

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

**THE GOVERNMENT DEVELOPMENT
BANK FOR PUERTO RICO**

Applicant

**PROMESA
Title VI**

Civil No. 18-1561 (LTS)

NOTICE OF INTENTION TO OBJECT TO QUALIFYING MODIFICATION

TO THE HONORABLE COURT:

COME NOW, Creditors, Fidelity and Deposit Company of Maryland and Zurich American Insurance Company, co-sureties for certain real estate construction project (hereinafter referred together as “F&D/Zurich” or “co-sureties”), through the undersigned counsel and hereby state and pray as follows:

INTRODUCTION

1. On August 10, 2018, the Government Development Bank for Puerto Rico (“GDB”) and the Puerto Rico Fiscal Agency and Financial Authority (“AAFAF”) (collectively referred hereafter as “Petitioners”) filed an application (the “Application”) pursuant to section 601(m)(1)(D) of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”) seeking approval of a Qualifying Modification (as this term is defined in the Application) for the GDB. (Dkt. No. 1).

2. On the same date, Petitioners filed an Emergency Motion for Setting Deadline for Parties to File Notice of Intention to Object to the Qualifying Modification for the GDB and Parties to File Standing Objections (Dkt. No. 3), and also filed a Motion Requesting Order Approving Procedures (Dkt. No. 4).

3. The Court granted Petitioners' Emergency Motion for Setting Deadline for Parties to File Notice of Intention to Object to the Qualifying Modification for the GDB and Parties to File Standing Objections and set August 20, 2018 as the deadline for parties to file notice of intention to object to the qualifying plan, and August 30, 2018 as the deadline to file Standing Objections. (Dkt. No. 7).

4. In compliance with the Court's Order, appearing creditors, F&D/Zurich provide notice of their intention to object to the Qualifying Modification filed by Petitioners.

FACTUAL AND LEGAL BACKGROUND

5. The co-sureties issued certain Performance and Payment Bonds ("Bonds") on behalf of L.P.C.D., Inc. ("LPCD") as principal for the Comunidad Río Bayamon Norte - Urban Infrastructure project (the "Project"). The Bonds name petitioner the Government Development Bank for Puerto Rico ("GDB") as the Owner/Obligee of the Project. Prior to the issuance of the Bonds for the Project, LPCD executed certain Agreement of Indemnity ("Agreement") in favor of F&D/Zurich. The Agreement contains language under which LPCD assigned the contract proceeds, including all percentages retained by GDB for the Project to F&D/Zurich, as collateral for losses and expenses in the event of any abandonment or breach by LPCD of any other contract bonded by the co-sureties.

6. Numerous subcontractors and suppliers of LPCD made demands upon F&D/Zurich for payment on the Bonds in connection with the Project and another project of LPCD.

7. On numerous occasions, F&D/Zurich gave notice to GDB of claims for a substantial portion of LPCD's unpaid contract balances ("retainage") from GDB, including retainage, for the Project. F&D/Zurich gave notice to GDB of its rights to subrogation under the Agreement before any funds were paid to LPCD by GDB so that these funds be paid instead to F&D/Zurich.

8. LPCD is a corporation organized under the laws of the Commonwealth of Puerto Rico, with its principal place of business located in Las Piedras, Puerto Rico.

9. F&D is a corporation organized under the laws of the State of Maryland, with its principal place of business located in Schaumburg, Illinois, and is authorized to do business in the Commonwealth of Puerto Rico.

10. Zurich is a corporation organized under the laws of New York, with its principal place of business located in Schaumburg, Illinois, and is authorized to do business in the Commonwealth of Puerto Rico.

BASIS FOR OBJECTION

11. As in prior occasions, on June 7, 2017, F&D/Zurich gave notice to GDB that the its Restructuring Support Agreement (“RSA”) did not clarify the proposed treatment and/or impairment of F&D/Zurich’s claims against GDB with respect to its subrogation rights against LPCD under the Agreement and/or the Bonds for any amounts due by GDB as owner of the Project. Indeed, notice was given that the RSA was silent as to how F&D/Zurich would recover amounts due by GDB as owner of the Project, including but not limited to retainage amounts.

12. GDB failed to answer repeated requests for information and notices from F&D/Zurich.

13. There are various reasons that support the F&D/Zurich’s objections to the Qualifying Modification. To begin with, the GDB failed to comply with Title VI’s information and notice requirements as no communication has been made to F&D/Zurich regarding the Qualifying Modification or the RSA.

14. Previous attempts made by the F&D/Zurich seeking information regarding the status of the retainage regarding the Project and the status of the proposed sale of the property object of the Project were left unattended by the GDB. Furthermore, no notice was provided to

these two entities and no Solicitation Package (as this term is defined in the Application) containing the Solicitation Statement, including the Preliminary Offering Memorandum and corresponding Ballots has been distributed or notified to F&D/Zurich, as holders of claims against the GDB. Hence, the requirements of section 601 of PROMESA have not been met and the Application should be denied.

15. The process followed by AAFAF and GDB to seek approval of the RSA and present their Application failed to ensure that all parties with a stake in GDB's restructuring, including F&D/Zurich, have an opportunity to be heard in connection with the Title VI efforts.

16. Also, F&D/Zurich hold claims because the co-sureties are private entities entitled to moneys held and owed by the GDB to the co-sureties on the basis that the co-sureties have incurred in substantial payments to cover claims under the Bonds issued for the Project owned by GDB. The Qualifying Modification posits that "the claims of GDB's bondholders, municipal and private depositors, and certain other contingent creditors will be resolved by exchanging such claims for new bonds issued by a governmental entity created by the GDB Restructuring Act - the GDB Debt Recovery Authority (the "**Recovery Authority**")". Yet, it ignores the claims of F&D/Zurich, as they are not included or listed in the RSA.

17. The private obligations of the GDB to F&D/Zurich are ignored in the Qualifying Modification and the RSA. The claims of the F&D/Zurich will not be resolved through the Qualifying Modification.

18. Moreover, the Qualifying Modification intends to use funds held by the GDB to satisfy GDB obligations to other creditors, while at the same time, ignoring the entitlement of the F&D/Zurich to payment under the Agreement.

19. Moreover, the RSA and the Qualified Modification intend to sell the real estate portfolio owned by GDB, including the Project, while impairing the rights of F&D/Zurich against GDB and the Project.

20. Finally, the F&D/Zurich, constitute a distinct and separate class of claim holders that have been ignored by the GDB in the Qualifying Modification.

RESERVATION OF RIGHTS

21. Nothing contained in this Notice constitutes an admission of the validity of the Qualifying Modification or a waiver of F&D/Zurich's rights.

22. F&D/Zurich expressly reserve the right to raise objections not described herein including but not limited to takings and illegal discrimination of equally situated creditors.

23. The F&D/Zurich reserve the right to amend this notice.

CONCLUSION

For the reasons stated in this Notice, F&D/Zurich provide notice of their intention of filing objections to the Qualifying Modification and request that the Court deny the Qualifying Modification as it does not satisfy the applicable requirements of PROMESA section 601.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 20th day of August, 2018.

GURLEY & ASSOCIATES

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CERTIFICATE OF SERVICE

I certify that on August 20, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will automatically send notice of such filing to all attorneys of record. I also certify that, in compliance with the Court's Order, on August 20, 2018 service of this Notice was provided before 5:00 p.m. (EST) by personal delivery and e-mail to: (a) GDB, Minillas Government Center, Avenida de Diego, Parada 22, San Juan, PR 00907 (Attn.: Belén Fornaris Alfaro) (Belen.Fornaris@bgf.pr.gov); (b) AAFAF, Minillas Government Center, Avenida de Diego, Parada 22, San Juan, PR 00907 (Attn.: Mohammad Yassin Mahmud)(Mohammad.Yassin@aafaf.pr.gov); and (c) O'Melveny & Myers, LLP, Times Square Tower, Seven Times Square, New York, NY 10036 (Attn.: John J. Rapisardi Esq. (jrapisardi@omm.com), Suzanne Uhland, Esq. (suhland@omm.com), and Peter Friedman, Esq.(pfriedman@omm.com)).

In San Juan, Puerto Rico, this 20th day of August, 2018.

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