

Hearing Date: December 14, 2017, 1:30 p.m. A.S.T.

**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)

**JOINT STATUS REPORT REGARDING RENEWED JOINT MOTION BY AD HOC
GROUP OF GENERAL OBLIGATION BONDHOLDERS, AMBAC ASSURANCE
CORPORATION, ASSURED GUARANTY CORP., ASSURED
GUARANTY MUNICIPAL CORP., THE MUTUAL FUND GROUP, AND
NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION FOR ORDER
AUTHORIZING RULE 2004 EXAMINATION**

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

To the Honorable United States Magistrate Judge Judith Gail Dein:

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), and the Commonwealth of Puerto Rico (the “Commonwealth”), by and through the Oversight Board as the Commonwealth’s representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),¹ the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF” and together with the Oversight Board and the Commonwealth, the “Respondents”), the Ad Hoc Group of General Obligation Bondholders (the “GO Bondholders”), Ambac Assurance Corporation (“Ambac”), Assured Guaranty Corp. and Assured Guaranty Municipal Corp. (together, “Assured”), the Mutual Fund Group (“MFG”), and National Public Finance Guarantee Corporation (“National”)² respectfully submit this joint status report (the “Joint Status Report”) in response to the Court’s November 29, 2017 “Order and Notice of Hearing” [ECF No. 1877].

On November 28, 2017, the Movants filed an Urgent Renewed Joint Motion for Order Authorizing Rule 2004 Examination [ECF No. 1870] (the “Motion”).³ On December 6, 2017, the Respondents filed Objections and Responses to the Motion [ECF No. 1928] (the “Objection”).

By filing this Joint Status Report, the Parties do not waive or release any rights, including but not limited to their respective positions set forth in their papers in support of and in opposition to the Motion and the Initial Motions. The Parties respectfully state as follows:

On December 8, 2017, the Parties met and conferred to discuss the Motion, the Objection and this Joint Status Report. As described further below, the Parties have been able to clarify

¹ PROMESA has been codified in 48 U.S.C. §§ 2101–2241.

² The GO Bondholders, Ambac, Assured, MFG and National are collectively referred to as the “Movants.” The Movants and Respondents are collectively referred to as the “Parties.”

³ Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

some issues, but a number of issues remain unresolved. There will be no factual issues to resolve at the hearing on December 14, 2017, but the parties continue to have legal disputes that will be addressed through briefing and oral argument, including a reply Movants will file on December 11, 2017. The legal issues in dispute are as follows:

1. Movants believe they are entitled to and require an order authorizing discovery pursuant to Rule 2004 for the reasons stated in the Motion and Movants' reply brief, while the Respondents object to the entry of an order granting the Motion and maintain the positions stated in the Objection, as well as Debtors' Omnibus Objection to Motions for Order Authorizing Rule 2004 Discovery [ECF No. 1345] and Debtors' and AAFAF's Joint Supplemental Memorandum of Law in Further Support of Debtors' Omnibus Objection to Motion for Orders Authorizing Rule 2004 Discovery [ECF No. 1616]. Respondents contend they have complied with the Court's November 21 order and have and will continue to upload documents sufficient to enable Movants to understand the Commonwealth's financial condition. Movants disagree that Respondents have so complied with the November 21 order.

2. Movants contend that while Respondents have added documents to the data room that are responsive to some of Movants' Rule 2004 requests, many of such documents were provided under confidentiality or mediation agreements. To mitigate restrictions on the use or distribution of these data room documents, Movants have asked Respondents to re-produce (or deem reproduced) documents identified in the Objection as being produced pursuant to an order granting the Motion. Respondents specifically object to this requested relief on the grounds that it was not sought in the Motion. Movants disagree with this contention. Respondents, nonetheless, agree to deem produced certain financial information regarding the Debtors' current and historic financial condition previously made available in the data room, subject to an

appropriate protective order.

3. Respondents do not agree to waive the confidentiality of certain non-public materials that were prepared for purposes of the mediation process, as well as materials created in connection with the Fiscal Plan, which were made available to creditors for the purpose of fostering mediation and continue to be subject to the Data Room nondisclosure agreement and the mediation agreement. With respect to such documents that Respondents identify as being responsive to the Motion, Movants contend that an appropriate protective order is all that is needed to allow Respondents to deem such materials as being produced pursuant to an order granting the Motion. However, subject to the first sentence of this paragraph as well as paragraph 1 above, Respondents assert that the Motion should be denied, but nevertheless have agreed voluntarily to consider on a document by document basis whether to provide documents identified in the Objections under a framework other than the existing non-disclosure or mediation agreement.

4. Respondents contend that certain potentially responsive documents may be withheld on the basis that they contain or reflect their financial advisors' confidential and proprietary information and/or the types of considerations that would chill developments of fiscal plans and budgets if required to be produced to Movants. Movants contend that the existence of confidential and proprietary information is not a valid basis to withhold responsive documents. The Parties are unable to reach agreement on this issue and expect the matter to be addressed through briefing and at the December 14 hearing. Movants have asked Respondents to identify and produce a privilege log of any documents or information being withheld on this basis. Respondents are willing to consider producing voluntarily a categorical privilege log, but object to producing a more detailed log, given that the burden of doing so would outweigh any benefit.

5. The Parties are also unable to reach agreement on the scope of the deliberative process privilege asserted by Respondents and expect the matter to be addressed, in general terms, through briefing and argument at the December 14 hearing. At the meet and confer, the Parties agreed to develop a process to identify documents or categories of documents that Respondents allege are subject to deliberative process privilege in an attempt to narrow the issues.

6. The Parties believe there will be continued disputes over the scope of the deliberative process privilege asserted by Respondents, the other key issues described above, and the remaining legal issues set forth in the briefs. To address these future disputes, Movants propose the following procedure: (A) three weeks before each omnibus hearing the Movants will provide Respondents with a list of outstanding requests and issues; (B) two weeks prior to each omnibus hearing Respondents will respond to each outstanding request and issue;⁴ and (C) one week before each omnibus hearing the Parties will file a status report with the Court. Movants contend that this procedure set forth in this paragraph should be embodied in an Order issued pursuant to Rule 2004 in which the Court reserves jurisdiction to review these disputes. Respondents object to this procedure, which presupposes that the Motion has been granted, which it has not, and because Respondents contend that they have demonstrated in their Objection, as well as in their continuing process of producing voluntarily documents that Rule 2004 Examination is not only legally unavailable, but it is unnecessary in order that Movants and other creditors may be apprised of the Commonwealth's fiscal condition. Further, and for the avoidance of doubt, Respondents contend that they do not have an obligation to maintain a current, ongoing log of documents or categories of documents that are arguably subject to a

⁴ Movants contend that the response required by clause (B) should include a list of (i) documents that Respondents have or will produced, (ii) categories of documents that Respondents are declining to produce and the basis for withholding production, and (iii) documents that do not exist.

privilege. Movants disagree with these objections and contentions.

7. With respect to specific requests that are contained in the pending Rule 2004 motion, Respondents are investigating whether additional documents exist that are responsive to Requests Nos. 1, 2, 9, 10, 11 (upon receiving further clarification from Movants) and 17. Additionally, Movants have provided Respondents with specific information they seek with respect to Requests 8 and 16. Movants have asked Respondents to complete their investigation and provide responses to outstanding issues by December 22 while Respondents seek a deadline of January 5.

8. Movants and Respondents are continuing to have conversations directed at making progress on the open issues relating to the Requests. The parties will provide an update to the Court prior to or at the December 14 hearing should they reach agreements that limit the scope of the legal issues before the Court.

[Signature pages follow]

We hereby certify that, on this same date, we electronically filed the foregoing with the clerk of the Court using the CM/ECF system, which will notify the attorneys of record.

RESPECTFULLY SUBMITTED,

In San Juan, Puerto Rico, today December 11, 2017.

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