

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

GOVERNMENT DEVELOPMENT BANK  
FOR PUERTO RICO

Applicant.

PROMESA  
Title VI

No. 18-1561

**JOINT REPORT**

COME NOW Siemens Transportation Partnership Puerto Rico, S.E. (“Siemens”), the Government Development Bank for Puerto Rico (“GDB”), and the Puerto Rico Fiscal Agency & Financial Advisory Authority (“AAFAF”), in this Title IV proceeding (collectively referred to as the “Parties”), jointly and through their respective undersigned counsel and very respectfully submit this joint status report in compliance with the Court’s Order dated October 22, 2018 at Docket No. 200.

1. On October 22, 2018, in reference to *Siemens Transportation Partnership Puerto Rico, S.E.’s Objection to Proposed Qualifying Modification* (Docket Entry No. 192, the “Objection”), the Court entered an Order requesting the Parties to submit a joint report (1) identifying disputed issues material fact; (2) providing a list of witnesses that the Parties wish to present at the November 6, 2018 hearing (the “Hearing”); and (3) setting forth their expectations as to the amount of time required (a) for the presentation of testimony at the Hearing and (b) for each of the Parties to present its argument with respect to the Objection at the hearing.

**I. Disputed Issues of Material Fact**

**A. Siemens’ Proposed Disputed Issues of Material Fact**

1. Siemens proposes the following as the list of disputed material facts:
  - (a) The extent of GDB’s (i) participation in the Settlement Agreement negotiations, (ii) consent to the Settlement Agreement, and (iii) knowledge of the terms thereof.

- (b) Whether it was the intent of Siemens, HTA, and GDB for the Completion Payment to be established and maintained at GDB as a “special” deposit in escrow designated for Siemens.
  - (c) Siemens’, HTA’s and GDB’s collective intent in establishing a “special” deposit at GDB for the Completion Payment at the time of creation of the account.
  - (d) Siemens’, HTA’s and GDB’s collective intent in maintaining the Completion Payment at GDB in a “special” deposit in escrow with funds earmarked for Siemens’ benefit.
  - (e) Siemens’, HTA’s and GDB’s collective intent in maintaining the Completion Payment in escrow at GDB.
  - (f) The reasonableness of Siemens’ reliance upon statements from GDB and HTA that the special account containing the Completion Payment was established and maintained at GDB for Siemens’ benefit.
  - (g) Whether the Completion Payment should be immediately disbursed to Siemens if Court decides that the funds in the account are not a “bond” claim subject to modification under Title VI of PROMESA.
  - (h) The current amount available for disbursement from GDB (i.e. whether the amount of funds held at GDB is more than the aggregate of the alleged special deposits held at the GDB, i.e., including the amounts designated for the UCC in their separately approved settlement).
2. GDB disagrees with the factual assertions made by Siemens in the foregoing paragraphs.

**B. GDB’s Proposed Disputed Issues of Material Fact**

3. GDB is of the position that the key factual issue here –whether GDB executed a contract whereby it bound itself to establish an escrow account subject to certain conditions- is undisputed. That leaves a pure issue of law: whether in the absence of a written contract executed by GDB which sets out the obligation to act as an escrow agent or otherwise binds the GDB to certain conduct concerning an escrow account, there can be a finding that an escrow account existed segregated from GDB’s liquidity and otherwise subject to the conditions Siemens seeks to impose.

4. Without waiving such arguments, and to the extent Siemens prevails as a matter of law in its contention that GDB can have obligations as an escrow agent without a written contract, or establish an escrow account pursuant to certain specified conditions without a written contract, on the basis of letters or any alleged oral agreement, then GDB would posit the following factual controversies:

- (a) The manner in which GDB assumed an obligation to establish an escrow account at GDB.
- (b) The specific conditions and requirements of the escrow which GDB allegedly bound itself to establish.
- (c) Siemens' knowledge that the account at issue was not segregated from GDB's liquidity.

5. Siemens disagrees with the factual and legal assertions made by GDB in the foregoing paragraphs.

## II. Witnesses

6. The Parties have agreed to the following:

- (a) With respect to José Santiago Ramos (GDB witness), the Parties have agreed that GDB will submit a declaration of José Santiago Ramos for inclusion into the record in lieu of live testimony on direct examination. Siemens is still considering whether it will designate portions of José Santiago Ramos' deposition for inclusion into the record in lieu of live cross examination or whether it desires to hold live cross examination of Mr. Santiago.
- (b) With respect to Jesús García Rivera (GDB witness), the Parties have agreed that GDB will submit a declaration of Jesús García Rivera for inclusion into the record in lieu of live testimony on direct examination. Siemens will designate portions of his deposition for inclusion into the record in lieu of live cross examination.
- (c) With respect to Javier Hernández Carreras (HTA witness), the Parties have agreed that they will counterdesignate portions of his deposition for inclusion into the record in lieu of live testimony on direct and cross examination.
- (d) With respect to Josué Menéndez (Siemens witness), the Parties have agreed that they will counterdesignate portions of his deposition for inclusion into the record in lieu of live testimony on direct and cross examination.

7. Disputed Witness:

- (a) Siemens intends to present José (“Pepe”) Espada, a former HTA employee and current Siemens employee, as a fact witness. His testimony is separate and apart from the testimony of Mr. Menendez. Unlike the response of GDB to Siemens’ interrogatories (in which GDB did not identify specific names but simply said that its previous production of documents includes “other persons that at some previous moment in time may have had information” as a way to identify witnesses), Siemens identified Mr. Espada in its response to GDB’s Interrogatory No. 1. That Interrogatory requested “every person” with knowledge of the facts alleged in the Complaint (whether or not they will be called as a witness). Siemens timely responded on September 17, 2018 that Mr. Espada was “reasonably likely to have material knowledge of (i) the facts alleged in the Complaint; (ii) the creation, nature, and maintenance of the Account; (iii) agreements entered into with respect to the Account; (iv) the Completion Payment deposited in the Account; (v) the status of the Account as an escrow account segregated from GDB’s liquidity for Siemens’ benefit; (vi) the negotiation and execution of the Settlement Agreement; and (vii) the negotiation and execution of the Guaranty Agreement.” While Mr. Espada was not “duplicated” in the list of HTA employees (via an oversight), various documents produced by Siemens on September 17, 2018, made plain that Mr. Espada’s knowledge derived from his time as a former HTA employee. Further, in its written responses to GDB’s discovery requests, Siemens reserved the right to “make witness disclosures in accordance with any pretrial or case management orders entered by the Court in this litigation.” The Order [Docket 200] is the only order requiring identification of witnesses. Siemens timely and fully complied at the meet and confer.

While GDB objected to certain discovery responses served by Siemens on September 25, 2018 (more than a week after initial documents were produced – identifying Mr. Espada no less than 15 times), GDB never objected to the responses provided in paragraphs 1 or 2 of Siemens’ Interrogatory responses at the time (until the filing of this status report). GDB now asserts that it lacked appreciation of Mr. Espada’s prior role – which was identified in the documents produced to GDB almost three weeks before the agreed upon deposition deadline. Siemens did not oppose or prevent any depositions requested by any Party including GDB. GDB did not request to take Mr. Espada’s deposition during the discovery stage. Siemens submits that GDB’s “surprise” is of its own lack of diligence in discovery. Further, GDB is subject to no prejudice as it will have full ability to cross examine Mr. Espada at the hearing (with an allotment of time which mirrors the time Siemens intends to present him on direct).

- (b) GDB objects to Mr. Espada’s testimony as his testimony was not announced prior to the “close of discovery” and the late announcement is prejudicial and constitutes an unfair surprise. In answering an interrogatory requesting the identity of witnesses it intended to use at trial, Siemens did not identify Mr. Espada. And, while Siemens did include the reservation quoted above in subsection (a), Siemens omits to quote the answer in full when it stated that it “further reserves the right to

modify, amend and/or supplement this response as discovery continues.” (emphasis ours). Depositions in connection with this matter ended on October 12, 2018 without Siemens ever amending or supplementing its answers to written discovery to disclose Mr. Espada as a witness. To make matters worse, at no time, did Siemens advise the parties that Mr. Espada is not only a Siemens employee, but more importantly a **former HTA officer** who allegedly had knowledge of the Settlement Agreement from HTA’s perspective. Instead, Siemens identified Mr. Espada as a Siemens Mobility employee with a generic description used for several other persons who allegedly had knowledge related to the case. Based on the representation that Mr. Espada was a Siemens Mobility employee, not a former HTA officer, and further taking into account that GDB requested a Rule 30(b)(6) deposition of a Siemens Puerto Rico representative with knowledge of the Settlement Agreement (and related agreements), the account in question, and the Completion Payment, GDB had no reason to request a deposition of Mr. Espada. Further, that to the extent that the scope of Mr. Espada’s testimony overlaps Josué Menéndez’s testimony, it would be cumulative.

**III. Amount of Time Required**

- (a) In the event that Siemens chooses to conduct live cross examination of Mr. Santiago, that live cross examination will last for one half hour and redirect by GDB will be 15 minutes.
- (b) To the extent Mr. Espada’s testimony is allowed to proceed, the parties anticipate requiring: (1) 1 hour for direct examination; (2) 1 hour for cross examination; and (3) 15 minutes for re-direct examination.
- (c) To the extent the declarations/designations are read by counsel into the record (as opposed to just to moving them in), time will need to be allocated for this.
- (d) For argument, the parties request: (1) 15 minutes each for opening statements; and (2) 15 minutes each for closing statements.

Dated: November 1, 2018

Respectfully submitted,

<p><b>PIETRANTONI MENDEZ &amp; ALVAREZ LLC</b> Popular Center – 19th Floor 208 Ponce de León Avenue San Juan, PR 00918 Tel. (787) 274-1212 Fax. (787) 274-1470 <u>/s/ Oreste R. Ramos</u> Oreste R. Ramos USDC No. 216801</p>	<p><u>/s/ Lady E. Cumpiano</u> Lady E. Cumpiano USDC-PR Bar No. 208207 <b>SEPULVADO, MALDONADO &amp; COURET</b> 304 Ponce de León – Suite 990 San Juan, PR 00918 Telephone: (787) 765-5656 Facsimile: (787) 294-0073 Email: acouret@smlawpr.com</p>
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oramos@pmlaw.com

/s/ María D. Trelles Hernández

María D. Trelles Hernández

USDC No. 225106

mtrelles@pmlaw.com

**Law Offices of Giselle López Soler**

PMB 257

Rd. 19 1353

Guaynabo, Puerto Rico 00966

Tel. (787) 667-0941

Email: gls@lopezsolerlaw.com

s/ Giselle López Soler

Giselle López Soler

USDC No. 224010

*Attorneys for the Government Development  
Bank for Puerto Rico*

**Marini Pietrantonio Muñoz LLC**

/s/ Luis C. Marini Biaggi

Luis C. Marini Biaggi

MCS Plaza, 255 Ponce de León Ave.,

Suite 500,

San Juan PR 00917

Email: lmarini@mpmlawpr.com

Tel: (787) 705-2171

Fax: (787) 936-7494

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

**REED SMITH LLP**

Claudia Springer

Derek J. Baker

Three Logan Square

1717 Arch Street, Suite 3100

Philadelphia, PA 19103

Telephone: (215) 851-8190

Facsimile: (215) 851-1420

E-mail: cspringer@reedsmith.com

*Counsel for Siemens Transportation  
Partnership Puerto Rico, SE*