

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

THE GOVERNMENT DEVELOPMENT BANK
FOR PUERTO RICO,

Applicant.

PROMESA
Title VI

Case No. 18-1561-LTS

**STIPULATION RESOLVING THE OBJECTION OF THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS OF ALL TITLE III DEBTORS
(OTHER THAN COFINA) TO THE APPROVAL APPLICATION**

TO THE HONORABLE COURT:

WHEREAS, on August 10, 2018, the Government Development Bank for Puerto Rico (“**GDB**”) and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“**AAFAF**”) filed the *Application, Pursuant to Section 601(M)(1)(D) of the Puerto Rico Oversight, Management, and Economic Stability Act, for Approval of the Qualifying Modification for GDB* [ECF No. 1] (the “**Application**”), thereby commencing the above captioned action under Title VI of PROMESA in the United States District Court for the District of Puerto Rico (the “**Court**”);¹

WHEREAS, also on August 10, 2018, this Court entered an Order setting August 20, 2018 as the deadline for parties to file a notice of intention to object to the Qualifying Modification. [ECF No. 7];

WHEREAS, on August 20, 2018, the Court approved a stipulation among GDB, AAFAF, and the Official Committee of Unsecured Creditors of all Title III Debtors (other than COFINA) (the “**UCC**”) extending the Notice of Intention to Object and Standing Objection Deadlines to August 22 and September 1, 2018, respectively [ECF No. 29];

¹ Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Application or the Offering Memorandum, as applicable [ECF No. 5-15 Ex. E; Case No. 18-01561].

WHEREAS, on August 22, 2018, the UCC filed the *Official Committee of Unsecured Creditors' Notice of Intention to Object Regarding Purported Qualifying Modification for Government Development Bank* [ECF No. 59];

WHEREAS, on September 1, 2018, the Financial Oversight and Management Board filed the *Objection of Financial Oversight and Management Board for Puerto Rico as the Administrative Supervisor of the Government Development Bank for Puerto Rico to the Official Committee of Unsecured Creditors' Notice of Intention to Object to the Qualifying Modification for Government Development Bank* [ECF No. 111];

WHEREAS, on September 1, 2018, GDB and AAFAF filed the *GDB and AAFAF's Objection to the Official Committee of Unsecured Creditors' Standing to Object to the Approval Application* [ECF No. 112];

WHEREAS, on September 6, 2018, the UCC filed the *Complaint of Official Committee of Unsecured Creditor' of All Title III Debtors (other than COFINA) for Declaratory Judgment with Respect to GDB Restructuring* [Case No. 17-03283, ECF No. 3880];

WHEREAS, on September 6, 2018, the UCC filed the *Official Committee of Unsecured Creditors' Motion for Order Granting Derivative Standing to Act on Behalf of Title III Debtors for Certain Limited Purposes and Other Related Relief with Respect to Restructuring of Government Development Bank for Puerto Rico* [Case No. 17-03283, ECF No. 3881];

WHEREAS, on September 13, 2018, the UCC filed the *Omnibus Response of Official Committee of Unsecured Creditors to GDB/AAFAF's and Oversight Board's Standing Objections* [ECF No. 131];

WHEREAS, on September 14, 2018, the UCC filed the *Preliminary Objection of Official Committee of Unsecured Creditors of All Puerto Rico Title III Debtors (other than COFINA) to*

Proposed PROMESA Title VI Modification of Government Development Bank for Puerto Rico [ECF No 136];

WHEREAS, on September 21, 2018, the Oversight Board filed the *Notice of the Financial Oversight and Management Board's Motion to Dismiss the Complaint for Lack of Standing* [ECF No. 6; Case No. 18-00101] and the *Financial Oversight and Management Board's Memorandum of Law in Support of Its Motion to Dismiss Complaint for Lack of Standing* [Case No. 18-00101, ECF No. 7];

WHEREAS, on September 21, 2018, GDB and AAFAF filed *GDB and AAFAF's Motion to Dismiss Complaint for Lack of Standing* [ECF No. 8; Case No. 18-00101] and the *Memorandum of Law in Support of GDB and AAFAF's Motion to Dismiss Complaint for Lack of Standing* [Case No. 18-00101, ECF No. 9];

WHEREAS, on September 21, 2018, the Oversight Board filed the *Objection of Financial Oversight and Management Board to Official Committee of Unsecured Creditors' Motion for Order Granting Derivative Standing to Act on Behalf of Title III Debtors for Certain Limited Purposes and Other Related Relief with Respect to Restructuring of Government Development Bank for Puerto Rico* [Case No. 17-03283, ECF No. 3959];

WHEREAS, on September 21, 2018, GDB and AAFAF filed *Objection of the Government Development Bank for Puerto Rico and the Puerto Rico Fiscal Agency and Financial Advisory Authority to the Official Committee of Unsecured Creditors' Derivative Standing Motion* [Case No. 17-03283, ECF No. 3961];

WHEREAS, on September 27, 2018, GDB and AAFAF filed *GDB and AAFAF's Reply to the Official Committee of Unsecured Creditors' Omnibus Response to GDB/AAFAF's and Oversight Board's Standing Objections* [ECF No. 170];

WHEREAS, on September 27, 2018, the Oversight Board filed the *Financial Oversight and Management Board for Puerto Rico's Reply to Omnibus Response of Official Committee of Unsecured Creditors to GDB/AAFAF's and Oversight Board's Standing Objections* [ECF No. 171];

WHEREAS, on September 28, 2018, the UCC filed the *Omnibus Objection of Official Committee of Unsecured Creditors of All Title III Debtors (other than COFINA) to Motions to Dismiss Committee's Complaint Relating to GDB Restructuring for Lack of Standing* [Case No. 18-00101, ECF No. 15];

WHEREAS, on September 28, 2018, the UCC filed the *Official Committee of Unsecured Creditors' Omnibus Reply in Support of Its Motion for Order Granting Derivative Standing to Act on Behalf of Title III Debtors for Certain Limited Purposes and Other Related Relief with Respect to Restructuring of Government Development Bank for Puerto Rico* [Case No. 17-03283, ECF No. 3992];

WHEREAS, on October 1, 2018, the Oversight Board, GDB, and AAFAF filed the *Joint Reply Memorandum of Law of Financial Oversight and Management Board, GDB, and AAFAF in Support of Their Motions to Dismiss Complaint for Lack of Standing* [Case No. 18-00101, ECF No. 18];

WHEREAS, subsequent to the filing of the foregoing pleadings, counsel for GDB, AAFAF, the Oversight Board and the UCC (collectively, the "**Parties**") have met and conferred in an effort to resolve the objections raised in such pleadings.

WHEREAS, as a result of those discussions, the Parties have arrived at a mutually agreeable resolution.

NOW, THEREFORE, IT IS HEREBY STIPULATED AS FOLLOWS:

I. PET Distribution

1. On the Closing Date, the Government Development Bank for Puerto Rico (“**GDB**”) shall transfer \$20 million in cash (the “**Fixed Settlement Cash**”) to the Public Entity Trust (as defined in the GDB Restructuring Act).

2. In addition, GDB shall transfer to the Public Entity Trust any cash retained by GDB on the Closing Date that remains after satisfaction of the obligations pursuant to the Cash Adjustments for which such cash was retained (such excess, if any, “**Excess Adjustment Cash**”), in an aggregate amount up to \$10 million (such Excess Adjustment Cash so transferred, the “**Contingent Settlement Cash**” and together with the Fixed Settlement Cash and the Excess Litigation Cash (as defined below), the “**Settlement Cash**”). The Public Entity Trust shall be entitled to receive the first identifiable Excess Adjustment Cash amounts, and the GDB Debt Recovery Authority shall not receive any such Excess Adjustment Cash until the Public Entity Trust receives Contingent Settlement Cash in the amount of \$10 million.

3. The Designated Deposit (as defined in the GDB Restructuring Act) of (i) the Puerto Rico Electric Power Authority (“**PREPA**”) in the amount of \$114,108,631 (the “**PREPA Designated Deposit**”) and (ii) the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“**ERS**”) in the amount of \$32,948,612 (the “**ERS Designated Deposit**” and, together with the PREPA Designated Deposit, the “**Title III Debtor Designated Deposits**”) shall be allowed claims against the Public Entity Trust. The Title III Debtor Designated Deposits shall be transferred to the Public Entity Trust, in accordance with the GDB Restructuring Act, and the Public Entity Deed of Trust shall provide that the Title III Debtor Designated Deposits shall be

- a. with respect to the Settlement Cash, first priority claims, senior to all other Designated Deposits;

- b. with respect to all other assets of the Public Entity Trust, *pari passu* (but for the avoidance of doubt, not including any federal funds) with all other Designated Deposits, *provided that* the Title III Debtor Designated Deposits shall be reduced on account of the Settlement Cash received.

4. Any distributions from the Public Entity Trust to the Title III Debtor or other Government Entity made hereunder shall be distributed and used in accordance with applicable law, including, but not limited to, the *Law to Guarantee Payment to Our Pensioners and Establish a New Plan for Defined Contributions for Public Servants*, Act No. 106 (2017).²

5. For the avoidance of doubt, the Title III Debtor Designated Deposits shall not be subject to any additional claims for setoff, netting, recoupment, or reduction, including in respect of any causes of action for preferential transfers, asserted by GDB, which shall be deemed settled as of the Closing Date.

II. Legal Claims

6. GDB acknowledges and affirms that the Legal Claims (as defined herein) are property of the applicable Title III Debtor or other Government Entity (other than GDB).

7. Regardless of whether the affirmation in Paragraph 6 hereof is accurate, to the extent GDB has any property interest in the Legal Claims, such interest shall be transferred as of the Closing Date to the applicable Title III Debtor or other Government Entity (the “**Transferee**”).

8. “**Legal Claims**” shall mean all legal rights, claims, and causes of action, including contingent or unknown causes of action, in law or in equity, that GDB may assert or be a party to, in its capacity as fiscal agent or financial advisor, or such other representative capacity to a Title III Debtor (or the entity that became a Title III Debtor) or other Government Entity other than GDB (including claims relating to the issuance of bonds by the Title III Debtors or Government

² The UCC is reserving all its rights with respect to the distribution of any funds from the Public Entity Trust to any of the Title III Debtors.

Entities other than GDB), and for which the intended or actual primary economic beneficiary of the transaction or series of transactions giving rise to the cause of action was a Title III Debtor (or the entity that became a Title III Debtor) or other Government Entity other than GDB, but shall exclude (i) any legal right, claim or cause of action relating to the issuance of any bond by GDB (or any of its subsidiaries or successors) and (ii) any legal right, claim or cause of action released or to be released under the GDB Restructuring Act (as in effect on the date hereof, and reflecting the modifications set forth in the *Informative Motion Regarding Releases Under Article 702 of the GDB Restructuring Act* [Docket No. 151 in Case No. 18-1561 (LTS)]).

9. To the extent a Legal Claim is asserted and any defendant(s) to such claim asserts an indemnification claim against GDB on account of such transferred Legal Claims, the Transferee shall assume such indemnification obligations, but only to the extent of GDB's interest, if any, in the transferred Legal Claims. To the extent a Transferee assumes any indemnification obligations of GDB, it shall control the defense of any indemnification claims asserted on account of such obligations.

10. GDB shall be required to provide reasonable cooperation to the Transferee in connection with the Transferee's prosecution of the Legal Claims and, as applicable, the defense of any indemnification claims, including, but not limited to, reasonable cooperation in responding to any Transferee discovery efforts; *provided, however*, nothing herein shall obligate GDB to provide any privileged information to any Transferee; *provided further*, that the applicable Transferee shall be responsible for all costs associated with GDB's reasonable cooperation.

11. The Title III Court shall have jurisdiction over any dispute with respect to the allocation of the Legal Claims among the Title III Debtors. The rights of the Oversight Board and

AAFAP under PROMESA, including under section 305, with respect to such issues are expressly preserved.

12. Nothing herein gives the UCC or its constituents any rights or standing with respect to the Legal Claims or any of the rights of any Transferee under this Stipulation. For the avoidance of doubt, nothing herein shall be interpreted to grant the UCC authority to prosecute the Legal Claims; *provided, however*, that nothing herein shall preclude the UCC from seeking derivative standing in the Title III Cases to bring such claims on behalf of the Title III Debtor; *provided further*, nothing herein shall prevent AAFAP or the Oversight Board from objecting to such relief.

III. GDB's Net Claim Against Commonwealth

13. The indebtedness owed by the Commonwealth to GDB that is to be transferred to the Public Entity Trust pursuant to the GDB Restructuring Act shall, as of the Closing Date, be reduced by the amount of the federal funds on deposit at GDB restored by the Commonwealth (which is, approximately, \$312 million). The claims of GDB against the Commonwealth in respect of such indebtedness shall remain subject to allowance in the Commonwealth's Title III Case, *provided* that such claim may not be allowed in an amount greater than \$578 million.

14. In exchange, GDB shall transfer to the Public Entity Trust the first cash or cash equivalents that constitute net proceeds of Causes of Action that remain after, or are received by GDB after, in GDB's sole determination, all contingent and unliquidated claims against GDB arising on or before the Closing Date have been satisfied, up until ERS and PREPA obtain net proceeds totaling 55 cents on the dollar of the Title III Debtor Designated Deposits (without reduction for payments from the Fixed Settlement Cash or the Contingent Settlement Cash) (such excess, if any, the "**Excess Litigation Cash**"). For the avoidance of doubt (i) GDB shall have the sole authority and absolute discretion to commence, prosecute, settle, offset against claims against

GDB, or release any such Cause of Action and (ii) the UCC shall not have the right to, and shall not have or seek standing to, directly, indirectly or derivatively, commence, direct, compel the prosecution of, settle, resolve, sell, transfer or dispose of any such Cause of Action or any litigation, other enforcement action or resolution thereof. For the avoidance of doubt, the causes of action described in this Paragraph 14 are Causes of Action other than the Legal Claims.

IV. UCC Release

15. The UCC shall withdraw, with prejudice, and shall not refile or otherwise assert or pursue, directly or indirectly:

- a. Any and all claims, objections, filings, requests for relief, or discovery requests in connection with, arising out of, or relating to the GDB Restructuring Act, the Qualifying Modification and the GDB Restructuring (as defined in the UCC Preliminary Objection (defined below)).
- b. Any and all claims, objections, filings, motions, and requests for relief in the Title III Cases (Case Nos. 17-3283, 17-3566, 17-9686, 17-4780, Adv. Proc. No. 18-0101) pertaining to the GDB Restructuring Act, the Qualifying Modification or the GDB Restructuring, including any appeals related thereto, including
 - i. *Official Committee of Unsecured Creditors' Motion for Order Granting Derivative Standing to Act on Behalf of Title III Debtors for Certain Limited Purposes and Other Related Relief With Respect to Restructuring of Government Development Bank for Puerto Rico* [Case No. 17-3283, Docket No. 3881];
 - ii. *Urgent Motion of Official Committee of Unsecured Creditors, Pursuant to Bankruptcy Code Sections 105(a) and 362, for Entry of Order Enforcing Automatic Stay and Court's June 29, 2017 Order Confirming Application of Automatic Stay With Respect to GDB Restructuring* [Case No. 17-3283, Docket No. 3797];
 - iii. *Complaint of Official Committee Of Unsecured Creditors of All Title III Debtors (Other Than COFINA) for Declaratory Judgment with Respect to GDB Restructuring* [Adv. Proc. No. 18-0101, Docket No. 1]; and
 - iv. *Official Committee of Unsecured Creditors' Notice of Appeal of Order Denying Motion to Enforce the Automatic Stay* [Case No. 17-3283, Docket No. 3998].

- c. Any and all claims, objections, filings, motions, requests for relief, and discovery requests in the in the GDB Title VI Case (Case No. 18-01561), including, but not limited to
 - i. *Notice of Intention to Object Regarding Purported Qualifying Modification for Government Development Bank* [Docket No. 59; Case No. 18-1561];
 - ii. *Preliminary Objection of Official Committee of Unsecured Creditors of All Puerto Rico Title III Debtors (Other Than COFINA) to Proposed PROMESA Title VI Modification of Government Development Bank for Puerto Rico* [Docket No. 136; Case No. 18-1561] (the “UCC Preliminary Objection”);
 - iii. Discovery requests, including Requests for Production of Documents, Interrogatories, Requests for Admission, Notices of Deposition, and Subpoenas to Testify at a Deposition, served by the Official Committee of Unsecured Creditors on September 14, 2018.

16. From the date hereof, all deadlines with respect to the matters described in 15(b)(i)-(iv) and 15(c)(i)-(iii) shall be stayed unless and until this Stipulation is terminated.

17. The UCC agrees that it will not commence, join, seek any relief with respect to, or otherwise participate in, including as *amicus curiae*, any future proceedings (including, but not limited to, any appellate proceedings) in or in connection with the GDB Title VI Case or otherwise relating to the GDB Restructuring Act, the Qualifying Modification or the GDB Restructuring, other than to give effect to and enforce the terms of this Stipulation.

18. The UCC agrees that it releases, and will not bring, assert, pursue, or otherwise advance, directly or indirectly, on its own behalf or derivatively, any claims, objections, avoidances, rights, rights of recovery, remedies or causes of action against GDB, GDB’s current officers or directors (but only with respect to their role as GDB officers or directors from January 1, 2017 through the present), the GDB Debt Recovery Authority, the GDB Debt Recovery Authority’s directors and officers, or the assets transferred to the GDB Debt Recovery Authority, or seek to require GDB to assert any cause of action; *provided, however*, that any rights that the

UCC may have to object to GDB's claim against the Commonwealth, and any rights of other parties to oppose such objection, are preserved.

19. The UCC agrees to modify its pending Rule 2004 discovery requests in the Title III Case so that such requests (and any future Rule 2004 requests, or any other discovery requests related to the GDB Restructuring) ("**Discovery**") are limited to matters unrelated to the GDB Restructuring. The UCC agrees that it will not seek Discovery in connection with any Cause of Action (as defined in the Solicitation Statement) that will be released by the Qualifying Modification and the GDB Restructuring Act (as in effect on the date hereof, but reflecting the modifications set forth in the *Informative Motion Regarding Releases Under Article 702 of the GDB Restructuring Act* [Docket No. 151 in Case No. 18-1561 (LTS)]).

V. Reservation of Rights

20. The UCC, AAFAF, GDB and the Oversight Board each reserves all rights, and does not waive any arguments, regarding the GDB Restructuring, any contentions of law or fact raised in connection with the above referenced pleadings, or the UCC's standing (or lack of thereof).

21. To the extent that, after the date hereof, the Qualifying Modification, the GDB Restructuring Act or the related transaction documents are modified, amended or altered in a manner that adversely impacts (a) the rights of the Public Entity Trust to the Settlement Cash and (b) rights of the Title III Debtors under the settlement, the UCC shall have the right to terminate this agreement and assert any of its objections related thereto, and the agreements and waivers in Section IV hereof shall be of no force and effect.

VI. Enforcement of Agreement

22. Any dispute concerning the interpretation or the enforcement of the terms and provisions hereof shall be submitted to the Title III Court; provided that any dispute concerning

whether a cause of action constitutes a Legal Claim, or GDB's rights against a Transferee in respect of an indemnification obligation relating to a Legal Claim, shall be an issue solely between the Oversight Board, in its capacity as representative of the Title III Debtors (to extent such cause of action relates to, or such Transferee is, a Title III Debtor), GDB and AAFAF, but over which the Title III Court shall have jurisdiction.

23. This Stipulation shall be valid, binding, and enforceable upon the Court SO ORDERING this Stipulation. This Stipulation shall be effective when the Qualifying Modification is approved and consummated; *provided however*, the approval of the Qualifying Modification shall be conditioned upon the Approval Order providing that this Stipulation (including the transfers contemplated herein) is valid, binding, and enforceable.

VII. Miscellaneous

24. Except as otherwise provided herein, this Stipulation may not be modified other than by a signed writing executed by the Parties, and so ordered by the Court.

25. Each Party executing this Stipulation represents that such party has the full authority and legal power to do so.

26. This Stipulation may be executed in counterparts and each such counterpart together with the others shall constitute one and the same instrument.

27. This Stipulation constitutes the entire agreement and understanding between the Parties relating to the subject matter herein and supersedes all previous or contemporaneous oral or written representations, understandings or agreements between the Parties.

28. This Court shall retain jurisdiction over the subject matter of this Stipulation to resolve all disputes arising under or relating to this Stipulation.

IT IS SO STIPULATED.

DATED: October 4, 2018

Respectfully Submitted

By: /s/ Peter Friedman

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SO ORDERED.

Dated: October 9, 2018

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge