras default on that project?

16 MR. FERNÁNDEZ: Of Manuel A. Pérez?

17 BY MS. LÓPEZ:

18 Q. Are there any letters you sent to  
19 Las Piedras, or any communications, where you  
20 acknowledge the default and you ask them to comply  
21 with the obligations under the indemnity  
22 agreement?

23 A. Would you please restate the question?

24 Q. Sure. Are there any documents or any  
25 documentary evidence that captures the time

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1 when -- the time or the circumstances surrounding  
2 the default of Las Piedras?

3 A. Yes, yes --

4 MR. FERNÁNDEZ: We are talking about the  
5 Manuel A. Pérez project?

6 BY MS. LÓPEZ:

7 Q. Right, Manuel A. Pérez.

8 A. Yes. Originally, the surety was contacted  
9 by the owner of Manuel A. Pérez to notify us of  
10 the default, and I responded to that notice as  
11 well as -- as typically we do -- contacted Las  
12 Piedras and asked for a meeting with them as well,  
13 to get their position on the default.

14 Q. Okay. I'm going to ask your attorney to  
15 produce those documents.

16 MR. FERNÁNDEZ: I'm going to produce  
17 that, and I'm also going to produce the  
18 judgement of the Court of Appeals of Puerto  
19 Rico, which -- that decided, in a final and  
20 unappealable decision, saying that Las  
21 Piedras defaulted on that project.

22 MS. LÓPEZ: Okay. Please do.

23 MR. FERNÁNDEZ: There was a litigation  
24 between The Government of Puerto Rico and Las  
25 Piedras Construction with respect to that

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1 default, and the government of Puerto Rico  
2 should have those files, but I will produce  
3 them to you.

4 MS. LÓPEZ: Okay.

5 MR. FERNÁNDEZ: I -- we're not a party of  
6 that litigation.

7 MS. LÓPEZ: Right. What I would like is  
8 the communications between you and the owner  
9 regarding the default, and you and Las  
10 Piedras regarding the default.

11 MR. FERNÁNDEZ: I'll give you -- you  
12 know, we may be speaking volumes of documents  
13 with respect to those communications because  
14 of the backup or related communications, but  
15 I will produce them; we have them. But I  
16 just want to point to your attention that,  
17 irrespective of those communications, there's  
18 a court decision already deciding the  
19 default.

20 MS. LÓPEZ: Right. I just want to get  
21 the documentary evidence surrounding the act  
22 of recording the document, the UCC file. I  
23 want to get sort of the background, get into  
24 context.

25 MR. FERNÁNDEZ: I have -- when I stepped

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1 out, it was primarily to request for my  
2 office a copy of the recorded Agreement of  
3 Indemnity with the dates, so you'll have  
4 that.

5 MS. LÓPEZ: Okay. That's what I would --  
6 right. Okay.

7 BY MS. LÓPEZ:

8 Q. And I think you've testified -- I just  
9 want to make sure I understood -- that there  
10 wasn't a default in the Río Bayamón project, or  
11 was there?

12 A. I'm not aware of any default.

13 Q. Okay.

14 A. Actually, I have to withdraw that. When  
15 he failed to pay his subcontractors, that was an  
16 act of default.

17 Q. Okay. And the act of default was  
18 communicated by his subcontractors. Is that  
19 correct?

20 A. Yes.

21 Q. And that was after the recordation of the  
22 indemnity agreement and the UCC?

23 A. Yes.

24 Q. Okay. Is it your position that, because  
25 of the obligations assumed by Las Piedras in the

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1 indemnity agreement, you have a right to claim  
2 accounts receivable from Las Piedras with respect  
3 to any project?

4 A. Yes.

5 Q. And is it accounts receivable only, or is  
6 it something else?

7 A. Well, under paragraph three of the  
8 indemnity agreement you'll find an assignment --  
9 and the assignment is relatively extensive; I will  
10 not read it for the record, unless you ask me to.  
11 It's a very extensive assignment.

12 Q. Okay. So, what is your position? What  
13 does it entail? Tell me in your own words. Don't  
14 read it, but tell me what you think you have a  
15 right to regarding that.

16 A. Well, once there's been a default under  
17 the indemnity agreement or in relation with one of  
18 our bonds, it is Zurich's position that the  
19 assignment in the Agreement of Indemnity means  
20 exactly what it says, that we are now assigned all  
21 propriety -- all contract balances, all labor  
22 materials, wherever we may find them, all  
23 equipment. The assignment is quite broad.

24 Did that answer your question?

25 Q. Yes. Yes, it did.

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1 A. But -- may I add further?

2 Q. Yes, go ahead.

3 A. There's also an issue of subrogation, to  
4 the extent I actually pay a claim, as the surety  
5 has done on Río Bayamón. We now have rights under  
6 the theory of equitable subrogation, to the extent  
7 I actually pay losses, I get to step into Las  
8 Piedras shoes to claim any contract balances.

9 Q. For the amount you actually paid, correct?

10 A. To the extent we actually paid and  
11 suffered a loss. That is correct.

12 Q. Other than the UCC recordation we've  
13 discussed -- and from which we're going to get  
14 evidence of -- was this agreement recorded  
15 anywhere else?

16 A. Not to my knowledge and not at my request.

17 MR. FERNÁNDEZ: Just for the record, in  
18 the letter sent to the GDB on January 26,  
19 2016, by me, as an attachment to that letter  
20 you'll find the performance bond and you'll  
21 also find the financing statement that was  
22 filed with the general Agreement of  
23 Indemnity -- which is, I think, what you were  
24 asking for.

25 MS. LÓPEZ: Right. But the -- we'll go

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1 over it.

2 MR. FERNÁNDEZ: Okay. It's just that you  
3 were asking for that.

4 MS. LÓPEZ: I'm asking for it because we  
5 can't read it.

6 MR. FERNÁNDEZ: Ah, okay.

7 MS. LÓPEZ: So, I want to make sure  
8 that's what we're --

9 MR. FERNÁNDEZ: Alright.

10 MS. LÓPEZ: That's where I was going.  
11 I want to make sure we're talking about the  
12 same thing, there's nothing else.

13 MR. FERNÁNDEZ: Alright. I just wanted  
14 to point that to your attention in case you  
15 wanted to -- for your benefit. But, that's  
16 what we --

17 MS. LÓPEZ: Actually, we can...

18 MR. FERNÁNDEZ: And there's a filing date  
19 here, so -- for your benefit.

20 MS. LÓPEZ: Okay. That's actually where  
21 I was going.

22 MR. FERNÁNDEZ: Okay.

23 MS. LÓPEZ: So, I'll just go there.

24 Let's make this next document the  
25 Exhibit 4.

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1 (Whereupon, deposition's Exhibit 4  
2 is marked for identification.)

3 BY MS. LÓPEZ:

4 Q. And if you want, we can go off the record  
5 so you have -- I want you to take a look at the  
6 whole document.

7 A. (Reviews the document.)

8 THE COURT REPORTER: Do we go off the  
9 record?

10 MS. LÓPEZ: Sure. I want to give him a  
11 chance to...

12 (Whereupon, a brief recess  
13 transpires.)

14 BY MS. LÓPEZ:

15 Q. So, what we've marked as Exhibit 4 -- and  
16 I'll just make sure that the record is clear, I'll  
17 say what it is for the record. There are five  
18 corporate resolutions, an acknowledgment of  
19 indemnitor's signature corporate acknowledgment,  
20 and then there's three pages of signatures, what  
21 appears to be two pages of the Agreement of  
22 Indemnity, and then eight pages that we can't  
23 really read, but I'll read for the record that  
24 it's supposed to be titled "Anejo, Declaración de  
25 Financiamiento," "Financing Statement Addendum,"

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1 and it's stamped January 19, 2016, at 3:36 p.m.

2 And my questions are related to that second  
3 portion of the exhibit, the ones that we can't  
4 really read.

5 A. Yes. Okay.

6 Q. Have you seen those documents before?

7 A. I believe so, yes.

8 Q. Okay. Are these just copies of one same  
9 document, or are these supposed to be different  
10 documents? If you know. If you don't know, you  
11 don't...

12 A. Well, my initial read is that each of the  
13 addendums identifies an additional indemnitor, but  
14 it's just barely legible. For instance, the first  
15 declaration page, you can make out "L.P.C.D. Inc."  
16 at top. The second is "Equipment Depo," another  
17 indemnitor. "Kane Caribbean," "Hacienda Cuco,"  
18 "Caribbean Raceway Park," "Pedro Feliciano  
19 Benítez," "Piezas Extra," "Tejo," and "Equipos de  
20 Boquerón".

21 Q. And is it your position that those are the  
22 corporations that signed or executed the agreement  
23 of indemnity with Zurich?

24 A. Yes, ma'am. It's my position. They are  
25 the indemnitors.

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1 Q. All right. And what are these documents?  
2 Can you explain what these documents are?

3 I'm sorry. The "Anejo Declaración de  
4 Financiamiento," what is this?

5 A. Well, each jurisdiction may be slightly  
6 different with the recordation, but in my opinion,  
7 these represent our UCC-1 filing in the  
8 Commonwealth of Puerto Rico.

9 Q. And I believe you testified that you were  
10 the one who took care of filing these, correct?

11 A. I instructed my legal counsel to file it  
12 on behalf of the surety.

13 Q. Okay. And -- if you know -- aside from  
14 this page that says, "Anejo Declaración de  
15 Financiamiento," was there anything else  
16 submitted? Was the actual Agreement of Indemnity  
17 submitted?

18 A. I have no actual knowledge, but that's  
19 typically how it works.

20 Q. Okay. And after you had this recorded,  
21 was GDB sent a notice or a copy of what was filed?  
22 If you know.

23 A. They were ultimately provided a copy, but  
24 I don't know how soon after recordation that they  
25 were eventually provided with a copy.

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1 Q. Okay.

2 MS. LÓPEZ: I'm going to ask that we get  
3 legible --

4 MR. FERNÁNDEZ: Well, this is the letter  
5 sent on January 26, 2016. It's seven days  
6 after the recordation to the GDB, with copies  
7 of the recordation and the agreement of the  
8 indemnity, also with the UCC stamp as filed.

9 MS. LÓPEZ: Okay. I have that letter,  
10 but I have the same problem where I can't  
11 really read --

12 MR. FERNÁNDEZ: You cannot read them?  
13 All right.

14 MS. LÓPEZ: No. They are --

15 MR. FERNÁNDEZ: I understand. I see it.  
16 But I'll get it to you. All right.

17 MS. LÓPEZ: But can't -- really. We  
18 don't have legible copies of this document.

19 MR. FERNÁNDEZ: I think it's they have  
20 been copied so many times, probably to give  
21 copies to the GDB, that copies over copies  
22 then become illegible. But I'll get them for  
23 you, don't worry.

24 I just want to make sure that you have  
25 this document, this letter, with the

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1 attachments. Because you just asked if the  
2 Agreement of Indemnity was included with the  
3 UCC filing, and I see it here filed, the  
4 Agreement of Indemnity with a stamp "filed".  
5 I just want to make sure you have that.

6 MS. LÓPEZ: I do. That's helpful. Okay.

7 MR. FERNÁNDEZ: All right. But I'll get  
8 them for you, don't worry. In fact, I have  
9 already asked for better legible copies.

10 MS. LÓPEZ: If we can go off the record  
11 for one minute.

12 (Whereupon, a brief recess  
13 transpires.)

14 MS. LÓPEZ: Back on record.

15 BY MS. LÓPEZ:

16 Q. Before we went off the record, your  
17 counsel mentioned that there was a letter dated  
18 January 26, 2016, that had the UCC filings, or  
19 stamped fillings, and the agreement attached --  
20 and that letter was sent to GDB.

21 I ask you whether, other than GDB, did Zurich  
22 notify of any claims -- of its claims with respect  
23 to the Manuel A. Pérez project to any other  
24 entity.

25 A. I'm not certain I understand your

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1 question.

2 Q. I'll repeat it.

3 GDB is not the owner of the Manuel A. Pérez  
4 project, correct?

5 A. No.

6 Q. Okay. So, the owner is a different  
7 entity.

8 A. Administración de Vivienda Pública.

9 Q. Did you notify Administración de Vivienda  
10 Pública of your claims with respect to any amounts  
11 owed to Las Piedras under the Manuel A. Pérez  
12 project?

13 A. Of course. We did. But those were --  
14 that situation was resolved under a separate  
15 agreement, directly between Zurich and  
16 Administración de Vivienda Pública. I mean, they  
17 know -- they had noticed the default and they were  
18 the ones that contacted me regarding the default.

19 Q. Right.

20 A. And then we subsequently entered into  
21 negotiations for the takeover and completion of  
22 that project. So, I'm not sure if you're asking,  
23 did I give them a copy of the indemnity agreement,  
24 or if they had an actual notice that my contractor  
25 was in default.

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1 Q. No. I know that they had an actual notice  
2 because we know the sue, but I just wanted to see  
3 if you had made monetary claims against them.  
4 But, you explained that you didn't have to because  
5 you reached an agreement?

6 A. Right. And the way Surety works is I  
7 agree to complete your project in exchange for you  
8 agreeing to pay me the contract balance.

9 Q. Right. So, did they pay the contract  
10 balance to Zurich?

11 A. Yes, ma'am. I'm waiting for the last  
12 payment but, yes, they have.

13 Q. Are there any amounts outstanding that  
14 they owe you, other than the last payment?

15 A. I don't know the specific amount, but I  
16 can steer the last payment to include all  
17 contractual retainage.

18 Q. Okay.

19 A. Yeah. We had issued three separate change  
20 orders following completion of the project, so the  
21 administration owes me retainage plus the three  
22 change orders.

23 Q. Okay. And presuming you receive those  
24 funds, would you still have an outstanding debt  
25 for that project?

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1 A. Yes.

2 Q. How much would that be?

3 A. Approximately 7,000,000 dollars. That  
4 primarily being the cost to complete was greater  
5 than the remaining contract funds.

6 Q. Is that a claim you will assert against  
7 Las Piedras?

8 A. Yes, ma'am.

9 Q. Okay. And is that something that's being  
10 litigated in federal court?

11 A. Yes.

12 Q. Okay. Let's go to the subcontractors.  
13 You'd mentioned that, as part of your payment bond  
14 with respect to the Río Bayamón project, claims  
15 had been made by subcontractors.

16 A. Yes. That's correct. The names of the  
17 subcontractors were Bermúdez, Longo, Díaz-Massó --  
18 B.L.D.M. -- electrical subcontractor. We received  
19 a claim from Constructora Argo -- I believe he  
20 provided playground equipment in tennis courts and  
21 lighting. And there was a third claim from an  
22 equipment supplier -- I do not recall the name of  
23 the company of the top of my head, but that  
24 information is stored electronically. I know who  
25 it is; I can find it.

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1 Q. Okay. And you'd mentioned that there was  
2 another subcontractor that had made a claim but  
3 had not pursued payment. Is that the one you're  
4 talking about, or someone else?

5 A. Yes, ma'am. That's the one.

6 Q. Okay. With respect to the Bermúdez, Longo  
7 Díaz-Massó claim, how much was that claim for?

8 A. Approximately 1,245,000 dollars.

9 Q. And was that claim paid by Zurich?

10 A. Yes, it was.

11 Q. In its entirety?

12 A. Yes, it was.

13 Q. When was the payment made?

14 MR. FERNÁNDEZ: I have a copy of the  
15 check if you want it.

16 MS. LÓPEZ: Yes, please.

17 MR. FERNÁNDEZ: You can have it.

18 MS. TRELLES: I can make copies.

19 BY MS. LÓPEZ:

20 Q. That was my follow-up question. Can you  
21 provide evidence of the payment to Bermúdez,  
22 Longo?

23 A. I can.

24 Q. Okay. And I'm going to ask the same  
25 question for all three: evidence of payment of

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1 Bermúdez Longo, Argo, and -- at least evidence of  
2 the claim with respect to that supplier.

3 A. I can provide copies of claim notices.

4 Q. Yes.

5 MR. FERNÁNDEZ: I can produce that.

6 BY MS. LÓPEZ:

7 Q. So, claim notices and evidence of payment  
8 for all three.

9 A. Correct.

10 MR. FERNÁNDEZ: Of the third one, there  
11 will be no evidence of payment.

12 MS. LÓPEZ: Right. Okay. We've just  
13 been provided evidence of a check for  
14 1,000,000 dollars to Bermúdez, Longo.

15 BY MS. LÓPEZ:

16 Q. Is there a second check for the remainder?

17 A. Yes, there is. My limit is 1,000,000  
18 dollars, so I had to pay them in two checks.

19 Q. Got it.

20 A. Actually, there's a little bit more to the  
21 story. I was in negotiations with B.L.D.M, they  
22 were performing as an electrical subcontractor on  
23 Manuel A. Pérez and I'd met with Feliciano Benítez  
24 and his attorney, Christian--

25 MR. FERNÁNDEZ: (Unintelligible.)

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1 I'm sorry.

2 THE DEPONENT: Thank you.

3 And they'd asked for some assistance with  
4 the surety to get that claim resolved. And I  
5 had asked if he would consider taking less  
6 than the full amount of his claim, and he  
7 agreed to consider it. But as the Manuel A.  
8 Pérez project went on, and certain things  
9 that Bermúdez, Longo did to bring me value on  
10 that project, I did not have. I was not  
11 going to ask them to compromise their claim.  
12 I agreed to pay it in full, which I did.

13 BY MS. LÓPEZ:

14 Q. Okay. And what's the amount of the Argo  
15 claim?

16 A. My recollection was it was approximately  
17 64,000 dollars.

18 Q. Okay. And same thing, we will ask that  
19 you produce evidence of the claim and the payment.

20 And the equipment -- you said, "Equipment  
21 supplier," is that what you said?

22 A. He was an equipment supplier, but he never  
23 responded to my request for information, so I  
24 can't conclusive say what he did for the project.

25 Q. But what's the claim for? What's the

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1 amount?

2 A. My recollection was it was less than  
3 30,000 dollars.

4 Q. Okay.

5 MR. FERNÁNDEZ: I have here for your  
6 benefit a letter from Constructora Argo, with  
7 the release and assignment of claim filed by  
8 Constructora Argo where it states the exact  
9 amount that was paid to it and that was  
10 assigned to Zurich. If you want it, I can  
11 give it to you and make copies.

12 MS. LÓPEZ: Yes.

13 MS. TRELLES: Let me go make copies.

14 MR. FERNÁNDEZ: "64,000 and change".

15 THE DEPONENT: I see my memory is a  
16 little better than I thought.

17 (Whereupon, Ms. Trelles exits the room.)

18 MR. FERNÁNDEZ: Sorry to interrupt when I  
19 did, but I'm just trying to make it easier.

20 MS. LÓPEZ: I understand.

21 MR. FERNÁNDEZ: If you look at the letter  
22 to José Santiago, you'll see the dates of the  
23 meetings that you were asking for. You were  
24 asking for the date of the meeting when Paul  
25 met with GDB, that's in the letter of April

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1 18, 2017.

2 MS. LÓPEZ: April 18...

3 MR. FERNÁNDEZ: 2017. It makes reference  
4 to a meeting that took place on April 6,  
5 2017. You don't have that letter?

6 MS. LÓPEZ: No.

7 MR. FERNÁNDEZ: On the 18th it was  
8 delivered to Belén Fornaris and José  
9 Santiago. I can make a copy if you want.

10 There's another one on June 7, 2017, to  
11 Belén Fornaris.

12 MS. LÓPEZ: Yes, but let's go off the  
13 record and --

14 (Whereupon, a brief recess  
15 transpires.)

16 BY MS. LÓPEZ:

17 Q. So, before we went off the record, I was  
18 asking you about the contractors' claims, and I  
19 believe we agreed that you were going to provide  
20 evidence of payment for both Bermúdez Long and  
21 Argo, and of their claims, and of this third claim  
22 which you haven't paid.

23 A. Yes.

24 Q. Okay. So, that amounts to roughly 1.3  
25 million dollars?

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1           A. As of this morning, Zurich has paid  
2           1,295,731 dollars and 62 cents, related directly  
3           to the Río Bayamón project.

4           Q. Okay. And aside from those, has there  
5           been any other expenses paid by Zurich with  
6           respect to the Río Bayamón project?

7           A. I have some legal expenses, but the way  
8           Zurich is billed -- it would take me some time to  
9           figure out directly which ones are related to Río  
10          Bayamón.

11          Q. Okay. Aside for the expenses and the  
12          numbers you just gave me, that should be it for  
13          Río Bayamón then.

14          A. Yes, ma'am.

15          Q. And we spoke about approximately 7,000,000  
16          dollars for the Manuel A. Pérez claim, correct?

17          A. Yes, ma'am.

18          Q. Okay. Let's talk about this procedure  
19          with Title VI for GDB. I'll just give you a very  
20          brief background in case you are not familiar --  
21          I'm sure you are relatively, it's just a brief  
22          background.

23          GDB is restructuring its debt, and as such, it  
24          has filed a petition for the court to approve a  
25          restructuring of its debt so that it may reach a

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1 general agreement with the majority of its  
2 stockholders, of its shareholders, of its  
3 bondholders, and that was submitted to the court.

4 And the way the deal is assembled is that  
5 there's going to be an issuer trust who is going  
6 to issue some bonds for the private bond claims,  
7 and those are going to be paid approximately to  
8 56 cents in a dollar, and the digital bonds will  
9 get paid in a term of approximately 20 years. And  
10 then, there's a trust that's called the Public  
11 Entity Trust that's going to be used to pay public  
12 funds that were deposited at GDB.

13 And in your claim to the court, this Title VI  
14 proceeding, you've asserted that you have a  
15 private bond claim against GDB. So, I ask you if  
16 you can tell me what the basis of your claim of  
17 being a private bond claimant of GDB is, if you  
18 know.

19 A. Okay. Well, I believe I understand your  
20 question.

21 We know that this project was completed by Las  
22 Piedras, and we also have been made aware that the  
23 final payment under the contract has not been paid  
24 to Las Piedras. I learned that, once the payment  
25 bond claim started coming, I discovered that this

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1 project was still open. And in light of that,  
2 that is when we decided that we were going to file  
3 our indemnity agreement, to notify GDB that we  
4 have an assignment of those funds.

5 It's Zurich's position that we have a valid  
6 assignment of any remaining contract funds related  
7 to the Río Bayamón infrastructure project. And  
8 that is been the premise of what we've been trying  
9 to accomplish with respect to GDB; is to ascertain  
10 the quantity of funds that are being held, and to  
11 ensure that at least we get an opportunity to be  
12 heard about our assignment, as well as our  
13 equitable subrogation rights to those funds.

14 Q. Okay. But, is it your position that you  
15 have a bond claim against GDB?

16 A. As to my understanding, Zurich is  
17 characterized as a vendor. Again, I've used the  
18 term earlier in my deposition where I used the  
19 term, "We step into the shoes of L.P.C.D. So,  
20 since we have suffered a loss, and since L.P.C.D.  
21 is in default, my position is we have stepped into  
22 their shoes."

23 So, to the extent GDB has any remaining  
24 contract funds that would otherwise be payable to  
25 Las Piedras, Zurich is saying, "No, I have an

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1 assignment of those funds. They're mine." And  
2 that is one avenue of our claim.

3 And the other is what we were discussing early  
4 on, our equitable subrogation rights, where I've  
5 actually paid losses related to that project.

6 Did that respond to your question?

7 Q. Yes. Thank you. That your position is  
8 that you have the right to the entirety of  
9 whatever amount GDB holds for the benefit of Las  
10 Piedras.

11 A. Yes, ma'am. That is correct.

12 Q. That is correct. Despite of the fact that  
13 your claims with respect to the Río Bayamón  
14 project are approximately 1.295 million.

15 A. Yes, ma'am. That is correct.

16 MS. LÓPEZ: I have nothing further,  
17 unless your client has any questions.

18 MR. FERNÁNDEZ: No, I haven't.

19 MS. LÓPEZ: Thank you very much for your  
20 time.

21 THE DEPONENT: Thank you.

22 MS. LÓPEZ: And we're done.

23 (Whereupon, at 11:00 a.m. the  
24 deposition concludes.)

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DEPONENT'S CERTIFICATE

I, PAUL W. EAVES, after reading the within transcription prepared by RITA, INC., certify that (yes) \_\_\_\_\_ \*(no) \_\_\_\_\_ I am in agreement with the contents of same.

In \_\_\_\_\_, Puerto Rico, the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
PAUL W. EAVES

\*NOTE: If the deponent is not in agreement with any portions of the transcription, he must utilize the enclosed Errata Sheet by indicating the page and line number and indicated correction.

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**RITA, INC.**

ERRATA SHEET

I, PAUL W. EAVES, certify that I have read the foregoing transcript of my deposition taken on September 25, 2018, and have signed it subject to the following changes, if any:

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 PAUL W. EAVES

\_\_\_\_\_  
 DATE

Sworn and subscribed to on this \_\_\_\_\_ day of \_\_\_\_\_, 2018.



RITA, INC.

CERTIFICATE OF NOTARY PUBLIC

I, ERIKA M. CARRASQUILLO-ÁLVAREZ, ESQ., Notary Public duly commissioned and qualified in and for the Commonwealth of Puerto Rico,

DO HEREBY CERTIFY that the court reporter and deponent were duly sworn before the commencement of the taking of the deponent's testimony.

IN WITNESS WHEREOF I sign these presents and affix my notarial seal in San Juan, Puerto Rico, this

\_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
ERIKA M. CARRASQUILLO-ÁLVAREZ, ESQ.

RITA, INC.

RITA, INC.

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REPORTER'S CERTIFICATE

I, PABLO EMILIO ÁLVAREZ-RODRÍGUEZ, E.R.  
Reporter, do hereby certify that the following  
transcript is a full, true and correct record  
transcribed by me.

I further certify that I am not interested in  
the outcome of the case named in said caption.



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PABLO EMILIO ÁLVAREZ-RODRÍGUEZ

RITA, INC.

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787.969.6676 - info@ritapr.com