

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

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO  
RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,  
*et al.*,

Debtors.<sup>1</sup>

PROMESA  
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

ACP MASTER, LTD., *et al.*,

Plaintiffs,

v.

THE COMMONWEALTH OF PUERTO RICO,  
*et al.*,

Defendants.

Adv. Proc. No. 17-189  
in 17 BK 3283-LTS

**JOINT STATUS REPORT**

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<sup>1</sup> The Debtors in these jointly-administered PROMESA Title III Cases, along with each Debtor's respective Title III Case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are: (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17 BK 3284) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric and Power Authority (Bankruptcy Case No. 17 BK 4780) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as bankruptcy case numbers due to software limitations).

The Official Committee of Retired Employees of the Commonwealth of Puerto Rico (the “**Committee**”), the Financial Oversight and Management Board for Puerto Rico (the “**FOMB**”) and Plaintiffs<sup>2</sup> (collectively, the “**Parties**”) submit the following joint status report regarding the Retiree Committee’s *Motion For Leave To Intervene Under Bankruptcy Rule 7024* (Dkt. No. 23) (the “**Motion**”):

1. In light of the First Circuit’s recent decision, the Parties agree as a general matter that the Motion should be granted to permit the Committee, as a statutory committee appointed under § 1102(a) of the Bankruptcy Code, to intervene in the Adversary Proceeding as a party in interest pursuant to § 1109 of the Code, and that intervention should be allowed now.

2. The Parties, however, do not agree on the scope of the Committee’s intervention. The Committee proposes that it be permitted to intervene to: (i) participate fully in the discovery process as it relates to any and all aspects of the Adversary Proceeding; *provided, however*, that the Committee agrees that it will not propound its own written discovery and that it will not seek to expand the number or permitted duration of depositions; and *provided, further* that the FOMB will consult with the Committee regarding the discovery that is sought; (ii) receive copies of all pleadings, memoranda and any other discovery or document which have been obtained or exchanged in the Adversary Proceeding; (iii) receive notice of and be authorized to attend and participate fully at all scheduled depositions, document productions, and hearings; (iv) participate in any settlement of the Adversary Proceeding, including without limitation all discussion of settlement; *provided, however*, that nothing allows any one Party to bind any other Party to a settlement or requires any Party to include any other Party in any such discussions or prevents the Committee from objecting to a settlement motion filed by the FOMB; and (v) be heard on the

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<sup>2</sup> Plaintiffs submit this joint status report solely on their own behalves and do not assume any fiduciary or other duties to any other creditor or person.

merits of any issue in the Adversary Proceeding. The Committee represented to the FOMB that it will cooperate with the FOMB on discovery and all other matters to avoid duplication.

3. The FOMB's position<sup>3</sup> is: (i) the Committee should be permitted to raise, appear and be heard on any issue in the Adversary Proceeding, pursuant to Bankruptcy code section 1109(b); (ii) the Committee should be permitted to review discovery and counsel to the Committee should be permitted to attend any depositions taken in the Adversary Proceeding, subject to the execution of any relevant protective order; (iii) the Committee should not have the right to propound discovery requests, nor the right to examine witnesses during depositions, hearings, or trial; and (iv) the Committee shall have the right to file briefs stating its positions on issues raised in the Adversary Proceeding, and, subject to such notice or other requirements as the Court may impose, the Committee may be heard at arguments concerning issues raised in the Adversary Proceeding. Regarding settlement, the FOMB agrees that the Committee can participate in discussions regarding settlement of the Adversary Proceeding, provided that the FOMB is not required to include the Committee in any or all discussions. The FOMB further agrees that the Committee may object to a settlement motion filed by the FOMB, but if such a settlement is approved by the Court it will be binding on the Committee. The FOMB further submits that the Committee should not be permitted to file its own settlement motion, or otherwise take any action to take control over the claims, defenses, or appeals of the FOMB or the Commonwealth.

4. The primary difference between the position of the FOMB and the Committee is that the FOMB does not agree that the Committee should be permitted to examine witnesses during depositions, hearings or trial, although counsel for the FOMB shall use reasonable efforts to confer with counsel for the Committee in advance of depositions, hearings, or trial, and shall allow

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<sup>3</sup> The Commonwealth's position is the same as that of the FOMB.

counsel for the Committee an opportunity to suggest questions and arguments. The FOMB's position is identical to the position it has taken with respect to intervention requests submitted by the official unsecured creditors committee.<sup>4</sup> The FOMB's concern is that the First Circuit's ruling is not limited to official committees, and does not want depositions or trials in adversary proceedings to be open to questioning by any and all parties in interest in the Debtors' Title III cases. It is less about duplication of effort between the Debtors and the Committee, and more about opening a floodgate of participants beyond the plaintiffs and defendants in the myriad litigation filed and to be filed in connection with these cases. The FOMB and the Committee may also differ regarding settlement, in that the FOMB insists that a Court-approved settlement will be binding on the Committee, and the Committee should not be allowed to pursue its own motion to approve a settlement. The FOMB otherwise incorporates its position and arguments stated in its Opposition to the Motion (Dkt. No. 51).<sup>5</sup>

5. Plaintiffs do not object to participation by the Committee in this Adversary Proceeding under the terms proposed by the FOMB above. Plaintiffs submit that these proposed limitations on the Committee's participation fall comfortably within the court's "broad discretion to control and limit the scope of intervention." *Assured Guaranty Corp. v. Financial Oversight & Mgmt. Bd. for Puerto Rico*, No. 17-1831, 2017 WL 4216438, at \*4 (1st Cir. Sept. 22, 2017). This form of limited participation is appropriate because it would give effect to the Committee's statutory right to participate as a "party in interest" under the First Circuit's decision while also reflecting the fact that, as explained in Plaintiffs' Memorandum in Opposition to the Motion (Dkt.

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<sup>4</sup> See *Response to Official Committee of Unsecured Creditors' Supplemental Briefing in Support of Limited Participation*, Adv. Pro. 17-155 (Dkt. 75); Adv. Pro. 17-156 (Dkt. 77); Adv. Pro. 17-159 (Dkt. 82); Adv. Pro. 17-189 (Dkt. 60); Adv. Pro. 17-228 (Dkt. 51); Adv. Pro. 17-232 (Dkt. 46).

<sup>5</sup> In light of the Parties' agreement to intervention, the Retiree Committee did not file replies to the FOMB's and Plaintiffs' objections, but disputes the arguments set forth therein.

No. 48, at 4-8), the Committee lacks any basis to intervene as a party under traditional intervention standards. Thus, although the Committee may be permitted to “raise and . . . appear and be heard on any issue,” 11 U.S.C. § 1109(b), it should not be afforded the broader intervention rights that are appropriate when a litigant establishes both a direct interest in a case and the absence of adequate representation by the existing parties.<sup>6</sup>

6. Plaintiffs further submit that an order granting intervention should preserve the rights of Plaintiffs, the FOMB, and the Commonwealth to contend that any issue presented by the Committee is not appropriate for resolution in this Adversary Proceeding, including because it would unnecessarily broaden the scope of the Adversary Proceeding and thereby prejudice the original parties. *See, e.g., Assured Guaranty*, 2017 WL 4216438, at \*5.

7. The Committee does not believe it is appropriate for the Court to block its ability to ask questions. *First*, because the Committee was not a party to the negotiations between the FOMB and the other committee; the Committee thus asserts it is improper for the FOMB to refuse to consider modifications to its proposal simply because someone else agreed to it under different circumstances. Further, the FOMB’s concern that the Committee’s proposed scope of intervention will lead to a “floodgate” of intervenors is unfounded. This Court can gauge the appropriateness of intervention on an intervenor by intervenor basis and not a “one size fits all” form of intervention—certainly the Committee which represents the largest creditor pool and 160,000 Puerto Rico retirees is in a different position than an individual intervenor.

8. *Second*, the Committee asserts the circumstances here *are* different. The other

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<sup>6</sup> Plaintiffs dispute the Committees’ position that it is entitled to broader intervention rights on the ground that this Adversary Proceeding implicates the priority of distributions to retirees. *See* Dkt. No. 48, at 1-2 (explaining that Plaintiffs’ complaint seeks to establish and enforce property interests in the discrete categories of Commonwealth resources defined as “Restricted Revenues” in the complaint, rather than to establish any broader priority with respect to other Commonwealth resources). Plaintiffs also reserve their right to challenge, in an appropriate forum, the various assertions made by the Committee in this joint status report regarding the nature and amount of retirees’ claims.

committee agreed to concessions in the context of a lawsuit that did not directly impact its rights—a bond insurer’s challenge to the certification of the fiscal plan—a suit the plaintiff now seeks to withdraw. By contrast, in this lawsuit, Plaintiffs directly attack the rights of Puerto Rico’s retirees to receive their pensions, arguing that the FOMB may propose a plan of adjustment *only* if such plan grants Plaintiffs priority over all other creditors, including retirees. As explained more fully in the Motion, the Committee has standing and this lawsuit is critical to the whole reason the Committee exists: to protect the pensions of its 160,000 constituents.

9. *Third*, the Committee argues the proposed order can ensure that there is not needless duplication by requiring cooperation and, as the final arbiter of the proceedings before it, should duplication occur, the Court can stop it. But the FOMB’s attempt to silence the Committee in advance is unnecessary. It also sends the wrong message to the citizens of Puerto Rico. Unlike the other committee, which represents a relatively small amount of trade creditors, many of which continue to be paid in the ordinary course, the Committee represents the largest group of creditors both in terms of numbers (160,000) and dollars (approximately \$50 billion). The retirees are primarily residents of Puerto Rico; preventing their representative to ask questions sends the wrong message about these proceedings to the citizens of the Commonwealth it is supposed to be serving. To the extent a factual issue requires an evidentiary hearing, the Committee should be permitted to participate; the FOMB’s proposed restrictions would impede the Committee’s right to appear and be heard as an intervenor-party under § 1109 and Rule 24. Accordingly, the FOMB’s limitation should not be adopted in this lawsuit.

10. Assuming the Court agrees that intervention should be granted, the Parties agree that the scope of the intervention may be decided by this Court without a hearing.

October 9, 2017

Respectfully submitted,

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