UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:	:	
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,	:	PROMESA Title III
as representative of	:	Case No. 17-BK-3283 (LTS)
THE COMMONWEALTH OF PUERTO RICO *et al.*,	:	(Jointly Administered)
Debtors.[1]	:	

CREDITORS' COMMITTEE'S INFORMATIVE MOTION REGARDING KOBRE & KIM FINAL REPORT

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

To the Honorable United States District Judge Laura Taylor Swain and the Honorable United States Magistrate Judge Judith Gail Dein:

The Official Committee of Unsecured Creditors of all Title III Debtors (other than COFINA) (the "Committee") hereby submits this *Informative Motion Regarding Investigator's Final Report* (the "Informative Motion"), seeking to inform the Court and parties in interest in these Title III cases of the Committee's various issues and concerns regarding the Final Investigative Report (the "Final Report")[1] issued by the Oversight Board's Investigator, Kobre & Kim LLP (the "Investigator"). The Committee feels duty-bound to make this filing in light of the fact that the Oversight Board and the government have already begun using the Final Report to argue that the Oversight Board fully satisfied any "duty" to investigate or that certain parties should not be investigated.[2]

Introduction

1. The Committee appreciates the efforts undertaken by the Investigator. Indeed, the Committee is continuing its review of the Final Report and—consistent with the "Exit Plan Order" entered by the Court following the July Omnibus Hearing[3]—is actively requesting access

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[1] FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO, Independent Investigator, *Final Investigative Report* (Aug. 20, 2018) (*available at* https://drive.google.com/open?id=19-lauVo3w9MPS03xYVe0SWhQin-Q6FEf).

[2] *See* Oversight Board Motion to Dismiss, at 27-28, *Pinto-Lugo v. United States*, [Dkt. 36 in Adv. Proc. 18-00041-LTS] ("The Oversight Board has already conducted an investigation **that fulfills any 'duty' it could be found to have to conduct an audit**. . ."); *see also* Governor's Motion to Dismiss, at 8-9 [Dkt. 38 in Adv. Proc. 18-00041-LTS], at 8 ("As the FOMB explains in its motion to dismiss, **the FOMB's independent PROMESA investigation was thorough and transparent**, and it addressed (among other things) (i) the reasons behind Puerto Rico's financial crisis, (ii) whether there was any intention to evade Puerto Rico's constitutional debt limits, (iii) compliance with the federal securities laws, and (iv) potential claims against responsible parties for their role in the events, transactions, and occurrences under investigation."). While the Committee does not take any position with respect to the underlying merits of that adversary proceeding, it notes with concern statements like these that attempt to make the Final Report the law of the land.

[3] *See Order Approving Motion of the Independent Investigator for an Order: (I) Establishing Procedures for Resolving any Confidentiality Dispute in Connection with Publication of the Independent Investigator's Final Report; (II) Approving the Disposition of Certain Documents and Information; (III) Relieving the Independent Investigator from Certain Discovery Obligations; (IV) Exculpating the Independent Investigator in Connection with the Investigation and Publication of the Final Report; and (V) Granting Related Relief* (the "Exit Plan Order"), ¶ 14 [Dkt. 3744] (setting forth procedures to access document depository).

to the third-party documents collected by the Investigator. Nevertheless, at this early stage, the Court should be extremely skeptical of claims by the Oversight Board and the government that the Final Report "uncovered everything" and therefore should (a) serve to prevent further inquiry or investigations that may be appropriate or (b) affirmatively be used as evidence, conclusions, or otherwise in a manner that would support the release of claims. In particular, the Committee wishes to bring to all parties' attention the various concerns that would make such reverence inappropriate and unwarranted. These concerns, which are outlined in greater detail below, highlight that additional work remains necessary to ensure that claims are fully evaluated (and, in some cases, prosecuted)[4] and public trust and accountability are restored.[5]

2. One crucial observation that the Final Report **does** make, though, is that the GDB served as the epicenter and effectively controlled all of the Title III Debtors' borrowing practices. *See infra,* section III. In fact, when Puerto Rico was hitting the proverbial "wall" in early 2014 and needed to retain restructuring advisors, it was the **GDB**, not any other Puerto Rico entity, that signed the retention agreements with those advisors for advice regarding what was, in at least one case, creatively termed "potential liability management transactions," which really means bankruptcy and/or restructuring.

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[4] In an August 29, 2018 press release, the Oversight Board announced that it created a "Special Claims Committee" to "pursue claims resulting from the results of the independent investigation conducted by Kobre & Kim into Puerto Rico's debt and its connection to the current fiscal crisis." *See* Ex. 1, Press Release, Financial Oversight & Management Board for Puerto Rico, *Oversight Board Establishes Special Claims Committee to Pursue Findings of Debt Investigation Report* (Aug. 29, 2018). However, there is no reason to expect the Special Claims Committee's approach to be any different than the approach undertaken by the Investigator—as three of the four members on that Special Claims Committee were the very three members of the "Special Investigative Committee" that oversaw and directed the Investigator's work and presumably approved the issuance of the Final Report.

[5] Indeed, these very issues appear to be undermining the Final Report's utility for its stated purpose—of restoring public trust in Puerto Rico's ability to return to the capital markets. *See* Joe Mysak, *No Conspirators or Smoking Gun in Puerto Rico Report,* BLOOMBERG (Aug. 21, 2018) (available at https://www.bloomberg.com/news/articles/2018-08-21/no-conspirators-smoking-gun-in-puerto-rico-report-joe-mysak) ("The report, prepared by independent investigator Kobre & Kim LLP, is critical of the island's leadership and lawmakers and processes, but only up to a point. It's the same with the bond lawyers and bankers, advisers and analysts. Everything, it seems, was done with the best of intentions.").

3. Given that background regarding the GDB's central role, the importance of viewing the Final Report with a wary eye is highlighted even more clearly by the government's recent efforts (with the Oversight Board's apparent approval) to steamroll any opposition to the GDB's Title VI restructuring and effectively bury the GDB as quickly as possible. Even though that restructuring process would result in a global release of the Title III Debtors' claims against the GDB and the GDB's current or former officers, directors, employees, agents, or representatives (the "GDB Releasees")[6] counsel to the Oversight Board has taken a dismissive position with regard to the need to analyze these claims. In fact, counsel for the Oversight Board has stated with absolute conviction that "**it is beyond credulity** that the Commonwealth, HTA, and PREPA can have meritorious claims against the governmental entity that loaned them money and kept them afloat at the request of the Puerto Rico government."[7]

4. In that context, the Committee further notes that, under well-established bankruptcy law, examiner reports or other "investigative" reports have no binding or preclusive effect on any pending or future matters.[8] Even more, courts have at times determined that the

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[6] *See In re Government Development Bank for Puerto Rico*, Case No. 18-1561, Committee's Notice of Intention to Object Regarding Purported Qualifying Modification for Government Development Bank [Dkt. 59], at 2 n.5. It is unclear at this stage whether the government will take the position that the release applies to former counsel and other advisors to GDB—but that possibility alone highlights the heightened need to fully investigate potential claims before exonerating any such third parties.

[7] Oversight Board Obj. to Creditors' Comm.'s Automatic Stay Mot., ¶ 29, Aug. 31, 2018 [Dkt. 3845] (emphasis added); *see also* Oversight Board Obj. to Creditors' Comm.'s Notice of Intent to Object to Qualifying Modification for Gov't Dev. Bank, ¶ 48, *In re Gov't Dev. Bank for Puerto Rico*, No. 18-1561 (D.P.R. Sept. 1, 2018) [Dkt. 111] ("it is beyond credulity that the Commonwealth, HTA, and PREPA have meritorious claims against the governmental entity that loaned them money and kept them afloat at the request of the Puerto Rico government.").

[8] *See In re FiberMark, Inc.*, 339 B.R. 321, 327 (Bankr. D. Vt. 2006) ("The facts, as found by the Examiner, are not 'true' just because they are in the [r]eport. They explain and justify the Examiner's conclusions. That is all."); *In re Refco Inc. Sec. Litig.*, No. 07-MD-1902 (JSR), 2013 WL 12191891, at *7 (S.D.N.Y. Mar. 11, 2013) ("underlying facts [behind examiner's report] still need to be proven"); *Gordon Props., LLC v. First Owners' Ass'n of Forty Six Hundred Condominium, Inc.* (*In re Gordon Props., LLC)*, 514 B.R. 449, 462 (Bankr. E.D. Va. 2013) ("[A]n examiner has no adjudicatory role, only an investigatory role. The examiner's report has no binding effect on the court.").

conclusions reached by bankruptcy examiners or investigators are incomplete in nature or even later proved wrong:

> The Court recognizes, as the Debtors and Silver Point argue, that the Examiner's Report is not evidence, and that the Examiner's conclusions are not based on a full factual record. . . . **In this case the Examiner's investigation was designed to assist the parties and the Court in analyzing a factual situation, determining what further record is required and in narrowing and focusing the issues, but many of its conclusions have been proved wrong by the evidence of record**.

In re Granite Broad. Corp., 369 B.R. 120 n.10 (Bankr. S.D.N.Y. 2007) (emphasis added).

I. WHAT FINAL REPORT DOES NOT ADDRESS

5. As a threshold matter, it is important to understand what the Final Report does **not** address. The Final Report itself states that it is not intended to be an exhaustive listing of causes of action (or analysis of such causes of action) and does not opine on the "likelihood of success" of any claims:

> The Report also provides a discussion and survey of potential causes of action that the Independent Investigator identified that may arise from the facts learned through the investigation. **That discussion is not intended to provide an exhaustive or definitive list and analysis of causes of action that may be available to investors, creditors, debtors, regulators and other parties. Indeed, we do not opine on the likelihood of success of any cause of action.**

Final Report, at 30 (emphasis added).

6. This fundamental limitation is reflected throughout the "causes of action" chapter of the Final Report. Although that chapter spends 52 pages providing a treatise-like overview of various types of claims that often arise in bankruptcy cases,[9] there is no serious application of the facts uncovered to those legal standards. *See* Final Report, at 476-528 (providing lengthy

[9] Indeed, the Final Report even dedicates multiple pages to the **legal** analysis of avoidance actions—claims the Investigator acknowledges it did not review as a factual matter. *See* Final Report, at 505–17.

overview of "legal framework" applicable in bankruptcy cases). In most cases, the Investigator does not apply the law to the facts and merely tosses a "jump ball"—offering the possibility that certain claims **may** exist in theory without meaningfully linking them to specific individuals, and supporting documentation. *See, e.g.,* Final Report, at 569 ("[A] **potential argument** could be made that GDB breached its fiduciary roles as the leading swap advisor.") (emphasis added). In stark contrast, other examiner reports have actually outlined the **likelihood** of any recoveries and the **values** of those recoveries to the debtors' estates, and have made express references to documents **or precise references to attributable witness statements as support**.[10]

7. In fact, the Final Report expressly acknowledges that it does not even address the question of whether any **avoidance actions (preferences and fraudulent transfers)** could be maintained by any of the Title III Debtors, including against any other government instrumentality. Even though the deadline to prosecute any such claims is fast approaching (May 2019) and these kinds of claims often result in some of the most lucrative recoveries in bankruptcy cases—providing for the "clawback" of amounts paid by an insolvent or undercapitalized entity—the Investigator notes that these issues were specifically carved out, **and that it did not seek or obtain "comprehensive discovery" relating to prepetition transfers because "[w]e have not been tasked" with this analysis and because the Investigator lacked a "solvency analysis."**[11]

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[10] *See, e.g.*, Final Report of Examiner Richard J. Davis (Volume I – Introduction and Executive Summary), at 1, *In re Caesars Entm't Operating Co.*, No. 15-01145 (Bankr. N.D. Ill. Mar. 15, 2016) [Dkt. No. 3401] (highlighting that "claims of varying strength arise out of these transactions for constructive fraudulent transfers, actual fraudulent transfers (based on intent to hinder or delay creditors) and breaches of fiduciary dut[ies]" and assessing that the "**potential damages from those claims considered reasonable or strong range from $3.6 billion to $5.1 billion**") (emphasis added); *see also* Report of Anton Valukas (Volume I), at 45 n.121, *In re Lehman Bros. Holdings Inc.*, , No. 08-13555 (Bankr. S.D.N.Y. Mar. 11, 2010) [Dkt. No. 7531] (showing, as an example, precise citations to page numbers of interview summaries and analyzing whether colorable claims exist).

[11] Final Report, at 535 ("**We have not been tasked with identifying or analyzing any payments or transfers made by the Debtors** . . . Also, we did not have the benefit of a solvency analysis for any of the Debtors . . .

8. The Final Report similarly does not directly address questions concerning whether the **constitutional debt limit** was ever exceeded—a gating issue for determining whether certain bonds are subject to challenge.[12] In every instance, the Final Report takes no position on whether a transaction actually caused Puerto Rico to exceed its constitutional debt limit.[13] Nor did the Investigator conduct a financial analysis of the Commonwealth's debt limit at any point in time, leaving the question entirely unanswered. Rather, the Investigator concludes only that certain transactions were not intended to "evade" the debt limit. *See infra,* ¶ 11. However, a transaction which causes the debt limit to be exceeded is not protected simply because its architects did not intend that result.

9. Moreover, with very limited exceptions, the Final Report avoids the question of whether **private financial institutions** should be held liable for their interactions with the Title III Debtors—instead focusing on process-oriented "fixes" or forward-looking prescriptions. For example, the Final Report mentions in passing the possibility that "aiding and abetting" liability could attach to certain financial institutions—but generally only in the context of certain ERS issuances, not any of the other varied complex and sometimes risky transactions undertaken by

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."); *see id.*, at 502 ("In connection with the investigation, we were not tasked with identifying or analyzing every payment or transfer made by each of the Debtors before commencement of the Title III Cases. Further, we did not have the benefit of a solvency analysis for any of the Debtors or comprehensive discovery pertaining to discrete prepetition transactions between the Debtors and third parties (e.g., lists of payments to creditors, which is typically contained in a chapter 11 debtor's Statement of Financial Affairs)."); *id.* at 504 ("We have not been tasked with identifying or analyzing any preference payments or transfers made by the Debtors . . . .").

[12] Similarly, the Final Report spends only a half-page addressing the balanced budget clause—seeming to conclude that the matter is settled because of the existence of a 1974 legal opinion on the subject. *See* Final Report, at 91. In fairness, the Final Report does acknowledge that the opinion "cited no case law, no legal treatises, and no other legal authorities in support of this conclusion." *Id.*

[13] The Final Report analyzes the termination fees associated with the various swap agreements, and notes only that "[a]n argument could be made" that those termination fees should have counted toward the constitutional debt limit. Final Report, at 567; *see id*. ("As such, there does not seem to be a meaningful reason why one would be counted toward the Constitutional Debt Limit, while the other is not."). Yet, the Final Report is silent regarding the important question raised by this possibility—the notion that any debt issued after the debt limit was exceeded (as a result of swap expenses) also would be subject to challenge.

the Title III Debtors. *See* Final Report, at 558–59.[14] Likewise, despite characterizing the various derivative swaps that were entered into by the Title III Debtors as highly risky—and even possibly leading to a downgrade in the Commonwealth's credit rating in 2007—the Final Report does not thoroughly analyze whether private parties, including outside advisors, could be liable for these transactions, and instead discusses whether the swaps were in "the best interests of Puerto Rico." Final Report, at 569-71. While it is, of course, valuable to determine what was in Puerto Rico's "best interests" when analyzing past mistakes, the Final Report largely misses the mark when it comes to the most important focus of any investigation—the possibility of recoveries for the Title III Debtors' estates.[15] As would be expected in any bankruptcy case, those recoveries can be found by focusing on the conduct of the **solvent** entities (here, the private financial institutions) that profited from the insolvent debtors' mistakes.

II. FINAL REPORT'S OVERALL APPROACH IS TO EXONERATE

10. Even where the Final Report attempts to address claims, it takes an approach that virtually ensures that responsibility will not be laid at any party's feet. For one, even though the Investigator states that it did not "opine" on the merits of any claims, *see* Final Report, at 30, in certain instances it volunteers conclusions and presumptions that give the impression that there was no wrongdoing. Indeed, as an example that can only be described as surreal, the Final Report goes out of its way to challenge the conclusions reached in a 2010 report issued by the

[14] The Final Report does, however, contain discussion of the participation of Banco Popular-related entities in the 2014 GO bond issuance (despite recommending against its issuance), but notes—without expression of a view on the merits of such claims—that interested parties "could seek" equitable subordination or other relief. *See* Final Report, at 543.

[15] The Investigator's lack of focus on claims maximization may have resulted from its view of the limited mandate provided by PROMESA section 104(o). That section provides the Oversight Board with authority to review **retail** selling issues such as the "disclosure and selling practices in connection with the purchase of bonds by a covered territory[.]"

well-known and reputable financial and consulting group, Conway MacKenzie.[16] That report previously determined that certain GDB and ERS officials[17] may have breached fiduciary duties to Commonwealth and ERS stakeholders in connection with the issuance of and "arbitrage" (i.e., gambling) with ERS bonds.[18] In fact, the Final Report takes direct aim at Conway's findings—spending nearly fifteen pages attempting to absolve GDB and ERS officials of any fiduciary claims and explaining why, in the Investigator's view, the Conway report was wrong. *See id*, at 543-557 (explaining, as an example, why it was acceptable for GDB and ERS officials to remain "optimistic" about market returns in June 2008).

11. In an apparent quest to exonerate, the Investigator appears to use "new" legal standards in order to reach these types of conclusions. For example:

- Rather than actually examining whether the constitutional debt limit was exceeded by a particular issuance, *see supra*, ¶ 8, the Investigator concluded that the "Puerto Rico employed a **reasonably robust process** for these Debt Limit Calculations," and the Final Report states that the myriad and convoluted financial structures utilized by the Commonwealth issuers **were not intended "to evade"** the debt limit.[19] The Committee is not familiar with the legal standard used by the Investigator here. **Either the constitutional debt limit was exceeded, or it was not; the "robustness" of the internal analysis is not relevant to that question, and it is apparent that the Investigator never analyzed whether the calculations were at all accurate.** Similarly, the fact that the Investigator did not find evidence of "knowledge" that the debt limit was being exceeded is not a sufficient reason to find that there are not viable claims—

[16] As the Final Report acknowledges, these conclusions were echoed by the Puerto Rico legislature in the Statement of Motives accompanying the 2011 legislation that prevented additional ERS bonds. At the time, the legislature concluded that ERS and GDB officials "failed the fiduciary duties imposed by the law over [a] board of directors." Final Report, at 197, 554.

[17] The Final Report discusses the conduct of officials at GDB and ERS, and refers to them collectively as the "ERS/GDB Decision-Makers." Final Report, at 543.

[18] In effect, the "arbitrage" strategy was conditioned on the hope that the funds obtained from ERS pension-obligated bonds could earn greater returns in the market than the total cost of debt service. *See* Final Report, at 548; *id.* at 217 (quoting the Conway report's findings that ERS management "ignored market conditions" and that the "lack of understanding is not reasonable an[d] may not fall within the general standards of fiduciary responsibilities expected by a Board of Trustees").

[19] Final Report, at 267; *id*. ("In addition, we did not find any evidence that Puerto Rico's government personnel believed that Puerto Rico's interpretation of the Constitutional Debt Limit was wrong or that Puerto Rico performed the Debt Limit Calculation Incorrectly.").

or that the individuals supervising an issuance were mistaken (or negligent) in that "knowledge";

- Similarly, the Final Report spends almost two pages discussing why GDB officials were "knowledgeable and well-credentialed"—an issue entirely irrelevant to whether those individuals breached any fiduciary duties or were negligent in their administration of GDB's role as a fiscal agent for the Commonwealth;[20]

- The Investigator largely ignores the necessary implications of the "revolving door"[21] issues—omitting such discussion from the "claims" chapter (Chapter XVI)—seemingly because the Investigator concluded in an earlier chapter that it did not find evidence of "bribery, kickbacks, or pay-to-play violations in connection with any Puerto Rico-related bond issuance." *See* Final Report, at 407. Of course, it is not necessary to prove that "bribes" or "kickbacks" were offered in order to establish that fiduciary duties were breached in the selection of financial advisors or underwriters based on potential favoritism (political or financial), and the Investigator's assumptions on this point preclude an in-depth analysis of potential recoveries. This is particularly troublesome given the government's efforts to grant global releases and immunity to the GDB Releasees in the context of the Title VI Restructuring of GDB; and

- The Investigator also states that its "investigation did not uncover **sufficient** evidence to conclude that the flow of talent [the "revolving door"] between GDB and the private sector resulted in any violations[.]" Final Report, at 98. In effect, the Investigator seems to admit that it may have found some evidence of potential violations—yet does not explain what that evidence was, or why it was insufficient.

12. In fact, even where these misguided standards were utilized, the Investigator premises many of its conclusions that "no evidence" existed to support certain claims on the fact

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[20] *See* Final Report, at 73-74. Indeed, the use of anonymous references here to these individuals ("[a] former Chairman," "[a] former Executive Vice President") and their former employers ("various positions with prominent financial institutions") prevents a meaningful analysis of the question of whether those individuals' loyalties were split while they served the GDB. *Id.*

[21] As the Court will recall, one of the animating concerns behind the Committee's original Rule 2004 Motion was the possibility that individuals may have served the GDB while potentially suffering from conflicts of interest due to their "back to back" roles at private financial institutions—the very same private financial institutions who profited by serving as underwriters for the Title III Debtors. *See, e.g.*, Comm.'s Rule 2004 Mot., ¶ 23, July 21, 2017 [Dkt. 706]. While the Final Report addresses "conflict of interest" issues as they relate to potential breach of fiduciary claims in some respects, this discussion is focused primarily on "multiple fee-generating roles" in the issuance of ERS bonds—not the underlying "revolving door" issues. *See* Final Report, at 558-59

that individuals "denied" misconduct.[22] Obviously, individuals would never confess to knowledge that the financial structures they were utilizing were misguided, risky, or unconstitutional. And, none of the interviews were transcribed or under oath—giving the witnesses a free pass to say whatever they may please. *See* Final Report, at 27 ("we did not take testimony under oath, nor were the interviews transcribed"). As the former Treasury Secretary, Juan Zaragoza (who was interviewed by the Investigator), wrote in a recent newspaper column regarding the Final Report:

> Reading the tome in installments (because no one could tackle it in one go), we are confronted with conclusions and comments that are so vague that **they could only be the result of one of two things: the lack of cunning to unravel the scene of the crime or the attorneys' survival instinct that forced them to conclude that they could not conclude anything or point fingers at anyone**. . . . A perfect example of this [effort] is concluding that that they found no evidence that government officials ever thought that their interpretation of the constitutional limitation applicable to the issuance of debt was incorrect. **But what did they expect? A legal memorandum recommending finding a way around the Constitution?**[23]

III. DESPITE ATTEMPTING TO EXONERATE INDIVIDUALS, FINAL REPORT CANNOT HELP BUT IDENTIFY HIGHLY TROUBLING CONDUCT MERITING FURTHER EXAMINATION, IF NOT ASSERTION, OF CLAIMS

13. Despite the Investigator's apparent effort to minimize negligent conduct, the findings with respect to GDB decision-makers reveal highly troubling conduct that highlights the need for further investigation and should work to discourage any efforts to prematurely provide global releases to GDB and the GDB Releasees.

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[22] *See* Final Report, at 262 ("no evidence" that officials "believed" that PBA debt service payments violated constitutional debt limit); *see id.* at 332 ("no evidence" that credit agencies "circumvented or deviated from existing conflict-separation or other protections").

[23] Juan Zaragoza, *El Mamotreto de la Deuda (The Voluminous Report of the Debt)*, EL NUEVO DIA (Aug. 29, 2018) (available at https://www.elnuevodia.com/opinion/columnas/elmamotretodeladeuda-columna-2443911/), certified translation attached as Ex. 2 (emphasis added).

14. In fact, with respect to derivative swap transactions—one area where the Final Report does acknowledge that "interested parties" could conduct further inquiry and an "argument could be made" that fiduciary responsibilities were breached, *see* Final Report, at 569—the evidence is damning. In that section, the Investigator observes that:

- GDB was the entity "acting as the main advisor and agent" for the Title III Debtors with respect to all derivative swaps, and "took the lead" on all swap transactions—many of which were complicated and extremely risky. Final Report, at 568, 570–71;

- Even though GDB had this advisory responsibility (and promulgated an internal "Master Swap Policy"), GDB officials essentially had no idea what swaps had been entered into by the Title III Debtors. Indeed, in order to inventory its total exposure, GDB had to hire an outside swap advisor in 2009 who **literally called swap counterparties on the phone over the course of months to "ask[] if they had trades with Puerto Rico-Related Entities."** Final Report, at 569 (emphasis added); and

- GDB failed to meaningfully consider whether swap termination fees should be counted for the purposes of the constitutional debt limit. *See* Final Report, at 565-67 (noting that "there does not seem to be a meaningful reason" why termination fees were not counted toward debt limit and termination fees were not referenced in official statements until 2011).

15. The facts pertaining to GDB's role as fiscal agent were just as illustrative, establishing the near-complete dereliction of GDB's duties:

- The Final Report acknowledges that the GDB had **complete** control over every aspect of the Title III Debtors' various bond offerings, serving as the financial "brain trust" of the Commonwealth. *See* Final Report, at 43. It characterizes the GDB as a "traffic cop" that "intermediated **all of the [Title III Debtors'] bond issuances,"** deciding "which of the Puerto Rico-Related Entities would issue their bonds [] and when" and selecting underwriters and law firms for those issuances. *Id.* at 71 (emphasis added);

- GDB, as the fiscal agent for the Commonwealth, had the tools and ability to monitor the Title III Debtors' indebtedness yet effectively did not discharge those monitoring responsibilities. *See* Final Report, at 85 ("Despite its responsibility for helping the Puerto Rico-Related Entities to make sound financial decisions, we found no meaningful evidence that GDB had an effective process in place to oversee important aspects of their fiscal health, or to impose accountability for repayment of debts."). **Indeed, even despite the entry of "Fiscal Oversight Agreements" (FOAs), GDB did not verify "what the Puerto Rico-Related**

Entities actually did with those loan funds after they received them." Final Report, at 86 (emphasis added); and

- GDB neglected to perform sufficient due diligence with respect to the loans it provided to certain instrumentalities, turning itself into a "piggy bank" for those instrumentalities and forcing itself into an eventual restructuring. Final Report, at 43. Indeed, the Investigator states that "GDB witnesses told us that **GDB evaluated and approved [multi-million dollar] HTA loan requests within hours**." Final Report, at 92 (emphasis added). In one instance, even, GDB officials approved PREPA's entry into an emergency $260 million line of credit with virtually no questions asked—even though PREPA sought approval just one month earlier for another $150 million line of credit without even mentioning the potential need for additional financing. *See* Final Report, at 87.[24]

16. In other words, GDB officials did not know whether bond issuances (or loans) were in the Title III Debtors' best interests and then, once those issuances occurred, had no idea how bond proceeds were being used or money was being spent. Troublingly, though, the Final Report does not analyze in sufficient detail whether any **private** actors should be liable as willing participants who profited off of GDB officials' negligence (or worse). *See supra*, ¶ 9.

17. Perhaps unsurprisingly, the Investigator stumbles upon highly troubling evidence in one area yet fails to recognize the significance of that evidence or its application to potential Title III Debtor (rather than creditor) causes of action. The Final Report examines how GDB officials hired restructuring counsel and restructuring financial advisors **before the issuance of the $3.5 billion GO bond offering in March 2014** and failed to disclose that fact to the general market.[25] While the Final Report focuses on "disclosure"-oriented claims by creditors that bought the 2014 GO bonds, it fails to even address the potential estate claims that could arise out of this situation not because of the lack of disclosure, but rather because GDB officials, who controlled the 2014 GO bond offering, (i) directed the Commonwealth to borrow additional debt

[24] The Final Report concludes that this was, "at the very least, [] a significant error," yet does not address whether any claims for breach of fiduciary duties would result from this specific transaction. *Id.*

[25] *See* Final Report, at 535-39.

even as they were plotting for a restructuring, and (ii) utilized proceeds of such offering to repay the GDB, so that GDB and its directors and officers would be off the hook from any liability—all of this at a time where both the Commonwealth and the GDB appeared to be at least undercapitalized, if not insolvent.[26] Of course, under the then-applicable version of the GDB Enabling Act, **criminal** liability attached for GDB accepting deposits while insolvent.[27] The Final Report indicates that these decisions may have been animated by the fear of such criminal liability, noting that "[e]vidence reflects that [in 2014] the GDB Board also became concerned that, under the criminal code, GDB Board members could be held responsible for negligence in the performance of their duties if an action or omission were to cause loss or damage to the public." Final Report, at 104. Analyzing the motivations that went into this transaction is an important element when considering the assertion of any claims against the GDB and/or the GDB Releasees.

18. As an example of the types of issues that should be investigated, the Investigator also noted that it engaged the financial advisory firm, Duff & Phelps, to track down the use of certain proceeds by PREPA from a number of bond issuances between 2010 and 2013.[28] **That analysis ultimately concluded that $430 million in bond proceeds may have been misspent (or possibly worse) from PREPA's accounts**. *See* Final Report, at 143-147 (discussing Duff & Phelps' methodology and how "the amount of bond proceeds [] earmarked for the Construction

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[26] *See* Official Statement for 2014 GO Bonds (Mar. 11, 2014) (available at http://www.gdbpr.com/investors_resources/documents/CommonwealthPRGO2014SeriesA-FinalOS.PDF) ("The Commonwealth will use the proceeds of the Bonds to (i) **repay amounts due to Government Development Bank for Puerto Rico ('GDB') under certain lines of credit extended to the Commonwealth and Puerto Rico Public Buildings Authority ('PBA').**") (emphasis added).

[27] *See* GDB Enabling Act, 1948 P.R. Laws 17, § 15, as amended by 1957 P.R. Laws 3 (providing for imprisonment of one to five years); *see also* 2015 P.R. Laws 97 (amending Enabling Act to remove criminal penalties for accepting deposits while GDB is insolvent). The current version of this statute is at 7 L.P.R.A. § 563.

[28] This review tracked the usage of those proceeds over the course of fiscal years 2010 to 2015.

Fund exceed, by approximately $430 million, what PREPA reported as Net Additions and changes in ending restricted cash account balances."). **Although one would normally congratulate an Investigator on this "find," what is troubling to the Committee is that the Final Report does not explain why other bond issuances by all Title III Debtors were exempted from similar reviews, leading to the unavoidable conclusion that other "autopsies" remain necessary**.

IV. FINAL REPORT IS OF LIMITED UTILITY, BECAUSE IT FAILS TO PROVIDE WITNESS OR DOCUMENT LINKS NECESSARY FOR FOLLOW-UP

19. To compound these problems, the Investigator chose to, in effect, cover tracks through its generous offerings of anonymity to the subjects in the Final Report. Unfortunately, though, this approach means that the Final Report may turn out to be of very limited utility. As the Court will recall, the Oversight Board argued that the Committee should be sidelined because, among other things, the "Committee will suffer no prejudice" and "the Oversight Board will establish a procedure for sharing with the Committee the documents uncovered in discovery and transcripts from depositions." *See* Oversight Board Obj. to Comm.'s Rule 2004 Request, ¶ 6, Aug. 3, 2017 [Dkt. 859]. Yet, contrary to these representations, none of the Investigator's interviews were conducted under oath or even transcribed—something that not only allows interviewees to evade crucial issues, but also frustrates any efforts to utilize the statements they gave. *See* Final Report, at 27. And, instead of laying out or summarizing any individual's viewpoints with specificity, each interviewee was generally identified only as a "witness" or a "high-ranking" official—even when that witness could be a target or the identity of the "high-ranking" official could be extremely useful in evaluating a potential claim.[29] Unless the

[29] *See, e.g.*, Final Report, at 78 (stating that "a witness told us" that underwriters, rather than GDB, would reach out and select law firms for issuances). The exceptions to this general rule were few and far between. For example, very limited statements were attributed to Governor Alejandro Garcia Padilla or Treasury Secretary

Investigator subsequently provides the Committee with additional detail regarding these statements—as was originally promised—the interviews conducted by the Investigator will ultimately be of limited value.

20. In that same vein, even though the Investigator has acknowledged that it had access to a treasure trove of millions of internal emails, the Final Report almost never cites to specific documents—resorting to citations only when documents were already in the public record, as was the case with the emails cited in the summary judgment briefing from the Commonwealth-COFINA litigation.[30] Even in the few isolated instances where the Investigator has referenced the contents of internal emails, the individuals behind those emails are almost never named.[31] **Perhaps most troubling, the Investigator's counsel recently confirmed that many of these emails themselves were never produced by the GDB to the Committee because they were either (a) withheld by GDB as privileged in nature; or (b) obtained directly by the Investigator from regulators (e.g., the SEC and FINRA).** With regard to the regulator documents, as the Court will recall, the Committee requested these very materials at the

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Melba Acosta, *see* Final Report, at 536, or to restructuring advisor Jim Millstein. *Id.* at 537. Far from this practice, other well-received examiner reports regularly provide direct summaries or even **quote transcribed notes of witness interviews at length.** *See, e.g.*, Report of Kenneth N. Klee, *In re Tribune Co.*, No. 08-13141 (Bankr. D. Del. Aug. 3, 2010) [unsealed version of Volume I at Dkt. No. 5247] (citing throughout to sworn interviews and providing quotes).

30 Final Report, at 165 n.34 (citing to exhibits and emails filed in Commonwealth-COFINA proceeding).

31 *See, e.g.,* Final Report, at 105 (referring to GDB email chain in which a "**high-ranking official** within GDB suggested that the spokesperson's statement was 'false' and should be reframed"); *see also* Final Report, at 422 ("In another contemporaneous email exchange **between two other high-ranking members** of GDB's management in 2005, one expresses frustration at Goldman directly marketing Swaps to the Executive and Legislative Branches, and characterizes Goldman as going behind GDB's back to convince the Secretary of Treasury and the legislature that the proposed Basis Swap could be a means of providing budget relief."). In total, the Committee has identified **fewer than ten** similar examples of specific citations to internal documents that were not already made public in the Title III cases. (In some instances, the Final Report states merely that "correspondence" was reviewed without providing specific dates or other identifying information—for example, that "correspondence between that witness and GDB confirm this stated belief." *See* Final Report, at 212.).

July 25, 2018 Omnibus Hearing. At that hearing, the Court acknowledged that the Committee's concerns were real, stating:

> The documents to the regulators, though, what I'm – what I want to be able to address is that there were documents that were normally requested by the investigator, which would have been in the room if they had come directly from GDB. **But if they are not there because they came from the SEC, I think the committees have the right to those documents, because they fit within all the other types of documents that would have been—that have been in the room and have normally been produced to the committees**.

See Ex. 3, Transcript of July 25, 2018 Hearing, 70:10–18 (emphasis added).

21. Consequently, the Committee is left guessing and forced to attempt to determine who said what. For example, because the Final Report makes no express disclosure of whether individuals served at the GDB or inside the government at the same time they or their family members owned Puerto Rico bonds[32]—an issue that could be highly relevant to the question of whether conflicts of interest arose—and there is no indication the Investigator even asked that question of witnesses, and, if he asked, what the responses were.[33]

CONCLUSION

The Committee wishes to reiterate that it is not dismissive of the work performed by the Investigator. Moreover, the Committee continues to study the Final Report, and, while

[32] The Final Report notes, however, that the Investigator found "no instances" of "deficiencies in mandatory financial disclosures," *see* Final Report, at 396 & 407, and that these financial disclosures—which are made public—contain information regarding a public servant's "investments in securities and other financial instruments." Final Report, at 400. Of course, as the Final Report also notes, the government agency responsible for monitoring these disclosures did not "exercis[e] the full scope of its authority" and "relied upon the cooperation of others to implement its mandate." *See* Final Report, at 405. With regard to other family connections, the Final Report also contained a very limited discussion in which it concluded that there was no evidence of impropriety in connection with "one political official who, to our knowledge, had a family member who worked for one of the financial institutions that was a swap counterparty" and "a GDB official who worked on Puerto Rico bond issuances during the same period whose family member worked for a financial institution that historically underwrote Puerto Rico-related debt." Final Report, at 407. The Investigator seemingly reached this conclusion with respect to the GDB official only because "**[t]he official told us** that he disclosed the relationship to OGEPR and implemented the screening recommendations" the agency recommended in an opinion letter. *See id.*

[33] It is unclear whether the Committee, parties in interest in these Title III cases, and the general public should assume that silence on this critical topic means that none of these officials or their families held Puerto Rico bonds.

attempting to minimize costs, will likely file another motion (or amend the Committee's prior Rule 2004 Motion) to the extent necessary to do so to cover areas of inquiry that were either completely ignored or partially covered by the Final Report. However, the Committee makes this filing only to highlight for the Court and the various parties that the Final Report is not the end of the matter, that its findings remain subject to question, and that—as the Final Report acknowledges—much more work remains necessary to obtain full transparency in these Title III cases.

[*Remainder of page intentionally left blank.*]

Dated: September 5, 2018

/s/ Luc A. Despins, Esq.

PAUL HASTINGS LLP
Luc. A. Despins, Esq. *(Pro Hac Vice)*
James R. Bliss, Esq. *(Pro Hac Vice)*
James B. Worthington, Esq. *(Pro Hac Vice)*
G. Alexander Bongartz, Esq. *(Pro Hac Vice)*
200 Park Avenue
New York, New York 10166
Telephone: (212) 318-6000
lucdespins@paulhastings.com
jamesbliss@paulhastings.com
jamesworthington@paulhastings.com
alexbongartz@paulhastings.com

Counsel to the Official Committee of Unsecured Creditors

– and –

/s/ Juan J. Casillas Ayala, Esq.

CASILLAS, SANTIAGO & TORRES LLC
Juan J. Casillas Ayala, Esq., USDC - PR 218312
Diana M. Batlle-Barasorda, Esq., USDC - PR 213103
Alberto J. E. Añeses Negrón, Esq., USDC - PR 302710
Ericka C. Montull-Novoa, Esq., USDC - PR 230601
El Caribe Office Building
53 Palmeras Street, Ste. 1601
San Juan, Puerto Rico 00901-2419
Telephone: (787) 523-3434
jcasillas@cstlawpr.com
dbatlle@cstlawpr.com
aaneses@cstlawpr.com
emontull@cstlawpr.com

Local Counsel to the Official Committee of Unsecured Creditors

EXHIBIT 1

Financial Oversight and Management Board for Puerto Rico

PRESS RELEASE

For Immediate Release

OVERSIGHT BOARD ESTABLISHES SPECIAL CLAIMS COMMITTEE TO PURSUE FINDINGS OF DEBT INVESTIGATION REPORT

(San Juan, PR – August 29, 2018) – The Financial Oversight and Management Board for Puerto Rico (the "Oversight Board" or the "Board"), created by Congress under the bipartisan Puerto Rico Oversight, Management and Economic Stability Act ("PROMESA"), today announced that it has designated, through Unanimous Written Consent, a Special Claims Committee to pursue claims resulting from the results of the independent investigation conducted by Kobre & Kim into Puerto Rico's debt and its connection to the current fiscal crisis.

Under PROMESA, the Oversight Board, as the representative of the Commonwealth and instrumentalities in Title III may pursue claims on behalf of the Title III debtors for the benefit of all creditors and parties in interest in the Title III cases. The Special Claims Committee will review the Debt Investigation Report and determine the scope of any further action to negotiate or pursue claims. The Oversight Board appoints Board members Andrew G. Biggs, Arthur J. González, Ana J. Matosantos and David A. Skeel, Jr. as the members of the Special Claims Committee.

As previously announced, the Oversight Board's Special Investigation Committee will conduct a public hearing on Tuesday, September 18, 2018, in Puerto Rico, to give interested parties an opportunity to hear and be heard regarding the results of the Report.

###

Contact:
Forculus Strategic Communications
José Luis Cedeño
787-400-9245
jcedeno@forculuspr.com
info@forculuspr.com

Contact (Mainland):
APCO Worldwide
Gabriella Zen
202-778-1056
gzen@apcoworldwide.com

Board's Contact Information:
E-mail: comments@oversightboard.pr.gov

EXHIBIT 2

Columns

GUEST COLUMN

By Juan Zaragoza

Wednesday, August 29, 2018

29

The hefty tome on the debt

The much awaited 600-plus page tome on the study of the debt commissioned by the Oversight Board is finally out. Well, not that much awaited really, because, knowing where it's coming from, we all knew it would be far from the much needed audit of the debt. My initial reaction upon seeing it was fear that they would get paid for it per page and not content.

I must confess that I was one of many people who were interviewed by a couple of foreign, young lawyers who were well-meaning but did not have sufficient cunning to face the complicated plot of the story of a crime against a country, where despite the hundreds of bloodied people on the scene of the crime, there is no culprit. I can picture them listening to the versions of politicians alleging their innocence and blaming their successor and of professionals who passed through agencies and corporations and did not hear or see anything strange.

Reading the tome in installments (because no one could tackle it in one go), we are confronted with conclusions and comments that are so vague that they could only be the result of one of two things: the lack of cunning to unravel the scene of the crime or the attorneys' survival instinct that forced them to conclude that they could not conclude anything or point fingers at anyone.

A perfect example of this is concluding that they found no evidence that government officials ever thought that their interpretation of the constitutional limitation applicable to the issuance of debt was incorrect. But, what did they expect? A legal memorandum recommending finding a way around the Constitution? From creating public corporations to issue their own debt to excluding the debts that the Commonwealth guarantees (but of which it is not the original issuer)

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Miriam R. García
Federally Certified Court Interpreter
Certificate No. 03-051

from the calculation of constitutional debt, this limitation has historically been given a liberal interpretation. Beyond a correctly or incorrectly interpreted formula, the issue here is whether the people who managed the country's finances knew that, with every debt that was issued, we were inching closer and closer to the abyss of default.

We need only look at how debt issuances were used for payroll and other operating expenses to realize that it was necessary to move beyond the Constitution and follow the universal principle of good government.

As to the Government Development Bank, the evidence supports a complicated story: top-notch officials who, conflicted between their roles as fiscal agents and lenders, chose the latter, mainly due to the political influence of members of the Oversight Board and "trust" employees appointed by the Office of the Governor. The report describes how the Government Development Bank strayed from their raison d'être, transforming from an instrument of development into a financier of bad administrative practices.

There are so many "conclusions" that I am forced to choose one last one to finish up (although I promise to continue in another column): the absolution in view of the lack of clear evidence that the credit rating agencies ever thought that their ratings of our issuances were inflated. Once again, what did they expect? A memorandum admitting that the triple tax exemption of our debt acted as the redeeming quality that trumped the increasingly clear signs that the jig was almost up? In other words, the exemption put lipstick on a pig (the debt) and turned it into a stuffed toy.

The report is far from an audit of the debt; but, without assigning blame due to a lack of evidence, it validates what many of us have been saying for a long time, that its magnitude is the result of an irresponsible management of public finances.

While I finish reading the tome, I would just like for some brave soul to come out and tell this investigation firm that we found no robust evidence that would permit us to pay their bill.

Other columns by Juan Zaragoza

Tuesday, July 24, 2018
The island of hallucination
Former secretary of the Treasury Juan Zaragoza Gómez says that it is time for Puerto Rico to face the truth.

Wednesday, June 27, 2018
The rewards
The former secretary of the Treasury addresses the issue of political investment in a bankrupt island

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and the challenge of governing to benefit the entire country, not just the few.

Friday, June 1, 2018
The mystery of the repeal
Former secretary of the Treasury Juan Zaragoza objects to the proposed repeal of Public Law No. 80, a statute created to protect workers from wrongful termination.

See 29 comments

MORE

About this columnist

Former secretary of the Department of the Treasury

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Certificate No. 03-051

EXHIBIT 3

UNITED STATES BANKRUPTCY COURT

DISTRICT OF PUERTO RICO

In Re:	)	Docket No. 3:17-BK-3283(LTS)
	)	
	)	Title III
The Financial Oversight and Management Board for Puerto Rico,	)	
	)	(Jointly Administered)
as representative of	)	
The Commonwealth of Puerto Rico, *et al.*,	)	July 25, 2018
Debtors.	)	

Siemens Transportation Partnership Puerto Rico, S.E.	)	Docket No. 3:18-AP-030(LTS)
	)	*in 17-BK-3567(LTS)*
Plaintiff,	)	
v.	)	
Puerto Rico Highways and Transportation Authority, *et al.*	)	
Defendants.	)	

Hon. Ricardo Antonio Rosselló Nevares, *et al.* Plaintiffs, v. The Financial Oversight and Management Board for Puerto Rico, *et al.* Defendants.	Docket No. 3:18-AP-080(LTS) *in 17-BK-3283(LTS)*
Hon. Thomas Rivera Schatz, *et al.* Plaintiffs, v. The Financial Oversight and Management Board for Puerto Rico, *et al.* Defendants.	Docket No. 3:18-AP-081(LTS) *in 17-BK-3283(LTS)*

OMNIBUS HEARING

BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN

UNITED STATES DISTRICT COURT JUDGE

AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN

UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

For The Commonwealth of Puerto Rico, et al.: Mr. Martin Bienenstock, PHV
Mr. Paul V. Possinger, PHV

APPEARANCES CONTINUED:

For The Commonwealth of Puerto Rico, et al.:	Mr. Timothy Mungovan, PHV Mr. Brian Rosen, PHV Ms. Margaret Dale, PHV
For the U.S. Trustee Region 21:	Ms. Monsita Lecaroz Arribas, AUST
For Official Committee of Unsecured Creditors:	Mr. Luc Despins, PHV
For Puerto Rico Fiscal Agency and Financial Advisory Authority:	Ms. Carolina Velaz Rivero, Esq. Mr. John Rapisardi, PHV Mr. Mauricio Muniz Luciano, Esq. Mr. Peter Friedman, PHV Mr. William Sushon, PHV
For the Government Development Bank:	Ms. Maria Trelles Hernandez, Esq. Ms. Suzzanne Uhland, PHV Appearing in New York
For Ad Hoc Retiree Committee:	Mr. Robert Gordon, PHV Mr. Landon Raiford, PHV Ms. Melissa Root, PHV
For Siemens Transportation Partnership Puerto Rico:	Ms. Claudia Springer, PHV
For Banco Popular de Puerto Rico:	Mr. John Dorsey, PHV
For ERS Secured Creditors:	Mr. Benjamin Rosenblum, PHV Mr. Bruce Bennett, PHV
For Hon. Thomas Rivera Schatz, et al.:	Mr. Claudio Aliff, Esq.
Independent Investigator:	Mr. David Farrington Yates, PHV

APPEARANCES CONTINUED:

For the GO Group:	Mr. Donald Burke, PHV Mr. Mark Stancil, PHV
For the Puerto Rico House of Representatives:	Mr. Israel Roldan Gonzalez, Esq.
For the Puerto Rico Funds:	Mr. Jason N. Zakia, PHV
For the American Federation of State, County and Municipal Employees:	Mr. Manuel Rodriguez Banchs, Esq.

Proceedings recorded by stenography. Transcript produced by CAT.

I N D E X

WITNESSES: PAGE

None offered.

EXHIBITS:

None offered.

San Juan, Puerto Rico

July 25, 2018

At or about 9:39 AM

* * *

THE COURT: Again, good morning. Welcome, Counsel, parties in interest, members of the public, the press, those observing here and in New York and the telephonic participants. It is, as always, good to be back in San Juan, and it's particularly good to be here on Puerto Rico Constitution Day to discuss matters that are of such importance to the future of Puerto Rico.

I remind you that consistent with the court and judicial conference policies and the Orders that have been issued, there is to be no use of any electronic devices in the courtroom to communicate with any person, source, or outside repository of information, nor to record any part of the proceeding.

Thus, all electronic devices must be turned off unless you're using a particular device to take notes or to refer to notes or documents that are already loaded on the device. All audible signals, including vibration features, must be turned off.

No recording or retransmission of the hearing is permitted by any person, including but not limited to the parties or the press. Anyone who is observed or otherwise

found to have been texting, e-mailing or otherwise communicating with a device from the courtroom during the Court proceeding will be subject to sanctions, including but not limited to confiscation of the device and denial of future requests to bring devices into the courtroom.

So having finished my usual friendly greeting, I will call on counsel for the Oversight Board to begin with a status report, for which we've allocated 20 minutes.

MR. ROSEN: Good morning, Your Honor. Brian Rosen of Proskauer Rose on behalf of the Oversight Board. I'll take the first half of that, Your Honor, and then turn it over to my colleague.

Your Honor, with respect to the claims aspect, as you know, the bar date was May 29 of this year. And even today, while all of the claims, excuse me, have been logged in and time stamped, not all of the claims have been categorized or even scanned. And that is because the estimate, as of yesterday, was that over 173,000 claims were timely filed. They were date stamped. Even after that, Your Honor, we've already received 6,000 late filed claims.

At this point, approximately 45,000 of those claims have been scanned in and categorized, and the amounts associated with those 45,000 are in excess of 32 trillion dollars. Those claims obviously are large claims, Your Honor. Many of them are claims filed by bond trustees. So they are

significant because they cover the entire issue of the series that was -- excuse me, that was issued by the Commonwealth or PREPA or one of the other entities, that have been filed.

There are other claims that have been filed, such as 55 billion dollar claims that were filed by the Retirees' Committee and so on. Likewise, there are claims for tax refunds that have been filed by multitudes, as well as a lot of pension and retiree claims.

You asked what the claims reconciliation process is going to be. Your Honor, at this time we formalized the retention of two claims agents to assist us in the analysis associated with those claims.

Specifically, we've brought on -- the Oversight Board has brought on Deloitte and BDO to assist with respect to the PREPA claims that have been filed. And Alvarez & Marsal will be assisting with respect to the Commonwealth, HTA, ERS and COFINA.

We intend to finalize those retention agreements this week and then file applications for those retentions with the Court hopefully as early as next week. We've also been working with the Unsecured Creditors' Committee and AAFAF with respect to procedures for the reconciliation of these claims.

With respect to many of the claims that I already referred to, Your Honor, like tax refunds and the pension retiree claims, there are already administrative procedures

that have been in place and have been followed for years by the government to process those claims. And like what was done in Detroit, in that case, Your Honor, we will attempt to continue to use that reconciliation process.

With respect to other claims, Your Honor, we have been developing with the committee and AAFAF a process that is actually streamlined to have claims submitted to the parties for the purpose of mediation, and if not mediation resolving those claims, a very shortened form of determination by this Court or another court that we all determine is the appropriate way to proceed.

We obviously don't want to be burdening this Court with over a hundred thousand claims, and so we're trying to come up with a process that will work best for everyone. At this point, we intend to include that procedure in a plan of adjustment, but obviously if that takes longer to get to, Your Honor, we will attempt to file those procedures with the Court and have that process move forward, even before we get to the plan of adjustment stage.

With that, Your Honor, that is really where we are on the claim status. I will turn it over to Mr. Possinger to discuss where we are with PREPA.

THE COURT: Thank you, Mr. Rosen.

MR. ROSEN: Thank you.

MR. POSSINGER: Good morning, Your Honor. Paul

Possinger, Proskauer Rose, on behalf of the Oversight Board, and I will be providing the status update that you requested with respect to PREPA.

And, Your Honor, I will start with the recent changes to PREPA's management. As I think the Court knows, during the week of July 9th, PREPA incurred the sudden resignation of two successive CEOs and five of its six board members.

The Oversight Board was certainly alarmed by this unfortunate development, and we are concerned about the destabilizing effect that this could have on the operations, on the recovery, and ultimately on the transformation process. We are informed by PREPA's advisors that PREPA's management is functioning and that operations are continuing in the ordinary course of business.

On July 23rd, Monday of this week, Jose Ortiz began his tenure as the new executive director and CEO of PREPA. Mr. Ortiz has experience in both the public and private sector, and has previously held leadership positions in the government of Puerto Rico under administrations of both major political parties on the island.

Additionally, Mr. Eli Diaz Atienza has been appointed to the PREPA board. Mr. Diaz Atienza is the executive director of PRASA, which is the water utility.

And Ralph Kreil Rivera has also been appointed to the PREPA board by the Governor. Mr. Rivera is a professional

engineer with over 30 years experience, both in Puerto Rico and the Caribbean region, and he's a former president of the college of engineers of Puerto Rico.

The Governor is working right now on identifying candidates for additional independent director positions of PREPA. And in the meantime, Filsinger Energy Partners and Ankura Consulting are continuing to provide day-to-day operation support and support for the privatization and transformation process that's currently under way.

With respect to operations, power has now been restored to over 99.5 percent of power customers on the island since the hurricanes. The current average weekly generation delivered to the power grid is at 95 percent of prehurricane levels, and approximately 84 percent of the large transmission lines on the island are fully operational.

With respect to the cash position and PREPA's liquidity, currently PREPA has approximately 299 million dollars in its operating accounts, and that includes 174 million dollars of outstanding borrowings under the Commonwealth DIP financing facilities.

Your Honor may remember, the DIP financing facility was a revolver that converted to term loan at the end of June, and so any amounts that are now repaid on that loan can no longer be reborrowed. Last week PREPA repaid approximately 126 million dollars on the DIP financing loan. However, in

the last four weeks, the average weekly cash collections have been approximately 62 million dollars per week, which we're advised is enough to service most of the operational expenses of PREPA and is a substantial improvement over where we were last February when we did the hearings on the DIP financing facility.

THE COURT: Would you speak a little louder and more directly into the microphone? Apparently there's some trouble with the telephonic participants.

MR. POSSINGER: Will do, Your Honor.

THE COURT: Thank you.

MR. POSSINGER: So I think as we indicated last hearing and is still the case, PREPA does not anticipate the need to seek further post-petition financing in the foreseeable future.

Finally, Your Honor, with respect to the transformation process, the transformation process is underway. A brief update on milestones. There has been a market sounding process that was completed on schedule in mid June. That process confirmed that there is a significant amount of interest in the marketplace to do a privatization transaction or transactions with PREPA, and PREPA received -- PREPA and its advisors received constructive feedback upon how to structure and achieve a successful privatization and transformation of PREPA.

Amendments to the public-private partnership law facilitating the transformation was signed into law in June. A new integrated resource plan is presently under production with Siemens, and that's a plan for capital expenditures and the mix of energy supply going forward in accordance with the fiscal plan.

A regulatory working group and a blue ribbon panel with respect to energy regulation has been announced. The P3 Authority, the Public-Private Partnership Authority, and PREPA have begun the necessary tasks to move forward on privatization transformation transaction, or transactions.

And in the meantime, PREPA, through Filsinger Energy Partners and Ankura, are continuing to work with the Oversight Board to develop a fiscal year 2019 budget with the goal of certifying that budget by the end of this month.

THE COURT: Thank you.

MR. POSSINGER: If you have any questions on PREPA --

THE COURT: That was quite comprehensive.

MR. POSSINGER: Thank you, Your Honor.

THE COURT: Thank you.

MR. DESPINS: Your Honor.

THE COURT: Mr. Despins.

Mr. DESPINS: Good morning, Your Honor. Luc Despins with Paul Hastings on behalf of the committee. Just on the proof of claim process, ten seconds.

You'll recall that the committee asked, and I'll admit at the last minute, to extend the bar date by 30 days.

THE COURT: Yes.

MR. DESPINS: And you may have thought at the time, really? We're really going to extend this for 30 days? I had the same reaction initially. But just so you know, more than 10,000 claims were filed between the original date and the new date, so I think that was a good thing. I just wanted to make sure you knew that.

THE COURT: Thank you. And I'd also just like to take this opportunity to commend the court and Prime Clerk staff who handled the intake of claims by physical filers at the court locations. Particularly in the last couple of days of the process, there were literally thousands of people lined up here, and very heavy traffic in Ponce. And the staff of the clerk's office, working together with the people from Prime Clerk, went over and above to make sure that all of the filers were attended to as quickly and as respectfully as possible.

People were out in the street in the sun with the filers taking papers to expedite the process. And so I want to publicly acknowledge and thank all of those who did that work in the process of claims filing. And it did turn out to be a very good thing that the extra time was afforded. And there continue to be people filing there.

Mr. Rosen referred to the late claims. And so we are accepting whatever comes to the clerk's office. And there will be processes for evaluating and any objections or whatever to claims later, but we are making sure that there are facilities to respond to the people who have come. So thank you.

The next agenda item is the status report on *Siemens v. HTA*, and the procedures that will be used for the Title VI and the resolution of the Siemens claim. In that connection, I've asked Judge Dein to lead that part of the discussion.

Pardon us for a minute.

HONORABLE MAGISTRATE JUDGE DEIN: We're not switching robes.

MS. SPRINGER: Good morning, Your Honors, and thank you for your time today. I'm Claudia Springer from Reed Smith, and I represent Siemens Transportation Partnership Puerto Rico, which I will --

THE COURT: Ms. Springer, may I just ask you to project even a little bit more and maybe angle the microphone closer to you?

MS. SPRINGER: Sure. Please let me know if that works. Nobody's ever accused me of being soft spoken, Your Honor, so this would be a first.

Your Honor, we have attempted to work with the defendants in this matter to come up with a joint resolution

on a protocol and deadlines for both discovery and the trial on our matter. And unfortunately, we have not been able to come up with a meeting of the minds on that. However, I don't think we are that far apart.

I guess the one sticking point here is that the date that the defendants want to start this process is a date that is still unknown, because it is the date that they file a Title VI, which as you may recall, has shifted about five times at this point.

It is now supposedly going to occur on August 6th. However, when we were before you a little bit more than a month ago, it was supposed to start on July 6. We are prepared to start the process tomorrow. And in fact, the papers that we filed on the status report, the T letter, can be tomorrow if Your Honor thinks that that will speed things up.

What we don't want to see happen is that we're railroaded and not able to adequately prepare for and present our case. If we did start tomorrow, and we were given the amount of time that we have requested, which is roughly 100 days, starting on the T date, that would take us till about the end of October, beginning of November. Not that different from what it will take if the date is actually August 6th and not again delayed by the GDB, in terms of filing the Title VI action.

I think all of the dates that we've put in here are reasonable. It is the summertime, as everyone knows. It is not a great time to have clients respond to discovery requests and be present for depositions, but we nonetheless are prepared to do that. And prepared to, if necessary, work over the Labor Day weekend. However, we want to get started, but we want the amount of time that we think is necessary to adequately prepare our case.

HONORABLE MAGISTRATE JUDGE DEIN: I understand GDB wants to speak from New York; is that correct?

MS. TRELLES HERNANDEZ: Your Honor, if I may?

HONORABLE MAGISTRATE JUDGE DEIN: Yes.

MS. TRELLES HERNANDEZ: Good morning. Maria Trelles from Pietrantoni Mendez & Alvarez on behalf of GDB on this matter.

What we'd like to do is turn this over to Ms. Uhland for an overview of where we are in the Title VI, because obviously that has an impact on the *Siemens* case, and then address any *Siemens* specific issues here.

HONORABLE MAGISTRATE JUDGE DEIN: Let's do it that way.

MS. UHLAND: Thank you, Your Honor. Suzzanne Uhland of O'Melveny & Myers on behalf of AAFAF and GDB.

Your Honor, at this point, GDB and AAFAF do anticipate launching the solicitation of the GDB qualifying

modification and commencing the Title III over the next few weeks.

At this point, the solicitation materials have been submitted to the Oversight Board, and we are awaiting confirmation of the delivery -- information delivery requirement as set forth in 601(f) of PROMESA. We are awaiting confirmation that that has been satisfied.

Siemens has requested that the commencement date occur no later than August 17. We expect that we will be launching sooner than that, but at this point, since we have a gating item, which is this approval from the Oversight Board, we cannot definitively commit to a launch date. But again, we do expect to be proceeding within the next few weeks.

The other item I wanted to point out to the Court is that we intend, when we commence the Title VI, to file a procedures motion, and in that procedures motion, you know, set forth a schedule. And parties would have the opportunity to object to our procedures motion.

We set out a timetable in the status report, and we actually realized it has a glitch in it, because we have the hearing on the procedures motion occurring after some of the dates by which things, you know, would need to occur. But I don't know whether at this juncture the Court wants to walk through what the schedule would look like, since it is -- you know, we have not filed the procedures motion or launched the

Title VI yet. It seems like we're maybe getting ahead of ourselves here.

HONORABLE MAGISTRATE JUDGE DEIN: So I guess, to both of you, maybe it makes sense to have the two speakers at the microphones. It's the Court's preference to have this all teed up, ready to go at the November Omni, which is November 7th.

At that point, it would either be an evidentiary hearing, you know, give or take a day, or argument on a summary judgment type motion. Briefing for that should be done the week before, which is October 31st. And that's all the briefing. All right. I think that fits in with both of the proposed schedules. It shortens it.

If August 17th was the start date, I think that comes out to T plus 82. So it's somewhere in between. I think it makes the most sense now to assume that it's going to be done in the context of a Title VI, as everybody's agreed. And I'm assuming that you can either reach an agreement regarding what happens to this 13 million dollars in the interim or file a motion on it.

And we can make an official ruling, but I think everybody's agreeing, at least for now, that that money isn't going anywhere during this process. And both sides seem to have agreed to that, so I think that's fine.

There was a question on what rules of procedure

should govern, and it seems there doesn't seem to be a real objection on that. We'll have Bankruptcy Rule 9014 applying. If you can agree on other Federal Rules, fine. If not, file a motion and we'll deal with it.

All of this is on the assumption that the outside date is August 17th. If the outside date passes, we'll have to re-evaluate this, because we would really very much like to have it by November, but we also recognize the need to have discovery, so --

MS. SPRINGER: Your Honor, thank you very much. I mean, we definitely would like it to end by that November date, and we are happy to work backwards. And, you know, if we need to shorten some of our dates and they need to lengthen some of theirs, that's fine.

What I fear is further delay. So if we can have -- I mean, we don't have a problem having this litigated within the Title VI, as long as the Title VI is going to be actually filed, and filed sometime very soon, because as Your Honor knows, we've been hearing the same story for months and months. And we heard it last month. Now we're hearing it again about, you know, within a few weeks.

So we want assurance that our matter is, in fact, going to be heard within the near future and is going to be litigated through discovery within the next -- certainly within the next few months.

HONORABLE MAGISTRATE JUDGE DEIN: So I think what makes the most sense, and tell me if I'm wrong, is that this proposal to have it heard at the November Omni assumes an outside date of August 17th. If that doesn't appear to be happening, file something and we'll figure out how to either start it or end it at a different time, but that's the timeframe.

I think that's sufficient time for all the discovery, and it should fit into the schedule proposed by GDB for the qualified modification process, as well assuming an outside date of August 17th. And what I'm hearing from GDB is that that should be attainable, at least as of now.

And it sounds to me like more steps have been taken. The process is further along today than it was at the last hearing. So assuming that that's happening. If not, file something at the beginning of August, you know, when you have a sense, by August 6th, if this isn't happening and we'll reassess the schedule at that point.

MS. SPRINGER: Your Honor, one more thing based upon what you're saying. I get assurances from GDB that they will advise me at the beginning of August whether it looks like they are going to make that date of August 17th or sometime beforehand so I'm not told on August 17 -- actually, I find out from looking at the docket that, in fact, the Title VI has not been filed.

HONORABLE MAGISTRATE JUDGE DEIN: Does GDB want to comment?

MS. TRELLES HERNANDEZ: Your Honor, yes. Again, Maria Trelles for GDB.

We can advise Siemens as to the progress of the Title VI filing on the same day that we advise everyone else on that progress. So it will be the same deadline for everyone.

I do want to take just a moment, if Your Honor would allow me, to address one specific point. Just that the Title VI is farther along than what it was some time ago. We do think it's important to note that discovery is farther along than it may be in some other cases, because Siemens already took Rule 2004 discovery here.

So GDB has made a substantial production of documents and made one deposition from its chief restructuring officer available. Even so, we have considered Siemens' position, and in order to move things along, we are willing to continue supplementing that discovery while the Title VI gets teed up just so that discovery -- Siemens has more time for discovery. And then it can use that within the Title VI once it files its objection. But that way it minimizes the risk of any delays affecting Siemens.

HONORABLE MAGISTRATE JUDGE DEIN: I appreciate that. And I appreciate that you've been working together, but again, all I can do is sort of evaluate the proposals that I have.

So the proposal that I have assumes a start date of August 17th. Let's -- it sounds like that's reasonable as of now, and --

MS. TRELLES HERNANDEZ: Yes, Your Honor.

HONORABLE MAGISTRATE JUDGE DEIN: -- until proven otherwise, I'm going to assume that happens.

MS. SPRINGER: Thank you, Your Honor.

MS. UHLAND: Thank you, Your Honor. And we do believe that's reasonable, and we will certainly aim for that date.

MS. DALE: Your Honor, Margaret Dale, Proskauer Rose, for the Oversight Board.

Just one point, Your Honor. Siemens began an adversary proceeding in HTA's Title III. That -- the Motions to Dismiss were fully briefed in that action. And at the last Omni, the Court made it clear that the Siemens claim should be handled in the Title VI, and we're supportive of that. But we did want to remind the Court that the adversary Complaint in HTA's Title III will have to be resolved at some point.

HONORABLE MAGISTRATE JUDGE DEIN: Thank you.

MS. DALE: You're welcome.

HONORABLE MAGISTRATE JUDGE DEIN: You've added to my guilt list.

THE COURT: Well, to that, assuming that we are going forward with resolving this claim within the Title VI, within

the time frames that we've discussed or roughly those time frames, I have been working on the assumption that there will be a withdrawal of the Complaint and/or the Motion as the mechanism for resolving that adversary proceeding.

Is that a reasonable working assumption?

MS. SPRINGER: We had not thought about exactly how we were going to do this, Your Honor. We understand that there will be -- as soon as the Title VI is filed, we will be filing an objection, which will look very similar to our Complaint. So everybody has notice of what is happening, you know -- has had notice, frankly, of Siemens' claim.

There may actually be more extensive remarks or statements in the objection than even existed in the Complaint. However, because of the way this is being teed up, which was not known at the time of the filing of the Complaint, of course we will be filing an objection, but again, it will look very similar to the Complaint.

And if it's -- certainly if it's appropriate at that time for us to withdraw the Complaint, we can withdraw the Complaint. But I don't want to make any promises yet. I want to see how this shakes out with the filing of the Title VI and when.

THE COURT: So would you all consent to our formally entering an Order staying that adversary at this point, without prejudice of course, to lifting of that stay on the

adversary if things go sideways in terms of coordinating with the Title VI process or there is other appropriate cause for lifting that stay?

MS. SPRINGER: As long as that language was in there, that it wasn't going to prejudice us and that we could move the Court to reopen or to --

HONORABLE MAGISTRATE JUDGE DEIN: Lift the stay.

MS. SPRINGER: -- lift the stay at that point. And as I said, I'm hoping that we will be able to have constructive dialogue with the defendants, all of them, but especially GDB regarding when that Title VI is going to be filed.

Up until now, we have not found out until, frankly, the actual date it was to have been filed that it was not going -- that it was being delayed again. So I'm hoping that by the beginning of August, we will have been told whether or not it is going to be filed by August 17.

THE COURT: We will enter something to that effect.

MS. DALE: Thank you.

THE COURT: If there is consent.

MS. DALE: There is consent to the stay from the Board and HTA's perspective.

Your Honor, I was just informed that there has been additional progress, I guess, in terms of the Title VI. The Board has acknowledged the disclosure materials. That

acknowledgment was sent to AAFAF and to GDB earlier this week. So again, that's moving forward as well.

THE COURT: Very good. Don't all go away.

MS. TRELLES HERNANDEZ: Your Honor, on behalf of GDB, of course there's no objection to staying the adversary, and counsel here for AAFAF --

MR. MUNIZ LUCIANO: Good afternoon, Your Honor. Mauricio Muniz of Marini Pietrantoni Muniz on behalf of AAFAF. We would support that Stay Order.

THE COURT: Thank you.

MS. TRELLES HERNANDEZ: Your Honor. Your Honor, if that is all on our part, we would appreciate if you could excuse us from the hearing. This is all we had.

HONORABLE MAGISTRATE JUDGE DEIN: You will be excused, but not yet.

MS. TRELLES HERNANDEZ: Okay.

HONORABLE MAGISTRATE JUDGE DEIN: I guess maybe it makes sense to do something a little more formally on the 13 million dollars. And from the -- I'm not understanding frankly the real distinction between what everybody's seeking here. It seems as a practical matter, until the qualified modification is ruled on, that the 13 million should not be moved, but I don't really understand whether that's disputed or not.

MS. SPRINGER: Well --

HONORABLE MAGISTRATE JUDGE DEIN: I know from your point of view it's not, so I guess it's more of a GDB --

MS. SPRINGER: Your Honor, I think there is some level of clarification that I need to provide. It -- when we prepared the status report, and since we were obviously not in agreement on the scheduling of the *Siemens* litigation, vis-a-vis the Title VI, we simply wanted to make sure that until that litigation is concluded, whether it's when the qualifying memorandum has been approved, not approved, whatever, we want to make sure that that money remains intact.

So in other words, if it were the case that the qualifying memorandum was approved, but the litigation for whatever reason was not over, we want to make sure that that 13 million dollars does not leave the bank, which we think should not be a problem, because this, after all, is a multibillion dollar RSA.

It cannot be, I hope, anyway, that that 13 million dollars will make or break the success of that Qualifying Memorandum and that RSA. So all we ask for is that that money stay intact, at the bank, until this *Siemens* litigation has concluded, whether it's before or after or on the same date as the Qualifying Memorandum is ruled upon.

MS. TRELLES HERNANDEZ: Your Honor, GDB has represented it will hold at least 13 million in cash until the qualified hearing has been held. At this point, we think

that's a sufficient representation.

The expectation is that this will end with a qualified modification hearing, but if, as the process moves forward, it is necessary to enter into a different agreement or make a different representation, we can consider that later on. At this point, again, the expectation is that this will all end with the qualified modification approval hearing.

The monies that GDB holds in general -- the 13 million are part of all the money that GDB holds. They're not -- they're subject to severe restrictions for disbursements. GDB is not generally disbursing monies. It has to go through a process to disburse, and it has to be for very specific things, essential services. And it has to go to the Board.

So the monies GDB has, we expect that it will have them, roughly the same proportion, the same amount that it has right now, by the time of the qualified modification hearing.

THE COURT: Well, the schedule that GDB had proposed literally says, as you just did, that it will be held until --

MS. TRELLES HERNANDEZ: Yes.

THE COURT: -- the date of the hearing. This is expected to be a contested hearing. The ruling may not be instantaneous, although I understand that it is one of some urgency.

And so at a minimum, from the Court's perspective, I

need a clear commitment that the hold will be through a determination of the Qualifying Modification Motion, whether that's the same day, two days later or whenever is consistent with the overall timetable.

I think that I heard Ms. Springer make a further request and I'm not precisely sure I understand how she would identify her end point, but from the Court's perspective, at a minimum, it would need to be until a determination of the Qualifying Modification Motion.

MS. TRELLES HERNANDEZ: And I -- we would have no issue withholding the monies until the determination by the Court, Your Honor.

HONORABLE MAGISTRATE JUDGE DEIN: And then without prejudice, I assume --

THE COURT: Yes, without prejudice to a request for extension, if that's deemed necessary.

MS. SPRINGER: Yes. Your Honor, I think you understood what I was saying. I should have said it more artfully, but I believe with what we're concerned about -- and the reason this was highlighted in our papers is because we didn't know whether there would be a -- necessarily be a decision on the *Siemens'* matter at the same time as a decision on the qualifying modification.

So we didn't want to run into a situation where the qualifying modification would be decided upon first and

Siemens' situation was not resolved at that point.

THE COURT: Well, it has been my understanding, and please correct me if I'm wrong, that the Qualifying Modification Motion is being cued up in such a way that the 13 million -- the GDB is seeking approval of inclusion of the 13 million in the amounts to be restructured under the RSA, so that a resolution of Siemens' claim to that 13 million would be necessary in order to resolve the Qualifying Modification Motion. Is that correct?

MS. TRELLES HERNANDEZ: Yes, Your Honor. That's correct.

HONORABLE MAGISTRATE JUDGE DEIN: So there's an agreement then that it will stay, at least through a ruling on the qualified modification hearing, and that's without prejudice to Siemens' right to seek to extend that.

MS. TRELLES HERNANDEZ: Yes, Your Honor. Until the resolution, qualified modification.

MS. DALE: And just one point, Your Honor. I'm sorry to keep this going, but we just want to make clear that the 13 million dollars is not segregated in some account right now at GDB. It is part of the GDB estate, so to speak, and it will remain, as counsel have just agreed, but there isn't -- it isn't separated and segregated at this point in time.

THE COURT: I think --

MS. SPRINGER: That may be the case, but that's the

nub of the problem here, Your Honor, right? What was told to Siemens and what is happening in actuality --

HONORABLE MAGISTRATE JUDGE DEIN: We understand that that's the issue. I think the bottom line that's coming down is if Siemens prevails, there will be 13 million dollars to pay them.

MS. TRELLES HERNANDEZ: Yes, Your Honor. We know. And Ms. Dale is perfectly correct, as I said earlier, GDB holds all of the monies together, and these 13 million are part of all of the money. So it's part of the liquidity.

HONORABLE MAGISTRATE JUDGE DEIN: The other question that came up in our review of the GDB's proposed Title VI timeline is given the commencement and the very short period by which people need to file their Notice of Intention to Object. How are you getting notice of the notice period out?

THE COURT: Since there's a seven-day deadline after the filing date, how does that work as a practical matter?

MS. TRELLES HERNANDEZ: I'll tee this up to Ms. Uhland in New York.

MS. UHLAND: Yes, Your Honor.

What we propose to do is the day that we file, that we launch the GDB and the solicitation and upon commencement of the Title VI, we intend to file something with the court, the Procedures Motion. We also intend to host that on EMMA, which is the public securities -- it's like an SEC filing for

municipal securities. So we will, in fact, be doing a very broad notice.

We are also intending to do a publication notice of the -- well, actually not for that particular deadline. We were going to do that for the notices to object. We intend to do public notice. But for the standing -- the reason for the intention to object is to try to resolve the standing issues and to try to understand who's going to do objections so that standing objections could be raised. It's not trying to -- so that's the purpose for that particular deadline.

So we're open to, you know, the Court's views on a better way to do that, but we were just trying to figure out how do we handle the standing objections without forcing people to do full-blown objections early in the process.

THE COURT: So let me just first ask again about logistics. You're filing this Procedures Motion; you're anticipating a hearing after the filing of objections to the Procedures Motion; but at the same time, you're proposing firm deadlines in advance of the hearing. And indeed, one deadline even in advance of the objection to the Procedures Motion.

So are you planning on day one to be asking me to sign an Order that sets that seven-day deadline, and the 14-day deadline and the 21-day deadline? Will you include alternatively in the disclosures on the RSA a notice that this timetable is going to be proposed and that I'll be asked on

the first day to sign an Order setting the timetable? I just --

MS. UHLAND: Your Honor, what I think we should do, given what the Court has stated with the November date, you know, assuming an early August filing is -- yes, we did assume that we would reach out to you when we filed to get a schedule for the procedures hearing. And we would ask for that, have the Court Order that schedule.

Given the timing, you know, moving it out to November, I believe that as part of the Procedures Motion, we will ask you to set a date for this intention to object for the standing hearing, so we don't have to have that date occurring before the procedures hearing.

I think we can move that date so that the Court -- set by the Court when the Court makes the procedures, enters the procedures Order.

THE COURT: All right. Well, clearly you're thinking through the mechanics of it, and so we'll await the more fully developed proposal. But I wanted to put those issues on the table in terms of effective notice, operative Court Orders, and a meaningful ability of the targets of those deadlines to appreciate the deadlines and react in a timely and appropriate way.

MS. UHLAND: Yes. We will take that into account, Your Honor. Thank you.

THE COURT: Thank you.

HONORABLE MAGISTRATE JUDGE DEIN: I think we're done.

THE COURT: Oh, Mr. Despins.

MR. DESPINS: I'm sorry. This is not directed at *Siemens* at all. Your Honor, Luc Despins for the Creditors' Committee.

As I mentioned at the last hearing, we have some concerns about the GDB restructuring. We are in discussions with Ms. Uhland. The concern I have is I think you mentioned in the last hearing that you would not be available for a hearing in August. I think I recall something along those lines.

THE COURT: The end of August, the last ten days or so of August, into the beginning of the Labor Day weekend. Not until after the Labor Day weekend. I'm not expecting to be asked to have a full-blown hearing on September 4th with briefing that comes in during the last week of August.

MR. DESPINS: Okay. So I think that's going to -- if we cannot reach an agreement, there's likely to be a lot of legal turbulence with this between the Committee and the debtors. So I -- so I am concerned about -- so you're saying that you are available for the first 15 -- I don't want to put you -- 15 days or so in August, or is that generally the time frame?

THE COURT: I think it is -- just one moment. I believe it is that I am relatively scarce starting in mid August --

MR. DESPINS: Okay.

THE COURT: -- and I am not available period from about the 23rd or 24th, but give me just a minute to look at my calendar.

Okay. So really the -- hold on a minute. So I am -- I have diminished ability to deal with major matters starting the week of the 13th of August.

MR. DESPINS: Okay.

THE COURT: And I will just simply not be able to hear anything from the 24th of August until just after Labor Day.

MR. DESPINS: Okay. Thank you, Your Honor. We'll have to coordinate with --

THE COURT: You'll have to coordinate. But why can't your objections to procedures or objections to the Title VI be handled within the proposed structure of objections to proposed procedures, objections to procedures, standing issues, the litigation structure that Ms. Uhland and Ms. Trelles-Hernandez have spoken about here?

Are you expecting you want to create something different for your issue?

MR. DESPINS: I mean, we're still formulating our

legal strategy, but I'm not sure -- I mean, when would that take -- can that take place? I mean, we will object if we can't reach an agreement in August. The question is if there's a need for a hearing. That's my concern, is that if you're not -- but I understand.

THE COURT: Well, their proposed timetable puts a hearing on the procedures at 27 days out from their T date, which is not going to be the first of August, as I understand it.

MR. DESPINS: Okay.

THE COURT: So that puts that in early September.

MR. DESPINS: Okay. I'm sorry. That's fine.

THE COURT: Okay. Thank you.

MR. DESPINS: Thank you.

HONORABLE MAGISTRATE JUDGE DEIN: That's one way to get rid of the cases.

THE COURT: Yes. I'm sorry. I just dropped my device.

HONORABLE MAGISTRATE JUDGE DEIN: Is there anything further on *Siemens*?

MS. SPRINGER: I don't think so. Thank you, Your Honor.

MS. TRELLES-HERNANDEZ: Thank you, Your Honor.

THE COURT: So that concludes the *Siemens* matter.

And the next matter on the agenda as printed is the

2004 Motion continuation, but we actually are first going to take up the Exit Plan Motion. And then we'll segue from that into 2004, because there are some issues that are likely to carry over.

So first, have there been any further developments on agreed changes to the Proposed Order in response to the objections since the Reply filing?

MR. YATES: Your Honor, first of all, David Farrington Yates at Kobre Kim for the independent investigator.

THE COURT: Good morning, Mr. Yates.

MR. YATES: Good morning. How are you?

THE COURT: Very well.

MR. YATES: We have proposed certain changes in response to the Committees' objections, and I will refer to both the Retirees' Committee and the Creditors' Committee as "committees" as I talk about the issues, unless they have different positions which would be important for me to distinguish.

So what we had proposed, and it's specifically with respect to access to the independent investigator's materials, and specifically with respect to information that's on top of what we've already provided pursuant to the earlier Orders from Judge Dein, with respect to our access to the GDB database, custodians, search terms, et cetera, have been

provided. And we've also done the same with respect to Popular and Santander.

Those three entities, if the Court recalls, were subject of the original motion for 2004 examination, which was since renewed. So from our perspective, essentially what the committees should be receiving, pursuant to agreements reached with us and agreements reached with GDB specifically, are productions of non-privileged materials, and also productions of privilege logs.

With respect to the documents that have been provided to us by GDB, the Court may recall that under PROMESA, we have access, by statute, to their materials log. And so some material has been provided to us that is classified as highly confidential, attorneys' eyes only.

We understand that GDB and AAFAF have provided or are in the process of providing a privilege log to the committees to identify what those documents are. So that's a long way of saying, in addition to the information that we've already provided, we will also provide a date range with respect to any searches. We'll put that into the depository. We would also put in any other privilege logs that we have received.

And then finally, it seems that much of the discussion from the committees was very much focused on our, the independent investigator's, written notes and summaries from its witness examinations and when we spoke with

disclosing parties. And so what we proposed was, to reserve all rights, we have taken the position that these are our work product. They also are subject of attorney-client communication.

Among other reasons, they should be withheld as privileged. However, we will hold on to them through what we've defined in our motion as the cooperation period, which is a period to June 1, 2019, whereby the investigator has agreed to sit and talk on request from the committees, from the debtor, from regulators, from the United States Trustee to discuss the report after it's published, and reserve all rights that if anyone, the committee, says that they would like to gain access to those materials, that they have to come to court and demonstrate need.

We think right now that doing more, without the benefit of the report being published, is really putting the cart before the horse. And so a number of the requests that were made by the committee specifically we thought were misplaced, because they are essentially demands that are better informed after the report is published. And we're still on track to do so in August, August 15.

And so these procedures, I think, are the best manifestation of the planning and structure of a way for us to publish our report, resolve any issues regarding disputes on confidentiality of information that we intend to publish in

our report, turn over information that's been provided to the investigator along the way by third parties, and third parties other than Santander, Popular and GDB, by agreement to do it on a voluntary basis as opposed to an involuntary subpoena-like process.

And then ultimately, to allow for the investigator to publish the report and exit, agreeing to cooperate for a period of time, and ultimately to serve its function, discharge its obligation on behalf of the special committee of the Board to investigate the issues for the benefit of the people of Puerto Rico.

And that report is going to contain the manifestation of our investigation, our choices with respect to strategy, who we talk to, et cetera. That will all be reflected there.

So at this time, as far as changes to the Proposed Order, we stand essentially by the procedures that we proposed. We think that they are balanced. We think that they are reasonable, particularly with respect to expectations of third parties that provided information to us in cooperation, and so they are entitled by agreement to keep that information private.

We think that trying to gain access to these materials through an Exit Procedures Motion, affirmative relief is misplaced. I think that the Creditors' Committee has said they want access now. The Retirees' Committee has

said, we want access to everything subject to a negative notice process whereby everyone would receive notice and they would have to file an objection ten days after any sort of Order was entered with respect to the Exit Procedures Motion.

And so ultimately, we think that puts on its head the expectations of the party. And also the parties put on its head what we were trying to accomplish in an efficient and economic way, to get the report done as quickly as possible, cover the issues that we needed to cover, provide for confidential treatment of information, and ultimately put everything in one place, where on demonstration of need, and also as part of that, justification of cost would be made available.

THE COURT: Thank you. It seems to me, then, that the objections that were essentially rejected by the independent investigator as reflected in the Reply Brief have not been -- there hasn't been any change of positions on those. So that unless the committees are withdrawing those objections, I will still need to rule on them.

MR. YATES: Yes, Your Honor.

THE COURT: And so before I hear from the committees, I'd like to preview for everyone that I have reviewed very carefully the submissions. I'm prepared to walk through the rulings on the disputed issues, issue by issue, but I want to give you an overview of the direction.

So in general, my intention is to have uniform procedures to which the committees will be subject, substantially in the form of the structure that the independent investigator has proposed.

Issues as to discovery of particular information would be dealt with in the 2004 context, and/or requests through the procedures, because there is some overlap there. And that's one reason Judge Dein is going to be taking up 2004 issues after we finish this discussion.

The procedure timetable will be sped up a little bit, with an explicit provision for application to the Court for expedited litigation timetables as was described in the Reply Brief, but not documented in the Proposed Order that was attached to the Reply Brief.

The investigator would be required to preserve all of its material that's not going into the repository during the cooperation period, not just witness interview notes, because frankly, it's not clear to me, and I think it wasn't clear to others what the universe of quote, unquote, privileged materials not going into the repository consists of.

So that forbearance agreement or obligation should apply to all of the investigator's files through the end of the cooperation period, which is the earlier of the dates stated, and confirmation.

My inclination is to make that date stated a year

from the filing of the report as opposed to two years from the commencement of the Commonwealth's Title III, since it did take a while for the independent investigator's process to get started. So my intention is to make that date August 16th of 2019, without prejudice to applications in advance of that date on a showing of good cause to extend that date. But the stated date would be August 16th of 2019.

So would anyone like to make remarks in response to that general description of my approach before I go to particular rulings and textual changes? I'm just trying to do this in the most efficient way possible.

MR. YATES: Sure. Your Honor, I just had one question. So when you described the outside date of August 16, 2019, you mentioned adjustment. And so I wanted to be clear, the way we've structured the deadline for the end of the cooperation period is through a date certain, or unless the investigator's engagement is terminated.

THE COURT: I thought you had said it was the earlier of confirmation and June 1st, unless the investigator's engagement is terminated early. So I guess there are sort of three conditions built into that, one of which is a date certain. So I was proposing to change that date certain to August 16 from June 1.

MR. YATES: Sure. So we had only said date certain for our termination. The committees introduced the concept of

confirmation of a Plan of Adjustment for a particular debtor, and so that's why I was asking the question. I don't want there to be any confusion about what the end date will be for the cooperation period.

And so I would suggest, the way we drafted it was a date certain, which would now be August 16, 2019, unless the investigator's engagement is terminated soon.

THE COURT: So just one -- and so your Proposed Order, document 3666-1 says, and this is on page nine of the ECF filing, page eight of the document itself, it says, "Until at least June 1, 2019, or confirmation of a plan of adjustment for the Title III debtors, whichever is earlier, unless the engagement of the independent investigator by the special investigation committee is terminated sooner," to which I had intended to add, "and subject to extension upon a timely application to the Court and a showing of good cause."

MR. YATES: Your Honor, I stand corrected. We did modify that in response to input that we had from the committee. So what you're proposing is fine from the independent investigator's perspective. And if a plan of adjustment is confirmed earlier, that would be a termination date, too. So I'm sorry if I was confusing you and confusing the Court.

THE COURT: Thank you.

And so do the committee representatives or other

counsel want to make general remarks or shall I -- yes, sir.

MR. RAIFORD: Good morning, Your Honor. Landon Raiford, Jenner & Block, for the Retirees' Committee.

THE COURT: Good morning, Mr. Raiford.

MR. RAIFORD: I think before we go into kind of our point-by-point breakdown, maybe if we could get some clarification, you mentioned that your intention was to expedite the timetable for gaining access to the document depository.

I was wondering if you could provide a little more detail, because it may resolve our objection on that, depending on what the Court's thoughts are at the moment.

THE COURT: All right. The all access -- there would be no pre-report release access, but the ten-day period timetable would be shortened so that those -- hold on one second. I'll try to do this in a logical way, orderly way.

So on the Proposed Order, ECF page seven, printed page six, in subsection 14(D), the first ten business day period from the notice by the neutral vendor to targets of the request as to what the request is remains the same. But since that's a fairly generous period, the meet and confer period regarding objections is shortened to five days, and the timetable for filing a motion, if necessary, is shortened to five additional days.

HONORABLE MAGISTRATE JUDGE DEIN: Business days.

THE COURT: Business days, yes.

It's all still in terms of business days. There will be an express provision that expedited proceedings may be scheduled with the approval of the Court if an objection is filed. And for clarification, you'd say that "to the extent that no timely objection is asserted," or if no motion is filed, then the neutral vendor promptly makes the requested documents available.

So if there's an objection to ten percent of the documents that are requested, the other 90 percent go right away and it's only the ten percent that will be withheld pending potentially expedited resolution of an objection that will be filed earlier than the timetable that was proposed in the Proposed Order.

MR. RAIFORD: Perfect. Thank you.

So for me, that's the only question I had, generally speaking. I will be back, I'm sure, to address the blow-by-below account in a few minutes, but I'll turn the podium over to anyone else who wants to address their general thoughts.

THE COURT: Thank you.

Mr. Despins.

MR. DESPINS: Do we understand from your preliminary thoughts that you are rejecting the -- clearly the automatic production? We understand --

THE COURT: Yes.

MR. DESPINS: But the automatic notice, deemed notice that both committees want everything that's in that file --

THE COURT: Yes.

MR. DESPINS: -- I trust it was simple to put that in the Order to say, okay, you're all on notice. We want everything that's in there. That starts the clock running. We don't see any harm to those parties.

Normally what the examiner gets in a Chapter 11, the committees get at the same time. The only issue they could have, the parties, is confidentiality, which is a pretty very straightforward issue to resolve.

They can't argue burdensome. They've already produced the documents.

THE COURT: Well, I don't believe it's an undue burden on the committees to require the committees to have the report in their hands for at least 45 seconds before they make an affirmative determination that they need and want to ask for everything.

MR. DESPINS: Okay.

THE COURT: You can make that request at 90 seconds, which will trigger the determination of whether there will be objections. And I'm sure that since you have given all of us notice many times, that your default position is going to be asking for everything, that the Oversight Board and the major

third-party producers should be on notice and in the thought process as to what their intended objections would be.

MR. DESPINS: Okay. Thank you, Your Honor.

THE COURT: And so with that, let's turn to specifics.

So there are a number of objections that dealt with document access. So for clarity, the first objection that I'll address is the request that the committees receive access to the entire depository with the ten-day notice period. I just spoke to that generally with Mr. Despins.

That objection is overruled. The same request procedures would apply to everyone with the speeding up of the timetable that I went over a few minutes ago.

MR. YATES: Yes, ma'am.

THE COURT: All right. Then the second issue is -- I'm sorry. Mr. Yates, did you wish to speak to the speeded up timetable?

MR. YATES: No, ma'am. The timetable is reasonable. Thank you.

THE COURT: Thank you. And the second was that the depository should include document requests, objections and privilege logs. The independent investigator has agreed to include the privilege logs. I am overruling the request for inclusion of objections without prejudice to the use of other discovery tools.

Does anybody want to yell at me about that? All right. Yes. Mr. Raiford.

MR. RAIFORD: I don't want to yell. I don't think that's going to get me very far. We would ask you to maybe reconsider that position. And the reason for that is while it is very important for the committees to know what the investigator asked for, and we are grateful that the investigator has agreed to share that with us, it is just as important that we have the flip side of that coin.

Because we may know what the maximum universe could have been, but if we don't know what the producing parties actually did in response to that request, we don't truly know what the investigator has or what kind of that middle ground is that the investigator asked for but never received, because clearly that would be the type of information that the committees would rule to come in on their own discovery and seek.

And so I think it would be very helpful. It's going to make the process -- after the investigator is done, it's going to speed that along. It's going to save costs and time for everyone. And I don't quite see the distinction between why it's okay for the -- or why the investigator should and is very comfortable with giving us information about what they requested, privilege logs, how they limited the date ranges of their requests, but they have a big problem with the idea of

us just seeing what the parties that they subpoenaed or that they were talking to, their responses back to the investigator.

To us, that doesn't go to the heart of the investigatory process at all. It simply gives us a complete picture of what we're dealing with, is going to help both my committee, the Retirees' Committee, and the UCC take advantage as quickly and efficiently as possible once the report is filed on August 15.

THE COURT: Thank you.

Mr. Yates.

MR. YATES: Sure, Your Honor. The difference is, is that the discussion between us and the disclosing party is ultimately going to be manifested in the final report. And so from our perspective, whether there's a need or not, or no need to understand if, in fact, there was some sort of discussion or what the investigator may or may not have agreed to or rejected, I think should be framed in the context of seeing the report.

And so I really don't -- and when you talk about what's a date range, what's a search term, et cetera, we have provided that information. This does start to drift into our strategic choices, and what it is we decided to incorporate or reflect in the final report.

And that's why it should stand and others should not

really gain any additional access into our thinking and decision making about what goes in and what stays out.

THE COURT: Well, my impression was that this request went more to understanding the third-party documents aspect of the repository rather than the report exhibit, report inclusion-specific choices of the investigator.

Having said that, I read the investigator's submissions as indicating that the process of resolving objections was one that was iterative, and interactive, and didn't involve simply the service of a Rule 34 type request and the receipt of objections to the Rule 34 request with item numbers that there -- at least to a certain extent, and perhaps to a great extent, were discussions that resulted in the production of whatever was produced. So that if there were such documents, it wouldn't be a complete record.

And if the investigator were, you know, asked to kind of recreate some description of what happened, that would invade the area that the investigator considers work product protected.

Did I understand your submissions or am I off?

MR. YATES: No. You understood our submissions. And that -- I may have said it inartfully and perhaps as a shortcut, but that's exactly what I'm talking about. We issued relatively few subpoenas, and so this process of receives an objection, et cetera, really didn't happen.

And so if, in fact, there were discussions with parties and we were choosing what to pursue or what not to pursue, again, that drifts into, as you say, the iterative process, and we believe that's privileged.

And there's really no demonstration of need until we see the report, because I think they're only going to be interested in figuring out if we included something or asked about something, if they have a question about the report. Again, the report starts the process.

THE COURT: So given the -- I'm sorry. Mr. Despins, did you want to say anything before I finalized my ruling?

MR. DESPINS: Not on this issue, Your Honor.

THE COURT: All right. So given the nature of the process, the representations as to the nature of the process, and what the documentation would be, if it exists at all, and the work product issues, and -- I overrule the objection.

So the next is related, that the investigator should disclose objections and withdrawn document requests. For substantially the same reasons, that objection is overruled without prejudice to a request for assistance from the investigator in accordance with the exit plan procedures and burdens.

Then the next that I have is that the investigator should not be allowed to destroy non-depository documents, including witness notes. And as I indicated in my general

remarks, I will require that the investigator forbear from destroying all documents for the entire cooperation period, which is extended to August 16th of 2019.

And for specific text edits on that, I'd ask you to turn to page six first of the ECF document, which is page five of the Proposed Order, in paragraph ten. I ask you to -- let's see, in the second sentence, delete the words from "witness interview notes" through "special investigation committee." And after the words discard or delete, add "any such documents and information."

So that the middle sentence will read, "The independent investigator shall not exercise any right to discard or delete any such documents and information during the cooperation period as defined below."

And the extent of any such documents is, all documents and information that have not been transferred to the document depository as described in the preceding sentence.

And then I'd ask you to turn to page nine of the ECF, which is paragraph 16(A), and in paragraph 16(A), change June 1st to "August 16th of 2019."

HONORABLE MAGISTRATE JUDGE DEIN: I think we need B, also.

THE COURT: Okay. Great. So it's an August 16 date, and substituted for June 1st in subparagraphs A and B. And

then at the end of subparagraph A, before the parenthetical reference to the cooperation period, add, comma, "and subject to extension upon a timely application to Court and a showing of good cause."

MR. DESPINS: Your Honor.

THE COURT: Mr. Despins.

MR. DESPINS: I have a specific question on that paragraph.

THE COURT: Hold on until Mr. Yates can make the microphone available, since the others have to hear.

MR. DESPINS: There's a provision in these two paragraphs that says that -- it says, "Unless the engagement of the independent investigator is terminated sooner." I want to make sure that what you've added is an override over that -- let's state the following scenario. The Board terminates the engagement of the investigator September 1st. I mean, that's the end of it? Or do we still have the ability -- or do we still have until a year after that?

I need to understand what takes precedence in those various provisions.

THE COURT: My intention is that there be an ability of a requesting party to make a request for an extension of any of these alternative deadlines. Before the deadline, as to the ones that are objectively obvious, like dates on the calendar coming up, and confirmation, which will be a process,

to the extent the Oversight Board pops up one day and says we've terminated the engagement, then it would have to be made promptly in relation to that announcement.

MR. DESPINS: So should we put a provision saying the Oversight Board shall or -- provide 15 days notice of any such termination so that we can do something about it?

HONORABLE MAGISTRATE JUDGE DEIN: How about having them hold the documents for 15 days after termination to allow somebody time to file a motion?

MS. DALE: Your Honor, Margaret Dale again for the Oversight Board.

We have no intention of terminating the cooperating again, the independent investigator, at least for one year following the issuance of the report. So if that helps --

THE COURT: So that would take us to August 16th, for that event anyway?

MS. DALE: Yes, ma'am.

THE COURT: Very good. Thank you for clarifying that.

Mr. Yates.

MR. YATES: Yes, Your Honor. Just one clarification. Actually, two. Sorry. So with the language you're giving us, we'll need to make some conforming changes, if not referred to specifically.

THE COURT: Very good.

MR. YATES: I'd like authority and direction to do that. And then secondly, we just want to be clear, I know the Court is very focused on August 16, 2019, as -- for the year from when the report is published. With that, what we would suggest is make it a year from the date the report is published, because that may drift a day or two.

So I just wanted to alert the Court to that issue, without raising alarm, that if you are fixed on one year, it may not be on August 16.

THE COURT: All right. So you'd prefer to use formulaic language as opposed to a particular date?

MR. YATES: One year from publication.

THE COURT: That's fine. And I appreciate your making conforming changes throughout.

MR. YATES: Thank you.

THE COURT: All right. So the next -- I'm sorry. Did you wish to speak further, Mr. Yates?

MR. YATES: No, ma'am.

THE COURT: So next on my list is the request that the investigator disclose GDB related information and responses. Mr. Yates spoke to the general universe of GDB related materials that are being included in the depository, and any remaining GDB issues should be dealt with in the context of the Rule 2004. So there will be no change in the Proposed Order in that regard.

Next was the request by the committees for access to unredacted versions of all of the document depository documents. That objection is overruled without prejudice to requests under the regular procedures. That will be established by the Order, so there is no change in the Proposed Order.

Next is the request that the investigator disclose whether pre-final report meet and confers led to exclusions from or changes to the report. That objection is overruled without prejudice to the committees' rights to pursue information requests under the Exit Plan procedures and/or Rule 2004. There will be no change in the Proposed Order.

And then the committees had requested that the assistance period extend until January 2020. I have made the deadline a year from issuance of the report, and the Order will be changed accordingly.

Then I just need the Oversight Board to confirm that the Oversight Board has no objection to the provision that the Order, the Exit Plan Order, will override any contrary provision and a plan of adjustment, which the Oversight Board has the sole power to propose in the first place.

MR. BIENENSTOCK: Your Honor, Martin Bienenstock for the Oversight Board. We're fine with that.

THE COURT: Thank you.

And so as to the request for investigatory documents

that were provided by GDB to the regulators, that is overruled with respect to Exit Plan provisions. And so any requests that are not considered or understood to be covered by the document depository should be directed to GDB and/or to FINRA and the SEC if you want to go in that direction. And also, we have the Rule 2004 process, and Judge Dein will be discussing that in a few minutes.

I think that takes me through my catalog of unresolved objections to the Exit Plan, but give me just one moment.

And so the other proposed provisions of the Order to which there were no objections, including the extension of the PROMESA 105 exculpation provision to the special investigator are approved. And so my request is that the independent investigator's counsel revise the Proposed Order to conform to the changes that we've discussed here on the record and file it on presentment.

MR. YATES: We will, Your Honor. Thank you.

THE COURT: Thank you. So the motion is granted as explained on the record.

MR. YATES: Thank you.

HONORABLE MAGISTRATE JUDGE DEIN: Could you wait one minute now?

MR. YATES: Sure.

HONORABLE MAGISTRATE JUDGE DEIN: So I just want to

understand the documents that were provided to SEC, FINRA and OCIF. Are you -- what is your proposal with respect to those documents that were provided by GDB as opposed to SEC's own documents?

MR. YATES: Sure. So our proposal for documents with respect to GDB is that if they are simply -- we will return anything that's been characterized as highly confidential or for attorneys' eyes only. And then any other documents that are not confidential will be put into the depository.

HONORABLE MAGISTRATE JUDGE DEIN: So are those going to be included in the privilege log then?

MR. YATES: So what's going to be included in the privilege log are going to be the documents, as I understand it, that are being withheld as privileged. My understanding is that GDB and the committees have reached a separate agreement where documents that are produced to us, that are considered privileged, will be produced to them -- I'm sorry, that are characterized as confidential, but not highly confidential, nor for attorneys' eyes only, will be produced to them.

So this issue, it shouldn't really be an issue as far as the committees are concerned.

HONORABLE MAGISTRATE JUDGE DEIN: All right. So with respect to the documents that were provided to you from the financial -- from the government agencies --

MR. YATES: Right.

HONORABLE MAGISTRATE JUDGE DEIN: -- they're still going into the depositories if they were GDB documents?

MR. YATES: No, ma'am -- I just want to make sure I heard your question.

HONORABLE MAGISTRATE JUDGE DEIN: So this is my concern: As I understand it, you got some documents, let's say, from the SEC?

MR. YATES: Right.

HONORABLE MAGISTRATE JUDGE DEIN: Those included GDB documents that you didn't then get from the GDB --

MR. YATES: Uh-huh.

HONORABLE MAGISTRATE JUDGE DEIN: -- because you had them already from the SEC?

MR. YATES: Uh-huh.

HONORABLE MAGISTRATE JUDGE DEIN: But those are the type of documents that would otherwise be in the depository if they had come to you from GDB? And I want to make sure those documents are in the depository.

MR. YATES: Sure, Your Honor. My understanding, based on our review, is there really aren't those kinds of documents that would fall within this questionable category. The information that we got from the regulators was pursuant to their exercise of the regulatory authority, and under PROMESA, we are entitled to see that. Others are not.

And so they suggested an approach, much like the Court has already delivered, which is if you want that information, go directly to the SEC, FINRA, OCIF or other parties, but not through the investigator.

And so I think it should be clear that if somebody wants documents from GDB, they can look in the depository, see what's there, and if they think they need something else, then the exit procedures would allow for them to make that request directly to GDB.

HONORABLE MAGISTRATE JUDGE DEIN: Thank you.

THE COURT: And I actually realized I had one little technical point in the document of the Proposed Order, which is that in paragraph 14(C), I think you need a definition of the term Notice, with a capital N. And I assume you would want to put that in the second line following the reference to the neutral vendor providing a notice, since you used Notice, with a capital N, later on in the formula.

MR. YATES: Yes, ma'am. Thank you.

HONORABLE MAGISTRATE JUDGE DEIN: And the other, the next items, I guess group of items, which I don't think are very large, but these are the information that the committees requested now, which would be the Board materials, the D&O policies and the like, some of which, as I understand it, are in the -- are going to be in the depository.

How does that work? And is there a way to put them

in there where they're easily located?

MR. YATES: So those documents -- we have received board minutes. They have been classified and characterized as highly confidential, because they are privileged. Therefore, they would not be turned over to the depository. They would be returned to GDB.

HONORABLE MAGISTRATE JUDGE DEIN: And they would be on the privilege log, then?

MR. SUSHON: Your Honor, Bill Sushon of O'Melveny & Myers for AAFAF, as representative of GDB. The GDB board minutes have been provided as highly confidential and attorneys' eyes only to the investigator in an effort to hasten their access to the materials.

We are currently reviewing them document by document for privilege. Some portion of those documents will be redesignated, so they will be made available directly to the committees under our agreement with them. Other documents will be withheld as privileged or redacted. And anything that is withheld or redacted will be logged on a document-by-document basis, so it will be very clear to the committees what they have and what has been withheld.

HONORABLE MAGISTRATE JUDGE DEIN: So while I have you, then, let me go over the items. And then I'll hear from the committees. The D&O policies.

MR. SUSHON: The D&O policies have not been produced

to the investigator. We think that it's inappropriate for the committees to have access to those.

Do you want to hear argument on that now, Your Honor?

HONORABLE MAGISTRATE JUDGE DEIN: No.

MR. SUSHON: Okay.

HONORABLE MAGISTRATE JUDGE DEIN: I love saying that.

MR. SUSHON: It makes me happy, too.

HONORABLE MAGISTRATE JUDGE DEIN: And then the retention policies.

MR. SUSHON: The retention policies have been produced to the committees. In fact, they had retention policies before they requested them.

HONORABLE MAGISTRATE JUDGE DEIN: And then the bond bibles, I understand they were produced; is that correct?

MR. SUSHON: That's correct, Your Honor. They have bond bibles.

HONORABLE MAGISTRATE JUDGE DEIN: Okay. From the committees, is there any specific documents you want to address?

MR. DESPINS: Luc Despins with Paul Hastings for the committees. I guess we're into the 2004 motion now?

HONORABLE MAGISTRATE JUDGE DEIN: Yes.

MR. DESPINS: Okay. Well, there were three types of items. So the Board minutes, because if I understand

correctly -- because they said we should not get the Board minutes, it was burdensome. Now what we're going to get is a privilege log with all board minutes that are being withheld?

HONORABLE MAGISTRATE JUDGE DEIN: No. As I understand it, they're being reviewed. So some of them will be produced that are not privileged. Some of them will be produced in a redacted form. And others will be identified as privileged.

MR. DESPINS: But we will have -- so therefore, GDB is withdrawing its objection that this is burdensome. They are actually going to do one of these three things, which is either produce them, or withhold because they're privileged, or redact them in part. So I want to make sure that's clear.

MR. SUSHON: That's correct, Your Honor.

MR. DESPINS: Okay. So now we can move on to the other issue, which is the D&O policy. The only thing that was said about this is that it's inappropriate. They cite no case law.

Judge, this is like in every 2004 we do, and I've done a lot of these over the years. We always ask for the D&O policy, because that tells you the value of your asset, meaning your asset is a cause of action.

If there's a five million dollar policy as opposed to a 500 million dollar policy, that's a huge difference in the claim, and, therefore, that's why the courts have Ordered the

production of D&O policies. And we've given counsel yesterday cites to this, but to the extent there's any doubt about this, there's the *Roman Catholic Church* case, which is 513 B.R. 761; the *Lincoln North Associate* case, 163 B.R. 403; and there is another one, *Lufkin*, which is 255 B.R. 204.

And the point, though, is that they cite no case for this, that it's inappropriate. They say it's inappropriate because -- there's no because there. They just said it's inappropriate. They don't want to produce this. It can't be burdensome, right?

These policies are 20 pages long. They know where they are. So there's no burdensome. It's purely that they don't want -- that someone from GDB doesn't want to produce those. And it's just standard fare, Your Honor. And that's why courts have Ordered the production of policies, of D&O policies.

The next item was this issue that we talked about, which was the various reports obtained by the investigator from the SEC. And so we understand, the investigator does not want to give to us what he got from the SEC. We got that. There's no reason why GDB can't produce that to us. And it's the same thing for the financial institutions.

HONORABLE MAGISTRATE JUDGE DEIN: Well, I'm not sure whether that is true. I'm not sure what kind of documents that we're speaking about. Some of them are going to be, I

assume, covered by the Bank Secrecy Act and the like of documents that can't be publicly disseminated.

MR. DESPINS: But that's then subject to confidentiality.

HONORABLE MAGISTRATE JUDGE DEIN: Having litigated that more than I want to admit, I'm not sure -- there are limitations. But to the extent that there are GDB documents that are just about the financial condition of GDB, that are otherwise regular documents, I would expect them to be in the room, in some form.

MR. DESPINS: So to be clear, Your Honor, what we're saying is that if they produce something to the SEC, that's what we want to see. Or SEC, as an example. I mean, it could be other agencies. That cannot be burdensome, because they've already produced it.

And it's the same thing for the financial institution. What they produce to the SEC or to other regulatory bodies, it's easy for them to produce that because they've already produced it once. There's plenty of courts that say it in 2004 context, that once an entity has already made a production to a third party, that the burdensome argument goes out the door, because they've already produced it. They just have to push the button and recreate the same production.

The only issue is confidentiality. We already have

confidentiality provisions or agreements in place. So that issue, I don't see how that can be an issue.

So I understand the examiner -- or sorry, the investigator does not want to share with us what he got directly from the SEC. We respect that. We understand that. But the targets, which are the financial institutions and GDB, have no such protection in the sense that whatever they produce is not burdensome, produced to those agencies is not burdensome, and there's no basis not to give it to us.

And I want to say this, Your Honor. You notice that we're very targeted, Board minutes, these documents produced to third parties and the D&O policies. There's a whole other issue which we have not brought to the Court yet, which is that the examiner -- sorry, the investigator saw thousands of documents, but is only giving us what was printed, meaning what they decided to print.

We're not burdening the Court with that today, but I want to make sure this issue is not waived. Right now we're very targeted in what we're seeking. And the reason why we're targeting it is because we believe that these document, the Board minutes, will help us have an even more targeted follow up. So I want to make sure that that issue is not lost.

Thank you, Your Honor.

HONORABLE MAGISTRATE JUDGE DEIN: Okay.

MR. SUSHON: Your Honor, Bill Sushon from O'Melveny &

Myers.

Your Honor set forth a process for the committees to get documents that were shared with the investigator, review those documents, and then make a determination as to whether they wanted more. And they're showing that they're entitled to it, and that it makes financial sense to do that.

By way of this informative motion which requests relief, which is something an informative motion should never do, they're trying to short-circuit that process. And as we've already seen with some of their requests, they were looking for documents they already had. And if they'd bother to review them instead of trying to create disputes with AAFAF and GDB, they would know they had those documents instead of wasting the Court's time and the parties' time on these issues.

So these requests are improper in that respect. They're improper because it's in the form of an informative motion and not a motion to compel. But the request for the D&O policies is also unjustified here. There's no question that D&O policies can be subject to discovery, and that they're an appropriate subject for discovery under certain circumstances. But here they are not.

And the reason for that is that the UCC does not represent creditors of GDB. The UCC represents creditors of the Commonwealth. So they need to identify some kind of a

claim that they would bring on behalf of the Commonwealth against GDB that would tap our GDB's D&O's, that would tap those policies. They haven't done that, Your Honor. They haven't even tried to do that.

We know from the Oversight Board's submission to the Court that the Oversight Board intends to bring claims that belong to the Commonwealth. They'll be doing that. That's not for the UCC to do. We also know that the Commonwealth owes GDB, on a net basis, nearly 900 million dollars.

So there would have to be some kind of massive claim before you would ever get into a situation where the D&O policies could possibly be relevant. It's just not appropriate in these circumstances, Your Honor.

As for document productions to regulators, they should first look and see what they have in -- from the documents we've given them. And if they think that there are documents missing, we think it would be much more efficient, Your Honor, for them to identify the documents they think we should give them, and then we can discuss those. But to simply ask for productions to the SEC, productions to other regulators, some of which may be subject to bank examiner or other privileges, it just doesn't seem like the appropriate path to us.

HONORABLE MAGISTRATE JUDGE DEIN: Let me deal with them separately. So for the board minutes, you're reviewing

those and you've discussed and those will be produced, or at least identified?

MR. SUSHON: Correct, Your Honor.

HONORABLE MAGISTRATE JUDGE DEIN: The D&O Policies, I think, is just premature. Let's see what the report is. You can renew the request after the report comes. But I don't want to mess up the procedure that we've set up, which is that you should review the report and then request documents in the context of something.

The documents to the regulators, though, what I'm -- what I want to be able to address is that there were documents that were normally requested by the investigator, which would have been in the room if they had come directly from GDB. But if they are not there because they came from the SEC, I think the committees have the right to those documents, because they fit within all the other types of documents that would have been -- that have been in the room and have normally been produced to the committees.

I don't know the easiest way to get them into the room.

MR. SUSHON: Your Honor, I don't know what the investigator requested or received from regulators. I have absolutely no insight into that. That's something that the investigator undertook on its own, so I can't speak to whether there are any documents that even fall into that category.

It really does seem as though the appropriate path here is for them to review what they've got, and then if there are documents that they think they need, then they can go through the process that the Court has already described. It just doesn't seem like this is an appropriate way to approach this issue.

HONORABLE MAGISTRATE JUDGE DEIN: I'm just trying to make it the easiest way, because I know the committees are going to stand up here and say, how do we know what we can ask for if we don't know what the documents are.

So you don't have to stand up and say it. I know you're going to say it. Maybe to the investigator, maybe that's -- I'm just trying to make it within the context of what we've already been doing, which is GDB has allowed access to all the documents that it -- non-privileged documents that it turned over to you, it has given to the committees.

I feel like maybe there's this group of documents that you can identify that maybe GDB can produce to the committees or put in the room.

MR. YATES: Sure. So my understanding is that the investigator would not have received any other documents from a third party, not the SEC, that hadn't been produced by that third party to them. So I don't --

HONORABLE MAGISTRATE JUDGE DEIN: I'm sorry. Say that again.

MR. YATES: So you're asking if there's -- the document that GDB produced to the SEC as an example that was delivered to us, that GDB or the committees somehow identify whether they should have access to that.

And my point is, is that we would not have that document unless it was produced by GDB in the first place, so any third-party documents to the SEC, other than what they've generated and produced on their own as part of their process, came from third parties.

So from our perspective, it is easiest, I think, to go to the disclosing party and say, what did you produce. That's going to capture all the documents that would be in the SEC's possession it's my understanding.

THE COURT: So you support the committees' approach, which is to ask for the SEC -- the production to the SEC or FINRA or whoever?

MR. YATES: I think that would be the appropriate request. I do think, however, that request should be made as suggested within the context of the procedures, because we have seen circumstances where the committees have asked for information that they already have. And so I do think that the notion that it's inappropriate because they should look at what they've got first, and also take a look at the report to see what exactly is needed, is really the best way to proceed. So --

THE COURT: But you -- but these aren't documents that they would be able to get through the procedures identified as documents produced to the SEC, because you'll have given back to the SEC whatever you've got from the SEC?

MR. YATES: That's correct. And that's our agreement with all of the regulators. Again, we are different. We have access according to PROMESA. And so we received information.

If they're concerned with what was produced by a party to the SEC in response to a request, our view would be go ask the producing party. And my understanding is that would also be the position of the regulators, because whatever issues regarding confidentiality, et cetera, are best addressed by the producing party as opposed to a request directly to the regulator or a request directly to the investigator.

HONORABLE MAGISTRATE JUDGE DEIN: But is there a way for you to work directly with GDB for you to identify those documents so GDB can then produce the documents into the room? Conceptually what I'm seeing is that there are documents that are sort of in the room that are coming out of the room. And that normally at the end of this, the whole point was that we don't redo it again and have the same big productions again.

So if these are documents that you could have obtained from GDB, normally would have obtained from GDB as

part of your investigation, but didn't obtain from GDB because you already had them from the agencies, I think they need to get into this room.

MR. YATES: And so as everyone else is starting to talk about process, we would have just asked for anything and everything from the SEC regarding this particular issue. We would not have broken it into what's been produced by GDB, what has not been produced by GDB. It's what do you have about -- in response to this particular inquiry.

So I don't think we have an ability to go through and do as you suggest. And so my kind of -- my reaction is that forcing GDB and the investigator to parse through something that's been produced by the SEC that they say pursuant to our agreement must be returned to them, because we got access to it under a different procedure, number one, you know, requires their consent before it's disclosed.

And number two, again, I think it just directs us back to the producing party. The investigator wouldn't have anything that the producing party wouldn't have produced in the first place.

HONORABLE MAGISTRATE JUDGE DEIN: Let me just ask you: Did you not obtain doc -- did you consciously not obtain documents from GDB that you already -- because you already had it from the investigators?

MR. YATES: From the regulators?

HONORABLE MAGISTRATE JUDGE DEIN: From the regulators.

MR. YATES: No. That wasn't part of our -- I explained what our process was.

HONORABLE MAGISTRATE JUDGE DEIN: All right. Do you want to add anything?

MR. SUSHON: No, Your Honor. I believe that that covers it. If there's no way to reconstruct what was in the room, then I think the appropriate process is for them to see what they have, and then we can meet and confer about any further requests that the committees may have.

Thank you, Your Honor.

MR. DESPINS: Your Honor, that was very helpful. I think you had a sense of what we've been dealing with for the last year. Either GDB has produced tons of stuff to the SEC, which would be really troubling, or they haven't. The point is they know that. So this thing of whether it's in the room or not -- we don't have any production that has been identified as being produced to the SEC.

And by the way, we asked that a year ago exactly, so it's not like this is a new thing that we're springing on through an informative motion. The 2004 Motion was adjourned to today. They know what they've produced to the SEC. We've asked for this a year ago. We're entitled to the production to any regulator that they've made. There's no ifs and buts

about that.

HONORABLE MAGISTRATE JUDGE DEIN: All right. Let me comment on that. The whole point of this was for you to work through the investigator if you wanted additional documents, and if you wanted specific documents, so don't quote to me what you had in the initial 2004 request, all right?

If these were things that you needed while this process was going on, you should have been working with the investigator, as I understand it, in these weekly telephone conferences or whatever. So let's just skip over that part of it.

MR. DESPINS: But, Judge, we did that.

HONORABLE MAGISTRATE JUDGE DEIN: But you're not concerned about the -- it's not that the document was produced to the SEC that makes it relevant. It's that the document exists that makes it relevant.

So if I'm hearing that the investigator did not limit its request of documents to GDB because it already had the documents from the investigator, then the same documents may already be in the room.

MR. DESPINS: No. No, Your Honor. You know why? Because they had access to all documents through their screen review. And of course if they had the document already, they could have said, we don't care about that.

We're limited to a universe of 5,000 that they

printed. Of course they wouldn't print something that they've already received from the SEC. That's the whole -- we've had this whole fight with them over, you know, we want to see these documents. They said, we're not going to share.

This is not a new issue. It's been pending for six months, at least. They've always said, we have a relationship with the regulators, we cannot breach that. We said, that's fine, but in the meantime, we are entitled to any e-mail or any letter from the GDB to SEC that says, enclosed is our production at your request.

We should have that. And they're not saying that they produced that to us. And frankly, there's no reason why the investigator would have put that in its 5,000 printed copies, because they already have those productions.

And why is it so relevant? Because the SEC is not calling for production of documents on innocuous issues. They're usually very targeted, and they know what they're going after. And that's why I don't understand why -- they know what they produced to the SEC. They can do that in a nanosecond. Why can't we get those documents?

HONORABLE MAGISTRATE JUDGE DEIN: Anybody want to add anything? All right.

MS. DALE: Hi, Your Honor. Margaret Dale for the Oversight Board.

The one thing I want to add is just to bring this

back in perspective, now we're talking about the 2004. The 2004 has a limited scope and intentionality behind it. The claims here, when the independent investigator issues this report, will be controlled and solely are the providence of the Oversight Board.

And we have indicated in our statement in support of the investigator's motion that we intend to discuss with the committees the claims to be pursued, as well as AAFAF. But they belong to the Oversight Board. It is not clear that claims of a sovereign could be handled or given to a committee to be brought, or that the Oversight Board would consent to that procedure.

So in terms of what the committees are seeking, we want to assist and be supportive of that, but we want to make sure that our position is on the record, that the claims will solely be controlled by the Oversight Board.

HONORABLE MAGISTRATE JUDGE DEIN: Thank you.

All right. I want to stick to the procedure that I set up last time, which is that the report will be issued -- I hear that it's on track. All right? I'll give you until August 16. Maybe a day or two, but we're on track, correct?

MR. YATES: Yes, ma'am, we're on track.

HONORABLE MAGISTRATE JUDGE DEIN: All right. And then the committees can renew specific requests targeted to specific issues. Okay. But the Board minute issue needs to

be addressed and produced before then.

MR. SUSHON: Yes, Your Honor.

HONORABLE MAGISTRATE JUDGE DEIN: All right. I think that covers my 2004.

MR. YATES: Thank you.

HONORABLE MAGISTRATE JUDGE DEIN: Thank you.

MR. SUSHON: Thank you, Your Honor.

MR. YATES: Your Honor, can we --

THE COURT: Yes.

MR. YATES: -- the investigator be excused?

THE COURT: Yes. Thank you.

MR. YATES: Thank you, Your Honor.

THE COURT: So our next agenda item is -- one moment.

MR. ROSEN: Yes, Your Honor. It was in connection with the ERS, the Motion for Lift of Stay.

THE COURT: Yes.

MR. ROSEN: Again, Your Honor, Brian Rosen from Proskauer Rose.

Your Honor, the Court entered an Order the other day where it announced that for reasons it would state on the record, this preliminary hearing would be continued to the final hearing to be held on September 12.

We trust that that is what we'll be doing now, which is to listen to the Court, as to what your arguments are or

your reasons are. The only point that we would like to raise with respect to that is under 362(e)(1), we would like to make sure that the automatic stay is continued beyond the 30 days from the conclusion of this preliminary hearing to the determination that the Court would make at the final hearing to be held on September 12th.

THE COURT: Yes.

MR. ROSEN: Thank you.

THE COURT: And so my anticipated remarks cover those issues. And here they are.

Section 362(d) of the Bankruptcy Code provides that creditors may seek relief from the automatic stay for cause. Section 362(g) places the ultimate burden of persuasion for stay relief motions on non-movants for all issues except for the issue of a debtor's equity in property. However, movants still retain the burden of making a showing of cause that is adequate to make out a prima facie case for the relief they seek.

In the instant context, where stay relief is sought on the basis of a lack of adequate protection, that showing must include an initial showing of a diminution in the value of movant's collateral resulting from the effect of the automatic stay. Movants have not made such a showing in their submissions.

As a result and in light of the pendency of the

summary judgment motion practice concerning the validity and extent of the liens claimed by the ERS bondholders, the Court has determined pursuant to section 362(e)(1) that there is a compelling reason to treat the hearing today on this motion as a preliminary hearing.

As noted in the Order that the Court has issued, the final hearing on the motion will be held at the next Omnibus Hearing in the Title III cases in September.

Furthermore, the lack of a showing relative to diminution of the value of collateral by reason of the automatic stay leads the Court to conclude at this juncture that there is a reasonable likelihood that the party opposing relief from the stay will prevail at the conclusion of the final hearing within the meaning of Section 362(e)(1).

The Court, therefore, Orders that the automatic stay will remain in effect pending the final hearing on the motion, which is now set for September 12, 2018, the date of the next scheduled Omnibus Hearing.

So I think that covers the technical points, as well as the substantive reasoning.

MR. ROSEN: Thank you very much, Your Honor. It does.

THE COURT: Thank you.

Mr. Bennett.

MR. BENNETT: Your Honor, we think the record in this

case amply demonstrates the problem, which is that all of the collateral has been taken and been spent. Does Your Honor want declarations in advance of the final hearing?

THE COURT: Well --

MR. BENNETT: I want to make sure we go forward adequately, because I don't think there's a question as to what is going on. I just want to make sure the record is satisfactory to Your Honor so that the burden does, in fact, shift where it belongs.

THE COURT: Well, if you believe in light of my remarks that points you intended to make as to what the precise equity is that you claim and how it is that the automatic stay, as distinguished from anything else, has resulted in its diminution, we can do a schedule for any further supplemental submissions and a response to the supplemental submission in advance of the final hearing. So --

MR. BENNETT: Your Honor, absent -- well, again, I don't think these matters are disputed. The money that is our collateral now has been diverted to the Commonwealth, and every nickel of it has been spent. That's occurring because the automatic stay prevents us from doing something about it.

THE COURT: And it never went into the hands of ERS because of the new structure, correct?

MR. BENNETT: Correct. And we have an adversary

proceeding that there's a Motion to Dismiss pending on, also --

THE COURT: Yes.

MR. BENNETT: -- that seeks to deal with that as well.

THE COURT: Yes.

MR. BENNETT: But the fact is we can't do anything about that in any court, and we're not just dealing with monies from the Commonwealth, but we're dealing with monies from other municipalities and other corporations that are not in bankruptcy.

So as I said before, I want to meet every technical requirement that Your Honor believes exists. And whatever they are, we're going to meet them, because the facts are, I think, extraordinarily well known. But I want to make sure we get the facts in front of Your Honor in a way Your Honor is comfortable with them.

THE COURT: Well, the argumentation in the -- well, the opposition argumentation posits that the relevant collateral in the hands of ERS affected by the automatic stay is the money from which distributions have been being made. And they're the arguments about employee contributions, employer contributions and interest.

So let me put it this way. Your papers don't identify precisely what relief you would be seeking, were the

stay lifted and from whom --

MR. BENNETT: Okay.

THE COURT: Would you like to speak to that?

MR. BENNETT: I'm happy to, Your Honor. First of all, just to make it clear, we sought relief against both ERS, because we fully understand that they concede some property remains in ERS, we also sought relief of the stay in the *Commonwealth* case, because, I don't think this is disputed, the property that was in ERS is -- some property that was in ERS is now in the *Commonwealth* case.

So as to what we would do if we had relief, we would take every step necessary to prevent the continuing expenditure of collateral in violation of our rights. Some of that is pursuing the litigation that is already pending in this court.

There's one other claim that would be brought in this court. I keep forget -- remembering the statute name, but there's another claim for transferring property from one debtor to another debtor that can't be asserted until relief from stay is obtained. So that would be another claim that would either be part of the existing adversary proceeding or another adversary proceeding.

And, of course, that would be an administrative claim, because all of the acts that resulted in the transfer of the collateral happened after the filing of the petition.

And just so people remember, before the hurricane, before either of the hurricanes.

But there's another whole area of potential litigation, which again, adequate protection would be better than any of this, but in the absence of adequate protection, we have to do our jobs.

There are a large number of non-debtors that are obligated to make employer contributions that we believe our lien attaches to, and to enforce those liens, because they're not debtors, they're not before Your Honor, and we would likely have to go to other courts to enforce the liens. We fully would intend to do so. And again, in the absence of adequate protection, we're entitled to do so.

So that's the relief that we would seek. And I don't think that's a mystery to anybody either. So again, we're going to have time. I want to make sure that there's -- that whatever format Your Honor wants to see it, if you want to see it in the form of an actual evidentiary showing through declarations, if you want additional allegations -- I think in our Reply, we pointed out that none of this is disputed. But, yes, the collateral is being diminished very significantly, every month.

THE COURT: Thank you.

It looks like Mr. Rosen wishes to speak.

MR. ROSEN: Yes, Your Honor. Very quickly.

Obviously there is a question that needs to be answered in all the things that Mr. Bennett was saying, and that question has to be answered by the Court. And so until that is done, I'm not sure Mr. Bennett can do any of the things that he is claiming that he is intending to do.

But we would be happy to work with him with respect to a schedule for additional submissions, declarations, counter declarations, whatever he thinks is appropriate over the next few weeks. We're happy to do that.

One other technical point I would like to add, Your Honor, is I know that Mr. Friedman may have already spoken with your chambers about the possible movement of September 12th as the Omnibus Hearing date, because I believe it follows the Rosh Hashanah holiday the next day --

THE COURT: Yes.

MR. ROSEN: -- and people may have difficulty getting to San Juan. But if, in fact, you wanted to have the ERS hearing, to adjust the ERS hearing, if you're not going to be moving everything off of that date, we're prepared to go forward with that, and even in New York, if that works better with all parties.

THE COURT: Okay. I hadn't yet been in the loop about the possible moving of the date.

MR. FRIEDMAN: I hadn't reached out. I was waiting to confirm with Mr. Bienenstock. But yes, I would appreciate

if the hearing is not in San Juan on the 12th, because I would not be able to get down from Washington the night before.

THE COURT: For anyone who didn't hear through the microphone, Mr. Friedman has confirmed that he was intending to ask and is now asking that the September hearing date be moved in order to mitigate the coincidence with the Rosh Hashanah holiday. So that's something that we will look into and work out in an appropriate way, and the continued hearing on ERS will, if necessary, be adjusted accordingly.

So, Mr. Bennett, what I would ask you to do is, first of all, I have -- my assessment at this point is that the evidentiary record is not one that shows adequately the automatic stay linked diminution of collateral.

And I recognize that a lot of this is bound up in theories of what is the security, and those are sub judice. And it is my expectation that we'll -- that we'll all know more about my thinking about those things before we come back for the final hearing. That is my intention.

But in the meantime, you have the ability to clarify and supplement your record. And so I would urge you to speak with Mr. Rosen, come up with a proposed schedule, and I will expect to get a proposed schedule within the next -- say by the end of next week. So that gives you ten days to do that.

MR. BENNETT: We actually might even have the entire submission done by then.

THE COURT: Would you speak a little louder?

MR. BENNETT: We might even have the entire submission done by then.

THE COURT: That will work, too.

MR. BENNETT: Your Honor, I think what I'm hearing from Mr. Rosen is that we are going to be having an evidentiary hearing as the final hearing, because it sounds like they think there are disputed issues of fact. He mentioned counter designations.

So it turns out that the 12th doesn't work for me either, but could we have a separate date so that we could actually have an evidentiary hearing? And it could be in New York. It wouldn't trouble me. But I think it would be very hard to do a full-blown evidentiary hearing in the context of what ordinarily happens on Omnibus days.

THE COURT: Mr. Rosen.

MR. ROSEN: Your Honor, I'm not saying that we could have --

THE COURT: Come closer to the microphone.

MR. ROSEN: I'm sorry, Your Honor. I'm not saying we would have a full-blown evidentiary hearing until I know what, in fact, the allegations are. So we'll work with them. We'll determine what is appropriate.

THE COURT: So your meet and confer shouldn't only be about scheduling. You should try to get to a bottom line as

to whether there are disputed issues of fact that would have to be explored at an evidentiary hearing, as opposed to an agreed set of facts whose legal significance I need to determine.

MR. ROSEN: Exactly, Your Honor.

MR. BENNETT: And actually, I need to make clear for the record that we do not waive our rights to a hearing, to the final hearing being conducted within 30 days of today. So I understand Your Honor has an issue, but in the absence of a specific date that works, we believe we're entitled to relief in 30 days, if there's not a hearing.

THE COURT: Well, I have made the 362(e)(1) findings, and the specific date, as we stand here right now, is September 12th or as soon thereafter as the parties can be heard. And you're going to work with telling me what dates will work for you all, and I'll look at my calendar dates, and we will work out the date as soon thereafter as the parties can be heard, since September 12 here appears not to work for a critical mass here.

MR. BENNETT: We don't -- Your Honor, we do not believe that the finding that you made justifies an extension of the 30-day period, but if that's your ruling, we understand. We just want to make sure it's clear that we're not acquiescing.

THE COURT: Thank you. I understand.

MS. ROOT: And Your Honor, Melissa Root on behalf of the Retirees' Committee.

I just want to make one point for the record, because Mr. Bennett represented that a number of things were not, in his words, in dispute. The Retirees' Committee certainly disputes that there has been any diminution in the bondholders' purported collateral or that that's been diverted in any way. I just want to make that clear for the record.

THE COURT: Thank you.

MR. ROSEN: Your Honor, I believe that concludes all the matters other than the two adversary proceedings.

THE COURT: There's the 2019 amendment.

MR. ROSEN: Oh, I'm sorry. I thought it was --

THE COURT: Yes. And so who is speaking in support? Is that Mr. Despins?

MR. DESPINS: Yes, that's my motion.

THE COURT: Yes. So Mr. Despins, please come. This is agenda item 11.4, the Creditors' Committee Motion to Clarify or Amend the Fourth Amended Case Management Order.

And so before you speak, Mr. Despins, let me tell you that as to the scope of triggers for reporting, it does seem appropriate to me to clarify that reporting as to each debtor in whose case a Rule 2019(B) group files a pleading in a group or representative capacity is required -- is a change that we ought to make.

So to the extent there was any doubt that the scope of 2019 obligation is as set forth in your proposal A, I will do that. But that trigger is a filing in a group capacity or in a representative capacity.

So I had some concern about your general references to proofs of claim, if a particular creditor files its own proof of claim and it isn't purportedly a Rule 2019(B) group claim, then that wouldn't trigger Rule 2019 obligations.

I am not -- and I'll have some language suggestions for you, as I always do. I am not, at this point, persuaded that retroactive reporting is necessary or appropriate, especially given that we're sort of a year out from when all this started. And there were earlier, much earlier on filings that would have indicated the existence of this problem, particularly by the GO Group.

So if you'd like to focus on that issue, and I'll hear from your opponents and then make my decision.

MR. DESPINS: So I'll put the Proof of Claim aside for now, Your Honor. There's no doubt that when people sign a stipulation giving them automatic intervention rights, and that was done in August or probably late July of that last year, that at that point they were taking a position in those cases, and those cases were the *COFINA* case and the *Commonwealth* case. I don't see how we get around that.

And, in fact, the GO Group knew that they had an

obligation to disclose COFINA holdings, because they did it the first time around.

THE COURT: And that's what I'm saying about the disparate filings in the context that it would have indicated that this problem existed a year ago.

MR. DESPINS: Well, no, because the way we read the second filing is that they no longer held COFINA bonds, meaning that they -- and we were very polite in our motion when we said there was confusion.

There was a conscious decision not to disclose the holding of COFINA bonds and the trading of COFINA bonds while they were arguing before with this Court side by side with the committee against COFINA, and that's what prompted this motion. And we were very troubled by that.

That's why we think retroactive disclosure is appropriate, because it's important for certainly the Court, but also for us, when we were basically operating as de facto co-counsel on the COFINA litigation with a group that holds COFINA bonds. To us it may be naive, but it was shocking. And that's what prompted this motion.

And we tried to be polite about it, but that's why the Court needs to know, and we need to know, when were the buying and selling of those bonds? Before or after the meetings with us where we disclosed the strengths and weaknesses of our cases against COFINA, for example? Before

the oral argument? After the oral argument?

The point is that they admit that they've been trading in those bonds. So we believe that absolutely, it's important for the process here for everyone to know what really went on there, which --

THE COURT: When you're saying it's important for the process, are you saying that this is by way of sanction, for want of a better quick term, or that there is some potential for retroactive re-evaluation or change in perspective going forward that would be materially informed by the filing of this information?

MR. DESPINS: I don't know. It's clearly not our intention to seek sanctions, and we're not seeking retroactive changes or anything like that. But I think that it's important from a process point of view to understand what happened here.

I don't know when they were trading, how much they bought, how much they sold. We will only know that when we see the information. But there were things that happened here where -- you know this because it was filed with Your Honor. You know, they issued a press release saying, oh, the settlement failed, but it was a great concept and all that. I'm quoting from their own press release.

Were they buying bonds at that time, just before that time or after that time? That's -- to me, I don't see how --

I mean, this is the Puerto Rico case. We need to have complete transparency about everything. And this is why we brought the motion. They know that on the law, we're right, that they should have filed this. They did it right the first time. And they didn't see the second pleading -- by the way, we're no longer disclosing this. They just assumed that it was gone. The filing is otherwise the same.

Now they're saying yeah, we're okay with the future, but not retrospective. But there's no burden here. These are associated funds. They have compliance officers. They can push the button and print out exactly when they bought, how much they bought. And they can supplemental filings.

That's going to take them a half hour to do so. So there's clearly no burden. And I think that from a process point of view, it's fundamental for everyone to know what was going on there.

Thank you, Your Honor.

THE COURT: Thank you.

MR. BURKE: Good morning, Your Honor. Donald Burke from Robbins Russell for the GO Group.

THE COURT: Good morning, Mr. Burke.

MR. BURKE: I think, as Mr. Despins' comments make clear, the dispute that's actually before the Court here is very narrow. We have no objection to the clarification or expansion of disclosure requirements going forward, but we do

think that it would be inappropriate to insist that those disclosure requirements also be applied retrospectively.

From our perspective, it seems like a rather extraordinary request. They haven't cited any court decision. We're not aware of one yet.

THE COURT: Well, you were supposed to have done it in the first place. And as Mr. Despins has noted, you were actively involved in taking positions in the public litigation. There were press releases, at least one press release that was in the context of your having disclosed only a position on one side of it.

Obviously the proposed Commonwealth-COFINA settlement is something that has generated both controversy and excitement of all sorts. And so why shouldn't -- and these are securities that are actively traded in the market. And the services will tell us that they're very actively traded in the market right now.

So why shouldn't the market have full information about where you were at particular times, that the market could not track to movements, and why shouldn't we have in the context of this proceeding, information that you should have filed on a timely basis?

MR. BURKE: Well, I think to be clear, we dispute the premise that there was, you know, any shortcomings in our filings or the information.

THE COURT: And I frankly don't -- I see that you're seeking to kind of gracefully accept it going forward, but I am not persuaded by your argument that there was no obligation at the time. And so maybe you'd like to run that one past me one more time?

MR. BURKE: Well, in light of what you just said, I'm not sure that's the best idea for me. But I think I'll just rest on the position that we set forth in our Response to the UCC's motion, which is that our participation was in adversary proceedings and we now understand that the Order is to be modified to clarify that.

THE COURT: An adversary proceeding can only be filed in a case, and you -- your clients were trading in securities that were securities of debtors in Title III cases.

MR. BURKE: Well, that's correct, Your Honor, but the -- your Case Management Order, as I understood it, required the disclosure of economic interest in -- only as to debtors in which the group has taken a position. And as we understood it, we had not taken a position -- taken a position in cases other than the Commonwealth's Title III case.

Now, Mr. Despins points to our initial Rule 2019 filing, which I believe was in May of last year. I think that was the first Rule 2019 filing that anyone submitted in this case. It was submitted before even your first Case Management Order was entered.

So I think it's the -- and to the extent there's a difference between the scope of what was disclosed there and what was disclosed in our minute forms, it's a consequence of what we understood to be the clarification about the nature of and the scope of disclosure requirements as to, you know, the particular debtor and in whose case you were taking interest.

I guess I did want to respond to the committees' insinuation that the group has tried to conceal economic interest in COFINA bonds in order to mislead the Court or the public about the basis for our position in the Commonwealth COFINA litigation.

I don't think that's supported by any evidence in -- and it's absolutely false. You don't have to take my word for it. If you take a look at page four of their Reply Brief, they acknowledge that if the GO Group's position is correct in its COFINA related litigation position, COFINA would essentially own no property.

In other words, throughout this litigation, summary judgment, oral argument and our Response to the agents' agreement, in principle, we've taken the maximally anti-COFINA position. So from our perspective, the notion that there was some sort of elaborate ploy to advance economic interest in COFINA bonds just doesn't -- it doesn't make sense. It doesn't fit with the evidence. But -- so that's, I mean, that's our response. And unless there's anything further from

the Court, that's all I had.

THE COURT: Do you want to turn to burden?

MR. BURKE: Well, I do think, from our perspective, the key point is that we don't think that the committee has identified any sort of basis or benefit associated with the retrospective application of the rules. The -- you know, if you look at page 14 of their motion, it just says they request retrospective clarification or amendment, and there's no sort of -- they don't identify any benefit on that one side of the ledger. And from our perspective --

THE COURT: Mr. Despins has, in his oral remarks, elaborated on the written submission.

MR. BURKE: I think that's correct, Your Honor. On the burden point, it is a significant burden to go back and sort of retrospectively create a set of disclosures that were not made at the time because we thought we were operating under a different set of standards.

It's true that our clients have access to trading information, but it requires an exercise of judgment to figure out when changes in an economic position have changed substantially enough that it's a material change. And a Rule 2019 filing would have been required. And so I think Mr. Despins really exaggerates the ease with which this process would be completed.

And I guess one other point I'd raise is that from

our perspective, it's a little bit difficult or a little bit hard to credit the UCC's position on burden, given that for months in this case the UCC had failed to comply with Rule 2019 by failing to even update the membership of their committee after it changed multiple times after these cases were filed.

The GO Group noticed that. We urged the committee to update their disclosure, which they did after some communications and some protracted delay. But given, you know, their inability to even comply with what seems to be the, you know, most basic aspect of the Rule, we do find their burden position a bit hard to credit.

And we would ask that to the extent there is any retrospective application of these standards, it's clear that it applies to everybody, including the committee itself.

Thank you, Your Honor.

THE COURT: And do you have a view as to -- that you want me to hear as to how much time should be allowed, if I am allowing and requiring retroactive disclosure, and the date to which that should go back?

MR. BURKE: In terms of -- I'm not sure I understand the question. In terms of how far back the --

THE COURT: What the deadline should be for filing the retroactive reports, and how far back it should go to capture rewriting of reports.

MR. BURKE: I don't have a position on the deadline for filing the retroactive or retrospective reports.

THE COURT: So you think two weeks from now would work for you?

MR. BURKE: We'd have no objection to that, Your Honor. And as to the latter point, I think we would defer to Your Honor. If there are guide points in the case that you would feel more comfortable with retrospective application, then we would defer to your decision then.

THE COURT: Thank you.

I'll let --

MR. BURKE: Thank you.

THE COURT: -- Mr. Despins put some information on these points as well. You have blanks in your Proposed Order.

Mr. DESPINS: Yes. Basically, we would say from the date that the Commonwealth-COFINA stipulation was signed by the GO holders, they were in that litigation. They were taking a position. So that's the date where it should go back to. That date.

And as to how much time, we have no position on that, Your Honor

THE COURT: Well, in light of the types of activities that were going on, and the profile of the activities that were going on, and my firm view that filing in an adversary proceeding is a filing in a case, and the stipulation dealt

with both the *Commonwealth* case and the *COFINA* case, there was an obligation stretching back to last year by the GO Group to disclose holdings in both Title III debtors.

I will require the retroactive reporting, with the retroactive reports to be filed within 14 days. What I'm going to request that Mr. Despins do, instead of having this as a stand-alone Order that accompanies the fourth CMO and that could be overlooked, I'm going to ask him to prepare a proposed restated fifth CMO that includes these provisions, with a couple of changes that I will read out in just a moment, and file that on presentment.

So for the additional changes in footnote three, in the A version of the Proposed Order, after the word, "pleading," and before the words, "in any Title III case," insert the words, "by or on behalf of a Rule 2019(B) group."

And similarly, in footnote four, change the term, "party," to "Rule 2019(B) group." And then in paragraph three, which is the retroactive amended filing provision, begin that with, "within 14 days after entry of this Order." And complete the blank with the date of the entry of the Commonwealth-COFINA stipulation.

And when you re-submit the Order, spell out "Taylor" in the middle of my name. I ask that of everybody. I'm not "Laura T. Swain," ever. So that would be helpful.

MR. DESPINS: Yes, Your Honor.

THE COURT: All right. So I think that that concludes the first part of the agenda. And when we return, we'll turn to the arguments on the Motions to Dismiss and the adversary proceedings.

So we'll reconvene at 1:15. It is now 12:10.

Thank you all.

(At 12:12 PM, recess taken.)

(At 1:21 PM, proceedings reconvened.)

THE COURT: Our next and final agenda item is oral argument on the Motions to Dismiss in the case of *Rosselló Navarez against the Oversight Board*, and the case of *Rivera Schatz, et al., against the Commonwealth*.

And I understand that the parties have agreed in these two adversaries, 18-80 and 18-81, to present the oral arguments together. And so I have an opening of 15 minutes by Oversight Board's counsel; with five minutes allocated for the UCC counsel. And then opposition at 24 minutes for AAFAF's counsel, or the Governor's counsel; eight for counsel for the Senate; and eight for counsel for the House. And then rebuttal at 20 minutes. Is that correct?

MR. ALIFF-ORTIZ: Your Honor, if I may, this is Claudio Aliff.

THE COURT: Yes.

MR. ALIFF-ORTIZ: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. ALIFF-ORTIZ: My name is Claudio Aliff, and I represent the president of the Senate of Puerto Rico.

And the agreement was the Senate would have 12 minutes, and the House of Representatives would have four minutes for its argumentation. So that's how the time is going to be distributed amongst us.

THE COURT: Your colleague will --

MR. ROLDAN: Good afternoon, Your Honor. Israel Roldan on behalf of the House.

What brother counsel said is correct. We agree as to that timetable.

THE COURT: Thank you --

MR. ROLDAN: All right.

THE COURT: -- for correcting me.

So it will be 12 minutes and four minutes. Thank you both.

All right, then. So would counsel for the Oversight Board like to come to the podium to begin? Mr. Bienenstock.

MR. BIENENSTOCK: Good afternoon, Your Honor, and thank you for enabling us to -- all of us to bring this to the Court on such a rapid schedule.

My name's Martin Bienenstock from Proskauer Rose, LLP. We represent the Oversight Board for itself and as the Title III representative of the Commonwealth.

The relief we request, Your Honor, are Orders

dismissing the Governor's Complaint dated July 5, 2018, and the Legislative Assembly and Senate's Complaint dated July 9, 2018.

Although -- taking the Governor's Complaint first, although the Governor's Complaint essentially turns on five discrete issues that the Governor has raised, plus there's a catchall which has its own significance, if anything, the Governor determines at a later time ought to be considered an unenforceable recommendation.

THE COURT: May I ask you to pause for just a moment?

Shouldn't we be setting that for 15 and then five?

LAW CLERK: 15 and five, yes.

THE COURT: Okay. So is it 18?

Okay. And if you'll -- I'm sorry. We need to wait just one more minute because my computer's kicking me off and I need to log back on. Sorry about that. Technology is wonderful except when it works against you.

I'm back. Our machine is reset for 15 minutes.

Mr. Bienenstock, thank you for your patience.

MR. BIENENSTOCK: Thank you, Your Honor. Do I need to start again or is what I said was on the record?

THE COURT: What you said was on the record, so just continue.

MR. BIENENSTOCK: Thank you. I picked up a few seconds in the bargain then.

The Governor's Complaint raises five discrete issues, and then has a catchall for any subsequent portions of the fiscal planning budget that are certified, that the Governor determines at some point should be considered unenforceable recommendations.

What makes this matter so specially specific, notwithstanding that it really turns on five discrete, somewhat unique issues is that each of the issues impacts the ability of the Oversight Board to carry out its statutory mission to return the Commonwealth to fiscal responsibility and market access. This is its ability to ensure that the people of Puerto Rico have a sustainable, competent economy and a meaningful future.

I'm going to go back to the five issues with the knowledge that the ruling on each one affects the ultimate outcome, even though it's just a discrete, unique issue.

I'll premise the legal part, and we know Your Honor has carefully read all the pleadings, so I'm not going to spend much time, except of course the Court's questions, in rehashing what we said.

But I will say that I think an overarching legal principle, so as not to be lost, because it may be obvious, is that the statute commanding the Oversight Board is to certify a fiscal plan, whether developed by the Governor or itself, has four key provisions that are mandatory. And I'm referring

to 201(b)(1)(A), (D), (F), and (G).

Now, for sure there are other mandatory provisions, many others, but these are particularly relevant here. (A) provides that the fiscal plan shall provide estimates of revenue and expenditures and other things. (D) provides that it shall eliminate structural deficits. It should provide for the elimination of structural deficits. (F) provides that it shall improve fiscal governance, accountability and internal controls. And (G) provides that the fiscal plan shall enable the achievement of fiscal targets.

Your Honor, each and every one of the five issues raised by the Governor carry out one or more of those four commands. Therefore, the notion that they could be considered an unenforceable recommendation, we submit, is wrong at the outset.

And as Your Honor knows from our pleadings, we believe, based on the statute, that 205 provides a procedure for the Oversight Board to make recommendations and get feedback from the Governor, but 201(b)(1)(K) tells the Oversight Board that if it's developing the fiscal plan, it must adopt appropriate recommendations.

And at that point they're adopted, they're enforceable. There's no such thing as an unenforceable recommendation in a fiscal plan.

THE COURT: Well, 201(b)(1)(K) refers to adopting

appropriate recommendations submitted by the Oversight Board under 205(a), and the only process of submission that is referred to and described in 205(a) is a process in which something is first incarnated as a recommendation and responded to by the Governor.

And so why doesn't the use of the term submitted in 201(b)(1)(K) suggest that the 205 process in its entirety is a precondition to any mandatory inclusion of a recommendation, even a rejected one, in the fiscal plan?

MR. BIENENSTOCK: Well, in this case, the Governor took the five issues that he's raised in his Complaint as recommendations, and he responded both to the Oversight Board and Congress and the President, as 205 provides that he can and should.

THE COURT: And so you agree generally with the allegation in I think it's paragraph 59 of the Governor's Complaint, that his May 6, 2018, letter constituted the response and notice to the Board, the President and the Congress in accordance with 205(b)(3)? So that to the extent any of these can be characterized as a recommendation, the 205 process has been carried through?

MR. BIENENSTOCK: Exactly, Your Honor. And I'm grateful that Your Honor put in the last part, because as the Court knows from our pleadings, we don't believe these are recommendations, but if they are, he's responded and the Board

has adopted them.

There are two of the five in particular -- I'm going to go through all five, but there are two of the five in particular that I believe deserve special mention and consideration, because they're so overarching in terms of the Board's ability to carry out its mission. And the two are the reprogramming and the criminal penalties.

The reprogramming issue that the Governor has raised is based on fiscal plan section 11.2.1 at page 63. And the relevant portion of the fiscal plan says that the power from the OMV, Fiscal Agency and Financial Advisory Authority, or the Department of Treasury, et cetera, to authorize the reprogramming or extension of appropriations for prior fiscal years is hereby suspended.

The reason I went to the trouble of reading that is that I wanted to point out that what the fiscal plan is doing is suspending the authorization or the power of AAFAF, et cetera, to authorize reprogramming. And I'm emphasizing authorize, because when we read the government brief, and pleadings and Complaint, it's unclear from which section of which pleading one reads whether they're complaining about the power to authorize being taken away or the power to request.

Presumably if it were just the power to say may I, they wouldn't have made a Federal case out of it, but they do

say that's the issue in various pleadings. That's not an issue. We don't care if the government -- the Governor says may I. What we do care about a lot is if the Governor or other parts of the government independently, without Oversight Board approval, authorize reprogramming.

Now, why do we care so much? We set the fiscal plan and the budget. For every dollar available, Your Honor, there has to be a careful decision made, should it go to services for the people, investment in their future, or payment to creditors. And we have to get the balance right so that it results in a sustainable economy and hope for people and creditors in the future.

If the Governor has the power to go into some prior budget and say, oh, gee whiz, there was some unused appropriated funds in this budget, I'm going to -- that doesn't mean there's money set aside. It just means there was a legal appropriation that wasn't used.

If the Governor finds that at any given time, day or night, any time in the 12 months, says, oh, I'm going to use some money for a project over here or a project over here, then we've lost control of the fiscal plan and the budget, and the debt restructuring, because that wasn't in our plans.

And the notion that this can happen not only destroys the ability to control the budget and the debt negotiations, it destroys the perception that there's a transparent process

where we know what money is available and we know what we're spending it on.

THE COURT: I fully understand why the prospect is so distressing from the perspective of the Oversight Board, but what -- how do you reconcile the specific provision in 204, speaking to reprogramming within a particular fiscal year, when there's a fiscal plan and budget in place? And the provision in 201 (b)(1)(A) that speaks of conformity with applicable laws, with the notion that the Oversight Board can unilaterally disable a pre-PROMESA statutory allocation of authority.

MR. BIENENSTOCK: Okay. I'm glad Your Honor raised it. 204. It's a process for the Governor to ask, to ask, to request that money within the certified budget be reprogrammed. And the legislature cannot, is not authorized to do that unless the Oversight Board certifies to the legislature that that reprogramming will not be contrary, inconsistent with the fiscal plan.

We have no problem with asking, and the Oversight Board being allowed to say, okay, it fits or it doesn't. As a practical matter, Your Honor, the Governor knows at all times we consider requests for changing anything. If it's a good idea, we want it. It's the notion of independent authority. And that I think --

THE COURT: Yes, but my question to you is that that

statutory authorization of request for reprogramming and control of the Oversight Board over whether the request will be granted or not is enacted in terms of a fiscal year under a certified fiscal plan.

MR. BIENENSTOCK: Right.

THE COURT: It doesn't say whatever, whenever. It doesn't speak to prior allocations.

MR. BIENENSTOCK: But that's our -- that's our point. That the only thing the statute does is let the judge -- let the Governor ask to reprogram money within the certified fiscal plan for the year. It doesn't authorize the Governor to do anything else.

And let me get to that answer, because I thought this was really the second part of the Court's question. Under -- whether you call it under 204 or under 201 (b)(1)(A), the answer is anything that's inconsistent with PROMESA is preempted by Section Four of PROMESA. When PROMESA goes through all of 201 and 202, telling the Board how it -- how it should formulate a fiscal plan or assess a fiscal plan formulated by the Governor, and then tells the Board how it should do the same for the budget, a pre-existing authorization from pre-PROMESA law in Puerto Rico saying, well, not withstanding what Congress has said about the budget in the fiscal plan, you just go right ahead and reprogram at will, that's totally inconsistent, because we can't control

the cash flow or anything else if the Governor has that power.

THE COURT: Well, it is indeed a conundrum, but we do have 201(b)(1)(A) that says, "and be based on applicable laws," and Section Four, the preemption provision, speaks of inconsistencies with this Act. It doesn't say inconsistency with steps or measures taken or implemented pursuant to the Act.

So is there some legal significance in the specific phrasing of those two provisions for the question of the scope of the Oversight Board's unilateral power? Obviously I'm seeking to engage and explore that issue.

MR. BIENENSTOCK: Well, I think under 201(b)(1)(A), it's very general that the Oversight Board should provide a method for estimating revenues and expenses. And it's hard to see how the Congress could have intended that provision to mean the Governor can undermine the same fiscal plan and budget by finding appropriations that he wants to reprogram at will without asking permission.

THE COURT: Or is it a command that if the Oversight Board wants to disable that, it has to, as part of the fiscal plan, specify bills that require enactment in order to reasonably achieve the projections of the fiscal plan? And so was it -- is it a requirement that in your fiscal plan, you have as one of the action items repeal of this Act 230 provision or authorization?

MR. BIENENSTOCK: Well, we didn't think we needed to dictate repeal, because it's so inconsistent with the notion that we set the budget. This is basically imposing a budget item that we didn't agree to, that we didn't approve. I think it's just the opposite. It's just totally inconsistent. The time is running.

On the criminal penalties, what the Governor is asking is that overspending the appropriations in the certified budget doesn't have consequences. What could be more indicative of the fact that this is an effort to basically make the Oversight Board's fiscal plan and budget meaningless? That's what the Governor is asking for.

We didn't change the criminal laws in Puerto Rico. We just said this is an appropriation. If you -- if you spend more than that, knowingly and willingly, and we agree, the terms of their criminal statute govern. It has to be knowingly and willingly. You're subject to the same sanctions as if this had been a prior budget.

THE COURT: So is that your interpretation of the impact of the statute, or are you saying that the Oversight Board under PROMESA has authority to direct the prosecutorial authorities to --

MR. BIENENSTOCK: No.

THE COURT: -- bring criminal charges?

MR. BIENENSTOCK: No, not at all. This is a

statement that in our view, this budget, like every other budget they passed -- which has the same language, by the way, Your Honor. Their own budgets had it.

This budget, because it's deemed approved by the legislature and the Governor, this budget has the same significance as a pre-PROMESA budget approved by the Governor and the legislature. And if somebody knowingly and willingly overspends an appropriation, they're subject to Puerto Rico laws that would have to be brought by the Puerto Rico Attorney General, et cetera, under their standards, et cetera.

We pointed that out, but the Governor is saying no, since it's your fiscal plan and budget, people shouldn't be subject to that. That just tells the Court, it tells everyone, he wants to make this a completely ineffectual budget, because you can overspend with impunity. That's why this is so important, Your Honor.

I see that I'm over time.

THE COURT: I have a couple of questions for you --

MR. BIENENSTOCK: Sure.

THE COURT: -- that are on my clock.

MR. BIENENSTOCK: Thank you, Your Honor.

THE COURT: So first, is there documentation of the certified budget? We searched high and low and couldn't find something that is a granular, particularized budget. So could you tell us where it is?

MR. BIENENSTOCK: Yes, Your Honor. I only have one copy with me here, but --

THE COURT: Well, if you can tell us where it's been -- where it's filed. We looked on your website. We looked as best we could through the pleadings, couldn't find it.

MR. BIENENSTOCK: Okay. It's at the top -- it's Exhibit 14 -- it's document number 38-14 filed July 21, 2018, and it's 68 pages, in case number 18-00081. That's the adversary proceeding.

THE COURT: All right. So Exhibit 38-14 -- I'm sorry. Would you read that ECF number again?

MR. BIENENSTOCK: Sure. It's document number -- my copy says 38-14. I guess that's because it's Exhibit 14 to document 38.

THE COURT: All right. 38-14 in 18-80?

MR. BIENENSTOCK: In 00081.

THE COURT: In 18-81. All right. Thank you.

Before you sit down, one other question. In the Oversight Board's view, is legislative action required to implement a budget that has been certified by the Oversight Board? So is there some appropriation legislation or something else that's required?

MR. BIENENSTOCK: Absolutely not. 202 clearly says that when the Oversight Board certifies its budget, it is

deemed approved by the Governor and the legislature.

THE COURT: And the Joint Resolutions that were attached to the Complaint, and I gather were attached to the budget, are those measures that the Board would consider enacted or adopted by virtue of the Board's certification, or were those proposals for adoption by the legislature in order to implement?

MR. BIENENSTOCK: The former, Your Honor. Most of them, Your Honor, most all of them are the same resolutions that the Puerto Rico legislature attached to budgets in prior years. It's one -- and the Puerto Rico Constitution provides that the budget has to come with rules for its implementation. That's what the resolutions are, rules for its implementation.

It's all one packet. It all comes under the heading, budget.

THE COURT: And so in this case, your understanding of PROMESA is that it allows -- the deemed approval by the legislature is also a deemed approval by the legislature of the joint resolution aspect of the typical Puerto Rican budgetary package?

MR. BIENENSTOCK: Yes, Your Honor.

THE COURT: Thank you.

Mr. Despins.

MR. DESPINS: Good afternoon, Your Honor. Luc Despins for the official committee. I probably will not use

the full five minutes.

As Your Honor knows, we did not file a pleading, even though we had a right to do so, because we're not taking a position on the legal issues here. We don't believe that we would add very much by rehashing all the points that have been made, nor has the committee taken a position regarding the desirability of some policy questions regarding, among other things, the repeal of Law 80.

The committee intervened in this proceeding because it was concerned that absent its intervention, there would be no discussion of the potential impact that fiscal plans or plans -- or plan or changes to such plans have on settlements reached or to be reached in these Title III cases.

The Oversight Board's Reply mentions this vaguely in footnote 16, but we wanted to elaborate on that point very quickly, which is that when the committee in its capacity as the Commonwealth agent approved or entered into the agreement in principle on June 5th with respect to the Commonwealth-COFINA dispute, there was a certified fiscal plan in place.

That was the May 30th fiscal plan. And that fiscal plan contains certain assumptions about revenues, expenses, debt capacity. And obviously this was relevant to the May 30th fiscal plan.

In light of recent developments involving the fiscal

plan, some of these assumptions are no longer valid, thereby affecting these same revenue and expense and debt capacity projections. This, in turn, could have a very real effect on the feasibility of the settlement contemplated in the Commonwealth-COFINA agreement in principle.

To be clear, the committee does not take a position as to which fiscal plan should be certified. All it seeks is to make sure that any fiscal plan that is put in place provides for the same or higher debt level capacity as provided under the fiscal plan that was in effect on June 5th. Without that, you know, we're going to have some issues with respect -- or we may very well have issues with respect to the Commonwealth-COFINA settlement, where obviously the committee is not abandoning the settlement.

I want to make clear that the message is not that, but rather that these internal issues need to play out before we have clarity on where we stand. And that was the purpose of our statement, Your Honor.

THE COURT: So before you sit down, are you asking me to be mindful that this is an essential externality, if that's not a contradiction in terms? Are you asking me to do something in particular with respect to any ruling that I issue? Are you underscoring this issue for the Oversight Board as it takes positions on what its fiscal plan will be? Can you give me context?

MR. DESPINS: There's some of that, but the Oversight Board understands that issue clearly, and I believe the Commonwealth understands it as well. So it's just that we wanted the Court to be aware of that dimension.

I know you're dealing with complex legal issues about who has the power, and of course these are the issues you need to address. But we believe that the parties in the case need to understand that there's another dimension to this.

THE COURT: Thank you.

MR. DESPINS: Thank you.

THE COURT: And now we turn to Mr. Friedman.

MR. FRIEDMAN: Good afternoon, Your Honor. Peter Friedman on behalf of Governor Rosselló and AAFAF from O'Melveny & Myers.

Actually, one of the things that might highlight the narrowness of the relief that we're seeking is we don't think that the Court can do and certainly haven't asked the Court to do what Mr. Despins just asked. We don't think we can tell the Oversight Board, go certify a fiscal plan with X surplus. That's well beyond the narrow issues we've raised.

We're raising a really narrow set of issues that if the relief we asked for is granted, what it will do is balance the roles and rights and powers of the government with the Oversight Board, and reject the concept that we basically have no functional role.

Mr. Bienenstock said the Governor doesn't want things to be -- doesn't want the budget to be meaningful. Nothing could be further from the truth. First of all, if the government doesn't comply with the budget, nothing in our Complaint attacks in the slightest bit the Oversight Board's powers under 203 to require a report as to whether revenue, cash flow and expenditures are compliant with the budget.

It doesn't change the fact that if the Oversight Board goes through 203(c) and sends the right message, that it can then step into its powers under 203(d) and start making appropriate budget cuts at the Commonwealth or with respect to territorial instrumentality. It's just not true that their budget has no teeth.

Moreover, Your Honor, the question with respect to both suspension of reprogramming and with respect to the implementation of a criminal law is not should the Commonwealth pass a law that says this is a crime. It's can the Board legislate. We think the answer to that is no, it can't legislate. It does not have the power to make something a crime even if the Commonwealth does.

Criminalizing something is, I think, at the heart of an independent government's ability to control itself, to control its legislature, to control its people. To take that power away from the Commonwealth and say that the -- I'm sorry, Your Honor. You clearly have something to say, so I'll

stop pontificating.

THE COURT: Well, just so that I follow, I think what I heard Mr. Bienenstock say as to the last criminalization point is PROMESA, at the appropriate stage, takes the making of a budget out of the -- the certification of the budget out of the hands of the elected government and lets the Oversight Board put it in place. And Puerto Rico already has a statute that says noncompliance with the budget, that is, the operative budget for the Commonwealth, is a crime.

And the Oversight Board is contributing to the mix by way of underscoring the significance of and the solemnity of the certification, its position that noncompliance with that official budget for the Commonwealth would be a crime within the meaning of the pre-existing statute. So how is that legislating?

MR. FRIEDMAN: So when I look at a joint resolution, a joint resolution is not a budget, right? They were not given the power, all legislative power, under Article III of the Puerto Rico Constitution, to legislate. They were given the right to deal with a budget.

A budget is not a defined term in PROMESA. It's a small B, budget. There's a capital B, territorial budget, but that links back to the definition of budget, which is a small B.

I think the right way to define budget is not budget,

plus all budget adjacent powers, or budget, plus every power the Puerto Rico legislature ever had with respect to a budget. It's -- I could imagine if, one -- they could say, well, we can put anything we want to in a budget, right? We can change the name of Puerto Rico to Rich Port in a budget because we think that's what you ought to do; that's the right way to implement a budget. No.

They have the power to submit a bunch of numbers. Those numbers can be fairly detailed and line item oriented, but we think that's all they have the power to do.

How do we know what a budget is? Look at their own budget. 107 says the Oversight Board has to submit a budget to Puerto Rico in the Constitution and to Congress.

If you look on their website, what their budget is, it's a bunch of numbers. It doesn't say, here's how the Oversight Board is going to do everything possible with respect to its budget. It's just a budget.

It says, we're going to spend money on motor oil; we're going to spend money on cars; we're going to spend money on rental -- on renting space; we're going to pay people. That's what a budget is to us.

THE COURT: So two questions. First, on the ancillary documentation to the budget, it seems to me Mr. Bienenstock's understanding is that Puerto Rico operationally, in order to implement a budget, has these

ancillary documents.

So are you saying that they can't create and have deemed approved these ancillary documents? So that simply by refusing to pass the joint resolution, or otherwise not acting on the set of numbers that the Board sends across the legislature, can stymie the certified budget?

MR. FRIEDMAN: Your Honor, if that happens, Puerto Rico can't spend any money. There's no money to be spent outside the context of their budget.

So if the Puerto Rico legislature decides not to pass a statute, that says here's how we're going to enable things, we can't spend a penny outside of compliance with the fiscal plan and the budget. And I think that's one of the things that's gotten lost here.

When we think about what's mandatory and what can be done, either under the budget or the fiscal plans, the way we think something is made mandatory and the way you know it's mandatory is by looking at 104, 203 and 204. Do they have the right to punish?

I think, as you said in a CTO decision, strongly incentivised. Do they have a right to cut something? Do they have a right to review a piece of legislation?

You know, Mr. Bienenstock made the argument, if I understand it, hey, if it's inconsistent with 201 or any provision of PROMESA or anything we do, it's preempted.

We don't think that's right, because we think that's allowing them to legislate. We think the examples where they're allowed to legislate, or really even repeal laws or take oversight over laws is super narrow. It's under 204(a), and also the section that says they can review any statute passed in the gap period before the Board was fully, you know, instituted or constituted.

We think that they have rights under 204 that let them review Executive Orders, let them review contracts, but for specific purposes -- review regulations, but for specific purposes. Not suspend them. Not write them away if there's not some empowerment under 203 or 204 or 104 to do it.

And I think that's at the crux of this. Can the Board legislate, whether through the budget or through a recommendation? We think the answer is no. We think what they have the right to do is to make recommendations.

I think the proof of that, Your Honor -- and I think you mentioned 201(a). They can make recommendations to what laws can be passed. Does that mean if they put it in the fiscal plan it becomes the law? The answer to that is no.

And the reason we know that is because Law 80 is still the law of Puerto Rico. If that is true, just by putting something in a fiscal plan, that the effect was the legislature and the government had to do it, A, you'd have like a massive, crazy Control Board that was unlike anything

in the statutes. And B, sitting here today, the May fiscal plan that said Law 80 is repealed and all the assumptions about revenue and budget, et cetera, those would be the law of the land. But they're not, because they don't have that power.

So I don't know if that answered your question or that was a little more broad than what you were looking for, but I think those are sort of fundamental principles that animate our position.

And, Your Honor, what we're asking the Court to do is say, if something is listed in a recommendation under 205(a)(1) through (10), that's all it is. It's a recommendation. The Board can tell us it's a recommendation. If the Governor agrees it's a recommendation, then at least with respect to the Governor, it has some force.

If the legislature agrees to a recommendation, frankly I think we're getting into a little bit of a gray area, because if the legislature backs out, I'm not exactly sure what happens.

Can they be ordered to vote on something? I don't think so. But thankfully, that's not the situation we're dealing with. But again, all it is is a recommendation.

THE COURT: Well, what about something that doesn't require a change in existing law, something that the Oversight Board has put through the recommendation process? The

Governor interpreted these five items to have been done. The Oversight Board's judgment is, nonetheless, that it is necessary for Puerto Rico's future. And so the Oversight Board certifies the budget that funds its desired outcome, defunds without, for purposes of this hypothetical, violating any specific statute, the course of action that the Commonwealth seems to want to pursue. What prevents the Oversight Board from doing that?

MR. FRIEDMAN: Your Honor, if they don't budget for it, then we've got a problem. We can't spend -- nothing in our Complaint says that we can spend in a manner inconsistent with their budgets.

Do I think that means -- let's say they budgeted one dollar for Christmas bonuses next year. Does that eliminate a person's statutory right to a Christmas bonus? Probably not.

Does it mean we can't pay that Christmas bonus? I think it does mean that we can't pay the Christmas bonus, because the Christmas bonus is six hundred dollars.

THE COURT: Or it forces hard choices in an application for reallocation or reprogramming.

MR. FRIEDMAN: Which I think they consent, I think they acknowledge that, hey, if we can meet their budget targets, good luck. Right? And those are hard decisions that I think they are reserved to the government, their elected government, in part because the way PROMESA is structured is

to ensure that the governed still have a stake.

It's the Governor who has to make some difficult choices, because he's the one who has to answer to the people. The Oversight Board is just, here's how much money you get. If people have to be let go, if Christmas bonuses don't get paid because of that, that's on us. That's on the chief executive officer of Puerto Rico to make a determination how to implement that budget guideline. And if there are violations of that budget guideline, then 203 kicks in.

If new legislation is passed inconsistent with that fiscal plan and that budget resolution and tries to say, oh, next year you have to spend 20 million dollars on Christmas bonuses per person, that legislation has to be scored. If it's scored and it says yeah, this is materially inconsistent with the fiscal plan, then they get to do certain things that are not particularly pleasant for Puerto Rico.

But we're not -- nothing we do takes away a single iota of their power to do that. We don't challenge that.

THE COURT: So you accept that the Board could give you a bucket that's salaries, benefits, bonuses, whatever that is. To cover Christmas bonuses means something else has to be squeezed, and you have to live within that bucket.

MR. FRIEDMAN: Yes.

THE COURT: Do you also accept that the Board can give you an operating expense item for administrative

agencies, that if spread among 134 administrative agencies, would give you 25 cents per agency; but if consolidated down to 22, would give you -- or some other number or consolidated in some other way, would give a workable budget? Is that something that the Board can do?

MR. FRIEDMAN: I think that's within their power. Your Honor, we can probably spend a lot of time on hypotheticals.

THE COURT: I'm trying to understand. That's all.

MR. FRIEDMAN: Yes, I accept that one. If the Board gave the legislature one dollar next year for itself, would that be a problem? I think it would, because that would vitiate the legislature's ability to play a meaningful role under PROMESA.

I don't think this Oversight Board, which is made up of seven extremely smart, extremely competent people who care about Puerto Rico's future, would ever do that; but I think there are some outer limits, perhaps. Or maybe if they do that, it's a political problem and the President removes them for cause. Maybe that's the bigger answer. I don't think that would ever happen.

I guess I accept what you've said as being within their lawful power, and I think if you read our Complaint, I don't think we've challenged that.

I think this is a good time to say, Your Honor, that,

and the Oversight Board acknowledges this in its pleadings, there's been a tremendous amount of working together, of listening. There's a 113-page fiscal plan. We're talking about five issues.

I think both the Oversight Board and us took exactly what you said in November to heart, which is that we have to act respectfully, candidly and cooperatively. But I think what we're trying to get at in this Complaint is the other part of what you said in that Opinion, which is that all that has to happen within their roles as defined by Commonwealth law and PROMESA.

And I guess our concern, Your Honor, is that the Oversight Board basically seems to give us no role under the Commonwealth law in PROMESA, while our approach to statutory interpretation respects a role for both the elected government and the Board.

Your Honor, I want to talk about reprogramming for just a second, because I think a critical issue with reprogramming is again, we get it, we cannot act inconsistently with 204. I don't think they can go beyond 204 and change the law. But if our reprogramming -- to the extent that the Governor would ever try to use Act 230 to reprogram, if our reprogramming means that we are spending more money in a fiscal year than we're allowed to, that's a program for us under 203. And the Board has the power to do certain things

to us.

What we object to is their legislating to try to suspend the law when they don't have the right to suspend a law outside of 204, which talks about when they get to suspend the laws or prevent the enforcement of the laws. I think they're just going well beyond what their statutory powers are, and that's what we object to.

The same thing, Your Honor, comes through in our issue with respect to the hiring freeze example. They talk about, I think in their -- you know, the fiscal plan appears to make mandatory, on certain events, a hiring freeze. We don't think they have the right to say mandatory hiring freeze.

First, we think it's a recommendation. All right. And second of all, because it relates to one of the 205 topics -- and second of all, the budgetary powers they have specifically mention hiring freezes, when they're allowed to impose hiring freezes.

And it's not just sort of by automatic operation if you fail to comply with X. It's, first of all, only if a territorial instrumentality, not the Commonwealth; and second of all, it's only after 203(a), (b), (c), and (d) have been complied with.

We just don't think they can change PROMESA by putting it in their fiscal plan. That is our concern, not

whether the Board has the ability to do things with respect to fiscal responsibility. It has the tools it needs to do that. We're just saying you can't go beyond your tools by putting something into a fiscal plan in the guise of what we think are recommendations.

Let me give you an example of something that's not a recommendation, because you may be worrying or wondering, Mr. Friedman, if I grant you the relief that you want, like does the Oversight Board have any power left? Sure.

So I guess, as an example, I would use section 12.52 of the fiscal plan. That's an example of how the Governor believes the fiscal plan is supposed to work.

The section provides that the PRDE, the education department, must achieve 54 million dollars in net personnel savings, and seven million dollars in non-personnel savings in fiscal year 2019. That's a must. And you know what? We think that must can be put into the budget.

But section 12.52 then offers recommendations as to how PRDE should accomplish these goals. PRDE could consolidate its footprint, including schools, classes, teachers and administration, modernize facilities, revise the curriculum, and equip teachers with what they need to succeed.

And you know what? The Government's going to have to choose in between those options or maybe some other options, how to get to the 54 in personnel savings and the seven

million in non-personnel savings, but it should be up to us to figure that out.

And I would say in some places in their briefs, I read them to be saying, you're right. You can pick Christmas bonuses, or you don't actually have to consolidate in, you know, all the agencies as long as you hit the money bonus. We think that's how it's all supposed to work.

And I think one of the reasons that it works, Your Honor, that way is the way -- and I know this Court is extremely familiar with it, it's the way Congress set up PROMESA.

Congress had the power to do whatever it wanted to. It could have taken all power away from the elected government and said, control -- you know, a mega control board is in place, but it didn't. And because it didn't, I think we should sort of heed *Gregory versus Ashcroft* which says, when Congress intends to make significant changes in a traditionally sensitive area -- and to my mind, home ruling self-government qualifies as a traditionally sensitive area -- it must make its intention to do so unmistakably clear in the language of the statute.

So I kind of think of that, Your Honor, as the tie should go to us. Right. If the statute is a little bit like, hey, you could read it either way -- and let me be honest, the statute has some areas where maybe that's right -- I think it

goes to us, because it's not unmistakably clear that the power has been taken away from us.

And again, both sides can quote snippets from the legislative history. I get that. Right. We have ours. They have theirs.

We think the most compelling, finally, significant portion of the legislative history is what did Congress think about doing? It thought about a D.C. Control Board type power where the Board had the specific power to force recommendations down the elected Government's throat, whether that be the Governor or the legislature, and they chose not to do that.

We think that was an act of legislative significance, and how you interpret what 205 means and how you interpret what 201 means.

THE COURT: Then you have 201(b)(1)(K), which brings back an ingredient that is not full-blown D.C. Control Board, and is not absence of D.C. Control Board. So that's the hard thing, isn't it?

MR. FRIEDMAN: It is a hard thing, right? But you know, Your Honor, we think too -- we obviously have very different interpretations of what 205 means. And we do think the reference in 201 to 205 is a very meaningful and significant mechanism.

So what I would say about that is, I kind of think

that the position they took in their Reply Brief, which is 205 just gives the Governor a right to complain, only works if you think something else in PROMESA took away the Governor's right to complain.

The Governor can issue press releases. The Governor can write letters to whoever he wants. The Senate can pass non-binding census of the Senate and the House and say, this is an outrage. This is terrible. Right. 205 isn't where that power comes from.

And I think their interpretation effectively is saying, you have a right to complain and say you don't like our recommendations, and the fiscal plan gives you that. I don't think that's right. I think we get to complain no matter what.

THE COURT: Doesn't it up the ante on a complaint if it obliges the Governor, if he's going to object formally, to produce a justification of a level and of a degree of significance and some solemnity that warrants a letter to the President and Congress? And then if the Oversight Board wants to go there, it has to engage and be prepared to meet both politically and in the public eye the concerns that have been raised by the Governor, and potentially the attention of Congress to those issues in saying, this is so important that we are wielding this, you know, very powerful tool that we believe Congress gave us?

MR. FRIEDMAN: Two responses to that. First of all, I think the statute would say, you can impose rejected recommendations, if that's the power they had. Or it would say, as the original draft of the statute in the D.C. Control Board said, Oversight Board, you then have to explain in your own letter responding to the Governor's letter by, you know, point by point, why what you're doing is so important, and you have to do something else.

But the process for recommendations just ends in 205. It doesn't say, and then you get to do X. And I think what's really important to note about 205, Your Honor, is it's not just recommendations. It's recommendations that the Governor -- the government may take, and this is what I think the most important step is, to ensure compliance with the fiscal plan.

If the fiscal plan was so sacrosanct that we had to do everything in the world to comply with every aspect of it, why would we be allowed to reject measures to ensure compliance with the fiscal plan? Because we're allowed to, assuming they don't hit any of the targets under 204 that give the government, the Oversight Board the power to take corrective actions.

And there's nothing in 204 that says, if you reject a recommendation, we get to take a corrective action. We think that -- so when you look at 204 and 205 together, that's pretty powerful.

The other point I'd make about 205 -- I'm sorry, about the statute and the way it works -- and if you want to ignore this because I didn't put it in the brief, that's fine. It didn't occur to me until yesterday afternoon -- is that 202 has some really important language about what happens when a budget is deemed certified, or was certified.

And under 202, it's (e)(3) maybe, because it's in full force and effect, the fiscal plan doesn't say a rejected recommendation is in full force and effect and is the law of Puerto Rico. Again, I think that's meaningful, and I think it shows the Board doesn't get to legislate.

The Board doesn't get to tell us what to do, because the fiscal plan doesn't become the law of Puerto Rico. It just becomes something they can hold us to if they have a specific power to do that under 204.

Unless you have any further questions, Your Honor, we rest on the rest of our papers.

THE COURT: Give me just one moment.

That's all. Thank you.

MR. FRIEDMAN: Thank you, Your Honor. And I do echo Mr. Bienenstock's comments, that we are grateful to your staff for exercising the power, and to you to exercise us to -- having been heard so quickly.

THE COURT: Thank you. It's very important.

MR. ALIFF-ORTIZ: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. ALIFF-ORTIZ: This is Claudio Aliff on behalf of the Legislative Assembly, the Senate of Puerto Rico and its President on behalf of the Senate.

Your Honor, I will begin by saying that Section Four of PROMESA makes PROMESA the supreme law of the territory on everything consistent with it, but it does not make the Board supreme in Puerto Rico. PROMESA did not appoint the Board as the king of this island territory.

In fact, PROMESA respects the political powers that the -- the political branches of government has under the Puerto Rico Constitution, and allows the legislature to enact laws and to approve budgets. Something that the Board prevented from doing -- prevented the Legislative Assembly from doing when it engaged in behavior outside of the confines of the Act, such as the decision on June 29 to rush the certification of a fiscal plan in violation of Section 201(c) and (d).

The procedures departed -- that departed from Section 204(a)(4)(B), when it interfered with the legislative process, sending a letter on June 4 to a president of a committee of the House of Representatives telling him that if PROME -- if Law 80 was not repealed in the way the Board wants it to be repealed, it would have adverse consequences to the government of Puerto Rico and the legislature in particular of depriving

it of its budget, and the practices of misrepresenting revenue forecast to throw monkey wrenches at the legislature, preventing it from ever being able to approve a certifiable budget.

If you look at the revenue forecast that the legislature -- that the Board assessed in the June 29 fiscal plan, which estimated them downward, to the budget that they approved, the budget that they approved is 200 million dollars over the revenue forecast for the fiscal year 2018-2019. It's that -- the budget that's approved by the Legislative Assembly of Puerto Rico was 40 billion less than the revenue forecast that the Board certified on May 6, when it referred the budget to the legislature.

So those are really monkey wrenches thrown at the legislative process that will never allow the legislature to exercise its authority within PROMESA. Meanwhile, we have the Board exceeding its authority within the confines of PROMESA just to frustrate the legislative process.

Not only that, when we see the reason why, the only reason that the Board has given to rush into a certification of a new plan on June 29 was because Law 80 was not repealed in the fashion that they wanted it. So that prompted, according to them, the need to revise the new -- the fiscal plan of May 30th and approve unilaterally one on June 29. That will certainly frustrate passing or certification of the

legislature budget.

And moreover, that reason is purely pretextual, because PROMESA -- I'm sorry, because the Board's own estimates show that repealing of Law 80 would not have any fiscal impact in the Puerto Rico budget until, at the best, the year 2020. Because the assumptions on which repeal of Law 80 rests will not trigger any new income until after it has come into place, which is January 1st of 1919 -- of 2019. I'm sorry. And the revenues will not come into the Commonwealth coffers until the year 2020. Therefore, it's pretextual.

The idea that they have to offset any losses created by the legislature on the Puerto Rico revenues for the fiscal year 2018-2019 as a result of not repealing Law 80, it's totally a conscious misrepresentation by the Board to justify illegal acts outside of the purviews of PROMESA, Your Honor. And it was incumbent on the Board to wait until the legislative process ended, until the legislature produced a law that repealed or not Law 80, and then let -- then engage in what Section 204 requires them to do, which is ask the legislature to explain the inconsistencies on that repeal.

But no, they did not do that. They chose to interrupt the legislative process by threatening the legislature in a letter dated June 4, and then just decertifying a validly certified fiscal plan, which is the May 30th fiscal plan, and approve the new one without the

participation of the Governor in any fashion or way.

And then the eventual consequence is what? They have approved and certified their own budget. And right now we are operating in Puerto Rico with, according to our perspective, an illegal budget.

And that creates a real bad situation here, because if Your Honor agrees with us, then what are we going to do? Are we going to give the Board the option to determine whether the budget is certifiable or not, the budget approved by the legislature and the government of Puerto Rico? I don't think that that's an adequate remedy at this point.

The Court can reinstate then the budget approved by the legislature, but it has a problem. It has not been certified by the Board.

THE COURT: Yes, but --

MR. ALIFF-ORTIZ: Yes?

THE COURT: Well, I was going to ask you, what in PROMESA or any other body of law would give this Court the power to certify a budget?

MR. ALIFF-ORTIZ: Well, not to certify, but yes, put in place a budget that was validly certified, which is the 2017-2018 budget. Article VI, Section Six of the Puerto Rico Constitution requires that when for a new fiscal year the legislature cannot agree on a budget, the fiscal year of the prior -- I'm sorry, the budget from the prior fiscal year will

then continue operating for that fiscal year in which the government could not agree on a budget.

Here we have the budget from the year 2017-2018. It's a certified budget. That budget was certified by the Board. So we have -- we have a budget that the Court can look at as one that was compliant, according to the Board, and put it in place.

THE COURT: And so now that is a remedy that was not flushed out or pleaded in your Complaint, correct?

MR. ALIFF-ORTIZ: Yes, Your Honor. It was not clearly developed, but we have a catchall request, which is to provide any remedy that is adequate in law. And based on the Constitution of Puerto Rico, that is a remedy that is adequate in law.

When the Board chose to deprive the legislature of its prerogatives within the constitutional framework in which it operates, it took away their functions as a representative of the people that they voted for, when they decided not to repeal Law 80, and when they decided to approve a particular budget.

So the actions of the Board certainly affected the legislative functions of each one of the legislature and the branch itself when it took away the powers to approve a budget without even giving the opportunity of comparing that budget to a validly approved fiscal plan to which it complied.

It is very important, Your Honor, that Law -- repeal of Law 80, and I want to stress what brother counselor already expressed, repeal of Law 80 is just a recommendation that the law allows the legislature to reject, which they did. According to the law, they sent the letter to the President, the Congress, the Board, everyone, stating the basis for the rejection.

So foreseeing that transformation in the employment area of Puerto Rico, which is outside of the boundaries of the Board, because that affects the private sector -- the Board is here to lead and direct the government of Puerto Rico, the public sector, on matters of fiscal responsibility and being able to return to the markets to gain financing to provide services and operate in the future.

THE COURT: Well, is it illogical to think that the Board is necessarily concerned with the economy of Puerto Rico as a whole, and the ability of the Puerto Rican economy, both public sector and private sector, to operate in a way that is sufficiently credible to attract interest in the credit markets?

MR. ALIFF-ORTIZ: Sure. And they can -- and they can engage in the exchange of ideas to develop those changes in the market, in the labor market, in the private sector. And that's what they miss, because instead of waiting for the end of the legislative process, and receiving the input from the

legislature as to why it did not agree with the way the Board wanted to repeal Law 80, instead of imposing their public -- the policy views on how the market should be, really transcends, went beyond its power in PROMESA, because PROMESA creates the avenue to this exchange of ideas, to create legislation that is satisfactory to the Board, and accomplishes the ends that they intend to accomplish, Your Honor.

And I think that by just bypassing that process, they just violated PROMESA and acted beyond the purview of their authority.

We submit our position, Your Honor. Thank you.

THE COURT: Thank you, sir.

MR. ROLDAN GONZALEZ: Buenas tardes, Your Honor. Israel Roldan on behalf of the House of Representatives.

THE COURT: Buenas tardes.

MR. ROLDAN GONZALEZ: Your Honor, we are here mainly for -- because of two reasons. First, we -- and when I say we, I mean Puerto Rico -- we are subjected to the territorial clause of the United States Constitution.

This was addressed by Judge Swain in her recent Opinion and Order. We are a territory. We are a colony. For some of us, Your Honor, that's shameful, but that simply is the truth.

The second reason, Your Honor, was stated by the

brother counsels in their Reply Memorandum that was filed the day before yesterday. And I quote, we are here because the legislature demands restoration of its budget without repealing Law 80.

Your Honor, the House and the Senate were working on repealing Law 80. There was all -- differences between the House and the Senate on how to do it, and they were working on it. They agreed on two things: The first one was that Law 80 had to be repealed. The second one was that both houses agree that it was to be repealed prospectively. But the Board wanted the law to be repealed retroactively.

So why the cuts to the legislative fiscal year 2018 budget? This is also answered by the Board in the Memoranda of Law, and allow me to quote again. The Oversight Board agreed to certify a new fiscal plan restarting the legislative budget and making certain other changes the Governor requested, in exchange for the repeal of Law 80. When the legislature failed to enact the repeal, the Board addressed the economic impact by certifying the June 2018 fiscal plan.

So, Your Honor, the question is not if the Board -- at least from my point of view, it's that the Board has the power to certify the June 2018 fiscal plan and the 2018-19 budget. The question that we present, Your Honor, is that if it was done in valid reasons, as stated in PROMESA, or it was done in retaliation because Law 80 was not repealed

retroactively as -- and in doing so, the Board exceeded its authority.

It is clear that due to the Legislative Assembly disapproval of a bill, repeal Law 80, in the way and manner the Board wanted, he refused to certify the legislative assembly budget which complies with PROMESA, and proceeded to impose punitive measures which included reducing the legislative assembly operational budget.

The Board's acts exceeding authority on PROMESA constituted a usurpation of the legislative assembly, exclusive legislative power, and furthermore, constituted an act of supplementation, bypass or replacement of the Commonwealth elected leaders. Therefore, has unlawfully enclosed upon the Legislative Assembly exclusive legislative power under the Puerto Rico Constitution.

So we submit, Your Honor, that there is no valid reason for the Board's action. If the alleged reason for repealing Law 80 is that this will promote the creation of new jobs, why it has to be retroactively?

The reason, Your Honor, we respectfully submit, is that there are no reasons. The Board wants to repeal Law 80 retroactively, and this constitutes an abuse of its power. This is the real reason why we're here today.

We pray for justice, Your Honor.

THE COURT: Thank you. May I ask you a question?

MR. ROLDAN GONZALEZ: Sure.

THE COURT: The Board I think will say something to the effect that it has done its economic and policy studies, and believes that the change has to apply retroactively in order to achieve certain targets in the future. And the Board would say that's its reason is that it genuinely believes that.

And the Board also, I think, has been saying that it has -- it has the power to create budget lines and to use that budget authority to give incentives or disincentives to the legislature and the Governor to see things the Board's way.

What in PROMESA specifically or other applicable legislation makes it illegal for the Board to use that tool of persuasion? Why should the Board just have to walk away?

MR. ROLDAN GONZALEZ: Your Honor, as we read PROMESA, if the Legislative Assembly works on a budget, and they discuss that with PROMESA, PROMESA makes its recommendations, and the budget that is approved is in accordance with PROMESA. And the budget that was signed by the government -- the Governor, was approved by PROMESA. Why the Board certifies their budget other than the fact that Law 80 was not immediately repealed as they requested?

Your Honor, as brother counsel Aliff said, Law 80 has a theory as to the fact of repealing Law 80. But the Board agreed that that will not take effect until 2020. So why

didn't they let the Legislative Assembly finish working under their procedure to repeal Law 80? And once that was done, they still had the power to repeal any law enacted by the legislature of Puerto Rico.

They have the power, Your Honor. We're not asking -- we're not arguing that. What we're saying is that for no valid reason, at least no valid reason presented to the Legislative Assembly, they said, we want Law 80 to be repealed; and we want it now, and we want it retroactively.

The assembly says, well, okay. We agree with repealing Law 80, but we believe it has to be repealed prospectively.

So there was some kind of disagreement which was cut off. There was no space to work out, to reach some kind of agreement, because the Board immediately approved their budget. That is, Your Honor, the reason why they did that.

We respectfully submit that it was against what PROMESA is all of, and we submit that it was an abuse of the powers granted to them by PROMESA.

THE COURT: Thank you.

MR. ROLDAN GONZALEZ: Respectfully submitted, Your Honor.

THE COURT: Thank you, sir.

And now rebuttal, please.

MR. BIENENSTOCK: Thank you, Your Honor. Martin

Bienenstock of Proskauer Rose for the Oversight Board.

Your Honor, I want to briefly revisit the initial discussion we had about the reprogramming, because Your Honor asked a question about the impact on that issue of 201 (b)(1)(A), and I was able to read it all and better, I think, better formulate the response while I was listening to everyone else.

So there are three key points that I would offer. The first is when 201(b)(1)(A) says that the fiscal plan shall provide for estimates of revenues and expenses and be based on applicable laws, they're talking about the revenues and expenses in the fiscal plan. They're not talking about other expenses the Governor might interject through reprogramming that he can't know at the time.

We don't know, now that the Governor said he wants the right, we don't know what he's going to claim was an unused appropriation and what he wants to do with it. So the first point is we don't think applicable laws meant the law in the books authorizing reprogramming.

Second, 201(b)(1)(F) provides that the fiscal plan shall improve fiscal governance. There's nothing more important in fiscal governance than saying to the Governor and the legislature, the budget is the budget. You can't change it willy-nilly based on some reprogramming authorization you have under prior law.

But let's say that were wrong, Your Honor, and let's say Your Honor would determine that's what they can do. Well, that leads to the following consequence. It would mean before a budget and fiscal plan is certified, we would have to get from the government every possible unused appropriation they could use, add up all the amounts, and say okay, if you're going to exercise that power or reserve the right to exercise it -- let's say they come back and say, we have 50 million of unused appropriations from prior years. You say, okay, we're subtracting 50 million from our fiscal plan and budget, because you want the right to authorize on your own. Now, that makes no sense, and it makes no sense that that's what Congress intended.

Finally, Your Honor --

THE COURT: I'll ask my question after your third point. Thank you.

MR. BIENENSTOCK: Okay. Your Honor, I think -- and this is really the point that I didn't appreciate earlier when Your Honor asked, it's at least possible -- I raised preemption of Section Four as to a reason why a statute on the books authorizing reprogramming would be preempted. And Your Honor, I think Your Honor's point was, well, that statute might be inconsistent with the Board's certified budget.

But Section Four only preempts things inconsistent with the PROMESA Act. And my point --

THE COURT: It can be read that way, yes.

MR. BIENENSTOCK: Well, that's what it does say. And I agree with that. We agree with that, Your Honor.

My point is that when the PROMESA Act says to the Board, you certify the fiscal plan, you certify the budget, something on the books in Puerto Rico that says, well, the Governor under this authorization to reprogram can change what you did, that's inconsistent with the Act. The Act gives the Board the right to prescribe what it shall be, not the Governor.

Now, that point, I think, can be driven home even further in connection with this and the Christmas bonus. Let's hypothesize for a moment that pre-PROMESA, the Puerto Rico legislature had said, the following is going to be our budget for the 2018-19 fiscal year. Well, I don't think there's any question in anyone's mind that that is preempted by PROMESA, because PROMESA says the legislature doesn't say what it is. It's got to be the Board, and the Board has to certify it.

Well, it's no different to say that they couldn't have passed a law setting the entire budget than to say they couldn't have passed a law setting pieces of it like the Christmas bonus. Anything they legislated that said, you're going to spend 67 million dollars on a Christmas bonus, that's inconsistent with PROMESA that says, no, the budget will be

what the Board certifies it will be, not what your prior statutes say you want to spend.

So it is inconsistent with the Act, not the budget, or not just the budget.

THE COURT: Thank you. So two questions. First, as to budget -- statutory budgetary line items, you have a specific tool for post PROMESA, post constitution of the Board legislation that is inconsistent with the fiscal plan or a budget.

Do you also take the position that specific budget line items that may have been created by pre-PROMESA legislation are in effect preempted by PROMESA, or do those fall into the applicable law category because prior law puts them on the books?

MR. BIENENSTOCK: No. The former, Your Honor. As I think the Christmas bonus example makes clear, it's Section Four of PROMESA that makes these prior laws that create budget items inconsistent. And they're inconsistent not only with the budget and fiscal plan, they're inconsistent with Section 201 and 202 of PROMESA that says, it's the Board, in its sole discretion no less, that gets to certify the fiscal plan and the budget.

It's not the Puerto Rico legislature that can preempt that by saying, well, you have to spend X, Y and Z, because we passed those laws previously and they are immutable. That's

the whole purpose we believe of having Section Four in the fiscal plan -- in PROMESA rather.

THE COURT: Thank you. My other question, the one I originally intended to interrupt you with, is that I think I heard Mr. Friedman say in his remarks that he accepted that, well, the Governor accepts that any attempt to reprogram, to top up with monies from a prior fiscal year, would be inconsistent with the Board's determination that the -- determination of the parameters of the current year's budget. And would be noncompliant, and would trigger the noncompliance procedures and sanctions, so that effectively, the Governor couldn't do it willy-nilly. And the Board would be able to use powers to attack it on the back end as opposed to consider it unavailable on the front end.

Do you have a response to that that you'd like me to hear?

MR. BIENENSTOCK: Yes. Definitely, Your Honor. And we think Mr. Friedman proved our point for the following reason: The way I understood him is he said, if the Governor finds unused appropriations in a prior year, let's say just, for example, he finds ten million, he can't spend ten million on whatever he wants to do with it if the ten million will put him over the budget limit in the Board certified budget.

So what I understood him to be saying is, he has to come within the Board certified budget. The reason I said he

proved our point is the whole purpose of 201 and 202 of PROMESA, and PROMESA in general, is it's not just how much revenue will you have and how much expense can you have. It's what should you be spending money on?

Do we want to spend money on different types of services, University of Puerto Rico, things to encourage growth, services for people, pensions for poor people, even if they're unfunded? It matters what they're spent on, and what Mr. -- and that is what PROMESA gives the Oversight Board its sole discretion to determine.

And what Mr. Friedman is saying is, oh, no, the Governor, under this prior Puerto Rico law authorized in reprogramming, he can decide how the money will be spent. And that makes the point, that makes it not our certified budget anymore.

Now the resources of the Commonwealth, which are scarce, everyone agrees are being used for purposes other than what the Oversight Board said they should be used for. If they were being used for what we said they would be used for, well, then he doesn't have to reprogram, because we are already approving them.

So it's only when the Governor wants to deviate from what the Board certified that the reprogramming right has any meaning. And he is saying they can do it. And I've now said two or three times why I think that proves our point.

THE COURT: Thank you.

MR. BIENENSTOCK: Now, when it comes to the -- what we call the benefit issue, where they're -- the fiscal plan required certain savings from what we call benefits, all of which except for the hiring freeze and the Christmas bonus are already required by existing Puerto Rico law, you can no longer get cash for unused sick and vacation days, et cetera.

And we said in our pleadings that while we don't think there's a good method to accomplish the amount of savings we required, without using cancellation of the Christmas bonus and a hiring freeze, if they find a way, that would not be contrary to this certified fiscal plan and budget.

That doesn't mean we couldn't have required a hiring freeze, but that issue is not in front of the Court, because in that situation, we gave them an amount of savings to -- that they had to achieve, and how they achieve it is, under this fiscal plan and budget, within their discretion. As I said, we think certain realities set in, but it is within their discretion.

THE COURT: Now, would you help me understand the difference you see between the repeal of Law 80 and the suspension of Act 230? Because your submissions assume, and I think affirmatively state, that you went to the June 30th plan; you couldn't do what you were proposing to do on May

30th, because it would have required the repeal of Law 80. You can't do that by yourself, but you can suspend Act 230.

MR. BIENENSTOCK: Right.

THE COURT: Prior budgetary budget lines out of prior legislation are automatically superseded, preempted by PROMESA. What's so special about Law 80 that you can't do anything about it if your other theories are right?

MR. BIENENSTOCK: Okay. And the difference is this: The reason we can suspend Act 230 that authorizes reprogramming is the reason I gave just previously, that it is directly inconsistent with PROMESA. Therefore, it's preempted, because it effectively let's the Governor decide what budget items should be, as opposed to the Oversight Board.

The reason repeal of Law 80 doesn't fit into that is Law 80 is simply a law different than 49 of the 50 states, that it says, in Puerto Rico, an employee can't be terminated without cause. So as a practical matter, he can't really terminate without having the expense and aggravation of litigation or whatever.

We think that's bad for Puerto Rico. It's really bad for Puerto Rico. But it's not inconsistent with PROMESA. There's nothing in PROMESA that says that it's got to be an at-will employment territory.

THE COURT: So you're targeting macroeconomic effects

with the repeal of Law 80? That's not something that's specifically provided for in PROMESA?

MR. BIENENSTOCK: Right.

THE COURT: On the other hand, a specific budget line item would be. And if that's inconsistent, then that would be preempted because of the power given to the Board?

MR. BIENENSTOCK: Exactly. Exactly.

THE COURT: Thank you.

MR. BIENENSTOCK: Now I'll respond to the legislature's argument. They said what's -- I think they don't contest, they don't mention it, but they don't contest that our original budget and fiscal plan -- or actually, fiscal plan in April, 2018, had the same cut to the legislature's budget for 2019 as the current budget does.

And the reason it had it is that it's an outsized per capita expense in Puerto Rico compared to the other 50 states. And even after the cut, it's still an outsized expense. It needs to be reduced.

We basically had discussions with the Governor, this is all explained in our pleadings, and they don't contest it, that the Governor said he would procure the repeal of Law 80 if we gave back certain things. The most, I guess, important or newsworthy item was the legislature's budget. But they're back where they should have been in April of 2018.

The word retaliation is not in the Oversight Board's

vocabulary. It's just not. And I'll leave it there.

And the answer to what's so bad about repealing Law 80 only for new jobs and not for present employees is simple, and this is in our pleading, too. You would have people in the same work place, most hired yesterday or before, new people hired tomorrow, subject to two different termination standards.

You would still have the problem of going to outside investors saying, please invest in this business in Puerto Rico. Oh, by the way, it still has people subject to Law 80, so you can't really terminate them.

That -- you can't foster business and investment if people have to get into a situation where they don't have employees at will. It's giant. We pointed that out in our briefs. It's the difference between having money for debt restructurings and largely not having it.

Something will have to be done about this. Unfortunately it didn't get done by the end of June. But for the reason I gave, we were not comfortable that we had the right to impose the repeal of Law 80.

THE COURT: Do you disagree with the legislature's proposition that the -- two propositions: One, that the Board had an obligation under PROMESA to essentially negotiate with the legislature rather than call the question and certify a plan? And two, that there was no particular urgency to the

June 30th certification date?

MR. BIENENSTOCK: Well, let me take the latter first, because it's shorter. We have to certify a budget before the first day of the fiscal year, so we couldn't wait later than June 29 to do it. The statute says we have to certify before the new fiscal year.

We gave them the maximum amount of time. People work 24/7. We don't complain or ask for sympathy, but the Oversight Board could not have done any more.

Second, I don't -- I think their comments were wrong, because members -- actual members of the Oversight Board participated in all of the discussions the legislature wanted to have. And no, we don't think it was a legal obligation, but that doesn't mean we didn't want to do it, we didn't actually do it. And we're willing to keep talking to them and the Governor, as we always plan to do.

If I could shift back quickly to the Governor's arguments. The argument about the D.C. statute, again, supports us. That statute, which as Mr. Friedman said, it allows the oversight, or the authority as they called it there, I think, but the Control Board there, to impose recommendations that still had a process for the Governor to say no.

So the fact that we have the same thing in PROMESA, except we can impose it under the fiscal plan by adopting it,

is not a significant difference between the D.C. statute and our statute. We actually have more power in our statute. We have sole discretion. They don't.

We can deem the budget approved by the legislature and the Governor. The D.C. statute didn't give them that. We have 106(e). They didn't have it. So actually, we have a more potent statute in all of those respects.

And in respect of the Creditors' Committee's point, we have always said that if we've made mistakes or if facts change, we will be changing the fiscal plans. And that can lead to changes in the budget obviously.

The Oversight Board wants to make clear, however, that it will not change a fiscal plan or budget simply to accommodate a deal, a creditor deal. The creditor -- it's the reverse. The creditor restructuring has to fit within what the Commonwealth can afford and still have a sustainable economic future. The fiscal plan has to come first, not the desired outcome.

God willing, we'll be able to get this done somehow, but we're not going to change the fiscal plan on account of that. If other facts change to the good, then we could change the fiscal plan.

And I would just leave with this thought, Your Honor. It's inconceivable, we submit, that Congress created the Oversight Board, with its power over fiscal plans and budgets,

only to create fiscal plans and budgets that you don't know which provisions are enforceable and which are not until the Governor says which ones he regards as recommendations.

We think for all the reasons we put in our briefs, that was not what Congress did, and that none of the five points that the Governor has raised are in any sense unenforceable.

THE COURT: One final question. With respect to the jurisdictional arguments that were made in the papers with respect to both of the actions, more vigorously with respect to the legislature's action, is the lack of discussion of them today an indication that they are not being pressed, although of course the Court has an independent duty to examine subject matter jurisdiction anyway, or was it just your choice as to what to spend your argument time on?

MR. BIENENSTOCK: It was the latter, Your Honor. First, we think we made the point in the papers. They weren't really the subject of the remarks of the legislature's attorneys, but we are pressing them. We just didn't think they were -- more discussion of them here would be helpful to the Court. But if Your Honor has any questions, I'm obviously more than willing to answer them.

THE COURT: No, thank you. I think they were covered well in the papers. I just wanted to make sure there wasn't some sort of signal --

MR. BIENENSTOCK: No.

THE COURT: -- or new consensus that I wasn't picking up on. All right.

MR. BIENENSTOCK: Thank you, Your Honor.

THE COURT: So thank you very much. I thank you all for these very serious, very powerful arguments on these very important issues.

I must reserve decision, because I must reflect further on them. But I do understand the urgency of the situation and how fundamentally it goes to the ability of the government of Puerto Rico to operate efficiently and effectively, and of the Oversight Board to do whatever job it is that Congress has determined in its particulars the Board is empowered to do.

And so I will render a decision as quickly as I possibly can. And I thank you all for your patience and your understanding.

This concludes today's agenda. Currently the next scheduled hearing date is September 12. It was scheduled for San Juan. I understand that the sentiment seems to be turning toward the feasibility of doing it in New York on that date, but not the feasibility of doing it here on that date. We will explore that further, and I will issue Orders so that everyone will know what is going on.

And again, I thank the court staff here and in New

York, and I wish safe travels and good health to all. We are adjourned.

(At 3:03 PM, proceedings concluded.)

* * *

U.S. DISTRICT COURT)

DISTRICT OF PUERTO RICO)

I certify that this transcript consisting of 163 pages is a true and accurate transcription to the best of my ability of the proceedings in this case before the Honorable United States District Court Judge Laura Taylor Swain and Honorable United States District Court Magistrate Judge Judith Dein on July 25, 2018.

S/ Amy Walker

Amy Walker, CSR 3799

Official Court Reporter