

**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.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

THE EMPLOYEES RETIREMENT SYSTEM
OF THE GOVERNMENT OF THE
COMMONWEALTH OF PUERTO RICO,

Debtor.

PROMESA
Title III

No. 17 BK 3566-LTS

¹ 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).

ALTAIR GLOBAL CREDIT OPPORTUNITIES
FUND (A), LLC, *et al.*,

Plaintiffs,

v.

THE COMMONWEALTH OF PUERTO RICO,
et al.,

Defendants.

Adv. Proc. No. 17-219
in 17 BK 3566-LTS

JOINT STATUS REPORT

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 certain holders of ERS bonds (the “**ERS Bondholders**”) (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. 14) (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 Bankruptcy 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 merits of any issue in the Adversary Proceeding. The Committee has represented to the FOMB

that it will cooperate with the FOMB on discovery and all other matters so as to avoid duplication.

3. The FOMB's position² 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, 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 ERS.

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 counsel for the Committee an opportunity to suggest questions and arguments. The FOMB's

² The Debtor ERS's position is the same as that of the FOMB.

position is identical to the position it has taken with respect to intervention requests submitted by the official unsecured creditors committee.³ 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 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 myriad litigation filed and to be filed in 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 settlement motion. The FOMB otherwise incorporates its position and arguments stated in its Opposition to the Motion (Dkt. No. 17).

5. The ERS Bondholders agree with the FOMB that the scope of the Committee's intervention should be limited. As the ERS Bondholders explained at length in their objection to the Committee's motion to intervene, the participation of the Committee in this litigation is entirely unnecessary. (Dkt. No. 16.) Joint Resolution 188 establishes only the mechanism by which pension claimants will be paid; it has no material effect on the amount of recovery pension creditors can expect. Simply put, the Retiree Committee's interest in this litigation is minimal and fully aligned with the existing Defendants.⁴

6. Accordingly, the ERS Bondholders believe the order allowing the Committee to intervene should require the Committee to coordinate the defense and any appeal with the Defendants. The order should make clear that the addition of the Committee will not increase the

³ 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).

⁴ In light of the Parties' agreement to intervention, the Retiree Committee did not file replies to the FOMB's and ERS's objections, but disputes the arguments set forth therein.

Defendants' number of depositions, discovery requests, briefs, or hearing time, and that the Committee is not permitted to propound its own discovery or notice any of its own depositions. The ERS Bondholders take no position on whether the Committee should be permitted to ask questions at depositions scheduled by the existing parties, or whether the Committee should participate in hearings, provided that the Committee must share time with the Defendants and that the total time is not expanded. Regarding settlements, the ERS Bondholders agree with the FOMB that the Committee should be permitted to participate in settlement discussions, but that its participation should not be made mandatory. Any judgment entered by the Court or settlement among the existing parties approved by the Court should be binding on the Committee, and the Committee should not have the power to appeal an adverse decision by the Court without the consent of the Defendants. Finally, the order should specify that by intervening in this litigation, the Committee is making itself amenable to suit as a class representative for any counterclaims the ERS Bondholders may choose to assert against the Committee or its constituents. The ERS Bondholders submit that the participation described above is consistent with that sought by the UCC in *Assured Guaranty* and is justified by the Committee's limited interest in this litigation.

7. The Committee does not believe it is appropriate for the Court to block its ability to ask questions. *First*, as an initial matter, 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 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, the ERS Bondholders have sought to enjoin the implementation of the Joint Resolution 188, the statute which allows payment of the retirees’ pensions, and to assert a lien on the funds that are used to make retiree pension payments. The Committee asserts that retirees are the direct beneficiaries of Joint Resolution 188 and, 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 (~\$50 billion). The retirees are primarily residents of Puerto Rico; preventing their representative to ask questions sends the wrong message to the citizens of the Commonwealth. 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.

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,

/s/ Robert Gordon

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