

Hearing Date and Time: October 4, 2017, at 9:30 a.m. EDT

Objection Deadline: September 22, 2017, at 4:00 p.m. EDT

**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)

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

**NOTICE OF HEARING ON MOTION OF
OFFICIAL COMMITTEE OF RETIRED EMPLOYEES OF
THE COMMONWEALTH OF PUERTO RICO FOR LEAVE
TO INTERVENE UNDER BANKRUPTCY RULE 7024**

¹ The Debtors in these jointly-administered PROMESA Title III Cases (these “**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); and (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).

PLEASE TAKE NOTICE that a hearing on the annexed *Motion of Official Committee of Retired Employees of the Commonwealth of Puerto Rico for Leave to Intervene Under Bankruptcy Rule 7024* (the “**Motion**”) filed by the Official Committee of Retired Employees of Puerto Rico, pursuant to section 1103(a)(1) of the Bankruptcy Code, made applicable to these cases by section 301 of the Puerto Rico Oversight, Management, and Economic Stability Act of 2016 (“**PROMESA**”), will be held before the Honorable Laura Taylor Swain, United States District Court Judge, at the United States District Court for the District of Puerto Rico, Room 3, 150 Carlos Chardón Street, Federal Building, Office 150, San Juan, Puerto Rico 00918-1767 on **October 4, 2017 at 9:30 a.m. (Prevailing Eastern Time)** (the “**Hearing**”).

PLEASE TAKE FURTHER NOTICE that any response or objection (any “**Objection**”) to the Motion must be in writing, must conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the District of Puerto Rico, must be filed with the Court (a) by attorneys practicing in the Court, including attorneys admitted *pro hac vice*, electronically in accordance with Rule 5 of the Local Rules for the District of Puerto Rico, and (b) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF), to the extent applicable, and shall be served in accordance with the First Amended Case Management Procedures (Dkt. No. 262-1), so as to be filed and received no later than **September 22, 2017 at 4:00 p.m. (Prevailing Eastern Time)** (the “**Objection Deadline**”).

PLEASE TAKE FURTHER NOTICE that if an Objection to the Motion is not received by the Objection Deadline, the relief requested shall be deemed unopposed, and the Court may enter an order granting the relief sought without a hearing pursuant to the First Amended Case Procedures.

August 4, 2017

JENNER & BLOCK LLP

By:

/s/ Robert Gordon

Robert Gordon (admitted *pro hac vice*)
Richard Levin (admitted *pro hac vice*)
919 Third Ave
New York, NY 10022-3908
rgordon@jenner.com
rlevin@jenner.com
212-891-1600 (telephone)
212-891-1699 (facsimile)

Catherine Steege (admitted *pro hac vice*)
Melissa Root (admitted *pro hac vice*)
353 N. Clark Street
Chicago, IL 60654
csteege@jenner.com
mroot@jenner.com
312-222-9350 (telephone)
312-239-5199 (facsimile)

Respectfully submitted,

BENNAZAR, GARCÍA & MILIÁN, C.S.P.

By:

/s/ A.J. Bennazar-Zequeira

A.J. Bennazar-Zequeira
Edificio Union Plaza
PH-A piso 18
Avenida Ponce de León #416
Hato Rey, San Juan
Puerto Rico 00918
ajb@bennazar.org
787-754-9191 (telephone)
787-764-3101 (facsimile)

*Proposed Counsel for The Official Committee
of Retired Employees of Puerto Rico*

**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)

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

**MOTION OF OFFICIAL COMMITTEE OF RETIRED
EMPLOYEES OF THE COMMONWEALTH OF PUERTO RICO
FOR LEAVE TO INTERVENE UNDER BANKRUPTCY RULE 7024**

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); and (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).

TABLE OF CONTENTS

INTRODUCTION1

JURISDICTION AND VENUE5

BACKGROUND5

RELIEF REQUESTED.....6

ARGUMENT7

I. The Retiree Committee Has Standing To Intervene.....7

II. The Retiree Committee’s Motion Is Timely.....8

III. The Retiree Committee Is Entitled To Intervene In The Adversary Proceeding As A Matter Of Right Under Rule 24(a)(1) Of The Federal Rules Of Civil Procedure And Section 1109 Of The Bankruptcy Code.9

IV. The Retiree Committee Satisfies The Requirements For Intervention In Rules 24(a)(2) And 24(b) Of The Federal Rules Of Civil Procedure.....12

 A. The Retiree Committee Satisfies The Requirements Of Rule 24(a)(2) Of The Federal Rules Of Civil Procedure.....12

 B. The Retiree Committee Satisfies The Requirements For Permissive Intervention Under Rule 24(b) Of The Federal Rules Of Civil Procedure.....13

NOTICE.....14

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>B. Fernandez & Hnos., Inc. v. Kellogg USA, Inc.</i> , 440 F.3d 541 (1st Cir. 2006).....	13
<i>Banco Popular de P.R. v. Greenblatt</i> , 964 F.2d 1227 (1st Cir. 1992).....	3
<i>Citibank, N.A. v. Roanca Realty, Inc. (In re Roanca Realty, Inc.)</i> , 747 F.2d 816 (1st Cir. 1984).....	10, 11
<i>Cotter v. Massachusetts Ass’n of Minority Law Enf’t Officers</i> , 219 F.3d 31 (1st Cir. 2000).....	3, 7
<i>Daggett v. Comm’n on Governmental Ethics & Election Practices</i> , 172 F.3d 104 (1st Cir. 1999).....	14
<i>In re Caldor Corp.</i> , 303 F.3d 161 (2d Cir. 2002).....	10
<i>In re El Comandante Mgmt. Co., LLC</i> , 359 B.R. 410 (Bankr. D.P.R. 2006).....	10
<i>In re Marin Motor Oil, Inc.</i> , 689 F.2d 445 (3d Cir. 1982).....	10, 11
<i>In re Rovira Ortiz</i> , No. 03-04534 SEK, 2006 WL 3898381 (Bankr. D.P.R. June 2, 2006).....	10
<i>In re Thompson</i> , 965 F.2d 1136 (1st Cir. 1992).....	11
<i>Motor Vehicle Casualty Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)</i> , 677 F.3d 869 (9th Cir. 2012)	7
<i>Sea Hunters, L.P. v. S.S. PORT NICHOLSON</i> , No. 2:08-CV- 272-GZS, 2013 WL 5435636 (D. Me. Sept. 29, 2013).....	14
STATUTES	
11 U.S.C. § 1109(b)	10, 11

**MOTION OF OFFICIAL COMMITTEE OF RETIRED
EMPLOYEES OF THE COMMONWEALTH OF PUERTO RICO
FOR LEAVE TO INTERVENE UNDER BANKRUPTCY RULE 7024**

The Official Committee of Retired Employees of the Commonwealth of Puerto Rico (the “**Retiree Committee**”) respectfully moves this Court for entry of an order, pursuant to Bankruptcy Rule 7024, made applicable by section 310 of the *Puerto Rico Oversight, Management and Economic Stability Act* (“**PROMESA**”),² authorizing the Retiree Committee to intervene in the above-captioned adversary proceeding (the “**Adversary Proceeding**”) filed by certain holders of general obligation bonds (the “**GO Bondholders**”). In support of this motion (the “**Motion**”), the Retiree Committee respectfully states as follows:

INTRODUCTION

1. The Retiree Committee seeks to intervene in the Adversary Proceeding to move to dismiss or stay the GO Bondholders’ Complaint and, if the Court does not dismiss or stay the Adversary Proceeding, to intervene for all purposes to protect the rights and interests of the Commonwealth’s retirees.

2. As set forth in the *Motion Of Intervenor Official Committee Of Retired Employees’ To Dismiss Or, In The Alternative, To Stay The Complaint* (the “**Motion to Dismiss or Stay**”), attached hereto as Exhibit A, the relief the GO Bondholders seek through their Complaint is premature and in conflict with PROMESA and the Bankruptcy Code. In their Complaint, the GO Bondholders directly attack the rights of Puerto Rico’s 160,000 retired teachers, police officers, firefighters, judges, municipal clerks, engineers, and other government workers of all categories

² PROMESA is codified at 48 U.S.C. §§ 2101–2241. Unless otherwise noted, PROMESA section 301(a) makes all Bankruptcy Code sections cited in this Motion applicable to the Title III Cases and this Adversary Proceeding (each as defined herein).

to receive their pensions, arguing that the Financial Oversight and Management Board (“**FOMB**”) may propose a plan of adjustment *only* if such plan grants the GO Bondholders priority over all other creditors, including retirees. (*See, e.g.*, Complaint ¶ 93.) Although the Complaint ostensibly is directed at stopping the Commonwealth from using two sources of revenue for purposes other than repayment of GO bond debt, the underlying purpose of the Complaint is to establish the priority of payment of GO bond debt relative to all other Commonwealth debt under any future plan of adjustment—and to do so outside of the plan confirmation process.

3. Indeed, the GO Bondholders’ Complaint would have this Court determine—in a purported two-party dispute between only the GO Bondholders and the Commonwealth and in the very early stages of these Title III Cases—that the GO Bondholders are entitled to certain funds and sources of revenue to the exclusion of the Commonwealth’s retirees and other creditors based upon their asserted priority right to these funds. An adversary proceeding, which by its very nature does not include all creditors, is not the appropriate forum to resolve priority of claim issues. Instead, these issues should be determined in the context of the plan confirmation hearing as part of the Court’s determination about whether the plan of adjustment satisfies the requirements of section 1129 of the Bankruptcy Code. Because PROMESA mandates that modifications to the Commonwealth’s debt can take place only through a confirmed plan of adjustment, the Retiree Committee respectfully requests that it be permitted to intervene to prosecute the attached Motion to Dismiss or Stay.

4. As set forth below, the Retiree Committee satisfies the requirements for intervention. *First*, the Retiree Committee has Article III standing to intervene in this Adversary Proceeding. The GO Bondholders seek declaratory and equitable relief from this Court with the express aim of establishing a priority scheme that will shift billions of dollars from retirees to

themselves. The GO Bondholders do not disguise this goal, repeatedly attacking the Commonwealth's proposed treatment of retirees' pensions in their Complaint. (*See, e.g.*, Complaint ¶¶ 95, 99, 126, 147, 152.) The harm to the retirees were the Court to grant this relief would be immediate and substantial. Because section 1102 of the Bankruptcy Code authorizes the Retiree Committee to represent the interests of the retirees, the Retiree Committee, on behalf of its constituents, has "a concrete stake in the outcome." *Cotter v. Mass. Ass'n of Minority Law Enf't Officers*, 219 F.3d 31, 33 (1st Cir. 2000).

5. **Second**, the Retiree Committee's Motion is timely. The Retiree Committee seeks to intervene prior to the deadline by which the named defendants must answer or move to dismiss the Complaint. No discovery has taken place in the Adversary Proceeding, nor has there been any substantive briefing on the issues presented by the Complaint. Accordingly, there is no risk that the Retiree Committee's intervention in the very early stages of this Adversary Proceeding will cause "last minute disruption" or prejudice to any parties. *See Banco Popular de P.R. v. Greenblatt*, 964 F.2d 1227, 1232 (1st Cir. 1992).

6. **Third**, as a statutory committee appointed under section 1102(a)(1) of the Bankruptcy Code, the Retiree Committee has an unconditional right to intervene in this Adversary Proceeding. Section 1109 of the Bankruptcy Code provides: "[a] party in interest, including . . . a creditors' committee . . . may raise and may appear and be heard on any issue in a case." 11 U.S.C. § 1109(b). Rule 24(a)(1) of the Federal Rules of Civil Procedure provides: "[o]n timely motion, the court must permit anyone to intervene who is given an unconditional right to intervene by a federal statute." Fed. R. Civ. P. 24(a)(1). Here, the Retiree Committee is a "party in interest," as its constituents' pecuniary interests are at direct issue in the Adversary Proceeding. Moreover, the relief the GO Bondholders seek in the Adversary Proceeding goes to the central issue of these Title

III Cases—the restructuring of the Commonwealth’s indebtedness and the relative priorities of various creditor bodies, including retirees. Thus, Rule 24(a)(1), read together with section 1109 of the Bankruptcy Code, mandates granting intervention.

7. **Fourth**, Rule 24(a)(2) and 24(b) provide alternate bases to support the Retiree Committee’s intervention. As the First Circuit has explained, Rule 24(a)(2) mandates intervention where an intervenor demonstrates: “(i) the timeliness of its motion to intervene; (ii) the existence of an interest relating to the property or transaction that forms the basis of the pending action; (iii) a realistic threat that the disposition of the action will impede its ability to protect that interest; and (iv) the lack of adequate representation of its position by any existing party.” *P.R. Tel. Co. v. Sistema de Retiro de los Empleados del Gobierno y la Judicatura*, 637 F.3d 10, 14 (1st Cir. 2011). As set forth herein, the Retiree Committee satisfies each of these requirements, justifying intervention under Rule 24(a)(2) and supporting permissive intervention under the more limited requirements of Rule 24(b).

8. Accordingly, the Retiree Committee respectfully requests that this Court enter the proposed Order attached hereto as Exhibit B, granting the Retiree Committee leave to intervene in the Adversary Proceeding to file the Motion to Dismiss or Stay and for all other purposes.³

³ The Retiree Committee has reviewed this Court’s *Memorandum Order Granting Urgent Motion Of Official Committee Of Unsecured Creditors To Expedite Consideration Of Motion For Leave To Intervene And Denying Motion For Leave To Intervene Under Bankruptcy Rule 7024* (Dkt. No. 301) in which this Court denied the motion of the Official Committee of Unsecured Creditors (the “UCC”) to intervene, in part, on the basis that the UCC was not appointed as a committee in the COFINA Title III Case. Here, the Retiree Committee was appointed as a committee in the Commonwealth’s Title III Case, and the retirees it represents are owed their pensions by the Commonwealth. Accordingly, the Retiree Committee’s Motion is distinguishable from that filed by the UCC.

JURISDICTION AND VENUE

9. The United States District Court for the District of Puerto Rico (the “**Court**”) has subject matter jurisdiction over this matter pursuant to PROMESA section 306(a).

10. Venue is proper pursuant to PROMESA section 307(a).

11. The statutory bases for the relief requested herein are Bankruptcy Code section 1109(a), made applicable pursuant to PROMESA section 301(a), and Bankruptcy Rule 7024, made applicable pursuant to PROMESA section 310.

BACKGROUND

12. On May 3, 2017, the FOMB filed a Title III petition for the Commonwealth of Puerto Rico (the “**Commonwealth**”). Thereafter, the FOMB commenced Title III cases for each of the Puerto Rico Sales Tax Financing Corporation (“**COFINA**”), the Puerto Rico Highways and Transportation Authority (“**HTA**”), and the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“**ERS**”).

13. Through Orders of this Court, the Commonwealth, COFINA, HTA, and ERS Title III Cases (the “**Title III Cases**”) are jointly administered for procedural purposes only, pursuant to PROMESA section 304(g) and Bankruptcy Rule 1015, made applicable to these Title III Cases by PROMESA section 310. (Dkt. Nos. 242, 537.)

14. On June 15, 2017, the United States Trustee, pursuant to section 1102(a)(1) of the Bankruptcy Code, appointed nine individuals to the Retiree Committee: Blanca Paniagua, Carmen Nunez, José Marin, Juan Ortiz, Lydia Pellot, Marcos A. Lopez, Miguel Fabre, Milagros Acevedo, and Rosario Pacheco. (Dkt. No. 340.) The Retiree Committee represents approximately 160,000 retired employees of the Commonwealth and various governmental bodies and their surviving beneficiaries, including Puerto Rico’s retired teachers, police officers, firefighters, judges, municipal clerks, engineers, and other government workers of all categories.

15. On June 29, 2017, the GO Bondholders commenced the Adversary Proceeding seeking “a declaratory judgment and related equitable relief recognizing and enforcing the GO Bondholders’ rights and interest in, and Defendants’ obligations with respect to, certain revenues committed by the Puerto Rico Constitution, by statute, and by contract, to payment of public debt.” (Complaint ¶ 1.)

16. The GO Bondholders executed service of the summons against the named defendants, the Commonwealth of Puerto Rico, and the FOMB, on July 6, 2017. (Dkt. Nos. 15, 16.)

17. Throughout the Complaint, the GO Bondholders contend that the Fiscal Plan—which already seeks to impose a significant 10 percent cut to retiree pensions—impermissibly favors retirees. Among other contentions, the GO Bondholders assert that the proposed 10 percent reduction in aggregate pension liabilities is “inconsistent with Puerto Rico’s Constitution and laws” (Complaint ¶ 126); criticize Governor Rosselló’s proposal to increase tax exemptions for pensioners (Complaint ¶ 148); claim the Fiscal Plan’s “unabashed elevation of pension claims is a flagrant violation of PROMESA” (Complaint ¶ 152); and allege that, as a result of pension reimbursements and asset sales, the Commonwealth’s pensions have not reached pay-go thresholds, and instead “hold substantially more assets” available to reduce future pension liabilities. (Complaint ¶ 165 & n.74.)

18. The Complaint seeks declaratory relief that would advance the interests of the GO Bondholders over those of the Commonwealth’s retirees.

RELIEF REQUESTED

19. To protect the interests of its constituents, the Retiree Committee requests entry of an Order authorizing it to intervene in the Adversary Proceeding to file and prosecute the Retiree Committee’s Motion to Dismiss or Stay. To the extent the Adversary Proceeding is not dismissed

or stayed, the Retiree Committee seeks authority to: (i) participate fully in the discovery process as it relates to any and all aspects of the Adversary Proceeding, including, without limitation, the right to propound discovery requests, examine witnesses, and receive and examine all discovery materials; (ii) receive and review 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) make and respond to motions; (v) participate in any settlement of the Adversary Proceeding, including without limitation all discussion of settlement; and (vi) be heard on the merits of any issue in the Adversary Proceeding.

ARGUMENT

I. The Retiree Committee Has Standing To Intervene.

20. To establish standing under Article III, a party must have “a concrete stake in the outcome of a dispute that is otherwise fit for resolution by the courts.” *Cotter*, 219 F.3d at 33. “Article III standing exists where the participant holds a financial stake in the outcome of the proceeding such that the participant has an appropriate incentive to participate in an adversarial form to protect his or her interests.” *Motor Vehicle Cas. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 677 F.3d 869, 887 (9th Cir. 2012) (citations and internal quotations omitted).

21. The Retiree Committee has Article III standing. The interests of Puerto Rico’s approximately 160,000 retirees who spent their working years earning the pensions and other benefits that allow them to live and obtain basic medical care, are directly targeted by the Adversary Proceeding. As the statutorily-appointed representative of the retirees, the Retiree Committee therefore has a direct economic interest in the outcome of this litigation. In *Official Committee of Unsecured Creditors of WorldCom, Inc. v. SEC*, the Second Circuit held that a statutory committee, like the Retiree Committee in this case, meets the requirements for Article III

standing “[b]ecause the Committee is composed of creditors who suffered economic injuries that are fairly traceable to WorldCom’s violations of the securities laws, and because it seeks financial compensation to redress those losses.” 467 F.3d 73, 77 (2d Cir. 2006).

22. In their Complaint, the GO Bondholders request declaratory and injunctive relief that would modify the pecuniary and legal interests of the retirees by subordinating their right to pension payments and allocating funds reserved for the payment of pensions to the GO Bondholders. Far from the speculative or attenuated harm that is insufficient to confer standing, the GO Bondholders ask this Court to reallocate potentially billions of dollars from the retirees. Worse, the GO Bondholders seek to avoid the collective debt-adjustment mechanism Congress enacted in PROMESA and instead adjudicate the retirees’ rights in two-party litigation that excludes the retirees. The Retiree Committee’s constituents have a vested and very personal interest in the relief sought in this adversary proceeding, and the Retiree Committee has standing to intervene.

II. The Retiree Committee’s Motion Is Timely.

23. The Retiree Committee’s Motion, filed even before a response to the Complaint is due, is timely. As the First Circuit has explained, “the concept of timeliness ... is not measured, like a statute of limitations, in terms of specific units of time, but rather derives meaning from assessment of prejudice in the context of the particular litigation.” *P.R. Tel. Co.*, 637 F.3d at 15 (finding no prejudice where parties sought intervention six weeks after their counsel became aware that named defendants would not adequately defend their clients’ interests). “The purpose of the [timeliness] requirement . . . is to prevent last minute disruption of painstaking work by the parties and the court.” *Banco Popular de P.R.*, 964 F. 2d at 1232 (quoting *Culbreath v. Dukakis*, 630 F.2d 15, 22 (1st Cir. 1980)). Factors considered in determining timeliness include: “(1) the length of time the applicant knew or reasonably should have known that its interest was imperiled before it

moved to intervene; (2) the foreseeable prejudice to existing parties if intervention is granted; (3) the foreseeable prejudice to the applicant if intervention is denied; and (4) idiosyncratic circumstances which, fairly viewed, militate for or against intervention.” *Id.* at 1231.

24. Here, the GO Bondholders filed suit on June 29, 2017, and served Defendants on July 6, 2017. (Dkt. Nos. 15, 16.) Accordingly, without any extensions, the deadline for Defendants to answer or otherwise plead is August 7, 2017. No discovery has commenced. The Adversary Proceeding is in its “initial stages,” and the Retiree Committee’s proposed intervention filed before the initial deadline for responding to the Complaint will not cause any disruption or prejudice to the existing parties.

III. The Retiree Committee Is Entitled To Intervene In The Adversary Proceeding As A Matter Of Right Under Rule 24(a)(1) Of The Federal Rules Of Civil Procedure And Section 1109 Of The Bankruptcy Code.

25. As a statutory committee formed pursuant to section 1102(a)(1) of the Bankruptcy Code, the Retiree Committee is entitled to intervene in the Adversary Proceeding as a matter of right.

26. Federal Rule of Civil Procedure 24(a)(1), read together with section 1109 of the Bankruptcy Code, mandates granting intervention. Rule 24(a)(1) provides, “[o]n timely motion, the court must permit anyone to intervene who is given an unconditional right to intervene by a federal statute.” Fed. R. Civ. P. 24(a)(1). Section 1109 provides that “[a] party in interest, including the debtor, the trustee, a creditors’ committee, an equity security holders’ committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case.” 11 U.S.C. § 1109. Thus, section 1109 entitles the Retiree Committee to intervene as a matter of right because the Retiree Committee is a “party in interest,” and the phrase “any issue in a case” encompasses the relief the GO Bondholders seek in this Adversary Proceeding.

27. **First**, the Retiree Committee is a “party in interest” because it is a creditors committee appointed pursuant to section 1102 of the Bankruptcy Code, and thus an enumerated “party in interest” under section 1109. Moreover, the Retiree Committee’s constituents have a direct “financial stake” in the outcome of this Adversary Proceeding. *See In re El Comandante Mgmt. Co., LLC*, 359 B.R. 410, 417 (Bankr. D.P.R. 2006) (“Generally, any person or entity, who holds a financial stake in the outcome of the debtor’s estate, is a party in interest”); *see also In re Rovira Ortiz*, No. 03-04534 SEK, 2006 WL 3898381, at *2 (Bankr. D.P.R. June 2, 2006) (“A party in interest is defined as one whose pecuniary interests are directly affected by the bankruptcy proceedings.”) (citations and internal quotations omitted).

28. **Second**, section 1109 permits parties in interest to intervene on any “issue in a case” as a matter of right. The Second and Third Circuits have both held that a committee’s status as a party in interest under section 1109(b) creates an unconditional right for statutory committees to intervene in adversary proceedings. *See In re Caldor Corp.*, 303 F.3d 161, 169 (2d Cir. 2002); *In re Marin Motor Oil, Inc.*, 689 F.2d 445, 451 (3d Cir. 1982). The *Caldor* court explained:

It is important to recognize, as the Third Circuit did, that the “exact language” of § 1109(b) “grants a right to appear and be heard not in ‘a case’ but ‘on any issue in a case.’” . . . The “issues” referred to in § 1109(b) occur in proceedings, which themselves occur in and constitute part of the “case.” While the bankruptcy rules “distinguish . . . between different types of litigated matters and divide them into contested matters and adversary proceedings,” . . . the plain text of § 1109(b) does not distinguish between issues that occur in these different types of proceedings within a Chapter 11 case. . . . We hold, therefore, that the phrase “any issue in a case” plainly grants a right to raise, appear and be heard on any issue regardless whether it arises in a contested matter or an adversary proceeding.

303 F.3d at 169 (citations and internal quotations omitted).

29. Although the First Circuit has not decided whether section 1109’s “issue in a case” language includes adversary proceedings, in *dicta*, the First Circuit noted that “11 U.S.C. § 1109(b), [] allows any ‘party in interest’ to ‘appear and be heard on any issue.’” *Citibank, N.A. v.*

Roanca Realty, Inc. (In re Roanca Realty, Inc.), 747 F.2d 816, 817 (1st Cir. 1984). The First Circuit’s support for this statement was *Marin Motor Oil*—the Third Circuit’s decision holding that committees have an unconditional right to intervene. *Id.* at 817.⁴ Moreover, as the Supreme Court has noted, the determination of whether an issue should be handled in an adversary proceeding or a contested matter “derives from the Bankruptcy Rules, see Rule Proc. 7001(6), which are procedural rules adopted by the Court for the orderly transaction of its business that are not jurisdictional,” *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272 (2010) (citations and internal quotations omitted). Therefore, since the distinction between a proceeding in the main case and an adversary proceeding is fundamentally procedural and not substantive, the fact that this intervention motion is filed in the context of an adversary proceeding should not be determinative of the Retiree Committee’s ability to be heard.

30. The Retiree Committee submits that this Court should follow the Second and Third Circuits and recognize that section 1109 grants statutory committees an unconditional right to intervene in adversary proceedings. As noted in *Collier*, “[b]ecause every issue in a case may be raised and adjudicated only in the context of a proceeding of some kind, it is apparent that the reference in section 1109(b) to ‘any issue in a case’ subsumes issues in a proceeding. Any other conclusion would render section 1109(b) meaningless because there is no such thing as an issue

⁴ The First Circuit has stated in *dicta* that section 1109 “does not afford a right to intervene” under Rule 24(a)(1). *In re Thompson*, 965 F.2d 1136, 1142 n.8 (1st Cir. 1992). *Thompson*, however, is distinguishable for two reasons. First, the party seeking to be heard was not a committee. Second, *Thompson* did not involve a motion to intervene in an adversary proceeding. Rather it involved an appeal from a settlement agreement resolving an adversary proceeding in which the appellants had not intervened. In holding that the appellants lacked standing to appeal, the First Circuit ruled that “mere participation in a hearing on the approval of a settlement or compromise in an adversary proceeding [did] not constitute *de facto* intervention,” and because the appellants had not moved to intervene, they lacked standing to appeal an order entered in that adversary proceeding. *Id.* at 1141-42.

that arises exclusively in a ‘case’ and not in a proceeding.” COLLIER ON BANKRUPTCY ¶ 1109.04[1][a][ii] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.).

31. Moreover, even if this Court were to determine that section 1109’s “issue in a case” language does not automatically apply to adversary proceedings, it should find that *this* Adversary Proceeding does present an “issue in a case.” As set forth in the Motion to Dismiss or Stay, the GO Bondholders are attempting to use this Adversary Proceeding as a backdoor to present issues that are central to the resolution of the Title III Cases and which should be heard and decided only in connection with a plan of adjustment.

32. For these reasons, the Court should recognize the Retiree Committee’s entitlement to intervene as a matter of statutory right under Rule 24(a)(1) and section 1109 of the Bankruptcy Code.

IV. The Retiree Committee Satisfies The Requirements For Intervention In Rules 24(a)(2) And 24(b) Of The Federal Rules Of Civil Procedure.

33. The Retiree Committee also satisfies the standards for intervention as a matter of right under Rule 24(a)(2), and for permissive intervention under Rule 24(b). Rule 24(a)(2) mandates that an intervention request be granted if a would-be intervenor demonstrates “(i) its motion [to intervene] is timely; (ii) it has an interest relating to the property or transaction that forms the foundation of the ongoing action; (iii) the disposition of the action threatens to impair or impede its ability to protect this interest; and (iv) no existing party adequately represents its interest.” *P.R. Tel. Co.*, 637 F.3d at 14.

A. The Retiree Committee Satisfies The Requirements Of Rule 24(a)(2) Of The Federal Rules Of Civil Procedure.

34. As set forth above, the Retiree Committee’s Motion is timely. *See supra* ¶¶ 23–24. The Committee also satisfies Rule 24(a)(2)’s second and third prongs for the same reasons that it qualifies as a party in interest in the first place. *See supra* ¶ 27. The Adversary Proceeding will

affect the amount of assets available to pay the retirees' future pension distributions. "An intervenor has a sufficient interest in the subject of the litigation where the intervenor's contractual rights may be affected by a proposed remedy." *B. Fernandez & Hnos., Inc. v. Kellogg USA, Inc.*, 440 F.3d 541, 545 (1st Cir. 2006).

35. With respect to the fourth prong, "[t]ypically, an intervenor need only make a 'minimal' showing that the representation afforded by a named party would prove inadequate." *Id.* at 545; *see also P.R. Tel. Co.*, 637 F.3d at 15 (intervention appropriate where named defendant would not aggressively advocate for defendant-intervenor's interests). Here, the United States Trustee appointed the Retiree Committee to represent the interests of the retirees because, as creditors of the Commonwealth, retirees are adverse to the Commonwealth and the FOMB and therefore, the Commonwealth and the FOMB cannot be expected to protect the interests of the retirees to the exclusion of other interests that might impact the Commonwealth's and FOMB's views on the priority of payment issue. Moreover, given the GO Bondholders' direct attack on retirees and their pensions, it is paramount that the Retiree Committee be permitted to intervene and represent its constituents' unique interests.

36. Thus, the Retiree Committee meets all requirements for intervention as a matter of right under Rule 24(a)(2) of the Federal Rules of Civil Procedure.

B. The Retiree Committee Satisfies The Requirements For Permissive Intervention Under Rule 24(b) Of The Federal Rules Of Civil Procedure.

37. Even if this Court were to determine that the Retiree Committee is not entitled to intervene as a matter of right, the Retiree Committee still should be permitted to intervene under Rule 24(b)'s "permissive intervention" standards. Rule 24(b) provides that a "court may permit anyone to intervene who: (A) is given a conditional right to intervene by a federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact."

38. Courts “enjoy[] very broad discretion” to grant permissive intervention under Rule 24(b), and will consider whether the putative intervenor (i) files a “timely motion,” (ii) “has a claim or defense that shares with the main action a common question of law or fact,” and (iii) will not “unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b); *see Daggett v. Comm’n on Gov’t Ethics & Election Practices*, 172 F.3d 104, 113 (1st Cir. 1999)). Accordingly, “the threshold for permissive intervention is low.” *Sea Hunters, L.P. v. S.S. Port Nicholson*, No. 2:08-CV- 272-GZS, 2013 WL 5435636, at *1 (D. Me. Sept. 29, 2013). Once the threshold requirements are met, “the district court can [then] consider almost any factor rationally relevant but enjoys very broad discretion in granting or denying the motion.” *Dagget*, 172 F.3d at 113.

39. As set forth above, the Motion is timely and intervention will not unduly prejudice the existing parties. And because the priority of payment under any plan of adjustment is a common question that directly impacts all creditors, including those represented by the Retiree Committee, permissive intervention is appropriate. Accordingly, permissive intervention is warranted to ensure the protection of unsecured retiree creditors by the only party charged with representing their interests.

NOTICE

40. Notice of this Application has been given in accordance with this Court’s *Order (A) Imposing And Rendering Applicable Local Bankruptcy Rules To These Title III Cases, (B) Authorizing Establishment Of Certain Notice, Case Management, And Administrative Procedures, And (C) Granting Related Relief*, as amended. (Dkt. Nos. 249, 262.)

WHEREFORE, the Retiree Committee respectfully requests the entry of an Order in the form attached hereto as Exhibit B granting the relief requested in this Motion and granting such other relief as the Court deems just and proper.

August 4, 2017

Respectfully submitted,

JENNER & BLOCK LLP

BENNAZAR, GARCÍA & MILIÁN, C.S.P.

By:

/s/ Robert Gordon

Robert Gordon (admitted *pro hac vice*)

Richard Levin (admitted *pro hac vice*)

919 Third Ave

New York, NY 10022-3908

rgordon@jenner.com

rlevin@jenner.com

212-891-1600 (telephone)

212-891-1699 (facsimile)

Catherine Steege (admitted *pro hac vice*)

Melissa Root (admitted *pro hac vice*)

353 N. Clark Street

Chicago, IL 60654

csteege@jenner.com

mroot@jenner.com

312-222-9350 (telephone)

312-239-5199 (facsimile)

By:

/s/ A.J. Bennazar-Zequeira

A.J. Bennazar-Zequeira

Edificio Union Plaza

PH-A piso 18

Avenida Ponce de León #416

Hato Rey, San Juan

Puerto Rico 00918

ajb@bennazar.org

787-754-9191 (telephone)

787-764-3101 (facsimile)

*Proposed Counsel for The Official Committee
of Retired Employees of Puerto Rico*

Exhibit A

**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)

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

**MOTION OF INTERVENOR THE OFFICIAL
COMMITTEE OF RETIRED EMPLOYEES OF THE COMMONWEALTH
OF PUERTO RICO TO DISMISS OR, IN THE ALTERNATIVE,
TO STAY THE ADVERSARY PROCEEDING**

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); and (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).

Table of Contents

PRELIMINARY STATEMENT 1
BACKGROUND 3
 A. The PROMESA Cases..... 3
 B. The Commonwealth’s Retirees..... 4
 C. The GO Bondholders..... 5
RELIEF REQUESTED..... 6
ARGUMENT 7
 I. The Court Should Dismiss The Adversary Proceeding..... 7
 A. The Adversary Proceeding Is Not “Ripe.” 7
 B. The Adversary Proceeding Seeks Relief Unavailable Under PROMESA..... 10
 C. The Adversary Proceeding Is Procedurally Improper..... 12
 II. Alternatively, The Court Should Stay The Adversary Proceeding..... 14
NOTICE..... 16

TABLE OF AUTHORITIES

	Page(s)
CASES	
Ainsworth Aristocrat Int’l Pty. Ltd. v. Tourism Co. of P.R., 818 F.2d 1034 (1st Cir. 1987).....	15
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	14
<i>Dade County Sch. Dist. v. John-Manville Corp. (In re Johns-Manville Corp.)</i> , 53 B.R. 346 (Bankr. S.D.N.Y. 1985).....	13, 15
<i>Flushing Nat’l Bank v. Mun. Assistance Corp. for City of New York</i> , 40 N.Y.2d 731 (1976).....	14
<i>In re Adelpia Commc’ns Corp.</i> , 336 B.R. 610 (Bankr. S.D.N.Y. 2006).....	9
<i>In re Adelpia Communications Corp.</i> , 307 B.R. 432 (Bankr. S.D.N.Y. 2004).....	3, 8, 9
<i>In re Baldwin-United Corp. Litig.</i> , 765 F.2d 343 (2d Cir. 1985).....	15
<i>In re City of Detroit</i> , No. 13-53846 (SWR) (Bankr. E.D. Mich. Jan. 16, 2014), ECF No. 2521	10
<i>In re City of San Bernardino</i> , 499 B.R. 776 (Bankr. C.D. Cal. 2013).....	10
<i>In re City of Stockton</i> , No. 12-32118 (Bankr. E.D. Cal. Nov. 21, 2013), ECF No. 1215.....	10
<i>In re City of Vallejo</i> , No. 08-26813-A-9, 2008 WL 4180008 (Bankr. E.D. Cal. Sept. 5, 2008)	10
<i>In re Energy Future Holdings Corp.</i> , 531 B.R. 499 (Bankr. D. Del. 2015).....	3, 8, 9
<i>In re Sanitary & Imp. Dist. No. 7 of Lancaster Cty.</i> , 96 B.R. 967 (Bankr. D. Neb. 1989)	10
<i>Kansas City S. Ry. Co. v. United States</i> , 282 U.S. 760 (1931).....	15

<i>Landis v. N. Am. Co.</i> , 299 U.S. 248 (1936).....	15
<i>Lex Claims, LLC v. Fin. Oversight & Mgmt. Bd.</i> , 853 F.3d 548 (1st Cir. 2017).....	11, 12
<i>Marquis v. FDIC</i> , 965 F.2d 1148 (1st Cir. 1992).....	15
<i>N.L.R.B. v. Bildisco & Bildisco</i> , 465 U.S. 513 (1984).....	13
<i>Reddy v. Foster</i> , 845 F.3d 493 (1st Cir. 2017).....	8
<i>Welt v. Conston Corp. (In re Conston, Inc.)</i> , 181 B.R. 175 (Bankr. D. Del. 1995).....	13, 15
STATUTES	
11 U.S.C. §§ 1123, 1124, 1129.....	4, 11

**MOTION OF INTERVENOR THE OFFICIAL
COMMITTEE OF RETIRED EMPLOYEES OF THE COMMONWEALTH
OF PUERTO RICO TO DISMISS OR, IN THE ALTERNATIVE,
TO STAY THE ADVERSARY PROCEEDING**

Proposed Intervenor the Official Committee of Retired Employees of the Commonwealth of Puerto Rico (the “**Retiree Committee**”) respectfully moves this Court for entry of an order, pursuant to Rule 7012 of the Federal Rules of Bankruptcy Procedure and Federal Rule of Civil Procedure 12(b)(1), made applicable by section 310 of the *Puerto Rico Oversight, Management and Economic Stability Act* (“**PROMESA**”),² dismissing the above-captioned adversary proceeding (the “**Adversary Proceeding**”), or in the alternative, staying the Adversary Proceeding pending the Court’s consideration of a plan of adjustment for the Commonwealth. In support of this motion (the “**Motion**”), the Retiree Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. The Retiree Committee moves to dismiss the Complaint filed by ACP Master, Ltd. and certain other plaintiffs (collectively, the “**GO Bondholders**”) because the relief the GO Bondholders seek through the Adversary Proceeding is premature, in conflict with PROMESA, and procedurally flawed. In the alternative, the Retiree Committee requests that this Court use its equitable powers to stay litigation in the Adversary Proceeding pending the Court’s consideration of the Commonwealth’s plan of adjustment.

2. These Title III Cases present complex factual and legal issues involving overlapping constitutional, statutory, and contractual provisions; over a hundred billion dollars in debt and other obligations; numerous government instrumentalities; and an array of competing

² PROMESA is codified at 48 U.S.C. §§ 2101–2241. Unless otherwise noted, PROMESA section 301(a) makes all Bankruptcy Code sections cited in this Motion applicable to the Title III Cases and this Adversary Proceeding (each as defined herein).

creditor constituencies. PROMESA provides for the resolution of these competing interests through a plan of adjustment process. The GO Bondholders seek to circumvent that process by asking this Court to determine—in a purportedly two-party dispute between only the GO Bondholders and the Commonwealth—that the GO Bondholders are entitled to super-priority treatment for their prepetition unsecured claims to the detriment of the Commonwealth’s retirees and other creditors.

3. But an adversary proceeding, which by its very nature is intended for two-party disputes, not for issues involving all creditors, is not the appropriate forum to resolve priority of claim issues. Indeed, resolving these priority disputes in this fashion would impair the substantive due process rights of all other stakeholders. Under analogous circumstances, courts have held that a creditor’s attempt to seek declaratory relief on issues central to a plan outside of the plan process is premature and not ripe and have granted motions to dismiss. *See, e.g., In re Energy Future Holdings Corp.*, 531 B.R. 499 (Bankr. D. Del. 2015); *In re Adelpia Commc’ns. Corp.*, 307 B.R. 432 (Bankr. S.D.N.Y. 2004). Indeed, the GO Bondholders have cited *no* authority in support of granting the relief they seek at this early stage in the Title III Cases. None of the chapter 9 cases which the GO Bondholders cite in their Complaint support their position that the Court should decide a priority dispute which directly affects the interests of multiple creditor groups outside of the collective plan process and in the context of a two-party adversary proceeding. (Complaint ¶ 67.)

4. The Complaint’s direct attacks on the Commonwealth’s retirees prove the point. Although they do not name the Retiree Committee or any retiree as a defendant, the GO Bondholders seek relief with the express aim of establishing a priority scheme that will shift billions of dollars from retirees to themselves. The GO Bondholders do not disguise this goal,

repeatedly attacking the Commonwealth's proposed treatment of pensions in their Complaint. (See, e.g., Complaint ¶¶ 99, 101, 126, 147-154.) The GO Bondholders' attempts to modify the rights of the Commonwealth's retirees in two-party litigation that *excludes* the Retiree Committee and the retirees it represents demonstrates why this Adversary Proceeding is not the appropriate forum to consider the GO Bondholders' contentions. Moreover, although the GO Bondholders attempt to cast their Adversary Proceeding as one to determine the validity and priority of a lien under Bankruptcy Rule 7001(2), the GO Bondholders' debt is unsecured, taking this dispute out of Rule 7001(2) and making this Adversary Proceeding procedurally improper. (See Complaint ¶ 20.)

5. In short, PROMESA directs that the treatment of claims, including the determination of their priority vis-à-vis other creditors, should be determined through the plan confirmation process. See PROMESA §§ 301(a), 312, 313, 314; 11 U.S.C. §§ 1123, 1124, 1129. The relief the GO Bondholders seek therefore is premature and in conflict with PROMESA and the Bankruptcy Code, and this Court should dismiss the Complaint.³ If the Court does not dismiss the Complaint, it should stay this litigation pending confirmation of a plan of adjustment to avoid inefficient resolution of common issues and to ensure that all parties with an interest in this issue are part of the decisional process.

BACKGROUND

A. The PROMESA Cases.

6. On June 30, 2016, President Obama signed PROMESA into law, which created the Financial Oversight and Management Board (the "**FOMB**") and empowered the FOMB to act as

³ The Retiree Committee reserves its right to join in any additional bases for dismissal advanced by the FOMB or the Commonwealth.

the Commonwealth's representative, triggered a temporary stay of litigation against the Commonwealth, and provided the Commonwealth with the ability to restructure its debts.

7. On March 13, 2017, the FOMB certified a joint fiscal plan (as amended and corrected, the "**Fiscal Plan**"). The proposed Fiscal Plan provides for a 10% reduction in aggregate annual pension payments to retirees.

8. On May 3, 2017, the FOMB filed a Title III petition for the Commonwealth of Puerto Rico (the "**Commonwealth**"). Thereafter, the FOMB commenced Title III cases for each of the Puerto Rico Sales Tax Financing Corporation ("**COFINA**"), the Puerto Rico Highways and Transportation Authority ("**HTA**"), and the Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("**ERS**").

9. Through Orders of this Court, the Commonwealth, COFINA, HTA, and ERS Title III Cases (the "**Title III Cases**") are jointly administered for procedural purposes only, pursuant to PROMESA section 304(g) and Bankruptcy Rule 1015. (*See* Dkt. Nos. 242, 537.)

10. On June 23, 2017, the Court designated a team of sitting federal judges to facilitate confidential settlement negotiations of any and all issues arising in the Title III Cases, with the goal of a successful, consensual resolution of these issues.

B. The Commonwealth's Retirees.

11. On June 15, 2017, the United States Trustee, pursuant to section 1102(a)(1) of the Bankruptcy Code, appointed nine individuals to the Retiree Committee: Blanca Paniagua, Carmen Nunez, José Marin, Juan Ortiz, Lydia Pellot, Marcos A. Lopez, Miguel Fabre, Milagros Acevedo, and Rosario Pacheco. (Dkt. No. 340.) The Retiree Committee represents approximately 160,000 retired employees of the Commonwealth and various governmental bodies and their surviving beneficiaries, including Puerto Rico's retired teachers, police officers, firefighters, judges, municipal clerks, engineers, and other government workers of all categories.

12. The Retiree Committee's constituents' pensions are underfunded by at least \$49 billion and they are the largest group of creditors in these Title III Cases. In addition to holding the largest claim, the Retiree Committee's constituents differ substantially from the Commonwealth's commercial creditors in that they have a very personal, long-term interest in the financial health and recovery of the Commonwealth, and for many, their very livelihoods depend on preserving their pensions. And unlike other creditor groups which until now have not even been asked to reduce their contractual entitlements, the Commonwealth's retirees have experienced significant reductions of their contractual benefits over the past several years. *See, e.g.*, 2013 P.R. Laws Act No. 3; 1999 P.R. Laws Act No. 305; 1990 P.R. Laws Act No. 1 (affecting ERS); 2013 P.R. Laws Act. No. 160 (affecting the Teachers Retirement System); 2013 P.R. Laws Act. No 162 (affecting the Judiciary Retirement System).

C. The GO Bondholders.

13. The GO Bondholders are beneficial owners of general obligation bonds issued by the Commonwealth and bonds issued by certain of the Commonwealth's public corporations and guaranteed by the Commonwealth (collectively, "**General Obligation Debt**").

14. On June 29, 2017, the GO Bondholders commenced this Adversary Proceeding seeking declaratory and injunctive relief governing the GO Bondholders' rights with respect to "certain revenues committed by the Puerto Rico Constitution, by statute, and by contract, to payment of public debt." (Complaint ¶ 1.) The GO Bondholders allege the Commonwealth's Fiscal Plan and budget misappropriate certain "Special Property Tax Revenues" and "Clawback Revenues." (*See* Complaint ¶¶ 118–27, 143–54.) The GO Bondholders contend that the only proper use of the Special Property Tax Revenues and the Clawback Revenues is to repay General Obligation Debt (Complaint ¶¶ 6, 63, 74, 122), and claim the Commonwealth's proposed expenditures, including pension payments to retirees, are an unlawful misappropriation of the GO

Bondholders' property. (Complaint ¶¶ 126–27, 145–54.) They further contend that General Obligation Debt is “secured” by a “first claim and lien” on all of the Commonwealth’s “available resources” pursuant to the Commonwealth Constitution and thus, that the GO Bondholders are entitled to a “first claim and lien on all available resources” of the Commonwealth. (Complaint ¶¶ 2, 25, 28, 39, 68.)

15. The GO Bondholders seek relief that sharply curtails the Commonwealth’s access to its revenues and resources, necessarily jeopardizing the Commonwealth’s ability to satisfy its obligations to retirees and severely prejudicing the retirees’ interests. The GO Bondholders rest their entitlement to the relief on the conclusion that they enjoy priority of payment over all other creditors, including the Retiree Committee’s constituents and that this priority must be respected under PROMESA. The Complaint takes frequent and direct aim at the Retiree Committee’s constituents. It claims a 10 percent reduction in aggregate pension liabilities is “inconsistent with Puerto Rico’s Constitution and laws” (Complaint ¶ 126); criticizes Governor Rosselló’s proposal to increase tax exemptions for pensioners (Complaint ¶ 148); claims the Fiscal Plan’s “unabashed elevation of pension claims is a flagrant violation of PROMESA” (Complaint ¶ 152); and complains that retirees are a politically favored group and have not been asked to sacrifice as much as others. (*See, e.g.*, Complaint ¶¶ 101, 115.)

RELIEF REQUESTED

16. To protect the interests of its constituents, the Retiree Committee requests entry of an Order (i) dismissing the GO Bondholders’ Complaint, or (ii) in the alternative, staying the Complaint pending the Court’s consideration of the Commonwealth’s Title III plan of adjustment.

ARGUMENT

I. The Court Should Dismiss The Adversary Proceeding.

17. Through this Adversary Proceeding, the GO Bondholders seek to substitute two-party litigation for PROMESA's collective debt adjustment process. Rather than resolve their claims alongside competing constituencies through a plan of adjustment and the ongoing mediation process, the GO Bondholders have filed this Adversary Proceeding to modify the Fiscal Plan, impose their preferred treatment of Commonwealth claims, and grant themselves rights superior to parties not named in the Adversary Proceeding, including the Commonwealth's retirees. (Complaint ¶¶ 179–237.) Because the relief sought by the GO Bondholders should be considered in the context of a confirmation hearing at which all creditors will have the right to be heard and their substantive due process rights respected, this Complaint is not ripe for determination, is in conflict with PROMESA, and is procedurally improper. Accordingly, this Court should dismiss the Complaint pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

A. The Adversary Proceeding Is Not “Ripe.”

18. The FOMB has not proposed a plan of adjustment specifying how creditors' claims will be restructured through the Title III process. Accordingly, the GO Bondholders' claims are speculative and not ripe for adjudication. As this Circuit has instructed:

[The] ripeness doctrine seeks to prevent the adjudication of claims relating to contingent future events that may not occur as anticipated, or indeed may not occur at all. The facts alleged, under all the circumstances, [must] show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of the judicial relief sought.

Reddy v. Foster, 845 F.3d 493, 500 (1st Cir. 2017) (citations and internal quotations omitted) (granting a motion to dismiss under Rule 12(b)(1)).

19. Under analogous circumstances, courts in other Circuits have granted motions to dismiss on the basis that issues that may be addressed by a plan are not ripe for adjudication. *See Energy Future Holdings Corp.*, 531 B.R. 499; *Adelphia Commc'ns. Corp.*, 307 B.R. 432. In *Energy Future Holdings*, for example, the debtors filed an adversary proceeding to determine whether prepayment penalties and post-petition interest would be due under the terms of PIK notes that had been accelerated upon the bankruptcy filing. 531 B.R. at 501. The bankruptcy court dismissed the suit as not ripe. *Id.* It explained: “[t]he function of the ripeness doctrine is to prevent federal courts through avoidance of premature adjudication, from entangling themselves in abstract disagreements.” *Id.* at 507 (internal citations and quotations omitted). The court dismissed the complaint because, as is the case here, there were “multiple contingencies that must be resolved prior to the determination,” and the proposed plan that would substantively affect the PIK notes had not been solicited for vote or confirmed by the court. *Id.* at 510-11.

20. Similarly, in *Adelphia*, holders of subordinated bonds filed an adversary proceeding *before* a plan was on file asking for a declaratory judgment that senior bondholders’ claims could not be impaired. 307 B.R. at 435–36. While the motion was pending, the debtors filed a plan that enforced subordination when making distributions of common stock in the reorganized company. In light of the pending plan, the court declined to rule on the request for a declaratory judgment, reasoning that if “such an argument [were] to carry the day, bankruptcy courts would be beset with requests for numerous advisory opinions, many of which ultimately would have no practical application.” *Id.* at 440–41. *See also In re Adelphia Commc'ns Corp.*, 336 B.R. 610, 671 (Bankr. S.D.N.Y. 2006) (denying prospective request to disqualify law firm from prosecuting substantive consolidation motion on ripeness grounds).

21. The rationale underlying *Energy Future* and *Adelphia* applies here. The GO Bondholders premise their injury on the current draft of the Fiscal Plan, which can be changed by the FOMB—not the plan of adjustment that will ultimately determine the treatment of the General Obligation Debt. (See Complaint ¶ 178.) The relief requested in this Adversary Proceeding, therefore, is speculative and advisory and would set a troubling precedent and invite duplicative and unnecessary litigation. Rather than adhere to PROMESA’s collective, structured framework for restructuring debt, Title III petitions would simply trigger a race to the courthouse, resulting in a morass of overlapping lawsuits by creditors seeking to vindicate their positions before any plan of adjustment is negotiated or confirmed. Particularly where, as here, claimants can only identify hypothetical or speculative injury based on anticipated treatment in a plan of adjustment, dismissal is necessary to maintain an orderly, efficient, and just reorganization process.

22. Finally, the GO Bondholders suggest in their Complaint that the relief they seek has been routinely granted in analogous chapter 9 cases. (Complaint ¶ 67.) But none of the chapter 9 cases upon which the GO Bondholders rely support their position that the Court should decide this priority dispute outside of a collective plan process and in the context of a two-party adversary proceeding. In both *In re City of San Bernardino*, 499 B.R. 776, 789 (Bankr. C.D. Cal. 2013), and *In re City of Vallejo*, No. 08-26813-A-9, 2008 WL 4180008, at *5 (Bankr. E.D. Cal. Sept. 5, 2008), the bankruptcy courts merely held that restricted funds would not be considered in determining the debtors’ solvency and eligibility to file a chapter 9 bankruptcy. The courts did not determine the validity and priority of creditor claims or issue a ruling that would pre-ordain how payments would be made under a plan of adjustment. The GO Bondholders cite the debtor’s disclosure statement in *In re City of Stockton*, No. 12-32118, ECF No. 1215 (Bankr. E.D. Cal. Nov. 21, 2013), which simply indicates that the plan comports with relevant state law. *In re City*

of *Detroit*, No. 13-53846, ECF No. 2521 at *25-27 (SWR) (Bankr. E.D. Mich. Jan. 16, 2014), involved a challenge to the debtor's use of proceeds from post-petition financing—not a declaration made in the context of an adversary proceeding that a particular creditor would receive payment priority under a plan of adjustment. The single case the GO Bondholders identify involving an action to restrict the use of a debtor's revenues was filed four years after the debtor entered chapter 9, and even there, the court declined to make any findings regarding the status of the disputed funds under state law. *In re Sanitary & Imp. Dist. No. 7 of Lancaster Cty.*, 96 B.R. 967, 972 (Bankr. D. Neb. 1989).

23. Accordingly, this Court should dismiss the Complaint on the basis that it is not ripe for adjudication.

B. The Adversary Proceeding Seeks Relief Unavailable Under PROMESA.

24. The Court also should dismiss the Adversary Proceeding because it seeks relief unavailable under PROMESA. The relief the GO Bondholders seek amounts to a modification of the Fiscal Plan with a resulting change in all stakeholders' rights to recovery outside of PROMESA's requirements for a plan of adjustment. (Complaint ¶¶ 179–237.) By establishing a plan of adjustment confirmation procedure and granting the FOMB the ability to classify claims in that plan of adjustment, PROMESA does not create a right of action that would allow one subset of creditors to jump the queue and obtain an advisory decision as to how any plan of adjustment should treat their claims.

25. By seeking relief in two-party litigation that excludes the vast majority of affected stakeholders—including the Retiree Committee, which represents the largest creditor constituency in these Title III Cases—the GO Bondholders seek to evade PROMESA's requirements for a collective debt-adjustment process. (*See* PROMESA §§ 312, 313, 314.) Specifically, section 312 and 313 of PROMESA provide that only the FOMB may file a plan of adjustment and that only

the FOMB may make modifications to that plan of adjustment pending confirmation. Section 314 sets forth the requirements for confirmation of any plan of adjustment, and section 301(a) makes certain requirements of sections 1123, 1124, and 1129 of the Bankruptcy Code applicable to plan confirmation. The GO Bondholders will have the opportunity to make their objections to the plan of adjustment at the appropriate time. But neither PROMESA nor the applicable provisions of the Bankruptcy Code permit the GO Bondholders to use the Complaint to attack a cornerstone of the Fiscal Plan itself and, in turn, define the contours of any plan of adjustment.

26. Earlier this year, the First Circuit considered a lawsuit by a separate coalition of general obligation bondholders seeking declaratory and injunctive relief that is similar to what the GO Bondholders seek in this Adversary Proceeding. *Lex Claims, LLC v. Fin. Oversight & Mgmt. Bd.*, 853 F.3d 548, 552 (1st Cir. 2017). The *Lex Claims* court considered a slightly different legal issue—whether the lawsuit violated the temporary stay imposed upon PROMESA’s enactment—but like plaintiffs here, the *Lex Claims* plaintiffs sought to commandeer control of the Commonwealth’s finances and prioritize repayment of their debt over all other expenditures. As the First Circuit explained:

When Congress enacted PROMESA and its “immediate—but temporary—stay” of litigation, it could hardly have envisaged that, during the stay period, one of these groups of bondholders could seek and potentially obtain injunctive relief that would dispossess the other by driving its bonds into default. And yet, that is what the GO bondholders evidently intend to do.

Id. at 550. The First Circuit rejected the plaintiffs’ attempts to circumvent PROMESA’s stay through their allegations that the Commonwealth’s allocation of certain proceeds and funds were unlawful: “the plaintiffs’ attempt to alter [the Commonwealth’s] resource-allocation decision falls comfortably within PROMESA’s stay of acts to exercise control over Commonwealth property.” *Id.* at 552.

27. The First Circuit's reasoning in *Lex Claims* applies with equal force here. Like the *Lex Claims* suit, which was dismissed for violating the stay, this litigation should be dismissed because it seeks to preclude parties in interest from consensually resolving their claims as PROMESA requires, through a plan of adjustment, and instead shifts the focus of debt adjustment to piecemeal two-party litigation.

C. The Adversary Proceeding Is Procedurally Improper.

28. This Court should also dismiss the Complaint because the Adversary Proceeding is not a proper adversary proceeding under Federal Rule of Bankruptcy Procedure 7001. Bankruptcy Rule 7001 limits the relief a party can obtain in an adversary proceeding to ten exclusive categories. Fed. R. Bank. P. 7001. If a party in interest seeks relief that is not specified in one of these ten categories set forth in Rule 7001, it must seek relief through a contested matter under Federal Rule of Bankruptcy Procedure 9014.

29. That is particularly true when the point of the complaint, like the GO Bondholders' Complaint here, is to establish a claim in a particular priority. It is well-established that the only means by which a creditor may seek recovery against a bankruptcy estate based on a pre-petition unsecured claim is by filing a proof of claim in the debtor's bankruptcy case. "[T]he filing of a proof of claim is a necessary condition to the allowance of an unsecured or priority claim...." *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 529 n.10 (1984). The requirement that a proof of claim is the sole means by which a creditor may assert an unsecured claim exists because the formal proof of claim process is the only way in which a bankruptcy estate can efficiently and practically deal with the claims asserted against an estate. As a bankruptcy court explained in *In re Crutchfield*, "[t]he fundamental purpose of the claims allowance process and the various rules for filing proofs of claim and allocating burdens of proof is to provide a fair and inexpensive procedure for the proper determination of claims on the merits." 492 B.R. 60, 68 (Bankr. M.D.

Ga. 2013) (citations and internal quotations omitted). Otherwise, debtors, their estates, and the bankruptcy courts would be paralyzed by untold numbers of adversary proceedings corresponding to each individual creditor's claim. *Accord Welt v. Conston Corp. (In re Conston, Inc.)*, 181 B.R. 175, 176 (Bankr. D. Del. 1995) (adversary proceeding cannot be used "as a substitute for a proof of claim"); *Dade County Sch. Dist. v. John-Manville Corp. (In re Johns-Manville Corp.)*, 53 B.R. 346, 354 (Bankr. S.D.N.Y. 1985) ("[T]he only appropriate way to assert a claim against a debtor's estate is through the timely filing of a properly executed proof of claim.").

30. In their Complaint, the GO Bondholders allege that the Adversary Proceeding is filed pursuant to Rule 7001(2) (a proceeding to determine the validity, priority, or extent of a lien or other interest in property) and Rule 7001(9) (a proceeding to obtain a declaratory judgment). (Complaint ¶ 20.) The GO Bondholders contend that the General Obligation Debt is "secured" by a "first claim and lien" on all of the Commonwealth's "available resources" pursuant to the Commonwealth Constitution, and thus, that the GO Bondholders are entitled to a "first claim and lien on all available resources" of the Commonwealth. (Complaint ¶¶ 2, 25, 28, 39, 68.) But conspicuously absent from the Complaint is any evidence that the GO Bondholders' claims are anything more than general, unsecured claims—the GO Bondholders do not allege the existence of any security agreements, financing statements, recorded liens, or other documents that support their contention that they are "secured." Thus, the Complaint as drafted does not satisfy the plausibility standard of pleading established in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

31. The GO Bondholders' suggestion that the Commonwealth's pledge of its full faith and credit and Puerto Rico's Constitution somehow create a security interest is also mistaken. (*See, e.g.,* Complaint ¶¶ 27, 28, 33, 38.) A contractual priority is not the same as possessing collateral.

As the court explained in *Flushing National Bank v. Municipal Assistance Corp. for City of N.Y.*, 40 N.Y.2d 731, 735 (1976), “[t]he effect of such pledge of ‘full faith and credit’ is not to create a general or special lien or charge upon the unspecified revenues, moneys or income of the obligor not therein specifically obligated to the payment of such bonds, but is to acknowledge an indebtedness for the amount of money received as a consideration for the bonds.” *Id.* Therefore, these provisions do not confer upon the GO Bondholders a security interest in the Commonwealth’s assets and are insufficient to create a property interest sufficient to bring an adversary proceeding before this Court.

32. The GO Bondholders’ contention that their debt is “secured” is particularly disingenuous in light of the pending motion of certain of the GO Bondholders to reconstitute the Official Committee of *Unsecured* Creditors (the “UCC”). (Dkt. No. 694.) In that motion, the GO Bondholders ask this Court to direct the United States Trustee to appoint the GO Bondholders to the UCC. *Id.* at 35. The GO Bondholders cannot have it both ways. Rule 7001 does not permit an unsecured creditor to litigate its claim in an Adversary Proceeding. *See, e.g., Crutchfield*, 492 B.R. at 68; *Welt*, 181 B.R. at 176; *Johns-Manville*, 53 B.R. at 354. Therefore, this Court should dismiss the Adversary Proceeding on the basis that it is improper under Rule 7001.

II. Alternatively, The Court Should Stay The Adversary Proceeding.

33. “[F]ederal district courts possess the inherent power to stay pending litigation.” *Marquis v. FDIC*, 965 F.2d 1148, 1154 (1st Cir. 1992). If the Court does not dismiss the Adversary Proceeding, it should stay litigation on the Complaint, pursuant to section 105 of the Bankruptcy Code and this Court’s inherent power, pending consideration and resolution of the Commonwealth’s plan of adjustment. *See In re Baldwin-United Corp. Litig.*, 765 F.2d 343, 348 (2d Cir. 1985) (recognizing authority of bankruptcy court to enjoin litigation under Bankruptcy Code section 105 in connection with complex chapter 11 reorganization); *see also Landis v. N.*

Am. Co., 299 U.S. 248, 254–55 (1936); *Kan. City S. Ry. Co. v. United States*, 282 U.S. 760, 763–64 (1931).

34. Prior to imposing a stay, a court must ensure that (1) the stay is supported by good cause, (2) the stay is “reasonable in duration,” and (3) “competing equities are weighed and balanced.” *Marquis*, 965 F.2d at 1155; *Ainsworth Aristocrat Int’l Pty. Ltd. v. Tourism Co. of P.R.*, 818 F.2d 1034, 1039 (1st Cir. 1987). These criteria are fully satisfied in this case. **First**, good cause exists to stay this litigation. As set forth above, this litigation attempts to adjudicate the Commonwealth’s adjustment of debts prior to the Court’s consideration of the FOMB’s plan of adjustment, forcing the Court to consider overlapping issues in a piecemeal fashion and contrary to the plain language of PROMESA. To the extent any of the claims raised in the Complaint are not disposed of in connection with the plan of adjustment, the Court should stay consideration of such claims until disputes about priority and security are resolved.

35. **Second**, the stay is reasonable in duration. The proposed stay would remain in effect until this Court considers the Commonwealth’s plan of adjustment. Section 312(b) of PROMESA requires the FOMB to propose such a plan within a time period set by the Court. Thus, the duration is within the Court’s control and is not open-ended.

36. **Third**, the equities weigh strongly in favor of staying this litigation. The GO Bondholders will experience no harm as a result of the stay. Any modification to the Commonwealth’s debt, including the GO Bondholders’ claims, will take place through the plan of adjustment. The GO Bondholders’ allegations regarding their purported “liens” on Commonwealth funds or priority in repayment of Commonwealth obligations will be properly addressed when this Court considers the Commonwealth’s plan. But if this Court were to allow the Complaint to go forward, the interests of all other creditors of the Commonwealth would be

prejudiced. Therefore, the equities weigh in favor of staying the Adversary Proceeding pending this Court's consideration of the Commonwealth's plan of adjustment.

NOTICE

37. Notice of this Motion has been given in accordance with this Court's *Order (A) Imposing And Rendering Applicable Local Bankruptcy Rules To These Title III Cases, (B) Authorizing Establishment Of Certain Notice, Case Management, And Administrative Procedures, And (C) Granting Related Relief*, as amended. (Dkt. Nos. 249, 262.)

[Remainder of page left intentionally blank]

WHEREFORE, the Retiree Committee respectfully requests the entry of an Order in the form attached hereto as Exhibit A dismissing the GO Bondholder's Complaint, or, in the alternative, staying the Adversary Proceeding pending this Court's consideration of the Commonwealth's plan of adjustment, and granting such other relief as the Court deems just and proper.

August 4, 2017

JENNER & BLOCK LLP

By:

/s/ Robert Gordon

Robert Gordon (admitted *pro hac vice*)

Richard Levin (admitted *pro hac vice*)

919 Third Ave

New York, NY 10022-3908

rgordon@jenner.com

rlevin@jenner.com

212-891-1600 (telephone)

212-891-1699 (facsimile)

Catherine Steege (admitted *pro hac vice*)

Melissa Root (admitted *pro hac vice*)

353 N. Clark Street

Chicago, IL 60654

csteege@jenner.com

mroot@jenner.com

312-222-9350 (telephone)

312-239-5199 (facsimile)

Respectfully submitted,

BENNAZAR, GARCÍA & MILIÁN, C.S.P.

By:

/s/ A.J. Bennazar-Zequeira

A.J. Bennazar-Zequeira

Edificio Union Plaza

PH-A piso 18

Avenida Ponce de León #416

Hato Rey, San Juan

Puerto Rico 00918

ajb@bennazar.org

787-754-9191 (telephone)

787-764-3101 (facsimile)

*Proposed Counsel for The Official Committee
of Retired Employees of Puerto Rico*

Exhibit A

**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)

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

ORDER DISMISSING ADVERSARY PROCEEDING

Upon the motion (“**Motion**”) filed by the Official Committee of Retired Employees of Puerto Rico (the “**Retiree Committee**”) in these Title III Cases for entry of an order dismissing the above-captioned adversary proceeding (the “**Adversary Proceeding**”), pursuant to

¹ The Debtors in these jointly-administered PROMESA title III cases (these “**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); and (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).

Bankruptcy Rule 7012 and Federal Rule of Civil Procedure 12(b)(1), made applicable by Section 310 of the Puerto Rico Oversight, Management and Economic Stability Act (“**PROMESA**”), and the Court finding that notice of the Motion given by the Retiree Committee was sufficient under the circumstances and that no other or further notice is necessary; and the Court being fully advised in the premises and having determined that the legal and factual bases set forth in the Motion and at the Hearing on the Motion establish just cause for the relief herein granted; it is hereby:

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED, as set forth herein.
2. The Adversary Proceeding is dismissed.
3. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
4. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2017

San Juan, Puerto Rico

Honorable Laura Taylor Swain
United States District Judge

**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)

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

**ORDER AUTHORIZING OFFICIAL COMMITTEE OF
RETIRED EMPLOYEES OF THE COMMONWEALTH
OF PUERTO RICO LEAVE TO INTERVENE**

Upon the motion (“**Motion**”) filed by the Official Committee of Retired Employees of Puerto Rico (the “**Retiree Committee**”) in these Title III Cases for entry of an order authorizing

¹ The Debtors in these jointly-administered PROMESA title III cases (these “**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); and (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).

the Retiree Committee to intervene in the above-captioned adversary proceeding (the “**Adversary Proceeding**”), pursuant to Bankruptcy Code Section 1109, made applicable by Section 301 of the Puerto Rico Oversight, Management and Economic Stability Act (“**PROMESA**”), and Bankruptcy Rule 7024, made applicable by Section 310 of PROMESA; and the Court having heard the statements of counsel in support of the relief requested therein and at a hearing thereon (the “**Hearing**”); and the Court finding that (a) the Court has subject matter jurisdiction over this motion pursuant to PROMESA section 306(a), (b) venue is proper pursuant to PROMESA section 307(a), and (c) notice of the Motion given by the Retiree Committee was sufficient under the circumstances and that no other or further notice is necessary; and the Court being fully advised in the premises and having determined that the legal and factual bases set forth in the Motion and at the Hearing on the Motion establish just cause for the relief herein granted; it is hereby:

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED, as set forth herein.
2. The Retiree Committee is authorized, pursuant to Section 1109 of the Bankruptcy Code and Bankruptcy Rule 24, to intervene as a Defendant in the Adversary Proceeding.
3. The Retiree Committee is authorized to participate fully in the discovery process as it relates to any and all aspects of the Adversary Proceeding, including, without limitation, the right to propound discovery requests, examine witnesses, and receive and examine all discovery materials.
4. The Retiree Committee is entitled to receive and review copies of all pleadings, memoranda and any other discovery or document which have been obtained or exchanged in the Adversary Proceeding.
5. The Retiree Committee is entitled to receive notice of and be authorized to attend

and participate fully at all scheduled depositions, document productions and hearings.

6. The Retiree Committee is authorized to make and respond to motions, including but not limited to the Motion to Dismiss or Stay the Adversary Proceeding.

7. The Retiree Committee is authorized to participate in any settlement of the Adversary Proceeding, including without limitation all discussion of settlement.

8. The Retiree Committee is authorized and empowered to be heard on the merits of any issue in the Adversary Proceeding.

9. The Retiree Committee is authorized and empowered to take all actions necessary to implement the relief granted in this Order.

10. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

11. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2017

San Juan, Puerto Rico

Honorable Laura Taylor Swain
United States District Judge