

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

THE GOVERNMENT DEVELOPMENT BANK
FOR PUERTO RICO,

Applicant.

PROMESA

Title VI

Case No. 18-1561 (LTS)

**INFORMATIVE MOTION REGARDING RELEASES UNDER ARTICLE 702
OF THE GDB RESTRUCTURING ACT**

To the Honorable United States District Judge Laura Taylor Swain:

The Government Development Bank for Puerto Rico (“GDB”) and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”), through their undersigned counsel, hereby state as follows:

1. On August 24, 2017, Governor Ricardo Rosselló Nevares signed into law Act 109-2017 (the “GDB Restructuring Act” or the “Act”). The Puerto Rico Legislative Assembly enacted the GDB Restructuring Act following “a careful analysis of all available alternatives” to address the “precarious economic situation” of GDB. *See* Act 147-2018, Statement of Motives at 20. In doing so, the Legislative Assembly concluded “that the best alternative to protect the interests of all interested parties was to restructure GDB’s debts through a consensual agreement with its creditors and proceed with an orderly wind-down of the Bank.” *Id.*

2. At its core, the GDB Restructuring Act “establish[es] the legal framework for [the GDB] restructuring” which “ensures compliance with GDB’s certified fiscal plan and protects the public interest, ensuring also that essential services from the [Commonwealth], municipalities, and other instrumentalities continue.” *See* Act 109-2017, Statement of Motives at 39.

3. An additional component of the Act is the release by the Commonwealth and other Government Entities¹ of certain rights and claims related to GDB. Specifically, article 702 of the GDB Restructuring Act provides the following release (the “702 Release”):

Other than as expressly provided in this Act, in the Ancillary Agreements and the Public Entity Deed of Trust, no Government Entity shall have any further rights or claims against GDB, the Recovery Authority and the Public Entity Trust, and any officers, directors, employees, agents and other representatives thereof, of whatsoever nature and kind, whether now existing or hereinafter arising, based, in whole or in part, on facts, whether known or unknown, existing or occurring on or prior to the Closing Date. Each Government Entity is hereby deemed to forever waive, release and discharge GDB, the Recovery Authority and the Public Entity Trust, and any officers, directors, employees, agents and other representatives thereof from any and all such claims.

4. On August 10, 2018, GDB and AAFAF commenced the above captioned action under Title VI of PROMESA (the “Title VI Action”) by filing the *Application of the Government Development Bank for Puerto Rico and the Puerto Rico Fiscal Agency and Financial Advisory Authority, Pursuant to 601(m)(1)(D) of the Puerto Rico Oversight, Management, and Economic Stability Act, for Approval of the Qualifying Modification for GDB* [ECF No. 1] (the “Approval Application”).

5. Certain parties—including this Court, the Financial Oversight and Management Board for Puerto Rico, and objectors to the Approval Application—have requested clarification regarding the scope of the 702 Release. While GDB and AAFAF are not seeking approval of the 702 Release in the Approval Application, they want to provide clarity regarding this issue.

6. As mentioned above, article 702 of the GDB Restructuring Act specifically states that the scope of the releases therein is qualified as “[o]ther[wise] . . . expressly provided in this

¹ The Act defines a Government Entity to include “any agency, department office, public corporation, trust, fund, system, instrumentality, political subdivision, taxing authority or municipality of the Government of Puerto Rico.” *Id.*, art. 103(w).

Act, in the Ancillary Agreements and the Public Entity Deed of Trust.” To this point, the Public Entity Deed of Trust (the “Deed of Trust”), which will govern the scope of the 702 Release, has not been finalized. However, it will contain the following clarifications regarding the 702 Release, which AAFAF and GDB believe are consistent with the intent of the GDB Restructuring Act and Puerto Rico law regarding the conduct of official business by public servants.

7. *First*, the 702 Release will be limited to GDB’s *current* officers, directors, employees, agents and other representatives, *in their capacity as such*. The current officers and directors of GDB were appointed on or after January 2017—approximately three years after the last Commonwealth debt issuance—and have been instrumental over the past 18 months in formulating, negotiating, and helping to implement the restructuring and wind-down of GDB.² It is standard practice, and exceedingly appropriate, for such officers and directors to obtain a release under these circumstances. For the avoidance of doubt, all directors and officers of GDB (both current and former) retain all rights and immunities existing under applicable law.

8. *Second*, the Deed of Trust will specify that the 702 Release is limited to *individual* agents and other *individual* representatives of GDB. The 702 Release does not—nor was it intended to—extend to any private banking institution or private corporation.

9. *Third*, the Deed of Trust will clarify that Government Entities are not releasing their interests in the Public Entity Trust, or their right to defend themselves against any claims asserted by the Public Entity Trust or GDB.

10. Based on the foregoing, the final Public Entity Deed of Trust will clarify the 702 Release as follows:

² Two current officers and directors formerly held positions at GDB but will not receive a release in connection with such former positions as the 702 Release will apply to them only in their capacity as current officers and directors.

Notwithstanding anything in the GDB Restructuring Act or the Ancillary Documents (as defined in the Act) to the contrary, no Government Entity shall have any further rights or claims against GDB, the Recovery Authority and the Public Entity Trust, and any current officers, directors, employees, individual agents and other individual representatives thereof, in their capacity as such, of whatsoever nature and kind, whether now existing or hereinafter arising, based, in whole or in part, on facts, whether known or unknown, existing or occurring on or prior to the Closing Date except for (i) any interest in the Public Entity Trust a Government Entity has pursuant to Article 303 of the GDB Restructuring Act and (ii) any defense a Government Entity may have against any claim asserted against it by the Public Entity Trust or GDB. Each Government Entity is hereby deemed to forever waive, release and discharge GDB, the Recovery Authority and the Public Entity Trust, and any current officers, directors, employees, individual agents and other individual representatives thereof, in their capacity as such, from any and all such claims, except as set forth above. All other claims of Government Entities are reserved.

Dated: September 17, 2018
San Juan, Puerto Rico

Respectfully submitted,

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

- and -

O'MELVENY & MYERS LLP
John J. Rapisardi
Suzanne Uhland
Peter Friedman
Daniel L. Cantor
7 Times Square
New York, NY 10036
Tel: (212) 326-2000
Fax: (212) 326-2061

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

s/ Giselle López Soler
Giselle López Soler
USDC No. 224010
Law Offices of Giselle López Soler
PMB 257
Rd. 19 1353
Guaynabo, PR 00966
Tel. (787) 667-0941
Email: gls@lopezsolerlaw.com

Attorney for the Government Development Bank for Puerto Rico