

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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THE GOVERNMENT DEVELOPMENT BANK :
FOR PUERTO RICO, : PROMESA
: Title VI
:
: Case No. 18-1561 (LTS)
Applicant. :
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OFFICIAL COMMITTEE OF UNSECURED CREDITORS’ OBJECTION TO MOTION FOR AN ORDER APPROVING PROCEDURES AND SETTING SCHEDULE FOR APPROVAL OF QUALIFYING MODIFICATION FOR GOVERNMENT DEVELOPMENT BANK FOR PUERTO RICO

The Official Committee of Unsecured Creditors of all Title III Debtors (other than COFINA) (the “Committee”) respectfully objects to the *Motion for an Order Approving Procedures and Setting a Schedule for Approval of the Qualifying Modification for the Government Development Bank for Puerto Rico* [Docket No. 4] (the “Procedures Motion”). In support of its objection, the Committee states as follows:

PRELIMINARY STATEMENT

1. According to GDB¹ and AAFAF, “standing will be an important threshold issue in this action.”² In light of the fact that, among other things, Title VI, by its express terms, provides that any Qualifying Modification will be “full, final, complete, binding, and conclusive as to the territorial government Issuer, other territorial instrumentalities of the territorial

¹ Capitalized terms used but not defined herein shall have the meanings used in the Procedures Motion.

² Procedures Motion ¶ 10.

government Issuer, and any creditors of such entities,”³ the Committee believes that it has standing to appear and be heard in this case under the Due Process Clause of the Fifth Amendment. However, out of an abundance of caution, the Committee will also seek entry in the Title III cases of an order granting it standing to appear in the Title VI case for limited purposes, in the event that the Court holds that, absent such specific authorization from the Court, the Committee does not have standing to appear in the Title VI case.⁴ The Committee recently filed its Notice of Intention to Object to GDB’s Title VI Application⁵ and related restructuring transactions (the “GDB Restructuring”).

2. GDB and AAFAF have informed the Committee that, in their opinion, the Committee does not have standing to be heard in the Title VI case. As such, the Committee anticipates that an objection to the Committee’s standing will be forthcoming. Although the Procedures Motion acknowledges that “it is essential, and in the interest of judicial economy, for [the standing issue] to be determined on an expedited basis,”⁶ the schedule that has been

³ PROMESA § 601(m)(2). The term “territorial government” used in section 601(m)(2) is defined by PROMESA as the “government of a covered territory.” PROMESA § 5(18). Here, that covered territory is Puerto Rico. *See* PROMESA § 5(8). Title VI of PROMESA defines “Issuer” as, among other things, a “Territory Government Issuer” (PROMESA § 601(a)(8)), which, in turn, means the “Government of Puerto Rico.” PROMESA § 601(a)(15). Thus, section 601(m)(2) provides that any Title VI approval order entered by this Court will have preclusive and binding effect on the unsecured creditors of Puerto Rico. Moreover, the guaranteed bond claim pool of \$110 million of aggregate principal amount and approximately \$19 million in accrued and unpaid interest with respect thereto benefits from a guarantee from the Commonwealth of Puerto Rico. *See* Application Of The Government Development Bank For Puerto Rico And The Puerto Rico Fiscal Agency And Financial Advisory Authority, Pursuant To Section 601(M)(1)(D) Of The Puerto Rico Oversight, Management, And Economic Stability Act, For Approval Of The Qualifying Modification For GDB [Docket No. 1] (the “Application”) ¶ 53; Declaration Of Suzanne S. Umland, Esq. In Support Of The Application Of The Government Development Bank For Puerto Rico And The Puerto Rico Fiscal Agency And Financial Advisory Authority, Pursuant To Section 601(M)(1)(D) Of The Puerto Rico Oversight, Management, And Economic Stability Act, For Approval Of The Qualifying Modification For GDB [Docket No. 1-19] (“Umland Declaration”) Ex. O [Docket No. 1-15], at p. 30.

⁴ The Committee will request that the Court schedule a hearing on the Committee’s standing motion in the Title III cases at the same time the Court will consider the standing issues in the Title VI case.

⁵ [Docket No. 59].

⁶ Procedures Motion ¶ 10.

proposed would force the Committee to expend considerable time and resources on substantive issues in this case, as well as discovery, before the Court rules on the issue of standing.

3. There is no reason why the threshold issue of standing must be resolved concurrently with the merits discovery and substantive briefing of this case, as is contemplated by the Procedures Motion. Moreover, it is not in the interest of judicial economy, nor is it in the best interests of the Title III debtors and their creditors, to have full document and deposition discovery and merits briefing move forward while the predicate question of standing remains unresolved. As a result, while standing discovery should be permitted to continue, merits briefing and discovery in connection with the GDB Restructuring should be stayed until the Court rules on standing, and the schedule for merits-based discovery and merits briefing should be adjusted accordingly.

PROCEDURAL BACKGROUND

4. On August 10, 2018, the GDB and AAFAF commenced this action by filing the Application pursuant to section 601(m)(1)(D) of PROMESA seeking approval of a Qualifying Modification for the GDB.

5. On the same day, GDB and AAFAF filed the Procedures Motion, which seeks an order approving proposed procedures and setting a schedule for approval of the Qualifying Modification. The Procedures Motion argues that such an order is necessary because “[u]nlike a proceeding under PROMESA Title III—which incorporates the Federal Rules of Bankruptcy Procedure—Title VI does not specify the process for the Court to consider, and the parties to be heard in connection with, the Qualifying Modification’s approval.”⁷

⁷ *Id.* ¶ 3.

ARGUMENT

6. Under the schedule proposed by GDB and AAFAF, over the course of the next two and a half months, the parties will simultaneously brief the standing issues, conduct discovery, and brief the merits of the GDB Restructuring. In fact, because document discovery will conclude on the same day as the hearing to consider any standing objections (October 3), and deposition discovery will conclude only two days later (October 5), the current schedule unnecessarily requires all parties to incur the full costs of discovery before determining who exactly is entitled to partake in discovery in the first place and with respect to what issues.⁸

7. This is wasteful and unnecessary. Deferring litigating the merits of the GDB Restructuring and the related merits-based discovery until after the Court rules on standing issues will not result in any prejudice to GDB. GDB commenced its orderly wind-down more than one year ago. Its assets are essentially its legacy loan portfolio, real estate, and cash—in other words, its value is not depreciating. Furthermore, the bondholders which would benefit from the GDB Restructuring are unsecured creditors. Thus the benefit of avoiding unnecessary litigation costs will far outweigh the minor prejudice that might result from a delayed resolution of the GDB Title VI case.

8. Likewise, while GDB and AAFAF claim that “[f]ailure to meet any of the milestones [set forth in the Sixth Amendment to the Restructuring Support Agreement] could result in the Supporting Creditors terminating the RSA,”⁹ they provide no reason to believe that deferring the merits litigation until after conducting merits-based discovery and resolution of the standing issues would cause any Supporting Creditor to terminate the RSA. In fact, the

⁸ See *id.* ¶ 9.

⁹ *Id.* ¶ 5

milestones under the RSA (i) have already changed on several occasions, and (ii) can be changed simply with the agreement of the counsel to the parties to the RSA.¹⁰ In other words, an extension of time will not require resolicitation or extensive consultation with the Supporting Creditors.

9. The evidence starkly contradicts the notion that the Supporting Creditors might withdraw their support. The Supporting Creditors have been negotiating and amending the RSA with GDB and AAFAF for over a year.¹¹ Over that time, the parties to the RSA have amended it six times.¹² If anything, this history demonstrates that the Supporting Creditors will wait for the Court to adjudicate the issues at play in this case.

10. Moreover, if and when full discovery proceeds in this case, the Committee respectfully requests that a deadline be included in the scheduling order requiring GDB and AAFAF to file all Ancillary Agreements (as defined in the GDB Restructuring Act), and file the proposed approval order, at least fourteen (14) days before the objection and discovery deadlines. This deadline is necessary to ensure that the Committee and other parties in interest have enough time to review such order and agreements and timely file any appropriate objections. Likewise, in light of GDB's propensity to engage in protracted litigation with respect to the production of documents, all other dates—including the deposition deadline and the date of the Approval Hearing—should be keyed off a date by which merits-based document discovery has been substantially completed.

¹⁰ See, e.g., Uhland Declaration, Ex. E [Docket No. 1-5] at p. 1 (attaching the second amendment to the RSA, where the parties modified the deadlines under the RSA “by and through their undersigned counsel”).

¹¹ See Application ¶ 19 (explaining that GDB and AAFAF began negotiating with certain of their major creditor constituencies in the spring of 2017).

¹² See Uhland Declaration ¶¶ 4-10 (attaching the original RSA, dated May 15, 2017, and the six amendments, the last one dated August 3, 2018).

11. The Committee also requests that the Court strike the requirement that individuals at GDB and AAFAF be served pleadings via mail.¹³ There is no reason why counsel for GDB and AAFAF, who receive pleadings through the ECF system, cannot forward relevant pleadings to their clients.¹⁴

CONCLUSION

12. For the reasons mentioned above, the Committee respectfully requests that the Court (1) order a schedule incorporating the deadlines proposed for resolving the standing issues (and the to-be-filed Title III standing motion described in paragraph 1 above) as they appear in the Procedures Motion, which would permit standing discovery to proceed; (2) impose a stay of merits briefing and discovery pending the resolution of the standing issues; (3) include a deadline in any scheduling order entered by this Court requiring GDB and AAFAF to file all Ancillary Agreements (as defined in the GDB Restructuring Act) and the proposed approval order at least fourteen (14) days before the objection and merits-based discovery deadlines; and (4) strike the proposed requirement that individuals at GDB and AAFAF be served pleadings via mail.

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¹³ See Procedures Motion ¶¶ 16, 20.

¹⁴ Cf. Fed. R. Civ. P. 5(b)(1).

WHEREFORE, the Committee respectfully requests that the Court enter an order granting the relief requested herein, and granting any other relief as is just and proper.

Dated: August 24, 2018

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CERTIFICATE OF SERVICE

I certify that on August 24, 2018, I caused a copy of the foregoing document to be served on the following parties by CM/ECF, overnight courier, and/or electronic mail:

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