

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

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IN RE:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

PROMESA
Title III

as representative of

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

No. 17 CV 1685-LTS
No. 17 BK 3566-LTS
(Jointly Administered)

Debtor.

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THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

Adversary No: 19-ap-00367 (LTS)

as representative of

PROMESA
Title III

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

and

THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF ALL TITLE III DEBTORS (OTHER THAN
COFINA),

as section 926 trustee of

THE COMMONWEALTH OF PUERTO RICO

Plaintiffs,

v.

GLENDON OPPORTUNITIES FUND, L.P.; OAKTREE-
FORREST MULTI-STRATEGY, LLC (SERIES B); OAKTREE
OPPORTUNITIES FUND IX, L.P.; OAKTREE
OPPORTUNITIES FUND IX (PARALLEL 2), L.P.;
OAKTREE VALUE OPPORTUNITIES FUND, L.P.;

PUERTO RICO AAA PORTFOLIO BOND FUND, INC.;
PUERTO RICO AAA PORTFOLIO BOND FUND II, INC.;
PUERTO RICO AAA PORTFOLIO TARGET MATURITY
FUND, INC.; PUERTO RICO FIXED INCOME FUND,
INC.; PUERTO RICO FIXED INCOME FUND II, INC.;
PUERTO RICO FIXED INCOME FUND III, INC.; PUERTO
RICO FIXED INCOME FUND IV, INC.; PUERTO RICO
FIXED INCOME FUND V, INC.; PUERTO RICO GNMA
& U.S. GOVERNMENT TARGET MATURITY FUND,
INC.; PUERTO RICO INVESTORS BOND FUND I;
PUERTO RICO INVESTORS TAX-FREE FUND, INC.;
PUERTO RICO INVESTORS TAX-FREE FUND II, INC.;
PUERTO RICO INVESTORS TAX-FREE FUND III, INC.;
PUERTO RICO INVESTORS TAX-FREE FUND IV, INC.;
PUERTO RICO INVESTORS TAX-FREE FUND V, INC.;
PUERTO RICO INVESTORS TAX-FREE FUND VI, INC.;
PUERTO RICO MORTGAGE-BACKED & U.S.
GOVERNMENT SECURITIES FUND, INC.; TAX-FREE
PUERTO RICO FUND, INC.; TAX-FREE PUERTO RICO
FUND II, INC.; TAX-FREE PUERTO RICO TARGET
MATURITY FUND, INC.; UBS IRA SELECT GROWTH &
INCOME PUERTO RICO FUND,

Defendants.

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ORDER GRANTING LIMITED INTERVENTION

This matter is before the Court on *The Motion of Official Committee of Retired Employees of the Commonwealth of Puerto Rico for Leave to Intervene Under Bankruptcy Rule 7024* (Dkt. No. 42) ("Motion to Intervene"). For the reasons addressed herein, the Motion to Intervene is ALLOWED IN PART. The Official Committee of Retired Employees of the Commonwealth of Puerto Rico ("Retiree Committee") is permitted to intervene in this adversary proceeding in a limited fashion.

I. Background

The Financial Oversight and Management Board for Puerto Rico ("Oversight Board"), as representative of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") and the Official Committee of Unsecured Creditors of all Title III Debtors (other than COFINA) ("UCC") filed the complaint in this adversary proceeding against certain ERS bondholders on May 20, 2019. (Dkt. No. 1)¹. Therein, Plaintiffs seek declaratory judgments regarding the extent and priority of Defendants' asserted security interests in ERS assets and a judgment avoiding some of those interests. This Court set a scheduling order for the adversary proceeding on June 14, 2019, whereby responses to the complaint are due on July 22, 2019. (Dkt. No. 34). On June 26, 2019, the Retiree Committee filed the Motion to Intervene. (Dkt. No. 42). The ERS Bondholders² filed an objection on July 9, 2019. (Dkt. No. 46) ("Bondholder Objection"). The Puerto Rico Funds filed a joinder thereto on July 12, 2019. (Dkt. No. 51). The Oversight Board filed a limited objection on July 9, 2019. (Dkt. No. 47) ("Oversight Board Objection"). On July 17, 2019, the Retiree Committee filed an omnibus reply. (Dkt. No. 52) ("Reply"). The Motion to Intervene was scheduled to be heard at the July 24, 2019 Omnibus Hearing. Having reviewed the submissions from the parties, the Court now makes its ruling without a hearing.

II. Right to Intervene

The Retiree Committee has moved to intervene under Bankruptcy Code § 1109(b), pursuant to which "[a] party in interest . . . may raise and may appear and be heard on any issue in a case under this chapter." The Retiree Committee represents the interests of "approximately

¹ Unless otherwise noted, all docket references refer to adversary proceeding 19-AP-367.

² As defined in Dkt. No. 46.

160,000 retired employees of the Commonwealth and various governmental bodies and their surviving beneficiaries." (Motion to Intervene ¶ 12). The Retiree Committee argues that they have an interest in this litigation because "[t]he ERS Bondholders seek to limit the Commonwealth's ability to satisfy its obligations to retirees. As a result, any judicial relief that limits the funds available to the Commonwealth has the potential to deprive the retired government employees of Puerto Rico of the benefits to which they are entitled." (Id. ¶ 31). The Retiree Committee further asserts that it has an interest because it "has filed a claim asserting that the funds held by ERS are properly used to satisfy obligations owed to retirees and are not subject to the ERS Bondholders' liens." (Id.). The ERS Bondholders oppose intervention, arguing that "the Retiree Committee is not an official committee in the ERS Title III case, and it cannot otherwise establish itself as a creditor in the ERS Title III case through the unauthorized filing of proofs of claim. As a result, the Retiree Committee has no right to intervene in this adversary case under Section 1109(b)." (Bondholder Objection ¶ 9). The Oversight Board argues that the Retiree Committee has a right to intervene under § 1109(b) but that any intervention should be limited. (Oversight Board Objection ¶ 1).

The First Circuit has held that Section 1109(b) grants parties in interest an "unconditional right to intervene" within the meaning of Federal Rule of Civil Procedure 24(a)(1). Assured Guar. Corp. v. Fin. Oversight & Mgmt. Bd. for P.R. (In re Fin. Oversight & Mgmt. Bd. for P.R.), 872 F.3d 57, 63 (1st Cir. 2017). Although the Retiree Committee is not an official committee in the ERS Title III case, the Court acknowledges the significant interest the Retiree Committee has in the various litigations over ERS assets and the ERS Bondholders' interests therein. This litigation includes significant legal claims regarding assets that the Retiree Committee contends should be

available for its constituents' pensions. The claims of the Retiree Committee's constituency are thus likely to be impacted by any outcome in this proceeding. This Court therefore finds that the Retiree Committee is a party in interest under Bankruptcy Code § 1109(b) and has the right to intervene in this adversary proceeding.

Further, the Court acknowledges the ERS Bondholders' argument that the Retiree Committee is already adequately represented. (Bondholder Objection ¶ 14). The Court finds that although the Retiree Committee may align with the Oversight Board and the UCC on many issues in this case, its particular interest in the effect of the outcome of this case on Commonwealth retirees warrants limited intervention.

III. Scope of Intervention

"The fact that the [Retiree Committee] is entitled to participate in the district court proceedings does not, of course, dictate the scope of that participation. This Court has the discretion to tailor intervention as needed to ensure the rights of the respective parties and the efficiency of the litigation." Assured Guar. Corp. v. Commonwealth of P.R. (In re Fin. Oversight & Mgmt. Bd. for P.R.), 297 F. Supp. 3d 261, 266 (D.P.R. 2017) (internal citations and quotations omitted). In their initial proposed order, the Retiree Committee asked to participate fully in discovery, receive and review information exchanged between the parties in the course of the litigation, participate fully in depositions, make and respond to motions, and participate in settlement. (Dkt. No. 42-1). The ERS Bondholders take issue with this level of intervention, and argue that the Retiree Committee should not be able to propound written discovery, notice depositions, participate in settlement, or file briefing on issues not already raised in the case. (Bondholder Objection ¶ 15). The Oversight Board similarly asks that the Retiree Committee not

be able to take independent discovery, call and examine witnesses, brief issues not raised in the case, and control settlement. (Oversight Board Objection ¶¶ 10-13).

In its Reply, the Retiree Committee accepts certain limitations on its participation, but argues that this Court should grant it rights above what the Court has allowed in other similar adversaries by allowing the Retiree Committee to propound written discovery and participate in settlement. (Reply ¶¶ 8-13). First, as related to discovery, the Retiree Committee represents that "the comparatively greater factual intensity of the instant dispute warrants expanded discovery rights." (Id. ¶ 9). While the Retiree Committee points to aspects of this litigation which may require extensive discovery, it does not sufficiently explain why the Oversight Board and the UCC will not be able to adequately seek (and share) the full extent of relevant discovery. Thus, the Court denies this request. As set forth herein, the Retiree Committee will have access to discovery taken in this proceeding but will not have the right to propound its own written discovery.

Second, as related to settlement, the Retiree Committee argues that "[t]wo recent developments giving the Retiree Committee an even more concrete interest in the resolution of the ERS litigation justify this request." (Id. ¶ 11). First, the Retiree Committee points to the fact that the Retiree Committee filed objections to the ERS Bondholders' proofs of claim alleging that ERS lacked the power to issue the bonds. (Id.). The Retiree Committee argues that any settlement of this adversary would likely encompass a settlement of its objections. Second, the Retiree Committee points to the fact that it recently announced a pension deal with the Oversight Board. (Id. at 12). The Retiree Committee argues that it will be important for it to "monitor and weigh in on how a prospective settlement with the ERS Bondholders might affect the viability of

the Retiree Committee's own deal with the Oversight Board." (Id.). A party intervening under § 1109(b) "cannot preclude other parties from settling their own disputes." In re Fin. Oversight & Mgmt. Bd. for P.R., 872 F.3d at 64 (internal quotations omitted). Although the parties may conclude that including the Retiree Committee at the settlement table may be a fruitful endeavor, the Court will not order that their participation is required.

In accordance with the above, the Motion to Intervene is ALLOWED IN PART as follows:

1. The Retiree Committee is authorized, pursuant to § 1109(b) of the Bankruptcy Code, to intervene in this adversary proceeding.
2. The Retiree Committee shall not have the right to propound its own written discovery but shall receive copies of all discovery already exchanged and to be exchanged in this adversary proceeding subject to any relevant protective order. The Oversight Board and the UCC shall consult with the Retiree Committee before seeking written discovery.
3. The Retiree Committee is entitled to receive and review copies of all pleadings, memoranda, and any other discovery or documents which have been obtained or exchanged in this adversary proceeding.
4. The Retiree Committee is entitled to receive notice of and be authorized to attend all depositions. The Court allows the Committee to question witnesses at depositions, provided that the questioning not duplicate the questioning of other parties. Some additional time may be allowed in order to accommodate the Retiree Committee's role at depositions. Parties shall meet and confer prior to any deposition in order to agree upon an efficient schedule. For the avoidance of doubt, the Retiree Committee shall not

be able to notice any additional depositions and the Oversight Board and the UCC shall consult with the Retiree Committee prior to noticing or taking depositions.

5. The Retiree Committee is authorized to file briefs in this proceeding, limited to the issues presented by the existing parties. The Retiree Committee may be heard at hearings with prior authorization from the Court.
6. The Retiree Committee may, but does not have the right to, participate in settlement discussions.

This order resolves Dkt. No. 42. The Motion to Intervene will not be heard at the July Omnibus hearing.

SO ORDERED.

/s/ Judith Gail Dein
Judith Gail Dein
United States Magistrate Judge

DATED: July 19, 2019