

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

THE GOVERNMENT DEVELOPMENT BANK
FOR PUERTO RICO,

Applicant.

PROMESA

Title VI

Case No. 18-01561

**GDB AND AAFAF'S OBJECTION TO THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS'
STANDING TO OBJECT TO THE APPROVAL APPLICATION**

TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT	1
FACTUAL AND PROCEDURAL BACKGROUND.....	3
JURISDICTION	6
RELIEF REQUESTED.....	6
BASIS FOR RELIEF	7
I. The UCC is Not a Proper Party to Object to the Approval Application.....	7
A. Under the Statutory Framework of Title VI, the UCC is Not a Proper Party to Object.....	7
B. The UCC Cannot Object to the Approval Application on Behalf of the Title III Debtors.	9
II. The UCC Cannot Establish Article III and Prudential Standing.	12
A. The UCC Lacks Article III Standing.	12
B. The UCC Lacks Prudential Standing.....	14
CONCLUSION.....	16

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Amieiro González v. Pinnacle Real Estata Home Team</i> , 173 D.P.R. 363 (2008)	11
<i>Bank of New York Mellon v. Puerto Rico Sales Tax Fin. Corp. (In re Fin. Oversight and Mgmt. Board for Puerto Rico)</i> , 301 F. Supp. 3d 306 (D.P.R. 2017).....	7, 12, 13, 15
<i>Clapper v. Amnesty Int’l USA</i> , 568 U.S. 398 (2013).....	13, 14
<i>Commoloco of Caguas, Inc. v. Benítez Díaz</i> , 126 D.P.R. 478 (1990)	11
<i>Elk Grove Unified School Dist. v. Newdow</i> , 542 U.S. 1, 124 St. Ct. 2301, 159 L.Ed.2d 98 (2004).....	15
<i>Katz v. Pershing, LLC</i> , 672 F.3d 64 (1st Cir. 2002).....	14
<i>Keene Corp. v. United States</i> , 508 U.S. 200 (1993).....	10
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555 (1992).....	13, 14
<i>Pagan v. Calderon</i> , 448 F.3d 16 (1st Cir. 2006).....	14
<i>Rodríguez Román v. Banco Gubernamental de Fomento para Puerto Rico</i> , 151 D.P.R. 383 (2000)	11
<i>Russello v. United States</i> , 464 U.S. 16 (1983).....	10
<i>Spokeo, Inc. v. Robins</i> , 136 S.Ct. 1540, 194 L.Ed.2d 635 (2016)	14
<i>U.S. v. Union Bank for Savings and Inv. (Jordan)</i> , 487 F.3d 8 (1st Cir. 2007).....	15
<i>Warth v. Seldin</i> , 422 U.S. 490 (1975).....	7

Statutes

11 U.S.C. § 1109(b)	10
GDB Debt Restructuring Act, Act No. 109, art. 102	11
GDB Debt Restructuring Act, Act No. 109, art. 103(w)	11
GDB Debt Restructuring Act, Act No. 109, art. 703	11
PROMESA § 601(b)	8
PROMESA § 601(d)	8
PROMESA § 601(g)	8
PROMESA § 601(h)	8
PROMESA § 601(i)	8
PROMESA § 601(j)	8
PROMESA § 601(m)(1)(D)	8
PROMESA § 601(m)(2)	9
PROMESA § 601(n)(2)	9
PROMESA § 601(n)(3)	9

The Government Development Bank for Puerto Rico (the “**GDB**”) and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“**AAFAF**”) submit this objection (the “**Standing Objection**”), requesting the entry of an order¹ declaring that the Official Committee of Unsecured Creditors of the Commonwealth of Puerto Rico (the “**UCC**”) lacks standing to object to the *Application of the Government Development Bank for Puerto Rico and the Fiscal Agency and Financial Advisory Authority for Puerto Rico, Pursuant to Section 601(m)(1)(D) of the Puerto Rico Oversight, Management, and Economic Stability Act, for Approval of Qualifying Modification* [ECF No. 1] (the “**Approval Application**”).² In support of this Standing Objection, GDB and AAFAF state as follows:

PRELIMINARY STATEMENT

1. The UCC has no standing to object to the Approval Application under a welter of constitutional, statutory, and common law doctrines, all of which flow from three unassailable premises: (i) the UCC is not a GDB creditor and has no legal rights of its own directly affected by the Qualifying Modification, (ii) the UCC has no authority to assert the rights of the Title III Debtors, and (iii) at most, the UCC represents the creditors of the Title III Debtors, who might be creditors of GDB, and it is axiomatic that creditors of a creditor have no standing.³ In light of these facts, the UCC is not a proper party to this action and its objection to the Approval Application should be dismissed.

¹ A form of order is attached hereto as Exhibit A. (the “**Proposed Order**”)

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Approval Application.

³ The Title III Debtors include the (i) Commonwealth of Puerto Rico (the “**Commonwealth**”), (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“**ERS**”), (iii) Puerto Rico Highways and Transportation Authority (“**HTA**”) (iv) Puerto Rico Sales Tax Financing Corporation (“**COFINA**”) and (v) Puerto Rico Electric Power Authority (“**PREPA**”). The UCC has been appointed in the Title III cases of the Commonwealth, HTA, PREPA, and ERS.

2. Congress enacted PROMESA Title VI as a mechanism to permit the Commonwealth or an authorized instrumentality (like GDB) to modify its debts outside of Title III. Title VI involves (i) negotiations between the Issuer and its Bond holders to reach agreement on a proposed modification, (ii) certification by the Oversight Board that the modification is a “Qualifying Modification,” and (iii) an informed vote of the Bond holders in favor of the Qualifying Modification following a process prescribed by PROMESA section 601. As described below, GDB successfully followed that process and has now reached Title VI’s final step by filing the Approval Application seeking the Court’s approval of the Qualifying Modification. Under PROMESA section 601(m)(1)(D), the Court’s role in approving the Qualifying Modification is simply to determine whether section 601’s other requirements have been met.

3. Given the statutorily circumscribed issue to be decided by the Court in reviewing the Approval Application, the only parties that could have standing to object to it are parties who could have participated in the Title VI process and, thus, might be aggrieved by an alleged failure to satisfy section 601’s requirements—*i.e.*, parties that are, or claim to be, GDB Bond holders. The UCC, however, is not a GDB Bond holder nor does it represent the interest of GDB Bond holders. Rather, the UCC is a creature of Title III, has the right to be heard only in Title III cases, and does not exist as an entity outside those cases. Accordingly, the UCC has no standing to object to the Approval Application.

4. Even if parties other than GDB Bond holders could have standing to object under Title VI, the UCC does not have authority to represent any such parties in this action. Indeed, the UCC has no power to take action on behalf of anyone—including the Title III Debtors or their creditors—outside the Title III proceedings. And even if the UCC had a general right to

appear in a Title VI Action, it could not assert the Title III Debtors' rights. The UCC represents only the interests of the unsecured creditors of the Title III Debtors, who are, at most, creditors of GDB's creditors and thus lack standing under well-established law. And finally, even if the UCC could assert the rights of the Title III Debtors, the UCC would still have no right to object because the Title III Debtors themselves have no right to object under the GDB Restructuring Act.

5. In addition to lacking standing under Title VI, the UCC does not have Article III standing because, in its capacity as a representative for unsecured creditors of the Title III Debtors, the UCC itself has not suffered a concrete and particularized injury directly traceable to the Qualifying Modification. The UCC's objections are based on alleged potential injuries that are both contingent and speculative, and would undermine a carefully negotiated asset allocation scheme (blessed by both the Puerto Rico government and the Oversight Board) that distributes assets over which the UCC has no legitimate claim. Moreover, the potential injuries that the UCC alleges are not its own, but those of third parties. For all these reasons, the UCC lacks standing to object to the Approval Application.

FACTUAL AND PROCEDURAL BACKGROUND

6. In the spring of 2017, GDB and AAFAF began negotiating with certain of their major creditor constituencies—including the ad hoc group of GDB bondholders, a number of on-island credit unions or “cooperativas,” and Bonistas del Patio, Inc., an organization that advocates for Puerto Rico residents who hold bonds of Commonwealth government issuers—regarding a Title VI modification. Those extensive negotiations resulted in the execution of the RSA on May 15, 2017. On July 12, 2017, the Oversight Board certified the Modification contemplated by the RSA, making it a “Qualifying Modification” under Title VI (the “**Qualifying Modification**”).

7. Under the Qualifying Modification, 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—with each \$1,000 of affected claims to be exchanged for new bonds having a face amount equal to \$550 (the “**New Bonds**”).⁴ In consideration for the Recovery Authority’s issuance of the New Bonds and the resulting cancellation of the Participating Bond Claims, GDB will transfer to the Recovery Authority its municipal loan portfolio, a portion of its public entity loan portfolio, its real estate owned assets, and its unencumbered cash, which assets will support and secure the New Bonds. The New Bonds are special limited obligations of the Recovery Authority and will not be payable or guaranteed by GDB or the Commonwealth. Upon closing of the Qualifying Modification, each municipality will also benefit from a full setoff of its deposits held at GDB against the outstanding balance of any loan owed by such municipality to GDB.⁵

8. The Qualifying Modification, thus, represents a key step in Puerto Rico’s financial restructuring, and is the culmination of good faith voluntary negotiations taking place over a year between GDB and its creditors, who have reached an overwhelming consensus on the terms of GDB’s debt modification.

⁴ To the extent there is any inadvertent discrepancy between the description here of the Qualifying Modification and the description provided in the Approval Application, the Court should defer to the description in the Approval Application.

⁵ There is a second aspect of GDB’s restructuring and wind-down that is not the subject of the Approval Application. The Commonwealth has determined that claims the Commonwealth and other public entities have against GDB will be resolved pursuant to the terms of the GDB Restructuring Act and the creation of a separate trust—the Public Entity Trust. Each of the entities affected thereby has consented thereto, either by statute or otherwise.

9. On August 9, 2018, GDB and AAFAF began soliciting votes on the Qualifying Modification from the holders of Participating Bond Claims (*i.e.*, the Bond Claims subject to the Qualifying Modification) by transmitting copies of a solicitation package to each holder.

10. On August 10, 2018, GDB commenced this action under PROMESA Title VI (the “**Title VI Action**”) by filing the Approval Application, seeking Court approval of the Qualifying Modification pursuant to PROMESA section 601(m)(1)(D). The Approval Application demonstrates beyond any legitimate dispute that GDB properly submitted the Qualifying Modification to the Oversight Board and obtained the necessary certifications, complied with Title VI’s information and notice requirements, and properly launched the solicitation of votes from Bond holders eligible to vote, thereby satisfying the requirements of section 601. For these reasons, GDB and AAFAF respectfully submit that the Court should approve the Qualifying Modification.

11. GDB and AAFAF also filed, contemporaneously with the Approval Application, a motion proposing a process and schedule for the GDB Title VI Action (the “**Procedures Motion**”). On August 27, 2018, the Court entered an order setting a hearing for September 7, 2018, at which the Court will hear oral argument in connection with the Procedures Motion. [ECF No. 80.] Under the Procedures Motion’s proposed schedule, there would be a hearing on November 7, 2018, to approve the Qualifying Modification.

12. Along with the Approval Application and the Procedures Motion, GDB and AAFAF filed an urgent motion for an order providing that the proposed Notice of Intention to Object Deadline and Standing Objection Deadline would be binding and effective on all potential objectors and other parties in advance of the Court’s ruling on the remaining relief sought by the Procedures Motion (the “**Emergency Motion**”). The Court granted the

Emergency Motion on August 10, 2018, setting the Notice of Intention to Object Deadline for August 20, 2018, and the Standing Objection Deadline for August 30, 2018. [ECF No. 7.]

13. On August 20, 2018, the Court approved a stipulation among GDB, AAFAF, and the UCC extending the Notice of Intention to Object and Standing Objection Deadlines to August 22 and September 1, 2018, respectively. [ECF No. 29.]

14. On August 22, the UCC filed its Notice of Intention to Object. [ECF No. 59.]

15. GDB and AAFAF hereby object the UCC's standing and request that the Court enter an order declaring that the UCC does not have the right to appear in this Title VI Action and object to the Approval Application.⁶

JURISDICTION

16. On August 10, 2018, GDB and AAFAF filed the Approval Application under PROMESA section 601(m)(1)(D), thereby commencing an action under PROMESA Title VI pursuant to District of Puerto Rico Local Civil Rule 3.1. Accordingly, the Court has subject matter jurisdiction over this matter pursuant to PROMESA sections 106(a) and 601 and Local Civil Rule 3.1.

RELIEF REQUESTED

17. By this Standing Objection, GDB and AAFAF respectfully request the entry of the Proposed Order declaring that the UCC lacks standing to appear in this Title VI Action and object to the Approval Application.

⁶ This Standing Objection does not address the standing of the United States Department of Justice, the Bank of New York Mellon, Ambac Assurance Corporation, Assured Guaranty Corp., Assured Guaranty Municipal Corp., and the National Public Finance Guarantee Corp., and Adsuar Muñoz Goyco Seda & Pérez-Ochoa, PSC, each of whom filed Notices of Intention to Object consisting of "reservations of rights to object," rather than actual objections. [ECF Nos. 8, 14, 15, 22, 25.] GDB and AAFAF have reserved their rights to challenge any of those parties' standing to object to the Approval Application in the event that one or more of them ultimately asserts an objection. [ECF No. 104]

BASIS FOR RELIEF

18. As demonstrated below, the UCC lacks standing to object to the Approval Application, both because it has no right to participate in this Title VI Action and because it lacks Article III and prudential standing.

19. Standing is a threshold issue that the Court should address before considering the merits of the UCC's objections. *See Warth v. Seldin*, 422 U.S. 490, 498 (1975) (stating that standing is a "threshold question in every federal case, determining the power of the court to entertain the suit"); *see also Bank of New York Mellon v. Puerto Rico Sales Tax Fin. Corp. (In re Fin. Oversight and Mgmt. Board for Puerto Rico)*, 301 F. Supp. 3d 306, 311 (D.P.R. 2017) (explaining that the Ad Hoc Group of General Obligation Bondholders in Puerto Rico's Title III action, like all federal plaintiffs, was required to "meet its burden of establishing that the district court ha[d] the constitutional power to adjudicate a case" by establishing "standing to assert its claim").

I. The UCC is Not a Proper Party to Object to the Approval Application.

A. Under the Statutory Framework of Title VI, the UCC is Not a Proper Party to Object.

20. The issue of standing, or whether a party has a direct interest in the outcome of a proceeding to warrant a federal court's jurisdiction over the party's claim, must be decided in light of the nature of the proceeding or dispute before the court. Title VI is a narrow proceeding involving a largely out-of-court restructuring through a voluntary negotiation process between interested parties resulting in a consensual modification agreement, which then must be certified by the Oversight Board, voted on by the affected Bond holders, and approved by the Court. The Court's role under PROMESA section 601(m)(1)(D) is limited to determining whether the Issuer

proposing a Qualifying Modification has complied with the certification, voting, and procedural requirements of Title VI.⁷

21. Consistent with the foregoing, the Approval Application's purpose here is to obtain Court approval of GDB's Qualifying Modification by demonstrating that GDB followed the procedures laid out in PROMESA section 601. Thus, at the hearing on the Approval Application, the Court will be asked to determine only whether GDB has met the requirements of section 601 by properly submitting the Qualifying Modification to the Oversight Board for certification, and complying with Title VI's requirements for, among other things, (i) vote pooling and claim classification, PROMESA § 601(d); (ii) vote solicitation, *id.* § 601(h); and (iii) vote tabulation, *id.* § 601(b), (j). Accordingly, the only parties with a legitimate interest in objecting to the Approval Application are those who are, or claim to be, GDB Bond holders, and who seek to object to GDB's compliance with the conditions set out in section 601.

22. The UCC's Notice of Intention to Object does not, and could not, assert that the UCC is itself a GDB Bond holder or that it has a legal right to represent any GDB Bond holder. Consequently, the UCC has no right to vote on the Qualifying Modification and, thus, is clearly not a proper party to object to the Approval Application or the solicitation and voting procedures.

23. Title VI's structure further demonstrates the limited universe of parties with a legitimate interest in objecting to the approval of a Qualifying Modification. Under section 601(i), only the Issuer or "one or more holders of the right to vote the Issuer's Outstanding Bonds" can propose a Modification. Under section 601(g), a Modification becomes a Qualifying Modification through either consultation or an agreement between the Issuer and its Bond

⁷ PROMESA § 601(m)(1)(D) ("A Qualifying Modification will be conclusive and binding on all holders of Bonds . . . if . . . the district court for the territory or, for any territory that does not have a district court, the United States District Court for the District of Hawaii, has, after reviewing an application submitted to it by the applicable Issuer for an order approving the Qualifying Modification, entered an order that the requirements of this section have been satisfied.").

holders, with subsequent certification by the Oversight Board. And Section 601's pooling, solicitation, and voting requirements all refer to the holders of Outstanding Bonds. Thus, the fact that Bond holders are the only parties referred to in section 601 other than the Issuer and the Oversight Board confirms that Bond holders alone have standing to object to the Approval Application.

24. Moreover, under section 601(m)(2), the Court's approval of a Qualifying Modification "will be full, final, complete, binding, and conclusive as to the territorial government Issuer, other territorial instrumentalities of the territorial government Issuer, and any creditors of such entities, and *should not be subject to any collateral attack or other challenge by such entities in any court or any forum,*" but "no claim or right that may be asserted by any party in the capacity *other than holder of a Bond affected by the Qualifying Modification* shall be satisfied, released, discharged, or enjoined by this provision." *Id.* § 601(m)(2) (emphasis added). Accordingly, Title VI's only impact on the rights of non-Bond holders is to preclude them from launching a challenge to or collateral attack on the Qualifying Modification; Title VI otherwise specifically preserves any rights they may have. This further confirms that non-Bond holders have no role to play in a Title VI action.⁸

B. The UCC Cannot Object to the Approval Application on Behalf of the Title III Debtors.

25. The UCC's Notice of Intention to Object leaves no doubt that the UCC intends to assert "rights that the Title III Debtors or the unsecured creditors of the Title III Debtors may

⁸ Title VI contemplates a second type of action, separate and apart from a proceeding to approve a Qualifying Modification. Section 601(n)(2) provides that "there shall be a cause of action to challenge unlawful application of" Title VI. The standard applicable to such a challenge is quite high: "[t]he district court shall nullify the Modification and any effects on the rights of the holders of Bonds resulting from such Modification *if and only if* the district court determines that such Modification is manifestly inconsistent with this section." PROMESA § 601(n)(3) (emphasis added). While it is conceivable that a non-holder could assert a claim under section 601(n)(2), the UCC has not done so—and it is clear, for the reasons set forth in Section II, *infra*, that the UCC lacks Article III and prudential standing to assert such a claim.

have against GDB” (UCC Obj. at 3.) But the UCC does not have the ability to assert those rights in the Title VI Action for several reasons.

26. *First*, the UCC simply has no power to take action on behalf of anyone—including the Title III Debtors or their creditors—outside the Title III proceedings. The UCC’s sole source of authority is Bankruptcy Code section 1109, which states that “[a] party in interest, including . . . a creditors’ committee . . . may raise and may appear and be heard on any issue *in a case under this chapter*.” 11 U.S.C. § 1109(b) (emphasis added). While PROMESA section 301(a) provides that Section 1109 is applicable to Title III proceedings, PROMESA neither makes section 1109 applicable to a Title VI action nor contains any analogous provision for Title VI actions. *See Keene Corp. v. United States*, 508 U.S. 200, 208 (1993) (“[W]here Congress includes particular language in one section of a statute but omits it in another . . . , it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983))). Thus, the UCC has no authority to object to the Approval Application or take *any* action in this Title VI Action.

27. *Second*, even if the UCC could somehow conjure a general right to appear in the Title VI Action (which it cannot), it cannot assert the Title III Debtors’ rights or reverse decisions made by the Title III Debtors’ statutory representatives. The UCC, at most, represents only the interests of the unsecured creditors of the Title III Debtors;⁹ it does not have any authority to assert objections on behalf of the Title III Debtors themselves. That is particularly true given that the Oversight Board, which is the Title III Debtors’ exclusive representative in the

⁹ Indeed, the UCC can only act on behalf of the Title III Debtors with such parties’ consent, as demonstrated by the UCC’s appointment as agent in the Commonwealth-COFINA dispute. *See Stipulation and Order Approving Procedure to Resolve Commonwealth-COFINA Dispute* [Case No. 17-BK-3283, ECF No. 996] (stipulation by FOMB to authorize the UCC to serve as the Commonwealth representative to litigate and/or settle the Commonwealth-COFINA dispute on behalf of the Commonwealth, and authorized Bettina Whyte to do so on behalf of COFINA).

Title III proceedings, has endorsed the Qualifying Modification. Indeed, the Oversight Board (i) certified the RSA as a Qualifying Modification under 601(g) of PROMESA; (ii) did not assert any opposition to the GDB Restructuring Act under PROMESA Title II, and (iii) certified a fiscal plan for GDB premised on the GDB Restructuring Act and RSA.

28. *Third*, even if the UCC could assert the rights of the Title III Debtors, the UCC would still have no right to object to the Approval Application because the Title III Debtors themselves have no right to object under Puerto Rico law. On August 24, 2017, Governor Ricardo Rosselló Nevares signed into law the GDB Debt Restructuring Act, Act No. 109-2017 (the “**GDB Restructuring Act**,” or the “**Act**”), to enable the Qualifying Modification under Title VI and to address the claims of the Commonwealth and its instrumentalities against GDB. The Act reflects the Legislative Assembly’s determination that the Qualifying Modification “is in the best interests of the people of Puerto Rico” and “is fair and equitable for all creditors of GDB.” Act 109, art. 102. Based on that determination, Article 703 provides that “[n]otwithstanding any other law of the Government of Puerto Rico, *no Government Entity shall have authority or standing to challenge this Act, or the Restructuring Transaction, or the other transactions contemplated in this Act in any local or federal court.*” Act. 109, art. 703 (emphasis added).¹⁰

29. Each of the Title III Debtors—HTA, PREPA, COFINA, and ERS—is undeniably an “agency...of the Government of Puerto Rico,”¹¹ and, thus, under Article 703 they have no

¹⁰ Article 703 is a valid exercise of the Commonwealth’s power over its municipalities and instrumentalities. *See, e.g., Rodríguez Román v. Banco Gubernamental de Fomento para Puerto Rico*, 151 D.P.R. 383 (2000) (public corporations are subject to creation or dissolution at the will of the legislature); *Commoloco of Caguas, Inc. v. Benítez Díaz*, 126 D.P.R. 478 (1990) (acknowledging government control over public corporations through enabling acts); *Amieiro González v. Pinnacle Real Estata Home Team*, 173 D.P.R. 363 (2008) (same).

¹¹ The GDB Restructuring Act defines Government Entity to include “any agency, department office, public corporation, trust, fund, system, instrumentality, political subdivision, taxing authority, or municipality of the Government of Puerto Rico.” Act 109, art. 103(w).

right to challenge any aspect of the Qualifying Modification. It is axiomatic that if the agencies themselves have no right to object to the Approval Application, the UCC cannot derivatively assert such an objection on their behalf. And the notion that the UCC could object to the Approval Application on behalf of the Commonwealth itself is even more absurd: the Commonwealth passed a statute approving the GDB Restructuring Act. No party purporting to act on its behalf can challenge that decision.

30. Fourth, the UCC cannot appear in the Title VI case to represent the interests of the Title III Debtors' creditors. Creditors of a Title III Debtor are, at most, simply creditors of a creditor,¹² which have no standing under applicable law. *See Bank of New York Mellon v. Puerto Rico Sales Tax Fin. Corp. (In re Fin. Oversight and Mgmt. Board for Puerto Rico)*, 301 F. Supp. 3d 306, 311 (D.P.R. 2017) (holding that creditor of a creditor did not have prudential standing to intervene because it had no direct relationship to the funds at issue between creditor and debtor).

II. The UCC Cannot Establish Article III and Prudential Standing.

31. Even if the Title VI process were not limited to GDB Bond holders (and it clearly is), the UCC lacks Article III and prudential standing to object to the Approval Application because it cannot demonstrate a concrete and particularized injury fairly traceable to the Qualifying Modification.

A. The UCC Lacks Article III Standing.

32. It is a fundamental principle that a party cannot appear in an action before a federal court unless it can demonstrate that it has standing to assert its claim, such that the matter presents a “case[] or controvers[y] within the meaning of Article III of the Constitution.” *See Bank of New York Mellon v. Puerto Rico Sales Tax Fin. Corp. (In re Fin. Oversight and Mgmt.*

¹² For the avoidance of doubt, GDB does not concede that the Title III Debtors are net creditors of GDB under applicable law.

Board for Puerto Rico), 301 F. Supp. 3d 306, 311 (D.P.R. 2017) (citing *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013)). To establish Article III standing, a party must prove (i) an “injury in fact” that is “concrete and particularized,” (ii) a “causal connection between the injury and the conduct complained of,” and (iii) the ability of a “favorable decision” by the court to redress the plaintiff’s injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

33. As discussed above, the UCC represents the interests of unsecured creditors of the Title III Debtors, whose debts are being dealt with in their respective Title III proceedings. The UCC does not represent the Title III Debtors themselves (or any individual creditor). Thus, it cannot rely on whatever standing the Title III Debtors might have with respect to this Title VI Action (which is none given the GDB Restructuring Act).

34. Moreover, there is no dispute that the UCC is not a GDB Bond holder—at best, the UCC is the representative (for Title III purposes only) of the unsecured creditors of certain GDB creditors (*i.e.*, the Title III Debtors).¹³ Thus, the UCC cannot allege a particularized injury that is, or would be, caused directly by the Qualifying Modification. The UCC’s objection to the alleged modification of “any rights . . . the unsecured creditors of the Title III Debtors may have against GDB or persons acting on behalf of GDB” is a red herring and does not confer standing on the UCC because *it cannot show that the Qualifying Modification would actually affect the rights of the creditors it represents or that the unsecured creditors of the Title III Debtors have any claims against GDB*. And any assertion that the Qualifying Modification might somehow impair GDB Bond holders’ ability to satisfy current or future debts to the Title III Debtors, which in turn could impair the rights of the unsecured creditors the UCC represents, relies on multiple levels of speculation and is far too remote to establish a “concrete or particularized”

¹³ Moreover, GDB believes that the Title III Debtors owe GDB billions of dollars and thus may not even be creditors of GDB.

invasion of a legally protected interest that is “actual or imminent,” and not merely “conjectural or hypothetical,” especially since Title III Debtors are also debtors of GDB. *See Spokeo, Inc. v. Robins*, 136 S.Ct. 1540, 1548, 194 L.Ed.2d 635 (2016) (quoting *Lujan*, 504 U.S. at 555); *see also Clapper*, 568 U.S. at 401–02 (explaining that an argument regarding a future injury is “too speculative to satisfy the well-established requirement that threatened injury must be certainly impending” and that a party “cannot manufacture standing by choosing to make expenditures based on hypothetical future harm”) (internal quotation marks and citations omitted).

35. Additionally, even if the UCC could allege a particularized injury directly caused by the Qualifying Modification, it would not have standing because creditors do not have standing to sue on behalf of a debtor “unless the alleged misconduct causes harm to them separate and distinct from the injury inflicted upon the debtor corporation.” *Pagan v. Calderon*, 448 F.3d 16, 20 (1st Cir. 2006). Any particularized injuries that could be alleged here by the UCC or the creditors that it represents are derivative of injuries to the Title III Debtors.

B. The UCC Lacks Prudential Standing.

36. Even if the UCC could establish that the creditors it represents have standing to object to the Approval Application—and it cannot—that would not be sufficient to establish the UCC’s prudential standing, an independent requirement for appearing before this Court. Parties establish their prudential standing by demonstrating their claims are “premised *on [their] own legal rights* (as opposed to those of a third party).” *Katz v. Pershing, LLC*, 672 F.3d 64, 72 (1st Cir. 2002) (internal citations omitted) (emphasis added). As demonstrated above, all of the UCC’s objections are based on the Qualifying Modification’s alleged impact on the rights of the Title III Debtors or their creditors, not any rights belonging to the UCC itself (because it has none). That is insufficient to establish standing. *See Katz*, 672 F.3d at 72. Indeed, this type of meddling in a case that does not affect the UCC’s own rights is precisely the conduct that the

prudential standing requirement seeks to foreclose—as courts have emphasized: “prudential standing encompasses the general prohibition on a litigant’s raising another person’s legal rights.” *Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1, 12, 124 St. Ct. 2301, 159 L.Ed.2d 98 (2004). *See also U.S. v. Union Bank for Savings and Inv. (Jordan)*, 487 F.3d 8, 22 (1st Cir. 2007) (holding bank did not have prudential standing to argue that forfeiture of funds under the USA PATRIOT Act was an “excessive fine” against the depositors of the funds under the Eighth Amendment because the bank could not assert the rights of depositors).

37. This Court’s decision in *Bank of New York Mellon v. Puerto Rico Sales Tax Fin. Corp. (In re Fin. Oversight and Mgmt. Board for Puerto Rico)*, 301 F. Supp. 3d 306, 311 (D.P.R. 2017), is on point and instructive. The Court rejected an attempt by the Ad Hoc Group of General Obligation Bondholders in Puerto Rico’s Title III action (the “**GO Group**”) to intervene in an adversary proceeding by the Bank of New York Mellon against COFINA, holding that the members of the GO Group did not have prudential standing because they were not COFINA creditors, but rather were creditors of a COFINA creditor (*i.e.*, the Commonwealth) and, thus, had no direct claim over the funds at issue. The Court flatly rejected the GO Group’s speculative assertion that the adversary proceeding would impact their property rights because of the possibility of “the Commonwealth’s failure to prevail on its claims vis á vis COFINA, or the failure by the Commonwealth as the prevailing party to apply sufficient funds to cover its outstanding obligations on GO Bonds.” *Id.* at 311–12. The UCC’s status here is even further removed than that of the GO Bond holders in that case—it represents the interest of the unsecured creditors of certain GDB creditors. Thus, the UCC clearly does not have prudential standing to participate in the Title VI Action.

CONCLUSION

For the reasons set forth above, GDB and AAFAF hereby object the UCC's standing and request that the Court enter an order declaring that the UCC does not have the right to appear in this Title VI Action and object to the Approval Application.

Dated: September 1, 2018
San Juan, Puerto Rico

Respectfully submitted,

/s/ María D. Trelles Hernández

María D. Trelles Hernández
USDC No. 225106
**PIETRANTONI MENDEZ &
ALVAREZ LLC**
Popular Center – 19th Floor
208 Ponce de León Avenue
San Juan, PR 00918
Tel. 787-274-1212
Fax. 787-274-1470

- and -

O'MELVENY & MYERS LLP

John J. Rapisardi
Suzanne Uhland
Peter Friedman
Daniel L. Cantor
(*Pro Hac Vice* admitted)
7 Times Square
New York, NY 10036
Tel: (212) 326-2000
Fax: (212) 326-2061

*Attorneys for the Puerto Rico Fiscal
Agency and Financial Advisory Authority
and the Government Development Bank
for Puerto Rico*

Exhibit A

Proposed Order

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

THE GOVERNMENT DEVELOPMENT BANK
FOR PUERTO RICO,

Applicant.

PROMESA
Title VI

Case No. 18-01561

**[PROPOSED] ORDER DENYING STANDING OF UCC TO OBJECT TO
APPROVAL APPLICATION**

The Court has reviewed the *Official Committee of Unsecured Creditors' Notice of Intention to Object Regarding Purported Qualifying Modification for Government Development Bank* [ECF No. 59], and *GDB and AAFAF'S Objection to the Official Committee of Unsecured Creditors' Standing to Object to the Approval Application* (the "**Objection**").¹ The Court determines that the UCC lacks standing to object to the *Application of the Government Development Bank for Puerto Rico and the Fiscal Agency and Financial Advisory Authority for Puerto Rico, Pursuant to Section 601(m)(1)(D) of the Puerto Rico Oversight, Management, and Economic Stability Act, for Approval of Qualifying Modification* [ECF No. 1].

SO ORDERED.

Dated: _____, 2018

Laura Taylor Swain
United States District Judge

¹ Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Objection.