

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

IN RE: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i> , Debtors. ¹	PROMESA Title III No. 17 BK 3283-LTS (Jointly Administered) Related to ECF No. 15201
IN RE: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO, Debtor.	PROMESA Title III No. 17 BK 3566-LTS Related to ECF No. 1022 <i>This Pleading Relates to the Commonwealth and ERS Only, and Should Be Filed in Both Dockets.</i>

**DECLARATION OF C. NEIL GRAY IN SUPPORT OF RESPONSE OF THE BANK
OF NEW YORK MELLON, AS FISCAL AGENT, TO COMMITTEES' MOTION TO
STRIKE DECLARATION OF JOHN FAITH AND ACCOMPANYING EXHIBIT
FROM FISCAL AGENT'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO
FED. R. CIV. P. 56 REGARDING *ULTRA VIRES* CHALLENGE**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) 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); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19 BK 5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

I, C. Neil Gray, hereby declare under penalty of perjury:

1. I am a partner at the law firm of Reed Smith LLP, located at 599 Lexington Avenue, New York, NY 10022. I am a member in good standing of the Bar of the State of New York and admitted *pro hac vice* in this matter. There are no disciplinary proceedings pending against me. I submit this declaration in support of the *Response of The Bank of New York Mellon, as Fiscal Agent, to the Committees' Motion to Strike Declaration of John Faith and Accompanying Exhibit from the Motion of The Bank of New York Mellon, as Fiscal Agent, for Summary Judgment Pursuant to Fed. R. Civ. P. 56 Regarding Ultra Vires Challenge* [ECF No. 14978] (the "Response").² I have personal knowledge of the matters stated herein. If called as a witness in this action, I could and would testify competently to the contents of this declaration.

2. Attached as Exhibit 1 hereto is a true and correct copy of the *Joinder of The Bank of New York Mellon, as Fiscal Agent, in the Response of Certain Secured Creditors of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico to the Omnibus Claim Objections of the Official Committee of Unsecured Creditors and the Official Committee of Retired Employees of the Commonwealth of Puerto Rico*, dated October 25, 2019 [ECF No. 9013] (the "Joinder").

3. The Joinder states:

4. Each ERS Bond was issued in the form of a separate single authenticated fully registered bond. Upon initial issuance, the ownership of each ERS Bond was registered in the registration books of ERS, which are maintained by the Fiscal Agent, in the name of Cede & Co. ("Cede"), as nominee of The Depository Trust Company ("DTC"). The registered ownership of the ERS Bonds has not changed since the initial issuance. Cede remains the registered owner of each ERS Bond.

² Capitalized terms used but not defined in this declaration have the meanings given to them in the Response. "ECF No." refers to the Electronic Case File No. in the Court's docket for the Title III proceedings of the Commonwealth of Puerto Rico, Case No. 17 BK 3283-LTS (D.P.R.), or as otherwise specified.

5. DTC holds the ERS Bonds as securities depository for certain broker-dealers, banks, and other financial institutions (the “Participants”). The Participants act, directly or indirectly, for the benefit of beneficial owners of such bonds.

....

8. [E]ven if ERS lacked authority to issue the ERS Bonds and the Bondholders had notice of a defect, such bonds still would be enforceable under section 8-202 of the UCC because the sole registered owner of the ERS Bonds had no knowledge of any defect. The Committees do not allege and cannot meet their burden of proving that Cede had notice of any defect going to the validity of the ERS Bonds when they were issued to Cede in 2008. Accordingly, under section 8-202 of the UCC, the ERS Bonds are valid and enforceable in the hands of Cede.

Joinder ¶¶ 4-5, 8 (footnotes omitted).

4. On November 1, 2019, the Fiscal Agent served the *Initial Disclosures of The Bank of New York Mellon, as Fiscal Agent* (the “Initial Disclosures”) in connection with the *Omnibus Objection of Official Committee of Unsecured Creditors to Claims Asserted by Holders of Bonds Issued by Employees Retirement System of Government of Puerto Rico* [ECF No 5580] filed by the Official Committee of Unsecured Creditors (the “Creditors’ Committee”), and the *Omnibus Objection of the Official Committee of Retired Employees of the Commonwealth of Puerto Rico, Pursuant to Bankruptcy Code Section 502 and Bankruptcy Rule 3007, to Claims Files or Asserted by Holders of ERS Bonds Against ERS and the Commonwealth* [ECF No. 6482] filed by the Official Committee of Retired Employees of the Commonwealth of Puerto Rico (the “Retiree Committee”). Attached as Exhibit 2 hereto is a true and correct copy of the Initial Disclosures.

5. In the Initial Disclosures, the Fiscal Agent identified two categories of documents pursuant to Fed. R. Civ. P. 26(a)(1)(A)(ii): (i) “The Resolution and related bond transaction documents, including but not limited to, all supplements to the Resolution,” and (ii)

“[d]ocuments sufficient to show the registered holder(s) of all ERS bonds offered pursuant to the Resolution.” Initial Disclosures at 6.

6. The Fiscal Agent also disclosed that it “incorporates by reference all documents produced or identified by the Creditors’ Committee, the Retiree Committee, or any other party in interest to this proceeding during the course of discovery in this proceeding.” *Id.*

7. Similarly, with respect to witnesses, the Fiscal Agent disclosed that it “incorporates by reference any witnesses who may be identified by the Creditors’ Committee, the Retiree Committee, or any other party in interest to this proceeding during the course of discovery in this proceeding.” *Id.* at 5.

8. On November 22, 2019, the Fiscal Agent served *The Fiscal Agent’s Responses and Objections to the Committees’ and Government Parties’ First Set of Requests for Production of Documents Related to the Ultra Vires Proceedings* (the “RFP Responses and Objections”). Attached as Exhibit 3 hereto is a true and correct copy of the RFP Responses and Objections.

9. In the RFP Responses and Objections, the Fiscal Agent expressly objected to providing documents that were “publicly available.” The Fiscal Agent stated:

The Fiscal Agent objects to each and every one of these Document Requests, and the instructions and definitions therein, to the extent that the information sought is publicly available

RFP Responses and Objections at 6.

10. The Committees’ and Government Parties’ Request No. 29 sought “[a]ll Documents related to Your contention that the ERS Bonds are enforceable under UCC § 8-202 (19 L.P.R.A. § 1752).” *Id.* at 14. In response, the Fiscal Agent stated:

The Fiscal Agent objects to this Document Request on the grounds that it requests documents that are not within the Fiscal Agent’s possession, custody, or control. ... The Fiscal Agent will produce responsive, non-

privileged documents, not otherwise publicly available, located after a reasonable search.

Id.

11. Following the Fiscal Agent's service of the RFP Responses and Objections, the parties met and conferred on several occasions. The Committees never objected to the Fiscal Agent's objection to producing publicly available documents, but the Fiscal Agent did agree that it would not withhold an otherwise responsive document encountered during its document review solely on the basis that the document is publicly available.

12. The parties also agreed on a list of custodians whose documents the Fiscal Agent would search, and a list of search terms to use in connection with those searches. The DTC Operational Arrangements dated February 2002 (the "2002 DTC Operational Arrangements") did not appear in the documents the Fiscal Agent reviewed.

13. The Fiscal Agent did not encounter the 2002 DTC Operational Arrangements during its review of documents for production.

14. The parties also agreed that the Fiscal Agent would produce certain documents regardless of whether such documents were in a particular custodian's documents and/or hit on one or more agreed search terms. For example, the Fiscal Agent agreed to produce the documents comprising the closing transcript for each series of the Bonds. The 2002 DTC Operational Arrangements were not included in the documents the Fiscal Agent agreed to produce in this manner.

15. Upon information and belief, based on a review of the 2002 DTC Operational Arrangements, the 2002 DTC Operational Arrangements is a document prepared by The Depository Trust Company ("DTC"). The document was not prepared by the Fiscal Agent.

16. On December 3, 2019, the Fiscal Agent served *The Fiscal Agent's Responses and Objections to the First Set of Interrogatories of the Committees and Government Parties to the Fiscal Agent Related to the Ultra Vires Proceedings* (the "Interrogatory Responses"). Attached as Exhibit 4 hereto is a true and correct copy of the Interrogatory Responses.

17. General Objection No. 14 in the Interrogatory Responses states: "The Fiscal Agent objects to each and every one of these Interrogatories, and the instructions and definitions therein, to the extent that the information sought is publicly available" Interrogatory Responses at 5.

18. The Committees' and Government Parties' Interrogatory No. 16 asked the Fiscal Agent to "[i]dentify each 'registered owner' of the ERS Bonds." *Id.* at 11. The Fiscal Agent responded to Interrogatory No. 16 as follows: "The registered owner of all outstanding ERS Bonds is Cede & Co., as nominee for the Depository Trust Company." *Id.*

19. Although the Fiscal Agent served supplemental responses and objections to certain of the Committees' and Government Parties' Interrogatories, the Fiscal Agent's responses and objections with respect to Interrogatory No. 16 did not change.

20. On December 3, 2019, the Fiscal Agent served *The Fiscal Agent's Responses and Objections to the First Set of Requests for Admission of the Committees and Government Parties to the Fiscal Agent related to the Ultra Vires Proceedings* (the "RFA Responses"). Attached as Exhibit 5 hereto is a true and correct copy of the RFA Responses.

21. General Objection No. 14 in the RFA Responses states: "The Fiscal Agent objects to each and every one of these Requests for Admission, and the instructions and definitions therein, to the extent that the information sought is publicly available" RFA Responses at 5.

22. The Committees' and Government Parties' Request for Admission No. 6 asked the Fiscal Agent to "[a]dmit that members of the public purchased ERS Bonds in 2008." *Id.* at 8. The Fiscal Agent responded to Request for Admission No. 6 as follows: "The Fiscal Agent objects to and denies this Request for Admission on the basis that it is vague and ambiguous, and avers that Cede & Co. purchased the ERS Bonds. Upon information and belief, certain members of the public purchased securities entitlements in ERS Bonds in 2008." *Id.*

23. The Committees' and Government Parties' Request for Admission No. 7 asked the Fiscal Agent to "[a]dmit that the original owner of record for each ERS Bond has never transferred record ownership of any ERS Bond to any party." *Id.* The Fiscal Agent responded to Request for Admission No. 7 as follows: "The Fiscal Agent objects to and denies this Request for Admission on the basis that it is vague and ambiguous, except avers that the original registered owner for each ERS Bond [which the Fiscal Agent had previously identified as Cede & Co., as nominee of DTC] has not transferred ownership of any ERS Bond." *Id.*

24. Although the Fiscal Agent served supplemental responses and objections to certain of the Committees' and Government Parties' Requests for Admission, the Fiscal Agent's responses and objections with respect to Requests for Admission Nos. 6 and 7 did not change.

25. On July 1, 2020, the ad hoc group of beneficial owners of the Bonds represented by Jones Day (the "ERS Bondholder Group") submitted the expert report of Dr. William Bartley Hildreth with respect to the *ultra vires* issue (the "Hildreth Report"). The Hildreth Report is attached as Exhibit 1 to the Declaration of W. Bartley Hildreth, dated September 9, 2020 [ECF No. 14244].

26. In the Hildreth Report, Dr. Hildreth expressly cited the 2002 DTC Operational Arrangements, and included the 2002 DTC Operational Arrangements among his references.

Specifically, Dr. Hildreth states:

DTC states that it “... does not in any way undertake to, and shall not have any responsibility to, monitor or ascertain the compliance of any transactions in the [DTC eligible] Securities with ... any other local, state, federal, or foreign laws or regulations thereunder.” [DTC, Operational Arrangements Necessary for an Issue to Become and Remain Eligible for DTC Services, February 2002, Section A.7.b.]

Hildreth Report ¶ 153.

27. Dr. Hildreth included the 2002 DTC Operational Arrangements among the references cited in Appendix C of his report. *See id.* at 50 (“Depository Trust Company, Operational Arrangements Necessary for an Issue to Become and Remain Eligible for DTC Services, February 20, 2002”).

28. Dr. Hildreth also states that “[a]t the time of initial issuance, ERS registered the ownership of the bonds in the name of Cede & Co., the nominee of DTC. Cede & Co. remains the registered owner of each ERS bond.” *Id.* ¶ 155.

29. Dr. Hildreth also states:

Underwriters enter into a Purchase Contract to buy bonds from the Issuer in one total purchase price, but sell the beneficial interest to investors in the denominations specified in the Official Statement, although the legal title rests in the name of the securities depository (in the case of municipal securities it is the Depository Trust Corporation’s nominee Cede & Co.). [Purchase Contract: Series A bonds, tab 5; Series B bonds, tab 4; Series C bonds, document 5 at PDF 545].

Id. ¶ 94.

30. Dr. Hildreth further opines:

According to the S.E.C.: “When securities are held in street name, there is a legal distinction between the nominee who has legal status as the registered securityholder, and the person with economic or beneficial ownership of the security. Securities held in street name are legally owned

by and registered in the name of the depository's nominee (most often DTC's nominee, Cede & Co.). The individual investor's broker (or other intermediary) who is a member or participant of the depository will be identified on the books of the depository as having a "securities entitlement" [4] to a pro rata share of the fungible bulk of that security held by the depository. Correspondingly, the individual investor will be identified on the books of the depository participant (his or her broker or other intermediary) as having a securities entitlement to a pro rata share of the securities in which the participant has an interest." [S.E.C. Release 34-76743, File No. S7-27-15, "Transfer Agent Regulations," December 22, 2015, pages 38 and 39, footnotes omitted]

Hildreth Report ¶ 145.

31. On July 1, 2020, counsel for the Oversight Board and counsel for the ERS Bondholder Group exchanged emails in which they agreed that, with respect to Dr. Hildreth's expert report and the authorities cited therein, the ERS Bondholder Group need "not produce publicly available, published materials (e.g., articles and books)," with the proviso that "if there are particular such materials that you have difficulty locating, let us know and we will do our best to help get them to you, as long as you will agree to do the same for us". Attached as Exhibit 6 is a true and correct copy of the July 1, 2020 email chain in which those parties concluded that agreement. Upon information and belief, no party requested a copy of the 2002 DTC Operational Arrangements.

32. On August 10, 2020, Dr. Hildreth sat for a deposition and was deposed for approximately six hours and nine minutes, including by the Committees. No party questioned Dr. Hildreth with respect to Cede & Co.'s knowledge of any defect going to the validity of the bonds.

33. The documents produced and testimony elicited in discovery are replete with references to, and thereby confirm the central role of, DTC and Cede & Co. By way of example:

- a. The ERS Bonds and the Fiscal Agent's register, produced by BNYM in the litigation, specifically identify Cede & Co. as the registered owner of the Bonds. SUF App. Exs. 5-8; SUF 12-13.
- b. The Supplemental Resolutions produced in discovery specifically identify Cede & Co. as the registered owner of the Bonds. SUF 15; SUF App. Exs. 2-4 § 2.5(b).
- c. Appendices to the Official Statement for each of the Bond Series, produced in discovery, describe the Book Entry System and DTC's role therein. SUF 19; SUF App. Exs. 10-12.
- d. BNYM produced all of the communications with DTC in its possession, custody, or control required by the discovery agreement with the Committees and the government parties. In addition, the lead underwriter on each series of the ERS Bonds likewise produced communications with DTC. BNYM cited to many of these documents in its motion. SUF App. Exs. 16-19.
- e. The Receipt and Safekeeping Agreement for each series of the ERS bonds provides: "The FAST Agent [BNYM] agrees to hold the Bonds in safekeeping on behalf of DTC in accordance with the DTC Operational Arrangements memorandum dated November 22, 2000, as it may be amended from time to time." SUF App. Ex. 14.
- f. ERS Resolution 2008-02, dated January 24, 2008, provides: "The Blanket Letter of Representations of the System to the Depository Trust Company ("DTC") regarding matters relating to the deposit of the Series A Bonds

with DTC, in standard form published by DTC (the “Letter of Representations”), is hereby accepted and approved, and the Administrator or any Deputy Administrator of the System is hereby authorized and directed to execute and deliver the Letter of Representations on behalf of the System with such changes, insertions or omissions as shall be approved by the Administrator or any Deputy Administrator of the System, such person’s execution thereof to be conclusive evidence of the approval by the Board of any changes, insertions or omissions therein.”

SUF App. Ex. 15 (PR-ERS-000003599).

g. Numerous witnesses testified about DTC and/or Cede & Co. For example:

- i. Justin Boyer, a Principal with Redwood Capital Management. *See Boyer Dep. 34:22–36:5.*
- ii. Alex Chang, a Vice President in the Corporate Trust department at The Bank of New York Mellon. *See Chang Dep. 39:13–39:25, 41:10–42:3, 68:12–69:3, 117:20–118:2.*
- iii. Luis Manuel Collazo Rodriguez, the Administrator of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) and the Executive Director of the ERS Retirement Board. *See Collazo Dep. 357:7–367:7.*
- iv. Elan Daniels, Associate General Counsel for King Street Capital Management. *See Daniels Dep. 22:12–24.*

v. Robert Doty, the Committees' and Government Parties'

expert with respect to certain issues in the *ultra vires*

proceedings. *See* Doty Dep. 51:7–53:19, 55:3–56:19,

74:3–77:3, 93:2–93:10, 111:21–113:21.

vi. Dr William Bartley Hildreth, the ERS Bondholder Group's

expert with respect to certain issues in the *ultra vires*

proceedings. *See* Hildreth Dep. 140:20–141:15.

Attached as Exhibit 7 are true and correct excerpts from the referenced deposition transcripts.

h. As noted, these witnesses included the Committees' expert Robert Doty, who testified:

Q Could you tell us what Cede and Company is?

A Cede and Company is the designee of Depository Trust Company to be shown as the owner of the bonds for purposes of facilitating electronic trading.

Q And for the record, could you tell us what the Depository Trust Company is?

A The Depository Trust Company is a company created to facilitate electronic trading, and to eliminate paperwork so that we no longer have paper bonds. We have electronic bonds.

Ex. 7 (Doty Dep. 51:7–19).

34. Given all of the above circumstances, the Fiscal Agent believes that it did not have an obligation to supplement its discovery responses, including its Initial Disclosures.

35. It was not until approximately September 9, 2020—just a few days before Mr. Faith executed the DTC Declaration and provided it to the Fiscal Agent—that the Fiscal Agent learned that Mr. Faith would be the declarant on behalf of DTC.

36. The Committees' Motion represents the first time in these ERS proceedings—indeed, in any of the Puerto Rico Title III proceedings—that the Fiscal Agent has been accused of a discovery violation, or any sanctionable conduct for that matter. The Fiscal Agent has always complied with its litigation obligations—discovery or otherwise—in these Title III proceedings.

Dated: November 19, 2020
New York, NY



C. Neil Gray

JOINDER OF THE BANK OF NEW YORK MELLON, AS FISCAL AGENT, IN THE RESPONSE OF CERTAIN SECURED CREDITORS OF THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO TO THE OMNIBUS CLAIM OBJECTIONS OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND THE OFFICIAL COMMITTEE OF RETIRED EMPLOYEES OF THE COMMONWEALTH OF PUERTO RICO

The Bank of New York Mellon (“BNYM” or the “Fiscal Agent”), as fiscal agent for the pension funding bonds issued by the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”), through its undersigned counsel, hereby joins in the *Response of Certain Secured Creditors of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico to the Omnibus Claim Objections of the Official Committee of Unsecured Creditors and the Official Committee of Retired Employees* (the “Bondholders’ Response”), filed contemporaneously herewith, and, in support hereof, respectfully represents as follows:²

SUPPLEMENTAL BACKGROUND

1. BNYM serves as fiscal agent under the Pension Funding Bond Resolution (the “Resolution”), adopted by ERS on January 24, 2008, pursuant to which ERS issued three series of the ERS Bonds in the aggregate original principal amount of approximately \$2.9 billion.

2. The Resolution requires ERS to collect and remit the Employers’ Contributions (as defined in the Resolution) to the Fiscal Agent for payment of the ERS Bonds. See Resolution § 701; see also id. §§ 704, 709.

3. To secure payment of the ERS Bonds, ERS granted the Fiscal Agent, for the benefit of the Fiscal Agent and all bondowners, a security interest in and lien on certain pledged property. See id. § 501.

² Capitalized terms used but not defined herein have the meanings given in the Bondholders’ Response.

4. Each ERS Bond was issued in the form of a separate single authenticated fully registered bond.³ Upon initial issuance, the ownership of each ERS Bond was registered in the registration books of ERS, which are maintained by the Fiscal Agent, in the name of Cede & Co. (“Cede”), as nominee of The Depository Trust Company (“DTC”).⁴ The registered ownership of the ERS Bonds has not changed since the initial issuance. Cede remains the registered owner of each ERS Bond.

5. DTC holds the ERS Bonds as securities depository for certain broker-dealers, banks, and other financial institutions (the “Participants”).⁵ The Participants act, directly or indirectly, for the benefit of beneficial owners of such bonds.

JOINDER IN BONDHOLDERS’ RESPONSE

6. The Fiscal Agent hereby joins the Bondholders’ Response and incorporates by reference the factual and legal arguments made by the Bondholders in response to the Creditors’ Objection and the Retiree Objection as if fully set forth herein.

SUPPLEMENTAL RESPONSE

7. In response to the Committees’ arguments, the Bondholders explain, among other things, that ERS had authority to issue the ERS Bonds, but that even if ERS did not have authority to issue the ERS Bonds, such bonds still would be enforceable under section 8-

³ Amended and Restated First Supplemental Pension Funding Bond Resolution (the “First Supplemental Resolution”), adopted by ERS on January 29, 2008, § 2.5(b); Second Supplemental Pending Funding Bond Resolution (the “Second Supplemental Resolution”), adopted by ERS on May 27, 2008, § 2.5(b); Third Supplemental Pension Funding Bond Resolution (the “Third Supplemental Resolution”), adopted by ERS on June 26, 2008, § 2.5(b).

⁴ First Supplemental Resolution, Second Supplemental Resolution, and Third Supplemental Resolution § 2.5(a).

⁵ First Supplemental Resolution, Second Supplemental Resolution, and Third Supplemental Resolution § 1.2(b).

202 of the UCC because the Bondholders are purchasers for value and without notice of any defect. See Bondholders' Response ¶¶ 53-68.

8. Alternatively, even if ERS lacked authority to issue the ERS Bonds *and* the Bondholders had notice of a defect, such bonds still would be enforceable under section 8-202 of the UCC because the sole registered owner of the ERS Bonds had no knowledge of any defect. The Committees do not allege and cannot meet their burden of proving that Cede had notice of any defect going to the validity of the ERS Bonds when they were issued to Cede in 2008. Accordingly, under section 8-202 of the UCC, the ERS Bonds are valid and enforceable in the hands of Cede.

WHEREFORE, the Fiscal Agent respectfully requests that the Court enter an order overruling the Creditors' Objection in its entirety and the *ultra vires* arguments raised in the Retiree Objection and granting the Fiscal Agent such other and further relief as may be just and proper.

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Dated: October 25, 2019
San Juan, Puerto Rico

Respectfully submitted,

SEPULVADO, MALDONADO & COURET

By: /s/ Albéniz Couret-Fuentes

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

IN RE:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA

Title III

Case No. 17-BK-3283-LTS

IN RE:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

EMPLOYEES RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE COMMONWEALTH OF
PUERTO RICO,

Debtor.

PROMESA

Title III

Case No. 17-BK-3566-LTS

**INITIAL DISCLOSURES OF
THE BANK OF NEW YORK MELLON, AS FISCAL AGENT**

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) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (Bankruptcy Case No. 19-BK-5233-LTS) (Last Four Digits of Federal Tax ID: 3801).

The Bank of New York Mellon, as fiscal agent ("BNYM"), through its undersigned counsel, and pursuant to Fed. R. Civ. P. 26(a)(1), made applicable to this action by Fed. R. Bankr. P. 7026, hereby provides the following Initial Disclosures in connection with the *Omnibus Objection of Official Committee of Unsecured Creditors to Claims Asserted by Holders of Bonds Issued by Employees Retirement System of Government of Puerto Rico*, ECF No 5580 in Case No. 17-bk-03283, filed by the Official Committee of Unsecured Creditors (the "Creditors' Committee"), and the *Omnibus Objection of the Official Committee of Retired Employees of the Commonwealth of Puerto Rico, Pursuant to Bankruptcy Code Section 502 and Bankruptcy Rule 3007, to Claims Files or Asserted by Holders of ERS Bonds Against ERS and the Commonwealth*, ECF No. 6482 in Case No. 17-bk-03283, filed by the Official Committee of Retired Employees of the Commonwealth of Puerto Rico (the "Retiree Committee");

PRELIMINARY STATEMENT

These initial disclosures are based on information reasonably available to BNYM as of the date of these disclosures and are made without prejudice to BNYM's right to amend these disclosures based on information learned through discovery, investigation, and legal research. In making these disclosures, BNYM does not represent that it is identifying every individual, document, or tangible thing upon which it may rely to support its claims or defenses, nor does BNYM waive its right to object to the production or to the use in this proceeding of any document or tangible thing on the basis of any privilege, the work product doctrine, relevancy, undue burden, competency, materiality, hearsay, or any other valid objection. Rather, BNYM's disclosures represent its good faith effort to identify information relevant to the specified factual disputes as required by Fed. R. Civ. P. 26(a)(1).

INITIAL DISCLOSURES

Rule 26(a)(1)(A)(i): The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information.

BNYM is unable to identify at present all persons it intends to use as witnesses to support its claims or defenses. Therefore, at this time BNYM identifies the following individuals as those who may have discoverable information or knowledge of facts that BNYM may use to support its claims or defenses:

Name	Position	Address	Subject Matter
Alex T. Chang	Vice President, The Bank of New York Mellon	c/o Reed Smith LLP, 599 Lexington Avenue, New York, NY 10022	BNYM's joinder in the Response of Certain Secured Creditors of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico to the Omnibus Claims Objections of the Official Committee of Unsecured Creditors and the Official Committee of Retired Employees of the Commonwealth of the Puerto Rico, including, but not limited to: BNYM's administration under the Pension Funding Bond Resolution, dated January 24, 2008 (the " <u>Resolution</u> "), including UCC filings made by BNYM.

Current and/or former representatives and employees of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”)	Unknown	c/o Proskauer Rose LLP, Eleven Times Square, New York, NY 10036	ERS, including its decision to issue bonds, its decision to issue underwritten bonds, the Puerto Rico Legislature’s decision not to authorize general obligation debt, the extent of and representations concerning ERS’s borrowing authority, the role of underwriters in the issuance of ERS’s bonds pursuant to the Resolution, and other transactions to obtain financing that ERS either engaged in or contemplated engaging in.
Current and/or former representatives of the Commonwealth of Puerto Rico (the “Commonwealth”)	Unknown	c/o Proskauer Rose LLP, Eleven Times Square, New York, NY 10036	ERS, including its decision to issue bonds, its decision to issue underwritten bonds, the Puerto Rico Legislature’s decision not to authorize general obligation debt, the extent of and representations concerning ERS’s borrowing authority, the role of underwriters in the issuance of ERS’s bonds pursuant to the Resolution, and other transactions to obtain financing that ERS either engaged in or contemplated engaging in.

The Official Committee of Unsecured Creditors of all Title III Debtors (Other than COFINA)	Unknown	c/o Paul Hasting LLP, 200 Park Avenue, New York, NY 10166	The Creditors' Committee's allegations that ERS bondholders were on notice of the alleged invalidity of the ERS bonds.
The Official Committee of Retired Employees of the Commonwealth of Puerto Rico	Unknown	c/o Jenner & Block LLP, 919 Third Avenue, New York, NY 10022	The Retiree Committee's allegations that ERS bondholders were on notice of the alleged invalidity of the ERS bonds.

In addition to the individuals identified above, BNYM incorporates by reference any witnesses who may be identified by the Creditors' Committee, the Retiree Committee, or any other party in interest to this proceeding during the course of discovery in this proceeding. BNYM does not concede the relevance or admissibility of any testimony at this time.

BNYM will identify any testifying expert witness consistent with the Court's Order and the Federal Rules of Civil Procedure, as made applicable by the Federal Rules of Bankruptcy Procedure 7026. BNYM reserves the right, pursuant to Federal Rule of Civil Procedure 26(e), as made applicable by Federal Rule of Bankruptcy Procedure 7026, to supplement these disclosures and disclose additional individuals whom BNYM may use to support its case based upon further developments in the case or information learned during the course of litigation.

Rule 26(a)(1)(A)(ii): A copy of or a description by category and location of, all documents, data compilations and tangible things in the possession, custody or control of the party that the disclosing party may use to support its claims or defenses unless solely for impeachment.

Given the early stage of these proceedings, BNYM is unable at present to identify all of the documents it may use to support its claims or defenses. Notwithstanding and subject to the

foregoing, BNYM identifies the following categories of documents currently within their possession:

1. The Resolution and related bond transaction documents, including, but not limited to, all supplements to the Resolution, official statements, opinions of counsel, and certifications.
2. Documents sufficient to show the registered holder(s) of all ERS bonds offered pursuant to the Resolution.

BNYM incorporates by reference all documents produced or identified by the Creditors' Committee, the Retiree Committee, or any other party in interest to this proceeding during the course of discovery in this proceeding. BNYM does not concede the admissibility of any documents at this time.

Rule 26(a)(1)(A)(iii): A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

BNYM has submitted a Proof of Claim (No. 16777), dated May 22, 2018 (the "ERS Claim") asserting claims against ERS on account of amounts due or becoming due under the Resolution and the three series of senior pension funds bonds (the "Bonds"), comprising:

- (i) \$3,841,110,000.00 in principal (maturity value);
- (ii) \$9,251,055.00 in accrued but unpaid interest as of May 21, 2017;
- (iii) accrued and unpaid interest subsequent to May 21, 2017;
- (iv) all amounts due and becoming due to BNYM for services rendered under the Resolution and reimbursement of all reasonable expenses, disbursements, and advances made or incurred by BNYM, its agents, and employees in connection

with its powers and duties under the Resolution, for indemnification, and for all other amounts due or becoming due to BNYM; and

- (v) any and all claims, rights, and/or remedies BNYM and/or Owners (as that term is defined in the Resolution) may have under or in connection with the Bonds and/or the Resolution, including any and all other interest, charges, penalties, premiums, and advances that may be due or become due under or in connection with the Bonds and/or the Resolution (whether under applicable law or principles of equity), which amounts presently may be unliquidated or contingent, but may become fixed and liquidated in the future, and which may constitute administrative claims,

as supplemented and more fully set out in the ERS Claim, including the Addendum to Proof of Claim of The Bank of New York Mellon, as Fiscal Agent, thereto, and the Proof of Claim (No. 16775), dated May 22, 2018, submitted by BNYM (the “Commonwealth Claim”), including the Addendum to Proof Claim of The Bank of New York Mellon, as Fiscal Agent, thereto. The ERS Claim and the Commonwealth Claim are hereby incorporated by reference.

Rule 26(a)(1)(A)(iv): For inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy judgment.

BNYM does not maintain any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in these actions or to indemnify or reimburse for payments made to satisfy judgment.

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Dated: November 1, 2019
San Juan, Puerto Rico

SEPULVADO, MALDONADO & COURET

By: /s/ Albéniz Couret-Fuentes

Albéniz Couret-Fuentes

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*Counsel to The Bank of New York Mellon,
as fiscal agent*

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

-----	X	
)	
In re:)	
	)	PROMESA
THE FINANCIAL OVERSIGHT AND	)	Title III
MANAGEMENT BOARD FOR PUERTO RICO)	
	)	Case No. 17-BK-03283 (LTS)
as representative of)	
)	
THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i> ,)	
)	
Debtors. ¹)	
-----)	
)	
In re:)	
	)	PROMESA
THE FINANCIAL OVERSIGHT AND	)	Title III
MANAGEMENT BOARD FOR PUERTO RICO,)	
	)	Case No. 17-BK-03566 (LTS)
as representative of)	
)	
THE EMPLOYEES RETIREMENT SYSTEM OF THE)	
GOVERNMENT OF THE COMMONWEALTH OF)	
PUERTO RICO,)	
)	
Debtor.)	
-----	X	

**THE FISCAL AGENT’S RESPONSES AND OBJECTIONS TO THE
COMMITTEES’ AND GOVERNMENT PARTIES’ FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS
RELATED TO THE ULTRA VIRES PROCEEDINGS**

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), (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) (Last Four Digits of Federal Tax ID: 3747).

Pursuant to Rules 7026 and 7034 of the Federal Rules of Bankruptcy Procedure, and Federal Rules of Civil Procedure 26 and 34 incorporated therein, made applicable to this proceeding by 48 U.S.C. § 2170, and in connection with the *Omnibus Objection Of Official Committee Of Unsecured Creditors To Claims Asserted By Holders Of Bonds Issued By Employees Retirement System Of Government Of Puerto Rico* [ECF No. 5580 in Case No. 17-bk-03283] (the “UCC Objection”), and the *Omnibus Objection Of The Official Committee Of Retired Employees Of The Commonwealth Of Puerto Rico, Pursuant To Bankruptcy Code Section 502 And Bankruptcy Rule 3007, To Claims Filed Or Asserted By Holders Of ERS Bonds Against ERS And The Commonwealth* [ECF No. 6482 in Case No. 17-bk-03283] (the “Retiree Objection,” and together with the UCC Objection, the “Objections”), The Bank of New York Mellon, as fiscal agent (the “Fiscal Agent”), secured creditor of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”), hereby submits the following Responses and Objections to those portions of the First Set of Requests of the Committee and Government Parties for Production of Documents that relate to the Ultra Vires issue.² The Fiscal Agent further reserves the right to supplement, amend, or modify these objections and responses as necessary.

GENERAL OBJECTIONS

1. The General Objections that follow are applicable to and incorporated into each and every individual response that the Fiscal Agent makes to the Document Requests whether or not restated in response to any particular request. The Fiscal Agent’s responses are made without

² On November 12, 2019, the Committees and Government Parties identified Document Request Nos. 1, 11, 14, 18-44, 48-49, 55-58 of the document requests propounded on the bondholders as relating to discovery in the Ultra Vires Proceedings. (Exhibit A.) The Fiscal Agent incorporates those designations on corresponding document requests herein.

waiving, or intending to waive, these General Objections, and the Fiscal Agent specifically reserves all of its other objections.

2. The Fiscal Agent objects to the Document Requests to the extent that they purport to seek information or documents that are not within the Fiscal Agent's possession, custody, or control.

3. The Fiscal Agent objects to the Document Requests, including the Definitions and Instructions, to the extent that they seek to impose obligations on the Fiscal Agent that are inconsistent with or exceed obligations for production under the Federal Rules, the Bankruptcy Rules, the Local Rules of the United States District Court for the District of Puerto Rico ("Local Rules"), the Local Rules of the United States Bankruptcy Court for the District of Puerto Rico ("Local Bankruptcy Rules"), or any other applicable rule or law.

4. The Fiscal Agent objects to the Document Requests to the extent they seek information that is subject to the attorney-client privilege, the attorney-work product doctrine, the joint defense privilege, or any other applicable privilege. The Fiscal Agent construes the Document Requests to seek non-privileged documents, and, as such, to the extent the Fiscal Agent produces documents, it will provide documents that it believes are non-privileged and otherwise properly discoverable. The Fiscal Agent does not intend to provide any privileged information or documents. Any production of privileged material is therefore inadvertent and shall not constitute waiver of any privilege.

5. The Fiscal Agent objects to the Document Requests to the extent that they purport to require preservation or production of electronically stored information ("ESI") that is not stored on active systems, but that is instead stored on systems, backup tapes, and other media that are no longer part of the Fiscal Agent's normal business operations, or that is stored on media that are

otherwise overly burdensome to search, such as text or instant messaging systems. Because the relevance of such ESI is minimal at best and the cost associated with searching, preserving, and accessing these data sources is significant, the Fiscal Agent interprets the Document Requests as excluding such ESI sources.

6. The Fiscal Agent objects to the Document Requests to the extent that they purport to require the Fiscal Agent to search for and produce documents that are not “reasonably accessible” as that term is generally understood.

7. The Fiscal Agent objects to the Document Requests to the extent that any requests are overly burdensome or seek documents or information that are not proportional to the needs of the case. In addition, the Fiscal Agent objects to each Request, definition, or instruction that purports to require that the Fiscal Agent identify and provide discovery with regard to “each,” “all,” “any,” or similar all-encompassing wording, on the grounds that such Requests, definitions, and instructions are overly broad, unduly or disproportionately burdensome, seek discovery that is not relevant to the parties’ claims and defenses, not proportional to the needs of the case, and beyond the scope of permissible discovery, particularly at this stage of the proceeding.

8. The Fiscal Agent objects to the Document Requests to the extent that a Document Request is not related to the parties’ claims and defenses in the Objections (the “Ultra Vires Proceedings”) and is only related to Adversary Proceeding No. 19-00366 (“Lien Scope Proceedings”). On November 12, 2019, the Committees and Government Parties identified by email correspondence which Document Requests were related to discovery in the Ultra Vires Proceedings and which Document Requests were related to discovery in the Lien Scope Proceedings. *See* Exhibit A. The Fiscal Agent, in reliance on that correspondence, asserts only relevance objections herein to Discovery Requests identified by the Committees and Government

Parties as not related to the Ultra Vires Proceedings, but reserves the right to assert any additional objections should the Committees and Government Parties attempt to pursue the Document Requests in the Ultra Vires Proceedings.

9. The Fiscal Agent objects to the “Definitions” in the Document Requests to the extent they define terms inconsistently with or more broadly than their usage under the Federal Rules, Bankruptcy Rules, Local Rules, or Local Bankruptcy Rules.

10. The Fiscal Agent objects to the definitions of “Communication,” and “Document” insofar as those definitions require the production of materials that exceed the scope of Federal Rule 34(a), made applicable to this adversary proceeding by Bankruptcy Rule 7034 and Section 310 of PROMESA (48 U.S.C. § 2170).

11. The Fiscal Agent objects to the definition of “You” and “Your” as overly broad insofar as it includes individuals and entities who have no connection with the current litigation, and have identities separate and apart from the Fiscal Agent, including “all persons acting on behalf of, for the benefit of, at the direction of, in exchange for compensation from, or under the control or authority of any of the foregoing” as listed in the Definitions. The Fiscal Agent will construe the Document Requests that refer to “You” and “Your” as referring exclusively to the Fiscal Agent with respect to the ERS Bonds, and disclaims any obligation to provide information from any other persons.

12. The Fiscal Agent objects to the definition of “ERS Bonds” as confusing or potentially misleading. The Resolution authorized the issuance of both senior and subordinate bonds, but only senior bonds were ultimately issued by the ERS. The Fiscal Agent will construe the Document Requests that define “ERS Bonds” as referring to Bonds as that term is defined in the Resolution.

13. The Fiscal Agent objects to the scope of these Document Requests on the ground that they are overly broad insofar as they purport to seek documents created at any time and contain no limitation on the date ranges within which the Fiscal Agent must search for and produce documents. In the absence of any agreement among the parties as to the applicable date ranges, the Fiscal Agent will search for and produce documents created within a date range that is reasonable for each request.

14. The Fiscal Agent objects to each and every one of these Document Requests, and the instructions and definitions therein, to the extent that the information sought is publicly available, unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. The Fiscal Agent further objects to the extent these Document Requests seek production of unsolicited mass electronic correspondence from third parties, including broadly distributed electronic-mail and Bloomberg messages.

15. Insofar as the Document Requests seek documents containing both discoverable and non-discoverable or objectionable material, the Fiscal Agent reserves the right to redact from documents produced any matter that is nonresponsive, objectionable, privileged, or otherwise non-discoverable.

RESPONSES TO DOCUMENT REQUESTS

Subject to the foregoing General Objections, the Fiscal Agent responds and objects to the document requests as follows:

Request No. 1: All Documents relating to, or delivered in connection with, the 2008 ERS Bond Issuance, including the ERS Bond Resolution, ERS Security Agreement, and any other deal-related Documents in connection with the 2008 ERS Bond Issuance.

Response to Request No. 1: The Fiscal Agent objects to this Document Request on the grounds that it requests documents that are either publicly available or in the possession, custody, or control of the Committees or the Government Parties. Further, the Fiscal Agent objects to this

Document Request as overly burdensome and not proportional to the needs of this case because it seeks “[a]ll Documents relating to” a number of issues, which could, if read literally, encompass many documents that will not bear on any of the issues in dispute.

Subject to these objections, the Fiscal Agent agrees to produce the following types of Bond Documents for the ERS Series A, B, and C Bonds that are within the Fiscal Agent’s possession, custody, or control:

- ERS Pension Funding Bond Resolution and Supplemental Pension Funding Bond Resolutions
- Preliminary Official Statements and Official Statements
- Purchase Contracts
- Master Continuing Disclosure Agreements
- Security Agreements
- Act 447
- Certificates of the Secretary of State and the Commonwealth
- Certificates of the System, Administrator of the System, Secretary of the Board of Trustees of the System
- Copies of Resolutions related to Pension Funding Bond Resolution and approval of issuance of bonds
- Letters from the System to the Fiscal Agent regarding (i) items required by Section 202.3 of the Bond Resolution, (ii) authorization and delivery of the Bonds, and (iii) application of proceeds of the Bonds
- Certificates and Copies of Resolutions certified by the Government Development Bank
- Certificates of the Fiscal Agent
- Underwriters’ receipts
- Receipt and Safekeeping Agreements
- Legal Opinions of Bond Counsel
- Specimen Bonds
- Agreements Among Underwriters
- Letters to each Nationally Recognized Municipal Securities Information Repository transmitting copies of the final Official Statement
- Certificates of the Acting Secretary of the Treasury of the Commonwealth of Puerto Rico
- UCC-1 Financing Statement
- Underwriters’ Closing Memorandum
- Letters of Credit Ratings Agencies regarding assignment of ratings to Bonds
- Independent Accountant’s Consent Letters
- Independent Accountant’s Report on Applying Agreed-Upon Procedures
- Employees Retirement System of the Government of the Commonwealth of Puerto Rico (ERS): Covered Payroll Outlook
- Letter of Representations

- Memorandum of Understanding

Request No. 2: All Documents relating to Your alleged security interest in the following (or in any claimed proceeds thereof): (a) ERS's Pre-2008 Assets; (b) AUC; (c) employee contributions to ERS; (d) ERS funds not deposited with the Fiscal Agent; (e) funds remitted to ERS by the Fiscal Agent; (f) Employee Loans; (g) Employee Loan Payments; or (h) ERS's investments.

Request No. 3: All Documents relating to Your contention that Employee Loans, Employee Loan Payments, ERS's investments, or ERS's cash or other assets are proceeds of Your collateral, including without any limitation any Documents relating to the sources of funds with which these assets were acquired.

Request No. 4: All Documents relating to Your alleged security interest in Employers' Contributions, including, but not limited to, Employers' Contributions that have not been received by ERS.

Request No. 5: All Documents relating to Your contention that You perfected or attempted to perfect a security interest in any property of ERS, including, but not limited to, any filings pursuant to the Uniform Commercial Code, control agreements, possessory agreements, or bailment agreements perfecting or attempting to perfect a security interest or a lien securing or attempting to secure an interest in the Pledged Property.

Request No. 6: All Documents relating to the source(s) of any payments of cash to ERS, to the extent You assert such payments occurred.

Request No. 7: All Documents relating to Your security interest in ERS assets, to the extent You assert such security interest exists.

Request No. 8: All Documents relating to Your control of any ERS deposit accounts, to the extent You assert such control exists.

Request No. 9: All Documents relating to the source(s) of funds transferred to You on account of the ERS Bonds.

Request No. 10: All Documents relating to the transfer by ERS to You of Additional Uniform Contributions.

Response to Request Nos. 2–10: The Committees and the Government Parties have stated that Document Requests 2 through 10 are not related to discovery in the Ultra Vires Proceedings.

Request No. 11: All Documents relating to Your actions and responses to Act 116-2011.

Response to Request No. 11: The Fiscal Agent objects to this Document Request on the grounds that it is vague and ambiguous as to undefined terms "actions" and "responses." Further,

the Fiscal Agent objects to this Document Request as overly broad because it does not specify which documents that relate to the undefined terms “actions” and “responses” that this Document Request seeks. Further, the Fiscal Agent objects to this Document Request to the extent that it seeks information that is subject to the attorney-client privilege, the attorney-work product doctrine, the joint defense privilege, or any other applicable privilege. The Fiscal Agent will produce responsive, non-privileged documents, not otherwise publicly available, located after a reasonable search.

Request No. 12: All Documents relating to Your actions and responses to Act 3-2013 and all executive orders related thereto.

Request No. 13: All Documents relating to Your actions and responses to Act 32-2013 and all executive orders related thereto.

Response to Request Nos. 12–13: The Committees and the Government Parties have stated that Document Requests 12 through 13 are not related to discovery in the Ultra Vires Proceedings.

Request No. 14: All Documents relating to Your actions and responses to the lawsuit *Retiro de los Empleados del Gobierno y la Judicatura de Puerto Rico v. UBS Fin. Servs. Inc. of Puerto Rico*, Civ. No. KAC-2011-1067 (803) (P.R. Ct. of First Instance, San Juan).

Response to Request No. 14: The Fiscal Agent objects to this Document Request on the grounds that it requests documents that are in the possession, custody, or control of UBS. The Fiscal Agent also objects to this Document Request on the grounds that it is vague and ambiguous as to undefined terms “actions” and “responses.” Further, the Fiscal Agent objects to this Document Request as overly broad because it does not specify which documents that relate to the undefined terms “actions” and “responses” that this Document Request seeks. Further, the Fiscal Agent objects to this Document Request to the extent that it seeks information that is subject to the attorney-client privilege, the attorney-work product doctrine, the joint defense privilege, or any other applicable privilege. The Fiscal Agent will produce responsive, non-privileged documents,

not otherwise publicly available, located after a reasonable search.

Request No. 15: All Documents relating to the identification of the source of any funds or property held by ERS.

Request No. 16: All Documents relating to any tracing analysis prepared for You or on Your behalf with respect to any ERS assets in which You allege that You have a security interest.

Request No. 17: All Documents related to the valuation of Your collateral, to the extent such Documents were not already produced in response to another Document Request.

Response to Request Nos. 15–17: The Committees and the Government Parties have stated that Document Requests 15 through 17 are not related to discovery in the Ultra Vires Proceedings.

Request No. 18: All Documents relating to the legality or validity of the ERS Bonds, including, but not limited to, any internal communications discussing whether the ERS Bonds are “ultra vires,” unauthorized, or contrary to public policy.

Response to Request No. 18: The Fiscal Agent objects to this Document Request to the extent that it seeks information that is subject to the attorney-client privilege, the attorney-work product doctrine, the joint defense privilege, or any other applicable privilege. The Fiscal Agent incorporates its Responses and Objections to Document Request No. 1 by reference.

Request No. 19: All Documents relating to the ERS Bonds or ERS Bond-related information known to or in the possession of You or any of Your advisors at the time of any evaluation or analysis with respect to the ERS Bonds (including, without limitation, their validity).

Response to Request No. 19: The Fiscal Agent objects to this Document Request on the grounds that it is vague and ambiguous as to undefined terms “advisors,” “evaluation,” “analysis,” and “ERS Bond-related information.” Further, the Fiscal Agent objects to this Document Request because it is overly broad to the extent it seeks “all Documents” relating to the ERS Bonds in the possession of the Fiscal Agent “at the time of . . . any evaluation or analysis with respect to the ERS Bonds”—which encompasses every single document about the ERS Bonds at any time as long as the Fiscal Agent has served in that role and is well beyond the scope of reasonable

document production. The Fiscal Agent objects to this Document Request to the extent that it seeks information that is subject to the attorney-client privilege, the attorney-work product doctrine, the joint defense privilege, or any other applicable privilege. Further, the Fiscal Agent objects to this Document Request as duplicative of multiple other requests herein. The Fiscal Agent is willing to confer regarding the overbreadth and ambiguity of this Document Request.

Request No. 20: All bond resolutions, trust indentures and equivalents, including opinions of counsel and similar supporting and closing documentation and all offering documents, for all municipal or governmental securities for which You have served as indenture trustee or fiscal agent since 2007.

Response to Request No. 20: The Fiscal Agent objects to this Document Request on the grounds that bond documents for other municipal or government securities are irrelevant to the Ultra Vires Proceedings. Further, the Fiscal Agent objects to this Document Request as overly broad, unduly burdensome, and not proportional to the needs of the case because it seeks irrelevant documents dating back to 2007.

Request No. 21: All Documents relating to or constituting communications, including through counsel, or contractual agreements between You and (i) any underwriter in connection with the ERS Bonds; (ii) any ERS Bondholder; or (iii) the registered owner of any ERS Bonds.

Response to Request No. 21: The Fiscal Agent objects to this Document Request to the extent that it seeks information that is subject to the attorney-client privilege, the attorney-work product doctrine, the joint defense privilege, or any other applicable privilege. The Fiscal Agent also objects to this Document Request to the extent it seeks the Fiscal Agent to produce communications between other parties, such as its counsel. The Fiscal Agent also objects to this Document Request as overly broad, unduly burdensome, and not proportional to the needs of the case because, on its face, it seeks “[a]ll Documents relating to or constituting communications . . . or contractual agreements” between the Fiscal Agent and a number of parties, without limitation to the subject of such communications or contractual agreements. The Fiscal Agent construes this

Document Request as only seeking ERS Bond-related communications or contractual agreements. Even with this construction, however, the Fiscal Agent objects that this Document Request is overly broad, unduly burdensome, and not proportional to the needs of the case because it does not specify which subjects of ERS Bond-related communications or contractual agreements the Document Request seeks.

Subject to these objections, the Fiscal Agent is willing to confer to resolve the ambiguity as to what type of ERS Bond-related communications the Document Request seeks.

Request No. 22: All documents relating to the “private placement” or “direct placement” of any municipal or governmental securities for which you have served as indenture trustee or fiscal agent.

Response to Request No. 22: In addition to the General Objections, the Fiscal Agent objects to this Document Request on the grounds that bond documents for other municipal or government securities are irrelevant to the Ultra Vires Proceedings. The Fiscal Agent further objects that this Document Request is vague and ambiguous with respect to its use of the undefined phrases “private placement” and “direct placement.” The Fiscal Agent further objects to this Document Request to the extent it seeks “[a]ll Documents” relating to the private placement or direct placement of such other municipal or government securities; such a request for “[a]ll Documents” is overly broad, unduly burdensome, and not proportional to the needs of the case.

Request No. 23: All Documents relating to Your understanding or interpretation of the phrase “direct placements of debt” under the ERS Enabling Act.

Response to Request No. 23: The Fiscal Agent objects to this Document Request as duplicative of Interrogatories Nos. 1 through 4 and incorporates its Responses and Objections to those Interrogatories by reference. The Fiscal Agent will produce responsive, non-privileged documents, not otherwise publicly available, located after a reasonable search.

Request No. 24: All Documents relating to Your contention, if any, that the Court must consider “the circumstances under which [ERS Bondholders] acquired the Bonds,” including but not limited

to “the relationship of the Bondholders to ERS” at the time the ERS Bondholders acquired the ERS Bonds. (See Adv. Pro. No. 17-00219-LTS, Dkt. 50 at p.27.)

Response to Request No. 26: The Fiscal Agent objects to this Document Request as duplicative of Interrogatories Nos. 8 and 9 and incorporates its Responses and Objections to those Interrogatories by reference. The Fiscal Agent does not make the quoted contention and, therefore, there are no responsive documents.

Request No. 25: All Documents relating to Your contention that the ERS Bonds are or were within ERS’s power and authority under the ERS Enabling Act to “tomar prestado de cualquier institución financiera . . .” (See Case No. 17-03283-LTS, Dkt. 9012 (“ERS Bondholders’ Response”) at ¶¶ 12-13 and Case No. 17-03283-LTS, Dkt. 9013, Your Joinder to the ERS Bondholders’ Response (“Joinder”).)

Response to Request No. 25: The Fiscal Agent objects to this Document Request as duplicative of Interrogatories Nos. 10 and 11 and incorporates its Responses and Objections to those Interrogatories by reference. The Fiscal Agent will produce responsive, non-privileged documents, not otherwise publicly available, located after a reasonable search.

Request No. 26: All Documents relating to Your contention that “unlike ‘seek a loan,’ ‘borrow’—‘tomar prestado’—includes raising money by selling bonds.” (See ERS Bondholders’ Resp. at ¶ 14.)

Response to Request No. 28: The Fiscal Agent objects to this Document Request as duplicative of Interrogatories Nos. 12 and 13 and incorporates its Responses and Objections to those Interrogatories by reference. The Fiscal Agent will produce responsive, non-privileged documents, not otherwise publicly available, located after a reasonable search.

Request No. 27: All Documents relating to Your contention that “the underwriters’ resale of ‘ownership interests’ in the ERS Bonds does nothing to change the fact that the issuance of the ERS Bonds involved borrowing from the underwriting financial institutions as the ERS Enabling Act allowed.” (See ERS Bondholders’ Resp. at ¶ 19.)

Response to Request No. 29: The Fiscal Agent objects to this Document Request as duplicative of Interrogatories Nos. 14 and 15 and incorporates its Responses and Objections to those Interrogatories by reference. The Fiscal Agent will produce responsive, non-privileged

documents, not otherwise publicly available, located after a reasonable search.

Request No. 28: All Documents relating to Your contention that any violation of the ERS Enabling Act was “harmless.”

Response to Request No. 30: The Fiscal Agent objects to this Document Request on the grounds that it requests documents that are in the possession, custody, or control of ERS. The Fiscal Agent will produce responsive, non-privileged documents, not otherwise publicly available, located after a reasonable search.

Request No. 29: All Documents related to Your contention that the ERS Bonds are enforceable under UCC § 8-202 (19 L.P.R.A. § 1752).

Response to Request No. 29: The Fiscal Agent objects to this Document Request on the grounds that it requests documents that are not within the Fiscal Agent’s possession, custody, or control. The Fiscal Agent also objects to this Document Request to the extent that it seeks information that is subject to the attorney-client privilege, the attorney-work product doctrine, the joint defense privilege, or any other applicable privilege. The Fiscal Agent will produce responsive, non-privileged documents, not otherwise publicly available, located after a reasonable search.

Request No. 30: All Documents related to Your affirmative defense that “Plaintiffs’ claims are barred in whole or in part by the doctrine of judicial estoppel.” (Affirmative Defenses asserted in Answer and Counterclaims, Adv. Pro. No. 19-00366 (“Lien Scope Answer”).)

Response to Request No. 35: The Fiscal Agent objects to this Document Request on the grounds that it requests documents that are not within the Fiscal Agent’s possession, custody, or control, or are in the possession, custody, or control of ERS. The Fiscal Agent also objects to this Document Request on the grounds that it requests documents that are publicly available, including but not limited to judicial pleadings in which the Government Parties stated that the Fiscal Agent has valid and enforceable liens. *See* Brief for Respondent-Appellee Employees Retirement System of the Government of the Commonwealth of Puerto Rico, at 14 & 30, No. 16-2433 (1st Cir. Dec.

23, 2016); Brief for Respondents-Appellees Alejandro Garcia-Padilla, Juan C. Zaragoza-Gomez, Luis G. Cruz-Batista, and Carmen Villar-Prados, at 45, No. 16-2433 (1st Cir. Dec. 23, 2016); Brief of Amicus Curiae Financial Oversight and Management Board for Puerto Rico in Support of Respondents-Appellees Urging Affirmance of the District Court Order, at 7, No. 16-2433 (1st Cir. Dec. 23, 2016); Joint Stip. of Movants, the Commonwealth Respondents, and ERS, at ¶¶ 6 & 11, No. 3:16-cv-02696, ECF No. 65 (D.P.R. Nov. 2, 2016); Financial Oversight and Management Board's Motion to Intervene, at 12, No. 3:16-cv-02696, ECF No. 56 (D.P.R. Oct. 28, 2016); Respondent Employees Retirement System of the Government of the Commonwealth of Puerto Rico's Brief in Opposition to Motion for Relief From the PROMESA Automatic Stay in *Altair Global Credit Opportunities Fund (A), L.L.C., et al. v. Governor Alejandro García Padilla, et al.*, at 10-11, No. 16-cv-2696, ECF No. 52 (D.P.R. Oct. 26, 2016); Respondents' Brief in Opposition to Motion for Relief From the PROMESA Automatic Stay in *Altair Global Credit Opportunities Fund (A), L.L.C., et al. v. Governor Alejandro García Padilla, et al.*, at 5, 13, 17-18, No. 16-cv-2696, ECF No. 53 (D.P.R. Oct. 26, 2016). The Fiscal Agent objects to this Document Request as duplicative of Interrogatory No. 22 and incorporates its Responses and Objections to Interrogatory No. 22 by reference. The Fiscal Agent will produce responsive, non-privileged documents, not otherwise publicly available, located after a reasonable search.

Request No. 31: All Documents related to Your affirmative defense that "Plaintiffs' claims are barred in whole or in part by the doctrine of laches." (Lien Scope Answer.)

Response to Request No. 31: The Fiscal Agent objects to this Document Request on the grounds that it requests documents that are not within the Fiscal Agent's possession, custody, or control. The Fiscal Agent objects to this Document Request as duplicative of Interrogatory No. 22 and incorporates by reference its Responses and Objections to Interrogatory No. 22, which the Fiscal Agent will serve on December 3, 2019. The Fiscal Agent will produce responsive, non-

privileged documents, not otherwise publicly available, located after a reasonable search.

Request No. 32: All Documents related to Your affirmative defense that “Plaintiffs’ claims are barred, in whole or in part, because they would violate the Fifth Amendment to the United States Constitution, as a taking of Defendants’ constitutionally-protected property interest without providing just compensation.” (Lien Scope Answer.)

Response to Request No. 32: The Fiscal Agent objects to this Document Request as duplicative of Interrogatory No. 22 and incorporates by reference its Responses and Objections to Interrogatory No. 22, which the Fiscal Agent will serve on December 3, 2019. The Fiscal Agent will produce responsive, non-privileged documents, not otherwise publicly available, located after a reasonable search.

Request No. 33: All Documents related to Your affirmative defense that “Plaintiffs’ claims are barred, in whole or in part, by the doctrines of res judicata and collateral estoppel.” (Lien Scope Answer.)

Response to Request No. 33: The Fiscal Agent objects to this Document Request as duplicative of Interrogatory No. 22 and incorporates its Responses and Objections to Interrogatory No. 22 by reference. The Fiscal Agent will produce responsive, non-privileged documents, not otherwise publicly available, located after a reasonable search.

Request No. 34: All Documents related to Your affirmative defense that “Plaintiffs’ claims are barred, in whole or in part, by the doctrines of unclean hands or *in pari delicto*.” (Lien Scope Answer.)

Response to Request No. 34: The Fiscal Agent objects to this Document Request as duplicative of Interrogatory No. 22 and incorporates its Responses and Objections to Interrogatory No. 22 by reference. The Fiscal Agent will produce responsive, non-privileged documents, not otherwise publicly available, located after a reasonable search.

Request No. 35: All Documents related to Your affirmative defense that “Plaintiffs have waived their rights to object to or otherwise challenge or seek to limit the scope of Defendants’ liens, pledges, and security interests by Plaintiffs’ acts, omissions, and statements.” (Lien Scope Answer.)

Request No. 36: All Documents related to Your affirmative defense that “Plaintiffs are estopped from objecting to or otherwise challenging or limiting the scope of Defendants’ liens, pledges, and security interests because Plaintiffs induced Defendants to rely upon Plaintiffs’ statements, agreements, and representations, and Defendants have so relied to their detriment.” (Lien Scope Answer.)

Request No. 37: All Documents related to Your affirmative defense that “Plaintiffs’ claims are barred to the extent that the claims were not asserted in the earlier Adversary Proceeding brought pursuant to the July 2017 Stipulation, Docket No. 170 in Case No. 17-bk-3566, regarding “the validity, priority, extent and enforceability of the prepetition and postpetition liens and security interests asserted by the Bondholders with respect to the ERS Bonds.” (Lien Scope Answer.)

Response to Request Nos. 35–37: The Committees and the Government Parties have stated that Document Requests 35 through 37 are not related to discovery in the Ultra Vires Proceedings.

Request No. 38: All Documents relating to, referenced in, or supporting the ERS Bondholders’ Response and Your Joinder to the ERS Bondholders’ Response.

Response to Request No. 38: The Fiscal Agent objects on the grounds that this Discovery Request is overbroad and ambiguous because it does not specify which types of documents that it seeks. Further, the Fiscal Agent objects on the grounds that this Discovery Request calls for a legal conclusion to the extent it seeks documents that “support[s]” the ERS Bondholders’ Response and the Fiscal Agent’s Joinder, because the determination of whether a given document supports the ERS Bondholders’ Response and/or the Fiscal Agent’s Joinder requires an evaluation of the relevance and legal significance of the document. The Fiscal Agent also objects to this Document Request to the extent that it seeks information that is subject to the attorney-client privilege, the attorney-work product doctrine, the joint defense privilege, or any other applicable privilege. Further, the Fiscal Agent objects to this Document Request on the grounds that it requests documents that are either publicly available or in the possession, custody, or control of the Committees or the Government Parties.

Subject to these objections, the Fiscal Agent will produce all documents specifically

referenced in the Fiscal Agent's Joinder, to the extent that the document has not been produced previously or is not publicly available.

Request No. 39: All Documents relating to, referenced in, or supporting the Lien Scope Answer.

Request No. 40: All Documents relating to or supporting Your contention, if any, that ERS Bonds are an obligation of the Commonwealth as the Debtor in Case No. 17-03283-LTS.

Request No. 41: All Documents supporting Your contention that You have standing to bring suit to enforce the ERS Bond Resolution and related documents.

Request No. 42: All Documents which would help establish the market value of the ERS Bonds both before and after (a) the commencement of the ERS Title III Case and (b) the enactment of Joint Resolution 188 and Act 106-2017.

Response to Request Nos. 39–42: The Committees and the Government Parties have stated that Document Requests 39 through 42 are not related to discovery in the Ultra Vires Proceedings.

Request No. 43: All Documents relating to, referenced in, or relied upon in connection with Your response to any Request for Admission that You do not unconditionally admit.

Response to Request No. 43: The Fiscal Agent objects to this Document Request as duplicative of the Requests for Admission. The Fiscal Agent incorporates by reference its Responses and Objections to the Requests for Admission, which the Fiscal Agent will serve on December 3, 2019. The Fiscal Agent further objects to the extent this Document Request seeks “[a]ll Documents relating to” any “Request for Admission that [the Fiscal Agent] do[es] not unconditionally admit,” on the ground that such a Request is overly broad, unduly burdensome, argumentative, and not proportional to the needs of the case.

Request No. 44: All Documents relating to, referenced in, or relied upon in connection with Your responses to the Committees' and Government Parties' Interrogatories dated November 1, 2019.

Response to Request No. 44: The Fiscal Agent objects to this Document Request as duplicative of the Interrogatories dated November 1, 2019, and incorporates by reference its Responses and Objections to those Interrogatories, which the Fiscal Agent will serve on December

3, 2019. The Fiscal Agent further objects to the extent this Document Request seeks “[a]ll Documents relating to” its responses to the Committees’ and Government Parties’ Interrogatories, on the ground that such a Request is overly broad, unduly burdensome, and not proportional to the needs of the case. The Fiscal Agent will produce responsive, non-privileged documents, not otherwise publicly available, located after a reasonable search.

Request No. 45: All Documents that You intend to rely upon or use at any evidentiary hearing or in pre- or post-hearing briefing in connection with the issue of whether the issuance of ERS Bonds was ultra vires.

Response to Request No. 45: The Fiscal Agent objects to this Document Request on the grounds that it requests documents that are either publicly available or in the possession, custody, or control of the Committees or the Government Parties. The Fiscal Agent further objects to this Document Request on the grounds that it is premature, in violation of pre-trial procedures applicable under the Federal Rules, the Bankruptcy Rules, the Local Rules, and the Local Bankruptcy Rules. Further, the Fiscal Agent objects to this Document Request to the extent that it seeks information that is subject to the attorney-client privilege, the attorney-work product doctrine, the joint defense privilege, or any other applicable privilege. The Fiscal Agent also objects to this Document Request as overly broad and unduly burdensome because it requires Bondholders to determine, at this early stage in the proceedings, “[a]ll Documents” that they will use “at any evidentiary hearing or in pre- or post-hearing briefing.”

Request No. 46: All Documents produced in response to any subpoenas You serve or have served on or after November 1, 2019 in connection with the ERS Title III case.

Response to Request No. 46: The Fiscal Agent objects to this Document Request on the grounds that it is overbroad, requests documents that are irrelevant to this proceeding, and requests documents that are either publicly available or in the possession, custody, or control of the Committees or the Government Parties. The Fiscal Agent will produce responsive, non-privileged

documents produced in response to subpoenas the Fiscal Agent serves in the Ultra Vires Proceedings.

Dated: November 22, 2019
San Juan, Puerto Rico

SEPULVADO, MALDONADO & COURET

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*Counsel to The Bank of New York Mellon,
as fiscal agent*

EXHIBIT A

[November 12, 2019 Email]

Gray, Neil

From: Roche, Jennifer L. <jroche@proskauer.com>
Sent: Tuesday, November 12, 2019 12:25 AM
To: Sooknanan, Sparkle L.
Cc: alexbongartz@paulhastings.com; mroot@jenner.com; mpocha@omm.com; pfriedman@omm.com; csteedge@jenner.com; Beville, Sunni P.; eweisflener@brownrudnick.com; rgordon@jenner.com; Sushon, Bill; lucdespins@paulhastings.com; Goldstein, Irena; jamesbliss@paulhastings.com; Bassett, Nicholas; Holm, Richard; John Arrastia; Raiford, Landon S.; Axelrod, Tristan G.; suhland@omm.com; Rosen, Brian S.; Levitan, Jeffrey W.; Dale, Margaret A.; Dalsen, William D.; Esses, Joshua; Bennett, Bruce S.; Rosenblum, Benjamin; jzakia@whitecase.com; jcunningham@whitecase.com; de la Hoz, Fernando; Schaffer, Eric A.; Sizemore, Luke A.; Gray, Neil; Stewart, Geoffrey S.; Papez, Matthew E.; Fox, David R.; Perez, Isel M.; Green, Jesse
Subject: Re: ERS discovery
Categories: BNYMellon

EXTERNAL E-MAIL

Sparkle,

Please see the breakdown of the discovery requests below. Let me know if you have any questions.

Lien Scope Discovery

RFPs 1-10, 12-13, 15-17, 35-36, 41, 43-47, 50-58
ROGs 19-21, 23-26

Ultra Vires Discovery

RFPs 1, 11, 14, 18-44, 48-49, 55-58

ROGs 1-22, 26

RFAs 1-10

Jennifer L. Roche
Proskauer
310.284.5635

From: "Sooknanan, Sparkle L." <ssooknanan@jonesday.com>
Sent: Friday, November 8, 2019 11:02 AM
To: Roche, Jennifer L.
Cc: alexbongartz@paulhastings.com; mroot@jenner.com; mpocha@omm.com; pfriedman@omm.com; csteedge@jenner.com; Beville, Sunni P.; eweisflener@brownrudnick.com; rgordon@jenner.com; Sushon, Bill; lucdespins@paulhastings.com; Goldstein, Irena; jamesbliss@paulhastings.com; Bassett, Nicholas; Holm, Richard; John Arrastia; Raiford, Landon S.; Axelrod, Tristan G.; suhland@omm.com; Rosen, Brian S.; Levitan, Jeffrey W.; Dale, Margaret A.; Dalsen, William D.; Esses, Joshua; Bennett, Bruce S.; Rosenblum, Benjamin; jzakia@whitecase.com;

Jennifer,

Would you please identify which particular document requests, interrogatories, and RFAs you intend to apply to the lien scope proceedings, and which you intend to apply to the ultra vires proceedings? Some discovery requests are obviously related to one set of proceedings but not the other, and we do not want to presume which is which. This is an issue for us because not all of our clients are parties to both proceedings. This is also becoming an issue as we work through our objections and responses to the discovery requests. Given the upcoming deadline, we would appreciate a response as soon as possible.

Finally, going forward please copy Geoff Stewart, Matt Papez, David Fox, and Isel Perez (all copied here) on emails related to the lien scope and ultra vires proceedings.

Thanks very much,
Sparkle

Sparkle L. Sooknanan
Associate
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Office +1.202.879.3435

From: Roche, Jennifer L. <jroche@proskauer.com>

Sent: Friday, November 1, 2019 9:05 PM

To: Bennett, Bruce S. <bbennett@jonesday.com>; Rosenblum, Benjamin <brosenblum@JonesDay.com>; Sooknanan, Sparkle L. <ssooknanan@jonesday.com>; jzakia@whitecase.com; jcunningham@whitecase.com; de la Hoz, Fernando <fdelahoz@whitecase.com>; eschaffer@reedsmith.com; Isizemore@reedsmith.com; cgray@reedsmith.com

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Subject: ERS discovery

Dear Counsel:

Attached are the following documents:

1. First Set of Requests for Admission of the Committees and Government Parties to the ERS Bondholder Groups
2. First Set of Interrogatories of the Committees and Government Parties to the ERS Bondholder Groups

3. First Set of Requests of the Committees and Government Parties for Production of Documents to the ERS Bondholder Groups
4. First Set of Requests for Admission of the Committees and Government Parties to the Fiscal Agent
5. First Set of Interrogatories of the Committees and Government Parties to the Fiscal Agent
6. First Set of Requests of the Committees and Government Parties for Production of Documents to the Fiscal Agent
7. ERS's Initial Disclosures Pursuant to Rule 26(a)(1)

Jennifer L. Roche

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jroche@proskauer.com

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 22, 2019, a true and correct copy of the foregoing was served via electronic mail to the counsel listed below:

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Counsel for The Official Committee of Retired Employees of Puerto Rico

/s/ C. Neil Gray

C. Neil Gray

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

-----	X	
)	
In re:)	
	)	PROMESA
THE FINANCIAL OVERSIGHT AND	)	Title III
MANAGEMENT BOARD FOR PUERTO RICO)	
	)	Case No. 17-BK-03283 (LTS)
as representative of)	
)	
THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i> ,)	
)	
Debtors. ¹)	
-----)	
)	
In re:)	
	)	PROMESA
THE FINANCIAL OVERSIGHT AND	)	Title III
MANAGEMENT BOARD FOR PUERTO RICO,)	
	)	Case No. 17-BK-03566 (LTS)
as representative of)	
)	
THE EMPLOYEES RETIREMENT SYSTEM OF THE)	
GOVERNMENT OF THE COMMONWEALTH OF)	
PUERTO RICO,)	
)	
Debtor.)	
-----	X	

**THE FISCAL AGENT'S RESPONSES AND OBJECTIONS TO THE
FIRST SET OF INTERROGATORIES OF THE COMMITTEES AND
GOVERNMENT PARTIES TO THE FISCAL AGENT RELATED TO
THE ULTRA VIRES PROCEEDINGS**

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), (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) (Last Four Digits of Federal Tax ID: 3747).

Pursuant to Rules 7026 and 7033 of the Federal Rules of Bankruptcy Procedure, and Federal Rules of Civil Procedure 26 and 33 incorporated therein, made applicable to this proceeding by 48 U.S.C. § 2170, and in connection with the *Omnibus Objection of Official Committee of Unsecured Creditors to Claims Asserted by Holders of Bonds Issued by Employees Retirement System of Government of Puerto Rico* [ECF No. 5580 in Case No. 17-bk-03283] and the *Omnibus Objection of the Official Committee of Retired Employees of the Commonwealth of Puerto Rico, Pursuant to Bankruptcy Code Section 502 and Bankruptcy Rule 3007, to Claims Filed or Asserted by Holders of ERS Bonds Against ERS and the Commonwealth* [ECF No. 6482 in Case No. 17-bk-03283], The Bank of New York Mellon, as fiscal agent, secured creditor of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (the “Fiscal Agent”), hereby submits the following Responses and Objections to those portions of the First Set of Interrogatories to the Fiscal Agent from the Committees and Government Parties, dated November 1, 2019 (“Interrogatories”) that relate to the Ultra Vires issue.² The Fiscal Agent further reserves its right to supplement, amend, or modify these objections and responses as necessary.

GENERAL OBJECTIONS

1. These General Objections are applicable to and incorporated into each and every individual response that the Fiscal Agent makes to the Interrogatories, whether or not restated in response to any particular request. The Fiscal Agent’s responses are made without waiving, or intending to waive, these General Objections, and the Fiscal Agent specifically reserves all of its other objections.

² On November 12, 2019, the Committees and Government Parties identified Interrogatory Nos. 1 to 22 and 26, of the interrogatories propounded on the bondholders, as relating to discovery in the Lien Scope Proceedings. (Exhibit A). The Fiscal Agent incorporates those designations on corresponding interrogatories herein.

2. The Fiscal Agent's responses to the Interrogatories are not intended to be, and shall not be construed as, agreement with the Committees' and Government Parties' characterization of any facts, circumstances, or legal obligations. To the extent any defined term or phrase is clear, the Fiscal Agent does not accept or endorse the characterization, but does not object to the defined term or phrase since its meaning is clear and any characterization is irrelevant.

3. The Fiscal Agent's responses to the Interrogatories are made on the basis of information now known to the Fiscal Agent and are made without waiving any further objections or admitting the relevancy or materiality of any of the information requested. Many of the Interrogatories concern facts and evidence which are principally in the possession of ERS or third parties, not the Fiscal Agent, and which are the subject of the Bondholders' pending discovery requests. The Fiscal Agent responds to these Interrogatories on the basis of the information presently available to it, and reserves the right to amend and/or supplement its responses as additional relevant information is received in discovery.

4. The Fiscal Agent objects to the Interrogatories, including the Definitions and Instructions, to the extent they seek to impose obligations on the Fiscal Agent that are inconsistent with or exceed obligations under the Federal Rules, the Local Rules of the United States District Court for the District of Puerto Rico ("Local Rules"), the Local Rules of the United States Bankruptcy Court for the District of Puerto Rico ("Local Bankruptcy Rules"), or any other applicable rule or law.

5. The Fiscal Agent objects to the Interrogatories to the extent they seek information that is subject to the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, or any other applicable privilege. The Fiscal Agent construes the

Interrogatories to seek non-privileged information, and, as such, to the extent that the Fiscal Agent provides information, it provides information that it believes is non-privileged and otherwise properly discoverable. The Fiscal Agent does not intend to provide any privileged information. Any production of privileged material is therefore inadvertent and shall not constitute waiver of any privilege.

6. The Fiscal Agent objects to each and every Interrogatory to the extent it seeks information that is not within the Fiscal Agent's possession, custody, or control.

7. The Fiscal Agent objects to the Interrogatories to the extent that they purport to require the Fiscal Agent to search for and provide information that is not "reasonably accessible" as that term is generally understood.

8. The Fiscal Agent objects to the Interrogatories to the extent that any requests are compound, vague, overly broad, ambiguous, or written in a form that is confusing or potentially misleading.

9. The Fiscal Agent objects to the "Definitions" in the Interrogatories to the extent they define terms inconsistently with or more broadly than their usage under the Federal Rules, Bankruptcy Rules, Local Rules, or Local Bankruptcy Rules.

10. The Fiscal Agent objects to the Interrogatories to the extent that any Definition or any Interrogatory seeks to define terms and/or characterize evidence or disputed issues in the case. To the extent the Fiscal Agent adopts any terms used by the Government Parties in the Interrogatories, such adoption is limited solely to these responses.

11. The Fiscal Agent objects to the definition of "You" and "Your" as overly broad insofar as it extends beyond the Fiscal Agent and includes individuals and entities who have no connection with the current litigation, and have identities separate and apart from the Fiscal

Agent, including “all persons acting on behalf of, for the benefit of, at the direction of, in exchange for compensation from, or under the control or authority of any of the foregoing.” The Fiscal Agent will construe the Interrogatories that refer to “You” and “Your” as referring exclusively to the Fiscal Agent with respect to the ERS Bonds, and disclaims any obligation to provide information from any other persons.

12. The Fiscal Agent objects to the definition of “ERS Bonds” as confusing or potentially misleading. The ERS Bond Resolution authorized the issuance of both senior and subordinate bonds, but only senior bonds were ultimately issued by the ERS. The Fiscal Agent will construe the Interrogatories that utilize “ERS Bonds” as referring to Bonds as that term is defined in the ERS Bond Resolution.

13. The Fiscal Agent objects to the definition of “ERS Enabling Act” as potentially misleading or irrelevant insofar as it refers to Act 447-1951 as it existed at any time other than in 2008 when the ERS Bonds were issued. The Fiscal Agent will construe all references to the “ERS Enabling Act” as referring to the ERS Enabling Act as it existed at the time of the issuance of the ERS Bonds.

14. The Fiscal Agent objects to each and every one of these Interrogatories, and the instructions and definitions therein, to the extent that the information sought is publicly available, unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

15. The Fiscal Agent objects to each Interrogatory to the extent it seeks information that will be the subject of, and produced in the course of, expert discovery, or otherwise concerns facts outside of the Fiscal Agent’s knowledge. The Fiscal Agent anticipates that it will offer expert testimony concerning multiple subjects related to these Interrogatories, but the Fiscal

Agent will disclose that expert testimony in accordance with the Court's scheduling order's provisions for expert discovery and does not disclose it here.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: Identify and explain the legal bases underlying Your interpretation or understanding of the phrase "direct placement" as that term is customarily used in finance.

Response to Interrogatory No. 1: The Fiscal Agent objects to this Interrogatory on the ground that it is vague and ambiguous as to the meaning of the phrase "legal bases" in the context of a question about the factual meaning of a term in an industry. The Fiscal Agent further objects to this Interrogatory to the extent that it calls for a legal conclusion. The Fiscal Agent further objects to this Interrogatory on the basis that the Fiscal Agent's interpretation or understanding with respect to the subject matter is not relevant because the Fiscal Agent had no role in any direct placements here. The Fiscal Agent responds that the Fiscal Agent's "interpretation or understanding of the phrase 'direct placement' as that term is customarily used in finance" depends on the specific context in which that phrase is used.

INTERROGATORY NO. 2: Identify and explain the factual bases underlying Your interpretation or understanding of the phrase "direct placement" as that term is customarily used in finance.

Response to Interrogatory No. 2: The Fiscal Agent objects to this Interrogatory on the basis that the Fiscal Agent's interpretation or understanding with respect to the subject matter is not relevant because the Fiscal Agent had no role in any direct placements here. The Fiscal Agent's "interpretation or understanding of the phrase 'direct placement' as that term is customarily used in finance" depends on the specific context in which the phrase "direct placement" is used. The factual basis for any particular interpretation is the context surrounding a particular use of the phrase.

INTERROGATORY NO. 3: Identify and explain the legal bases underlying Your interpretation or understanding of the phrase “colocaciones directas de deuda” as used in the ERS Enabling Act.

Response to Interrogatory No. 3: The Fiscal Agent objects to this Interrogatory to the extent that it calls for a legal conclusion. The Fiscal Agent further objects to this Interrogatory on the ground that it misquotes from the ERS Enabling Act, which contains the phrase “colocaciones directas de deuda.” The Fiscal Agent responds to this Interrogatory based on the correct phrase from the ERS Enabling Act, as follows: The Fiscal Agent’s interpretation of the phrase “colocaciones directas de deuda” as used in the ERS Enabling Act, and the legal bases for that interpretation, are identified and explained in the *Response of Certain Secured Creditors of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico to the Omnibus Claim Objections of the Official Committee of Unsecured Creditors and the Official Committee of Retired Employees of the Commonwealth of Puerto Rico*, ECF No. 9012 in Case No. 17-bk-03283 (the “Claim Objection Response”), including in paragraphs 7, 20–27, and 28–41 of that document, to which the Fiscal Agent filed the “Fiscal Agent’s Joinder,” ECF No. 9013 in Case No. 17-bk-03283.

INTERROGATORY NO. 4: Identify and explain the factual bases underlying Your interpretation or understanding of the phrase “colocaciones directas de deuda” as used in the ERS Enabling Act.

Response to Interrogatory No. 4: The Fiscal Agent objects to this Interrogatory on the ground that it misquotes from the ERS Enabling Act, which contains the phrase “colocaciones directas de deuda.” The Fiscal Agent responds to this Interrogatory based on the correct phrase from the ERS Enabling Act, as follows: The Fiscal Agent’s interpretation of the phrase “colocaciones directas de deuda” as used in the ERS Enabling Act, and the factual bases for that interpretation, are identified and explained in the Claim Objection Response (to which the Fiscal

Agent filed the Fiscal Agent's Joinder), including in paragraphs 7, 20–27, and 28–41 of that document.

INTERROGATORY NO. 5: Identify each financial institution from which You contend ERS borrowed money in connection with the issuance of the ERS Bonds.

Response to Interrogatory No. 5: The Fiscal Agent contends that ERS borrowed money, directly or indirectly, from each of the underwriters for each series of ERS Bonds. Upon information and belief, those underwriters are: UBS Financial Services Incorporated of Puerto Rico; Popular Securities, Inc.; Santander Securities Corporation; Banco Bilbao Vizcaya Argentaria Puerto Rico; Citigroup Global Markets Inc.; Lehman Brothers, Inc.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; Oriental Financial Services, Inc.; Samuel A. Ramirez & Co., Inc.; Scotiabank of Puerto Rico; TCM Capital, Inc.; Wachovia Capital Markets, LLC; BBVAPR MSD; Eurobank MSD; Merrill Lynch & Co.; and Scotia Capital.

INTERROGATORY NO. 6: Identify each document provided to and relied upon by You in connection with Your purchase of any ERS Bonds.

Response to Interrogatory No. 6: The Fiscal Agent objects to this Interrogatory as overbroad, vague, and ambiguous. The Fiscal Agent responds to this Interrogatory on the assumption that it intends to inquire about documents authored by or on behalf of ERS, as follows: The Fiscal Agent has not purchased ERS Bonds.

INTERROGATORY NO. 7: Identify each representation and/or warranty made in connection with the ERS Bonds, including who made each representation and/or warranty, that You contend bars the ultra vires argument.

Response to Interrogatory No. 7: The Fiscal Agent objects to this Interrogatory as vague and ambiguous with respect to the meaning of the undefined phrase “representation and/or warranty,” with respect to the time-period covered, and with respect to the legal meaning of the phrase “bars the ultra vires argument.” The Fiscal Agent responds to this Interrogatory on the assumption that it intends to inquire about formal contractual representations and warranties

made by ERS in connection with and at around the time of the issuance of the ERS Bonds, that are inconsistent with the argument that the ERS Bonds are *ultra vires*, as follows: The Fiscal Agent is aware of representations and warranties made by ERS in the closing transcripts for the issuance of the ERS Bonds that are inconsistent with the *ultra vires* argument—documents that should be in ERS’s possession and control, but which the Fiscal Agent will produce in its first production of documents—including the following:

- The “Representations, Warranties and Agreements of the System” contained in Section 6(a)–(e), (i), (j), and (o) of the Amended and Restated Purchase Contract for the Senior Pension Funding Bonds, Series A (Jan. 30, 2008).
- The “Representations, Warranties and Agreements of the System” contained in Section 6(a)–(e), (i), (j), and (o) of the Purchase Contract for the Senior Pension Funding Bonds, Series B (May 28, 2008).
- The “Representations, Warranties and Agreements of the System” contained in Section 6(a)–(e), (i), (j), and (o) of the Purchase Contract for the Senior Pension Funding Bonds, Series C (June 26, 2008).
- The various legal opinions of Fiddler Gonzalez & Rodriguez as counsel to ERS and of the General Counsel to the System, dated January 31, 2008.
- The various legal opinions of Fiddler Gonzalez & Rodriguez as counsel to ERS and of the General Counsel to the System, dated June 2, 2008.
- The various legal opinions of Fiddler Gonzalez & Rodriguez as counsel to ERS and of the General Counsel to the System, dated June 30, 2008.

INTERROGATORY NO. 8: Identify the legal bases underlying Your contention, if any, that the Court must consider “the circumstances under which [ERS Bondholders] acquired the Bonds,” including but not limited to “the relationship of the Bondholders to ERS” at the time the ERS Bondholders acquired the ERS Bonds. (See Case No. 17-00219-LTS, ECF No. 50, at p.27.)

Response to Interrogatory No. 8: The Fiscal Agent did not make the quoted contention and, therefore, no response by the Fiscal Agent to this Interrogatory is necessary.

INTERROGATORY NO. 9: Identify the factual bases underlying Your contention, if any, that the Court must consider “the circumstances under which [ERS Bondholders] acquired the Bonds,” including but not limited to “the relationship of the Bondholders to ERS” at the time

the ERS Bondholders acquired the ERS Bonds. (See Case No. 17-00219-LTS, ECF No. 50, at p.27.)

Response to Interrogatory No. 9: The Fiscal Agent did not make the quoted contention and, therefore, no response by the Fiscal Agent to this Interrogatory is necessary.

INTERROGATORY NO. 10: Identify the legal bases underlying Your contention that the ERS Bonds fall within ERS's authority under the ERS Enabling Act to "tomar prestado de cualquier institución financiera . . ." (See Case No. 17-03283-LTS, Dkt. 9012 ("ERS Bondholders' Response") at ¶¶ 12-13 and Case No. 17-03283-LTS, Dkt. 9013, Your Joinder to the ERS Bondholders' Response ("Joinder").)

Response to Interrogatory No. 10: The legal bases underlying the contention described in this Interrogatory are contained in the Claim Objection Response (to which the Fiscal Agent filed the Fiscal Agent's Joinder), including in paragraphs 10–19 and 28–50 of that document.

INTERROGATORY NO. 11: Identify the factual bases underlying Your contention that the ERS Bonds fall within ERS's authority under the ERS Enabling Act to "tomar prestado de cualquier institución financiera . . ." (See Case No. 17-03283-LTS, Dkt. 9012 ("ERS Bondholders' Response") at ¶¶ 12-13.)

Response to Interrogatory No. 11: The factual bases underlying the contention described in this Interrogatory are contained in the Claim Objection Response (to which the Fiscal Agent filed the Fiscal Agent's Joinder), including in paragraphs 10–19 and 28–50 of that document.

INTERROGATORY NO. 12: Identify the legal bases underlying Your contention that "unlike 'seek a loan,' 'borrow'—'tomar prestado'—includes raising money by selling bonds." (See ERS Bondholders' Resp. at ¶ 14.)

Response to Interrogatory No. 12: The legal bases underlying the contention described in this Interrogatory are contained in the Claim Objection Response (to which the Fiscal Agent filed the Fiscal Agent's Joinder), including in paragraphs 10–50 of that document.

INTERROGATORY NO. 13: Identify the factual bases underlying Your contention that "unlike 'seek a loan,' 'borrow'—'tomar prestado'—includes raising money by selling bonds." (See ERS Bondholders' Resp. at ¶ 14.)

Response to Interrogatory No. 13: The factual bases underlying the contention described in this Interrogatory are contained in the Claim Objection Response (to which the Fiscal Agent filed the Fiscal Agent's Joinder), including in paragraphs 10–50 of that document.

INTERROGATORY NO. 14: Identify the legal bases underlying Your contention that “the underwriters’ resale of ‘ownership interests’ in the ERS Bonds does nothing to change the fact that the issuance of the ERS Bonds involved borrowing from the underwriting financial institutions as the ERS Enabling Act allowed.” (See ERS Bondholders’ Resp. at ¶ 19.)

Response to Interrogatory No. 14: The legal bases underlying the contention described in this Interrogatory are contained in the Claim Objection Response (to which the Fiscal Agent filed the Fiscal Agent's Joinder), including in paragraphs 17–19 of that document.

INTERROGATORY NO. 15: Identify the factual bases underlying Your contention that “the underwriters’ resale of ‘ownership interests’ in the ERS Bonds does nothing to change the fact that the issuance of the ERS Bonds involved borrowing from the underwriting financial institutions as the ERS Enabling Act allowed.” (See ERS Bondholders’ Resp. at ¶ 19.)

Response to Interrogatory No. 15: The factual bases underlying the contention described in this Interrogatory are contained in the Claim Objection Response (to which the Fiscal Agent filed the Fiscal Agent's Joinder), including in paragraphs 17–19 of that document.

INTERROGATORY NO. 16: Identify each “registered owner” of the ERS Bonds.

Response to Interrogatory No. 16: The Fiscal Agent objects to this Interrogatory on the ground that it is vague and ambiguous. The Fiscal Agent responds to this Interrogatory as follows: The registered owner of all outstanding ERS Bonds is Cede & Co., as nominee for the Depository Trust Company.

INTERROGATORY NO. 17: Identify each individual who provided information or documents relied upon or referenced in the ERS Bondholders’ Response and Your Joinder. For each such person, provide their last known address, telephone number, and relationship to You.

Response to Interrogatory No. 17: The Fiscal Agent objects to this Interrogatory to the extent that it seeks direct contact information for its officers and employees, who as represented parties must be contacted through counsel. The Fiscal Agent is without sufficient knowledge of

“each individual who provided information or documents relied upon or referenced in the ERS Bondholders’ Response,” and directs the Committees and the Government Parties to the ERS Bondholders’ responses and objections to the Committees’ and the Government Parties’ interrogatories. The following individual provided information or documents relied upon or referenced in the Fiscal Agent’s Joinder: Alex T. Chang, Vice President, The Bank of New York Mellon. Mr. Chang may be contacted through counsel: C. Neil Gray, Reed Smith LLP, 599 Lexington Avenue, New York, NY 10022, (212) 231-2652.

INTERROGATORY NO. 18: Identify the legal bases underlying Your response to each Request for Admission that You do not unconditionally admit. For each such response, identify each individual associated with the ERS Bondholders who has knowledge of the facts and circumstances relating to Your response. For each such person, provide their last known address, telephone number, and relationship to You.

Response to Interrogatory No. 18: The legal bases underlying the responses to each Request for Admission that the Fiscal Agent does not unconditionally admit are contained in the Fiscal Agent’s Responses and Objections to the First Set of Requests for Admission of the Committees and Government Parties, including its responses to Requests for Admission Nos. 1–8. The Fiscal Agent is without sufficient knowledge of “each individual associated with the ERS Bondholders who has knowledge of the facts and circumstances relating to” the Fiscal Agent’s response to this Interrogatory, and directs the Committees and the Government Parties to the ERS Bondholders’ responses and objections to the Committees’ and the Government Parties’ interrogatories.

INTERROGATORY NO. 19: Identify the factual bases underlying Your response to each Request for Admission that You do not unconditionally admit. For each such response, identify each individual associated with the ERS Bondholders who has knowledge of the facts and circumstances relating to Your response. For each such person, provide their last known address, telephone number, and relationship to the ERS Bondholders.

Response to Interrogatory No. 19: The factual bases underlying the responses to each Request for Admission that the Fiscal Agent does not unconditionally admit are contained in the

Fiscal Agent's Responses and Objections to the First Set of Requests for Admission of the Committee and Government Parties to the Fiscal Agent Related to the Ultra Vires Proceedings, including its responses to Requests for Admission Nos. 1–8. The Fiscal Agent is without sufficient knowledge of “each individual associated with the ERS Bondholders who has knowledge of the facts and circumstances relating to” the Fiscal Agent's response to this Interrogatory, and directs the Committees and the Government Parties to the ERS Bondholders' responses and objections to the Committees' and the Government Parties' responses and objections to interrogatories.

INTERROGATORY NO. 20: Identify the source of all funds or interests in property You contend were held by ERS as of the date on which the ERS Title III Case was commenced, May 21, 2017.

INTERROGATORY NO. 21: State the basis for Your contention, if any, that You have an attached security interest in the following (or in any claimed proceeds thereof): (a) ERS's Pre-2008 Assets; (b) AUC; (c) employee contributions to ERS; (d) ERS funds not deposited with the Fiscal Agent; (e) funds remitted to ERS by the Fiscal Agent; (f) Employee Loans; (g) Employee Loan Payments; (h) funds transferred to the Commonwealth pursuant to Act 106-2017; or (i) ERS's investments.

INTERROGATORY NO. 22: Identify the factual bases for each of the Affirmative Defenses You assert in the Answer and Counterclaims You filed in Adv. No. 19-00366, Docket No. 42.

Response to Interrogatory Nos. 20–22: The Committees and the Government Parties have stated that Interrogatories 20–22 are not related to discovery in the Ultra Vires Proceedings.

[Signatures on Next Page]

Dated: December 3, 2019
San Juan, Puerto Rico

SEPULVADO, MALDONADO & COURET

By: /s/ Albéniz Couret-Fuentes
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*Counsel to The Bank of New York Mellon,
as fiscal agent*

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, Alex T. Chang, being duly sworn, state that I am an agent of The Bank of New York Mellon, as fiscal agent, that I have read the foregoing Fiscal Agent's Responses and Objections to the First Set of Interrogatories of the Committees and Government Parties to the Fiscal Agent, and that the factual answers set forth in the Fiscal Agent's responses are true and correct to the best of my knowledge, information, and belief.

By: _____


Alex T. Chang

Subscribed and sworn to before me on this 3rd day of December, 2019.


Notary Public

ALEXANDER TITUS TONGE
Notary Public, State of New York
My commission expires: No. 01TO6278785
Qualified in Kings County
Commission Expires March 25, 2021

EXHIBIT A

[November 12, 2019 Email]

Gray, Neil

From: Roche, Jennifer L. <jroche@proskauer.com>
Sent: Tuesday, November 12, 2019 12:25 AM
To: Sooknanan, Sparkle L.
Cc: alexbongartz@paulhastings.com; mroot@jenner.com; mpocha@omm.com; pfriedman@omm.com; csteedge@jenner.com; Beville, Sunni P.; eweisflener@brownrudnick.com; rgordon@jenner.com; Sushon, Bill; lucdespins@paulhastings.com; Goldstein, Irena; jamesbliss@paulhastings.com; Bassett, Nicholas; Holm, Richard; John Arrastia; Raiford, Landon S.; Axelrod, Tristan G.; suhland@omm.com; Rosen, Brian S.; Levitan, Jeffrey W.; Dale, Margaret A.; Dalsen, William D.; Esses, Joshua; Bennett, Bruce S.; Rosenblum, Benjamin; jzakia@whitecase.com; jcunningham@whitecase.com; de la Hoz, Fernando; Schaffer, Eric A.; Sizemore, Luke A.; Gray, Neil; Stewart, Geoffrey S.; Papez, Matthew E.; Fox, David R.; Perez, Isel M.; Green, Jesse
Subject: Re: ERS discovery
Categories: BNYMellon

EXTERNAL E-MAIL

Sparkle,

Please see the breakdown of the discovery requests below. Let me know if you have any questions.

Lien Scope Discovery

RFPs 1-10, 12-13, 15-17, 35-36, 41, 43-47, 50-58
ROGs 19-21, 23-26

Ultra Vires Discovery

RFPs 1, 11, 14, 18-44, 48-49, 55-58

ROGs 1-22, 26

RFAs 1-10

Jennifer L. Roche
Proskauer
310.284.5635

From: "Sooknanan, Sparkle L." <ssooknanan@jonesday.com>
Sent: Friday, November 8, 2019 11:02 AM
To: Roche, Jennifer L.
Cc: alexbongartz@paulhastings.com; mroot@jenner.com; mpocha@omm.com; pfriedman@omm.com; csteedge@jenner.com; Beville, Sunni P.; eweisflener@brownrudnick.com; rgordon@jenner.com; Sushon, Bill; lucdespins@paulhastings.com; Goldstein, Irena; jamesbliss@paulhastings.com; Bassett, Nicholas; Holm, Richard; John Arrastia; Raiford, Landon S.; Axelrod, Tristan G.; suhland@omm.com; Rosen, Brian S.; Levitan, Jeffrey W.; Dale, Margaret A.; Dalsen, William D.; Esses, Joshua; Bennett, Bruce S.; Rosenblum, Benjamin; jzakia@whitecase.com;

Jennifer,

Would you please identify which particular document requests, interrogatories, and RFAs you intend to apply to the lien scope proceedings, and which you intend to apply to the ultra vires proceedings? Some discovery requests are obviously related to one set of proceedings but not the other, and we do not want to presume which is which. This is an issue for us because not all of our clients are parties to both proceedings. This is also becoming an issue as we work through our objections and responses to the discovery requests. Given the upcoming deadline, we would appreciate a response as soon as possible.

Finally, going forward please copy Geoff Stewart, Matt Papez, David Fox, and Isel Perez (all copied here) on emails related to the lien scope and ultra vires proceedings.

Thanks very much,
Sparkle

Sparkle L. Sooknanan
Associate
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Washington, DC 20001
Office +1.202.879.3435

From: Roche, Jennifer L. <jroche@proskauer.com>
Sent: Friday, November 1, 2019 9:05 PM
To: Bennett, Bruce S. <bbennett@jonesday.com>; Rosenblum, Benjamin <brosenblum@JonesDay.com>; Sooknanan, Sparkle L. <ssooknanan@jonesday.com>; jzakia@whitecase.com; jcunningham@whitecase.com; de la Hoz, Fernando <fdelahoz@whitecase.com>; eschaffer@reedsmith.com; lsizemore@reedsmith.com; cgray@reedsmith.com
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Subject: ERS discovery

Dear Counsel:

Attached are the following documents:

1. First Set of Requests for Admission of the Committees and Government Parties to the ERS Bondholder Groups
2. First Set of Interrogatories of the Committees and Government Parties to the ERS Bondholder Groups

3. First Set of Requests of the Committees and Government Parties for Production of Documents to the ERS Bondholder Groups
4. First Set of Requests for Admission of the Committees and Government Parties to the Fiscal Agent
5. First Set of Interrogatories of the Committees and Government Parties to the Fiscal Agent
6. First Set of Requests of the Committees and Government Parties for Production of Documents to the Fiscal Agent
7. ERS's Initial Disclosures Pursuant to Rule 26(a)(1)

Jennifer L. Roche

Senior Counsel

Proskauer

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Suite 2400

Los Angeles, CA 90067-3010

d 310.284.5635; <tel:+13102845635>

f 310.557.2193

jroche@proskauer.com

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 3, 2019, a true and correct copy of the foregoing
was served via electronic mail to the counsel listed below:

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*Attorneys for the Financial Oversight and Management Board for Puerto Rico as representative
for the Debtors*

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/s/ C. Neil Gray

C. Neil Gray

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

-----	X	
)	
In re:)	
	)	PROMESA
THE FINANCIAL OVERSIGHT AND	)	Title III
MANAGEMENT BOARD FOR PUERTO RICO)	
	)	Case No. 17-BK-03283 (LTS)
as representative of)	
)	
THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i> ,)	
)	
Debtors. ¹)	
-----)	
)	
In re:)	
	)	PROMESA
THE FINANCIAL OVERSIGHT AND	)	Title III
MANAGEMENT BOARD FOR PUERTO RICO,)	
	)	Case No. 17-BK-03566 (LTS)
as representative of)	
)	
THE EMPLOYEES RETIREMENT SYSTEM OF THE)	
GOVERNMENT OF THE COMMONWEALTH OF)	
PUERTO RICO,)	
)	
Debtor.)	
-----	X	

**THE FISCAL AGENT'S RESPONSES AND OBJECTIONS TO THE
FIRST SET OF REQUESTS FOR ADMISSION OF THE
COMMITTEES AND GOVERNMENT PARTIES TO THE FISCAL
AGENT RELATED TO THE ULTRA VIRES PROCEEDINGS**

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), (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) (Last Four Digits of Federal Tax ID: 3747).

Pursuant to Rule 7036 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 36 of the Federal Rules of Civil Procedure (the “Federal Rules”) incorporated therein, made applicable to this proceeding by 48 U.S.C. § 2170, and in connection with the *Omnibus Objection of Official Committee of Unsecured Creditors to Claims Asserted by Holders of Bonds Issued by Employees Retirement System of Government of Puerto Rico* [ECF No. 5580 in Case No. 17-bk-03283] and the *Omnibus Objection of the Official Committee of Retired Employees of the Commonwealth of Puerto Rico, Pursuant to Bankruptcy Code Section 502 and Bankruptcy Rule 3007, to Claims Filed or Asserted by Holders of ERS Bonds Against ERS and the Commonwealth* [ECF No. 6482 in Case No. 17-bk-03283] (collectively, the “Ultra Vires Proceedings”), The Bank of New York Mellon, as fiscal agent, secured creditor of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (the “Fiscal Agent”), hereby submits the following Responses and Objections to the First Set of Requests for Admission of the Committees and Government Parties to the Fiscal Agent, dated November 1, 2019 (the “Requests for Admission”).² The Fiscal Agent further reserves its right to supplement, amend, or modify these objections and responses as necessary.

GENERAL OBJECTIONS

1. The General Objections that follow are applicable to and incorporated into each and every individual response that the Fiscal Agent makes to the Requests for Admission, whether or not restated in response to any particular request. The Fiscal Agent’s responses are made without waiving, or intending to waive, these General Objections, and the Fiscal Agent specifically reserves all of its other objections.

² On November 12, 2019, the Committees and Government Parties indicated, notwithstanding the reference to Adversary Proceeding Nos. 19-00366 and 19-00367 in the caption to the Requests for Admissions, that each Request for Admission relates only to discovery in the Ultra Vires Proceedings. (Exhibit A.) The Fiscal Agent incorporates that designation on corresponding requests herein.

2. The Fiscal Agent's responses to the Requests for Admission are not intended to be, and shall not be construed as, agreement with the Committees' and Government Parties' characterization of any facts, circumstances, or legal obligations. To the extent any defined term or phrase is clear, the Fiscal Agent does not accept or endorse the characterization, but does not object to the defined term or phrase since its meaning is clear and any characterization is irrelevant.

3. The Fiscal Agent's responses to the Requests for Admission are made on the basis of information now known to the Fiscal Agent and are made without waiving any further objections or admitting the relevancy or materiality of any of the information requested. Many of the Requests for Admission concern facts and evidence which are principally in the possession of ERS or third parties, not the Fiscal Agent, and which are the subject of the ERS Bondholders' pending discovery requests. The Fiscal Agent responds to these Requests for Admission on the basis of the information presently available to it, and reserves the right to amend and/or supplement its responses as additional relevant information is received in discovery.

4. The Fiscal Agent objects to the Requests for Admission, including the Definitions and Instructions, to the extent that they seek to impose obligations on the Fiscal Agent that are inconsistent with or exceed obligations for discovery under the Federal Rules, the Bankruptcy Rules, the Local Rules of the United States District Court for the District of Puerto Rico ("Local Rules"), the Local Rules of the United States Bankruptcy Court for the District of Puerto Rico ("Local Bankruptcy Rules"), or any other applicable rule or law.

5. The Fiscal Agent objects to the Requests for Admission to the extent they seek information that is subject to the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, or any other applicable privilege. The Fiscal Agent construes the

Requests for Admission to seek non-privileged information, and, as such, to the extent the Fiscal Agent provides information, it will provide information that it believes is non-privileged and otherwise properly discoverable. The Fiscal Agent does not intend to provide any privileged information. Any production of privileged material is therefore inadvertent and shall not constitute waiver of any privilege.

6. The Fiscal Agent objects to each and every Request for Admission to the extent that it purports to seek information that is not within the Fiscal Agent's possession, custody, or control.

7. The Fiscal Agent objects to the Requests for Admission to the extent that they purport to require the Fiscal Agent to search for and provide information that is not "reasonably accessible" as that term is generally understood.

8. The Fiscal Agent objects to the Requests for Admission to the extent that any requests are compound, vague, overly broad, ambiguous, or written in a form that is confusing or potentially misleading.

9. The Fiscal Agent objects to the "Definitions" in the Requests for Admission to the extent they define terms inconsistently with or more broadly than their usage under the Federal Rules, Bankruptcy Rules, Local Rules, or Local Bankruptcy Rules.

10. The Fiscal Agent objects to the Requests for Admission to the extent that any Definition or any Request seeks to define terms and/or characterize evidence or disputed issues in the case. To the extent the Fiscal Agent adopts any terms used by the Committees and Government Parties in the Requests for Admission, such adoption is limited solely to these responses.

11. The Fiscal Agent objects to the definition of “You” and “Your” as overly broad insofar as it extends beyond the Fiscal Agent and includes individuals and entities who have no connection with the current litigation, and have identities separate and apart from the Fiscal Agent, including “all persons acting on behalf of, for the benefit of, at the direction of, in exchange for compensation from, or under the control or authority of the Fiscal Agent.” The Fiscal Agent will construe the Requests for Admission that refer to “You” and “Your” as referring exclusively to the Fiscal Agent with respect to the ERS Bonds, and disclaims any obligation to provide information from any other persons.

12. The Fiscal Agent objects to the definition of “ERS Bond” as confusing or potentially misleading. The ERS Resolution authorized the issuance of both senior and subordinate bonds, but only senior bonds were ultimately issued by ERS. The Fiscal Agent will construe the Requests for Admission that refer to “ERS Bonds” as referring to Bonds as that term is defined in the ERS Resolution.

13. The Fiscal Agent objects to the definition of “ERS Enabling Act” as potentially misleading or irrelevant insofar as it refers to Act 447-1951 as it existed at any time other than in 2008 when the ERS Bonds were issued. The Fiscal Agent will construe all references to the “ERS Enabling Act” as referring to the ERS Enabling Act as it existed at the time of the issuance of the ERS Bonds.

14. The Fiscal Agent objects to each and every one of these Requests for Admission, and the instructions and definitions therein, to the extent that the information sought is publicly available, unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

15. The Fiscal Agent objects to each Request for Admission to the extent it seeks information that will be the subject of, and produced in the course of, expert discovery, or otherwise concerns facts outside of the Fiscal Agent's knowledge. The Fiscal Agent anticipates that it will offer expert testimony concerning multiple subjects related to these Requests for Admission, but the Fiscal Agent will disclose that expert testimony in accordance with the Court's scheduling order's provisions for expert discovery and does not disclose it here.

RESPONSES TO REQUESTS FOR ADMISSION

Subject to the foregoing General Objections, all of which are incorporated by reference into the specific responses below, the Fiscal Agent responds to the Requests for Admission as follows:

Request for Admission No. 1:

Admit that You are aware of no other authority, other than the ERS Enabling Act, that permits ERS to engage in debt financing.

Response to Request for Admission No. 1:

The Fiscal Agent objects to and denies this Request and states that the Request impermissibly seeks an admission of a legal conclusion, and thus no response is required.

Request for Admission No. 2:

Admit that You are not aware of any loans from the government of Puerto Rico or the United States that were made as part of the 2008 ERS Bond Issuance.

Response to Request for Admission No. 2:

The Fiscal Agent objects to this Request for Admission on the basis that it is vague and ambiguous. The Fiscal Agent can neither admit nor deny this Request because it is without sufficient information to determine whether ERS obtained loans from the government of Puerto Rico or the United States government in connection with the 2008 ERS Bond Issuance. This information is in the possession of ERS, the government of Puerto Rico, and/or the United States

government. To the extent a further response is required, the Fiscal Agent denies this Request.

Request for Admission No. 3:

Admit that You are not aware of any form of borrowing by ERS from the government of Puerto Rico or the United States government as part of the 2008 ERS Bond Issuance.

Response to Request for Admission No. 3:

The Fiscal Agent objects to this Request for Admission on the basis that it is vague and ambiguous. The Fiscal Agent can neither admit nor deny this Request because it is without sufficient information to determine whether ERS borrowed any assets from the government of Puerto Rico or the United States government in connection with the 2008 ERS Bond Issuance. This information is in the possession of ERS, the government of Puerto Rico, and/or the United States government. To the extent a further response is required, the Fiscal Agent denies this Request.

Request for Admission No. 4:

Admit that You are not aware of any loans from any financial institution that were made as part of the 2008 ERS Bond Issuance.

Response to Request for Admission No. 4:

The Fiscal Agent objects and denies this Request for Admission on the basis that it is vague and ambiguous. The Fiscal Agent avers that in issuing the ERS Bonds, ERS borrowed nearly \$3 billion.

Request for Admission No. 5:

Admit that ERS issued bonds in 2008 to the public through the use of underwriters.

Response to Request for Admission No. 5:

The Fiscal Agent objects to and denies this Request for Admission on the basis that it is vague and ambiguous, except avers that underwriters participated in the issuance of bonds by ERS as more fully described in the Official Statements issued in connection with the 2008 ERS

Bond Issuance. *See, e.g.*, Official Statement, dated January 29, 2008, for ERS Senior Pension Funding Bonds, Series A, at 52.

Request for Admission No. 6:

Admit that members of the public purchased ERS Bonds in 2008.

Response to Request for Admission No. 6:

The Fiscal Agent objects to and denies this Request for Admission on the basis that it is vague and ambiguous, and avers that Cede & Co. purchased the ERS Bonds. Upon information and belief, certain members of the public purchased securities entitlements in ERS Bonds in 2008.

Request for Admission No. 7:

Admit that the original owner of record for each ERS Bond has never transferred record ownership of any ERS Bond to any party.

Response to Request for Admission No. 7:

The Fiscal Agent objects to and denies this Request for Admission on the basis that it is vague and ambiguous, except avers that the original registered owner for each ERS Bond has not transferred ownership of any ERS Bond.

Request for Admission No. 8:

Admit that: (i) no ERS bondholder provided You notice of a default in the payment of principal or interest on the ERS Bonds; (ii) owners of at least 25% in outstanding principal amount of the ERS Bonds did not request that You exercise Your powers under § 1102(1) of the ERS Bond Resolution; and (iii) You did not decline any request of owners of at least 25% in outstanding principal amount of the ERS Bonds to exercise Your powers under § 1102(1).

Response to Request for Admission No. 8:

Denied.

[Remainder of page intentionally left blank.]

Dated: December 3, 2019
San Juan, Puerto Rico

SEPULVADO, MALDONADO & COURET

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EXHIBIT A

[November 12, 2019 Email]

Gray, Neil

From: Roche, Jennifer L. <jroche@proskauer.com>
Sent: Tuesday, November 12, 2019 12:25 AM
To: Sooknanan, Sparkle L.
Cc: alexbongartz@paulhastings.com; mroot@jenner.com; mpocha@omm.com; pfriedman@omm.com; csteedge@jenner.com; Beville, Sunni P.; eweisflener@brownrudnick.com; rgordon@jenner.com; Sushon, Bill; lucdespins@paulhastings.com; Goldstein, Irena; jamesbliss@paulhastings.com; Bassett, Nicholas; Holm, Richard; John Arrastia; Raiford, Landon S.; Axelrod, Tristan G.; suhland@omm.com; Rosen, Brian S.; Levitan, Jeffrey W.; Dale, Margaret A.; Dalsen, William D.; Esses, Joshua; Bennett, Bruce S.; Rosenblum, Benjamin; jzakia@whitecase.com; jcunningham@whitecase.com; de la Hoz, Fernando; Schaffer, Eric A.; Sizemore, Luke A.; Gray, Neil; Stewart, Geoffrey S.; Papez, Matthew E.; Fox, David R.; Perez, Isel M.; Green, Jesse
Subject: Re: ERS discovery
Categories: BNYMellon

EXTERNAL E-MAIL

Sparkle,

Please see the breakdown of the discovery requests below. Let me know if you have any questions.

Lien Scope Discovery

RFPs 1-10, 12-13, 15-17, 35-36, 41, 43-47, 50-58
ROGs 19-21, 23-26

Ultra Vires Discovery

RFPs 1, 11, 14, 18-44, 48-49, 55-58

ROGs 1-22, 26

RFAs 1-10

Jennifer L. Roche
Proskauer
310.284.5635

From: "Sooknanan, Sparkle L." <ssooknanan@jonesday.com>
Sent: Friday, November 8, 2019 11:02 AM
To: Roche, Jennifer L.
Cc: alexbongartz@paulhastings.com; mroot@jenner.com; mpocha@omm.com; pfriedman@omm.com; csteedge@jenner.com; Beville, Sunni P.; eweisflener@brownrudnick.com; rgordon@jenner.com; Sushon, Bill; lucdespins@paulhastings.com; Goldstein, Irena; jamesbliss@paulhastings.com; Bassett, Nicholas; Holm, Richard; John Arrastia; Raiford, Landon S.; Axelrod, Tristan G.; suhland@omm.com; Rosen, Brian S.; Levitan, Jeffrey W.; Dale, Margaret A.; Dalsen, William D.; Esses, Joshua; Bennett, Bruce S.; Rosenblum, Benjamin; jzakia@whitecase.com;

Jennifer,

Would you please identify which particular document requests, interrogatories, and RFAs you intend to apply to the lien scope proceedings, and which you intend to apply to the ultra vires proceedings? Some discovery requests are obviously related to one set of proceedings but not the other, and we do not want to presume which is which. This is an issue for us because not all of our clients are parties to both proceedings. This is also becoming an issue as we work through our objections and responses to the discovery requests. Given the upcoming deadline, we would appreciate a response as soon as possible.

Finally, going forward please copy Geoff Stewart, Matt Papez, David Fox, and Isel Perez (all copied here) on emails related to the lien scope and ultra vires proceedings.

Thanks very much,
Sparkle

Sparkle L. Sooknanan
Associate
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Office +1.202.879.3435

From: Roche, Jennifer L. <jroche@proskauer.com>

Sent: Friday, November 1, 2019 9:05 PM

To: Bennett, Bruce S. <bbennett@jonesday.com>; Rosenblum, Benjamin <brosenblum@JonesDay.com>; Sooknanan, Sparkle L. <ssooknanan@jonesday.com>; jzakia@whitecase.com; jcunningham@whitecase.com; de la Hoz, Fernando <fdelahoz@whitecase.com>; eschaffer@reedsmith.com; Isizemore@reedsmith.com; cgray@reedsmith.com

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Subject: ERS discovery

Dear Counsel:

Attached are the following documents:

1. First Set of Requests for Admission of the Committees and Government Parties to the ERS Bondholder Groups
2. First Set of Interrogatories of the Committees and Government Parties to the ERS Bondholder Groups

3. First Set of Requests of the Committees and Government Parties for Production of Documents to the ERS Bondholder Groups
4. First Set of Requests for Admission of the Committees and Government Parties to the Fiscal Agent
5. First Set of Interrogatories of the Committees and Government Parties to the Fiscal Agent
6. First Set of Requests of the Committees and Government Parties for Production of Documents to the Fiscal Agent
7. ERS's Initial Disclosures Pursuant to Rule 26(a)(1)

Jennifer L. Roche

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 3, 2019, a true and correct copy of the foregoing
was served via electronic mail to the counsel listed below:

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Counsel for The Official Committee of Retired Employees of Puerto Rico

/s/ C. Neil Gray

C. Neil Gray

Gray, Neil

From: wdalsen@proskauer.com
Sent: Wednesday, July 1, 2020 3:35 PM
To: Fox, David R.; Papez, Matthew E.; Podmaniczky McGonigle, Sarah
Cc: Dale, Margaret A.
Subject: RE: ERS - Expert Work Papers

**** External mail ****

Hi David –

Those clarifications work for us.

Thanks,

--Will

William D. Dalsen
Attorney at Law

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From: Fox, David R.
Sent: Wednesday, July 1, 2020 1:44 PM
To: Dalsen, William D. ; Papez, Matthew E. ; Podmaniczky McGonigle, Sarah
Cc: Dale, Margaret A.
Subject: RE: ERS - Expert Work Papers

This email originated from outside the Firm.

Thanks, Will.

This is fine with us, with a few hopefully non-controversial clarifications:

- On your second bullet, it is our understanding that all raw data relied on in the reports has previously been produced, and we reserve our rights if that is not the case.
- On your third bullet, we will produce any intermediate datasets prepared from any raw data and used in the report's analysis. We will not produce intermediate datasets, if any, that were not used in the report's analysis.

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Please confirm that this works.

Thanks,

David

David Fox

Associate

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Sent: Wednesday, July 1, 2020 11:24 AM

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McGonigle, Sarah <smcgonigle@jonesday.com>

Cc: Dale, Margaret A. <mdale@proskauer.com>

Subject: ERS - Expert Work Papers

** External mail **

Matt, David, and Sarah –

Following service of opening expert reports today, we would propose serving expert work papers related to the report this [coming Friday, July 3, 2020 no later than 12:00 p.m. Eastern time](#). Such work papers (if any) should include, among other things:

- Excel spreadsheets used to run calculations and/or generate tables and figures in the reports;
- Any additional raw data relied on for the reports if not previously produced;
- Any intermediate datasets prepared from any raw data used in the report's analysis;
- Computer code written for purposes of the report's analysis;
- Methodological details not contained in the report, including academic papers or other documents used to support the report's analysis.

Please advise whether that works on your end.

Thanks,

—Will

William D. Dalsen

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greenspaces

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EXHIBIT 7-A

BNYM / Puerto Rico - Employee Retirement System
Boyer, Justin - Vol. 1
3/3/2020

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF PUERTO RICO

3

4

5 In Re:)

6 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD) PROMESA TITLE I

7 FOR PUERTO RICO) Case No.

8 as representative of) 17-BK-03283 (LTS)

9 THE COMMONWEALTH OF PUERTO RICO, et. al,)

10 Debtors.)

11)

12 In Re:)

13 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD) PROMESA Title III

14 FOR PUERTO RICO) Case No.

15 as representative of) 17-BK-03566 (LTS)

16 THE EMPLOYEES RETIREMENT SYSTEM OF THE)

17 GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO,)

18 Debtor.)

19)

20

21 CONFIDENTIAL

22 Transcript of JUSTIN BOYER

23

24 Reported by:

25 LORRAINE B. ABATE, CSR, RPR

1 _____
2 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL)
3 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,) ADV. PROC. NO
4 ACTING BY AND THROUGH ITS MEMBERS,) 19-00356 (LTS)
5 and)
6 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS)
7 OF ALL TITLE III DEBTORS (OTHER THAN COFINA))
8 as co-trustees of)
9 THE EMPLOYEES RETIREMENT SYSTEM OF THE)
10 GOVERNMENT OF PUERTO RICO,)
11 Plaintiff,)
12 vs.)
13 DEFENDANT IM, et al.,)
14 Defendants.

15 _____)
16 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL)
17 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,) ADV. PROC. NO
18 ACTING BY AND THROUGH ITS MEMBERS,) 19-00357 (LTS)
19 and
20 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS)
21 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),)
22 as co-trustees of)
23 THE EMPLOYERS RETIREMENT SYSTEM OF THE)
24 GOVERNMENT OF PUERTO RICO,)
25 Plaintiff,)
26 vs.)
27 STOEVEER GLASS & CO., et al.,)
28 Defendants.)

29 _____)
30

1 _____
2 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL)
3 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,) ADV. PROC. NO
4 ACTING BY AND THROUGH ITS MEMBERS,) 19-00359 (LTS)
5 and)
6 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS)
7 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),)
8 as co-trustees of)
9 THE EMPLOYEES RETIREMENT SYSTEM OF THE)
10 GOVERNMENT OF PUERTO RICO,)
11 Plaintiff,)
12 vs.)
13 DEFENDANT 1H-78H,)
14 Defendants)
15 _____)

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1 _____
2 THE SPECIAL CLAIMS COMMITTEE OF THE FINNCIAL)
3 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,) ADV. PROC. NO
4 ACTING BY AND THROUGH ITS MEMBERS,) 19-00361(LTS)
5 and)
6 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS)
7 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),)
8 as co-trustees of)
9 THE EMPLOYEES RETIREMENT SYSTEM OF THE)
10 GOVERNMENT OF PUERTO RICO,)
11 Plaintiff,)
12 vs.)
13 DEFENDANT 1G-50G, et. al.,)
14 Defendants.)
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1 _____
2 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD)
3 FOR PUERTO RICO,) ADV. PROC. NO.
4 as representative of) 19-00366(LTS)
5 EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT)
6 OF THE COMMONWEALTH OF PUERTO RICO,)
7 and)
8 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS)
9 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),)
10 as Section 926 trustee of)
11 THE COMMONWEALTH OF PUERTO RICO,)
12 Plaintiffs,)
13 vs.)
14 ANDALUSIAN GLOBAL DESIGNATED)
15 ACTIVITY COMPANY, et. al,)
16 Defendants.)
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1 _____
2 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD)
3 FOR PUERTO RICO) ADV. PROC. NO.
4 as representative of) 19-00367 (LTS)
5 EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT)
6 OF THE COMMONWEALTH OF PUERTO RICO,)
7 and)
8 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS)
9 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),)
10 as Section 926 trustee of)
11 THE COMMONWEALTH OF PUERTO RICO,)
12 Plaintiffs,)
13 vs.)
14 GLENDON OPPORTUNITIES FUND, L.P., et. al,)
15 Defendants.)
16 _____)

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19

TRANSCRIPT of the stenographic notes of the
20 deposition of JUSTIN BOYER in the above-entitled
matter, as taken by and before LORRAINE B. ABATE, a
21 Certified Shorthand Reporter and Notary Public of the
State of New York and Registered Professional
22 Reporter, held at the offices of Proskauer & Rose,
LLP, 11 Times Square, New York, New York, on March 3,
23 2020, commencing at time 1:15 p.m., pursuant to
Notice.

24

25

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14 Chris Martin, Videographer

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I N D E X

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	Ms. McGonigle	167

E X H I B I T S

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2 Notice of Videotaped Deposition of Justin Charles Boyer	47
3 Redwood Master Fund, Ltd.'s Responses and Objections to the Committee's and Government Parties Amended Notice of Rule 30(b)(6) Deposition of Redwood Master Fund, Ltd.	47

1

2 EXHIBITS

3 BOYER PAGE

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5 Objections to the First Set of

6 Interrogatories of the Committees

7 and Government Parties to the ERS

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21 Powers Agency Document 155

22 15 Letter dated October 24, 2019 165

23

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25

1 CONFIDENTIAL - Boyer - March 3, 2020 - CONFIDENTIAL

2 A. I would say that from our standpoint as
3 an investment analyst, the technicalities of what an
4 underwriter does or does not do are not really
5 material to our investments.

6 Q. Well, do you have an understanding of
7 the role that an underwriter serves in the public
8 bond issuance?

9 A. I have a basic understanding.

10 Q. What is that understanding?

11 A. The underwriter serves as a -- they
12 purchase -- they basically loan money to an investor,
13 and then they syndicate that loan to a client base of
14 ultimate holders.

15 Q. When you say they loan money to an
16 issuer, what do you mean by that?

17 A. They -- the issuer is the borrower and
18 the underwriter lends them the money. That's --

19 Q. So as a -- your -- Redwood is a bond
20 holder for a variety of bond investments, correct?

21 A. Yes.

22 Q. And as a bond holder to a company, does
23 -- as a bond holder holding the bonds of an issuer,
24 does Redwood view itself as a lender to that issuer?

25 MS. McGONIGLE: Objection. Is that as

1 CONFIDENTIAL - Boyer - March 3, 2020 - CONFIDENTIAL

2 30(b)(6) now or are you still asking in his
3 personal capacity does he think that Redwood
4 views itself that way?

5 MR. BASSETT: 30(b)(6).

6 MS. McGONIGLE: Okay. I would object to
7 that as beyond the scope of the topics
8 themselves. But to the extent the witness has
9 that information, you can answer.

10 A. You mind just repeating the question.

11 MR. BASSETT: Can you read it back,
12 please.

13 (The record was read.)

14 A. Again, there's technical terms that I
15 don't really feel comfortable opining on because
16 they're technical in nature. But colloquially, if
17 you called up the investor relations of, you know, a
18 company, and Redwood -- even though we -- Redwood
19 doesn't own bonds.

20 I believe how the system works is DTC or
21 some other depository agency holds these bonds and
22 then our prime broker, you know, they -- the prime
23 broker actually has the entry at DTC for its
24 allocation of those bonds. And then the prime broker
25 further allocates, you know, that beneficial

1 CONFIDENTIAL - Boyer - March 3, 2020 - CONFIDENTIAL

2 ownership to Redwood.

3 So these are -- these are very technical

4 points that are not really particular to my job

5 function.

6 Q. So you mentioned before that you believe

7 an underwriter loans money to an issuer in a public

8 bond offering.

9 Are you aware of whether a loan

10 agreement would typically exist between the

11 underwriter and the issuer in that situation?

12 A. Like I said, I mean, the -- the details

13 of -- like I was never an investment banker. I never

14 worked on the capital market side of -- at an

15 investment bank. The legality and -- and specific

16 meaning of these terms, this is not something that we

17 focus our operations on.

18 Q. So I want to understand better than I

19 currently do Redwood's process for identifying and

20 then evaluating new investments.

21 A. Okay.

22 Q. You mentioned that you worked on kind of

23 both of those tasks, if you will.

24 So I guess if you could just tell me

25 what happens once you or another employee of Redwood

BNYM / Puerto Rico - Employee Retirement System
Chang, Alex
6/4/2020

1 _____
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF PUERTO RICO
4 PROMESA TITLE III
5 CASE NO: 17-BK-03283 (LTS)
6
7 IN RE: THE FINANCIAL OVERSIGHT AND
8 MANAGEMENT BOARD FOR PUERTO RICO
9 as representative of
10
11 THE COMMONWEALTH OF PUERTO RICO, et al.,
12 Debtor(s).
13 _____

14
15 IN THE UNITED STATES DISTRICT COURT
16 FOR THE DISTRICT OF PUERTO RICO
17 PROMESA TITLE III
18 CASE NO: 17-BK-03566 (LTS)
19 IN RE: THE FINANCIAL OVERSIGHT AND
20 MANAGEMENT BOARD FOR PUERTO RICO
21 as representative of
22 THE EMPLOYEES RETIREMENT SYSTEM OF THE
23 GOVERNMENT OF THE COMMONWEALTH OF PUERTO
24 RICO,
25 Debtor(s).
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2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF PUERTO RICO
4 ADV. PROC. NO: 17-00356 (LTS)
5 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL
6 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,
7 ACTING BY AND THROUGH ITS MEMBERS,
8 -and-
9 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
10 OF ALL TITLE III DEBTORS (OTHER THAN COFINA)
11 -as co-trustees of
12 THE EMPLOYEES RETIREMENT SYSTEM OF THE
13 GOVERNMENT OF PUERTO RICO,
14 Plaintiff(s),
15
16 vs.
17
18 DEFENDANT IM, et al.,
19 Defendant(s).

20
21 IN THE UNITED STATES DISTRICT COURT
22 FOR THE DISTRICT OF PUERTO RICO
23 ADV. PROC. NO: 17-00357 (LTS)
24
25 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL
OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,
ACTING BY AND THROUGH ITS MEMBERS,
-and-
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
OF ALL TITLE III DEBTORS (OTHER THAN COFINA)
-as co-trustees of
THE EMPLOYEES RETIREMENT SYSTEM OF THE
GOVERNMENT OF PUERTO RICO,
Plaintiff(s),
vs.
STOEVEER GLASS & CO., et al.,
Defendant(s).

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF PUERTO RICO
4 ADV. PROC. NO: 19-00359 (LTS)
5 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL
6 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,
7 ACTING BY AND THROUGH ITS MEMBERS,
8 -and-
9 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
10 OF ALL TITLE III DEBTORS (OTHER THAN COFINA)
11 -as co-trustees of
12 THE EMPLOYEES RETIREMENT SYSTEM OF THE
13 GOVERNMENT OF PUERTO RICO,
14 Plaintiff(s),
15
16 vs.
17
18 DEFENDANT 1H-78H, et al.,
19 Defendant(s).

20
21 IN THE UNITED STATES DISTRICT COURT
22 FOR THE DISTRICT OF PUERTO RICO
23 ADV. PROC. NO: 19-00361 (LTS)
24
25 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL
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ACTING BY AND THROUGH ITS MEMBERS,
-and-
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
OF ALL TITLE III DEBTORS (OTHER THAN COFINA)
-as co-trustees of
THE EMPLOYEES RETIREMENT SYSTEM OF THE
GOVERNMENT OF PUERTO RICO,
Plaintiff(s),
vs.
DEFENDANT 1G-50G, et al.,
Defendant(s).

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF PUERTO RICO
4 ADV. PROC. NO: 19-00366 (LTS)
5 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD
6 FOR PUERTO RICO,
7 -as representative of
8 EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT
9 OF THE COMMONWEALTH OF PUERTO RICO,
10 -and
11 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
12 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),
13 -as Section 926 trustee of
14 THE COMMONWEALTH OF PUERTO RICO,
15 Plaintiff(s),
16 vs.
17 ANDALUSIAN GLOBAL DESIGNATED ACTIVITY
18 COMPANY, et al.,
19 Defendant(s).

20
21 IN THE UNITED STATES DISTRICT COURT
22 FOR THE DISTRICT OF PUERTO RICO
23 ADV. PROC. NO: 19-00367 (LTS)
24
25 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD
26 FOR PUERTO RICO,
27 -as representative of
28 EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT
29 OF THE COMMONWEALTH OF PUERTO RICO,
30 -and
31 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
32 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),
33 -as Section 926 trustee of
34 THE COMMONWEALTH OF PUERTO RICO,
35 Plaintiff(s),
36 vs.
37
38 GLENDON OPPORTUNITIES FUND, LP, et al.,
39 Defendant(s).

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TRANSCRIPT of the videotaped deposition of
the witness, called for Oral Examination in the
above-captioned matter, said deposition being taken by
and before CHARLENE FRIEDMAN, a Notary Public and
Certified Court Reporter of the State of New Jersey, a
Registered Professional Reporter and Certified Realtime
Reporter, via video teleconference, by WebEx, on June 4,
2020, commencing at approximately 9:35 in the morning.

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25

1 INDEX

2 WITNESS NAME PAGE

3 ALEX CHANG

4 By Mr. Dalsen 13

5 *****

6 EXHIBITS

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15 Exhibit 8 PX-008 139

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17 Exhibit 10 PX-029 152

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25

1 Direction in the paragraph that we just

2 looked at on page 2 of Exhibit 3 --

3 A Yes.

4 Q -- is that the owners of a majority

5 in principal amount directed Bank of New York

6 Mellon, as to the conduct of certain

7 proceedings, including the proceedings that

8 we're involved in today.

9 Is that right?

10 A Yes.

11 MR. GRAY: Object to the form.

12 Misrepresents the owners.

13 Q Now, Mr. Chang, how did the Bank of

14 New York Mellon know that it was receiving

15 direction from the right people?

16 A Well, pursuant to this section, and

17 if this is verbatim from that section, the

18 owners identified as DTC Cede & Co. as

19 nominee for the trust company.

20 These individuals that signed this

21 direction letter are beneficial owners, and

22 so we took -- we verified that they are

23 actually beneficial owners by asking them to

24 provide evidence that they -- they hold

25 beneficial interest bonds.

1 just take the word -- the word of the people
2 who signed this document to -- as
3 confirmation that they in fact own a majority
4 of a principal amount for the outstanding ERS
5 bonds?

6 A No. So as I stated earlier, we've
7 asked for evidence that they have beneficial
8 interest in the bonds by providing statements
9 or third-party certification.

10 Q And other than the statements and
11 certifications from the people who signed
12 this Letter of Direction, did Bank of New
13 York look for any information outside of
14 those statements and certifications to
15 confirm who the majority and principal
16 amounts of the owners were and the majority
17 and principal amounts of the outstanding ERS
18 bonds?

19 A So as I said earlier, the owners,
20 we recognized Cede & Co. as a nominee for DTC
21 to be the owner of the bonds.

22 He's directing parties who are
23 beneficial owners, and so by providing us
24 with their third-party statements and
25 certification and investment statements that

1 show their beneficial interest in these
2 bonds, you believe them to be the actual
3 beneficial owners.

4 Q And Bank of New York was satisfied
5 that the information provided showed that the
6 people who signed this Letter of Direction
7 were, in fact, the owners of the majority and
8 principal amounts of the outstanding ERS
9 bonds?

10 MR. GRAY: Object to the form.
11 Misstates the testimony.

12 Q You can answer, if you understand
13 my question, Mr. Chang.

14 A So as I said, we -- we -- we took
15 them to be the beneficial owners of the
16 bonds.

17 Q And Bank of New York Mellon was
18 satisfied that the people who signed this
19 letter had established that they were
20 beneficial owners of the ERS bonds?

21 A Yes.

22 Q And Bank of New York Mellon, on the
23 basis of being satisfied accepts -- accepted,
24 by your signature, this letter of direction?

25 A Yes.

1 The Bank of New York Mellon is
2 the -- is the fiscal agent under the ERS bond
3 resolution.

4 Is that right?

5 A That's correct.

6 Q And that Bank of New York Mellon,
7 beyond the ERS bonds, provides services,
8 especially your division that you work for,
9 Mr. Chang, as fiscal agent on a variety of
10 municipal securities.

11 A That's correct.

12 Q And what does it mean to be a
13 fiscal agent in that context?

14 MR. GRAY: So let me just state,
15 this is beyond the scope of the 30(b)(6)
16 category.

17 So Mr. Chang can answer in his
18 individual capacity, if he knows.

19 A What does it mean to act as fiscal
20 agent in general terms is hard to answer,
21 but -- but what your duties are obviously are
22 laid out on -- on those contract in the bond
23 resolution indenture, whatever the governing
24 documents are.

25 In general terms, they typically

1 include paying ceding funds pursuant to the
2 resolution or the indenture, paying bond,
3 paying DTC as a bond owner.

4 Q Is it fair to say that in your
5 experience, the responsibilities of the
6 fiscal agent are outlined in whatever the
7 contract or indenture is for that particular
8 issuance?

9 A That is -- that is correct.

10 Q And specifically, for the ERS
11 bonds, Bank of New York Mellon's
12 responsibilities as fiscal agent are aligned
13 in the ERS bond resolution.

14 Is that correct?

15 A That is correct.

16 Q And specifically, with reference to
17 the ERS bonds, what are Bank of New York
18 Mellon's responsibilities as fiscal agent?

19 A I'm not going to be able to tell
20 you off the top of my head what all those
21 duties are and responsibilities are.

22 You know, I think if you pull out
23 the ERS resolution, it will state what our
24 duties are in there.

25 Q Sure. Let's do that actually.

1 ERS pursuant to Section 509?

2 A So the bond resolution provides for

3 Pledged Property.

4 The security agreement provides for

5 the security lien.

6 The UCC provides for security lien

7 or rights to those assets to Pledged

8 Property.

9 That's -- that's all I'm looking

10 at.

11 Q Okay. Mr. Chang, the ERS

12 bondholders themselves received payments from

13 Bank of New York Mellon in accordance with

14 the ERS bond resolution.

15 Is that right?

16 A I'm sorry. Say that again, the

17 bank --

18 Q Can you hear me clearly, Mr. Chang?

19 A Yes.

20 Q Okay. Mr. Chang, my question to

21 you was, the ERS bondholders themselves

22 received payments from Bank of New York

23 Mellon in accordance with the ERS bond

24 resolution, right?

25 A Absolutely. The DTC Cede & Co.

1 registered holder in bond always received

2 payments from Bank of New York Mellon.

3 Q And the Bank of New York Mellon

4 continued to make debt service payments to

5 what date within the ERS bonds?

6 A I don't remember the exact date

7 until -- until -- until ERS defaulted under

8 payment.

9 Q And do you recall -- even if you

10 don't know the exact date, approximately when

11 ERS defaulted, as you put it?

12 A I don't remember exactly. I'm

13 sorry.

14 Q Do you recall the year?

15 A In 2018? I -- I can't remember.

16 Q Does July 2018 sound familiar as

17 far as when the ERS bondholder stopped

18 receiving debt service payments?

19 A It could be. I -- I really don't

20 know. I have to look at the files.

21 Q Up until the point where ERS

22 defaulted, did the bondholders receive all

23 funds from the Bank of New York Mellon that

24 they were entitled to receive under the ERS

25 bond resolution?

BNYM / Puerto Rico - Employee Retirement System
Rodriguez, Luis Manuel Collazo - Vol. 2
6/9/2020

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

2 _____

3 In Re:)
4 THE FINANCIAL OVERSIGHT AND) PROMESA TITLE III
5 MANAGEMENT BOARD FOR PUERTO RICO,) Case No.
6 as representative of) 17-BK-03283 (LTS)
7 THE COMMONWEALTH OF PUERTO RICO,)
8 et. al,)
9 Debtors.)

10 _____)

11 In Re:) PROMESA Title III
12 THE FINANCIAL OVERSIGHT AND) Case No.
13 MANAGEMENT BOARD FOR PUERTO RICO) 17-BK-03566 (LTS)
14 as representative of)
15 THE EMPLOYEES RETIREMENT SYSTEM)
16 OF THE GOVERNMENT OF THE)
17 COMMONWEALTH OF PUERTO RICO,)
18 Debtor.)

19 _____)

20 CONFIDENTIAL - SUBJECT TO THE PROTECTIVE ORDER
21 DEPOSITION OF
22 LUIS MANUEL COLLAZO RODRIGUEZ
23 VOLUME 2

24 Tuesday, June 9, 2020, 9:13 a.m.

25 REPORTED BY: Dennis Zambataro, RPR and CCR

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5)
6 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL)
7 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,))
8 ACTING BY AND THROUGH ITS MEMBERS,)
9)
10 and)
11)
12 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS)
13 OF ALL TITLE III DEBTORS (OTHER THAN COFINA))
14 as co-trustees of)
15 THE EMPLOYEES RETIREMENT SYSTEM OF THE) ADV. PROC. NO.
16 GOVERNMENT OF PUERTO RICO,)
17) 19-00356 (LTS)
18 Plaintiff,)
19)
20 vs.)
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22 DEFENDANT IM, et al.,)
23)
24 Defendants.)
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27 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL)
28 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,))
29 ACTING BY AND THROUGH ITS MEMBERS,)
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34 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),)
35)
36 as co-trustees of) ADV. PROC. NO.
37)
38 THE EMPLOYERS RETIREMENT SYSTEM OF THE) 19-00357 (LTS)
39 GOVERNMENT OF PUERTO RICO,)
40)
41 Plaintiff,)
42 vs.)
43 STOEVEY GLASS & CO., et al.,)
44)
45 Defendant.)
46 _____)

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5 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL)
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15 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),)
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17 as co-trustees of) ADV. PROC. NO.
18)
19 THE EMPLOYEES RETIREMENT SYSTEM OF THE) 19-00359 (LTS)
20)
21 GOVERNMENT OF PUERTO RICO,)
22)
23 Plaintiff,)
24)
25 vs.)
26)
27 DEFENDANT 1H-78H,)
28)
29 Defendants)
30)
31 _____)

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5 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL)
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15 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),)
16)
17 as co-trustees of) ADV. PROC. NO.
18)
19 THE EMPLOYEES RETIREMENT SYSTEM OF THE) 19-00361(LTS)
20)
21 GOVERNMENT OF PUERTO RICO,)
22)
23 Plaintiff,)
24)
25 vs.)
26)
27 DEFENDANT 1G-50G, et. al.,)
28)
29 Defendants.)
30)
31 _____)

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5 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD)
6)
7 FOR PUERTO RICO,)
8)
9 as representative of)
10)
11 EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT)
12)
13 OF THE COMMONWEALTH OF PUERTO RICO,)
14)
15 and)
16)
17 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS)
18)
19 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),) ADV. PROC. NO.
20)
21 as Section 926 trustee of) 19-00366(LTS)
22)
23 THE COMMONWEALTH OF PUERTO RICO,)
24)
25 Plaintiffs,)
vs.)
ANDALUSIAN GLOBAL DESIGNATED)
ACTIVITY COMPANY, et. al,)
Defendants.)
_____)

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3)
4 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD)
5)
6 FOR PUERTO RICO)
7)
8 as representative of)
9)
10 EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT)
11)
12 OF THE COMMONWEALTH OF PUERTO RICO,)
13)
14 and)
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16 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS)
17)
18 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),) ADV. PROC. NO.
19)
20 as Section 926 trustee of) 19-00367 (LTS)
21)
22 THE COMMONWEALTH OF PUERTO RICO,)
23)
24 Plaintiffs,)
25)
vs.)
GLENDON OPPORTUNITIES FUND, L.P., et. al,)
Defendants.)
_____)

18
19 Transcript of the stenographic notes of the
20 video-conferenced deposition of LUIS MANUEL COLLAZO
21 RODRIGUEZ, in the above-entitled matter, as taken by
22 and before DENNIS ZAMBATARO, a Registered Professional
23 Reporter and Certified Court Reporter, held via WebEx
24 video-conference on Tuesday, June 9, 2020, commencing
25 at 9:13 a.m., pursuant to subpoena.

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20 Interpreter: Pura M. Reyes-Gilestra

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23 (In person)

24

25

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1 closing memoranda for each of the series of
2 bonds. This pertains to the Series A bond. As
3 I said, this was marked as Exhibit 8 yesterday.

4 A All right.

5 Q If you turn to page 2.

6 A [Witness complies.]

7 Q At the top you'll see a heading in
8 bold that says "Form of Bonds," and then the
9 document says "DTC Book Entry Only."

10 Do you see that?

11 A Yes, I see it.

12 MR. SUSHON: I'm sorry, I don't see
13 it, Neil. Where are you referring to?

14 MR. GRAY: I'm on page 2, the
15 document bearing Bates number ending
16 3788, the second line.

17 MR. SUSHON: I have it now. Thank
18 you.

19 BY MR. GRAY:

20 Q Mr. Collazo, do you have an
21 understanding of what "DTC Book Entry Only"
22 means?

23 MR. SUSHON: Objection. Beyond the
24 scope of the 30(b)(6) topic.

25 [Question interpreted.]

1 THE WITNESS: "DTC Book Entry" means
2 logged into the DTC book only. I would
3 have to verify with my finance personnel
4 in order to corroborate what "DTC" is.

5 BY MR. GRAY:

6 Q Well, let me ask: Do you have an
7 understanding about what "DTC" means in the
8 context of this closing memorandum?

9 MR. SUSHON: Again, I object. This
10 is beyond the scope of 30(b)(6).

11 [Question interpreted.]

12 THE WITNESS: No, I just answered
13 that I would have to consult with my
14 financial personnel to verify and to know
15 what "DTC" means.

16 BY MR. GRAY:

17 Q Mr. Collazo, have you ever heard of
18 the company Depository Trust Company?

19 MR. SUSHON: Same objection.

20 [Question interpreted.]

21 THE WITNESS: Right now, nothing
22 comes to mind.

23 BY MR. GRAY:

24 Q All right. At the bottom of that
25 page in the paragraph, the second sentence

1 reads:

2 "Series A bonds will be held at DTC
3 pending verbal notification from UBS and the fiscal
4 agent when the transaction has been successfully
5 closed and delivered to the fiscal agent at the
6 office of Fiddler, González & Rodríguez PFC."

7 Do you see that?

8 A Yes.

9 Q But do you know, Mr. Collazo, were
10 the bonds delivered to the fiscal agent at the
11 office of Fiddler González, as this suggests?

12 MR. SUSHON: Objection. Beyond the
13 scope of the 30(b)(6) topics.

14 [Question interpreted.]

15 THE WITNESS: To the best of my
16 knowledge and the information that I have
17 had available to me, I could not answer
18 that at this time.

19 BY MR. GRAY:

20 Q Mr. Collazo, looking back over the
21 top of the page where it says "DTC Book Entry
22 only," if I were to show you the -- strike that.

23 If the closing memorandum for the
24 Series B bonds said the same thing, would your
25 answer to my questions be the same?

1 MR. SUSHON: Objection. You said

2 Series "E" as in "echo"?

3 MR. GRAY: "B" as in "boy."

4 Series B.

5 MR. SUSHON: Then I object. It's

6 beyond the 30(b)(6) scope.

7 [Question interpreted.]

8 THE WITNESS: If it said the same as

9 you say, then the answer would then be

10 yes, it would be the same.

11 BY MR. GRAY:

12 Q And would your answers be the same

13 regarding the paragraph on the bottom of the

14 page for the Series B bonds, "B" as in "boy," if

15 the language is the same?

16 MR. SUSHON: Objection. Beyond the

17 scope of the 30(b)(6) topic.

18 [Question interpreted.]

19 THE WITNESS: Well, if you show me

20 the memorandum for the Series B and stop

21 telling me if it said or if it would

22 say -- we should not continue to

23 speculate.

24 BY MR. GRAY:

25 Q All right. If you could open in the

1 Series B and C docs folder on the computer, the
2 document titled "Doc 6 - Series B Equivalent."

3 [Brief pause in the proceedings.]

4 THE INTERPRETER: We're searching
5 for it.

6 MR. SUSHON: This is Exhibit 9,
7 correct?

8 MR. GRAY: Yes, it was.

9 THE WITNESS: What's the number of
10 the document?

11 MR. GRAY: Doc 6 - Series B
12 equivalent.

13 THE WITNESS: Okay. Good, now I am
14 there. Now we can speak with the
15 document in front of me without any
16 speculations.

17 BY MR. GRAY:

18 Q At the top of page 2 of Exhibit 9,
19 you'll see that it says "Form of Bonds, DTC Book
20 Entries Only."

21 Do you see that?

22 A Yes.

23 Q Mr. Collazo, do you understand what
24 "DTC Book Entries Only" means?

25 MR. SUSHON: Objection. Beyond the

1 scope.

2 [Question interpreted.]

3 THE WITNESS: [In English] DTC

4 only.

5 THE INTERPRETER: "DTC book only."

6 THE WITNESS: I could know what

7 "DTC" means by doing the translation.

8 But if it has a meaning beyond that

9 function, I would have to corroborate.

10 BY MR. GRAY:

11 Q Mr. Collazo, sitting here without

12 consulting with your finance department, you

13 don't have an understanding of what "DTC" means,

14 correct?

15 MR. SUSHON: Again, beyond the

16 scope.

17 [Question interpreted.]

18 THE WITNESS: "DTC" is "Depository

19 Trust Company."

20 "Book Entry Only," only one entry to

21 the book, which I assume -- I understand

22 it has to do something with accounting.

23 BY MR. GRAY:

24 Q When I asked you when we were

25 looking at Exhibit 8 what "DTC" stood for, you

1 said you didn't know.

2 Has something changed now that we're
3 looking at Exhibit 9?

4 MR. SUSHON: Objection. Beyond the
5 scope and mischaracterizes his testimony.

6 [Question interpreted.]

7 THE WITNESS: I didn't say I didn't
8 know. You are putting words in my mouth.
9 I said that I knew what "Book Entry Only"
10 was, but not "DTC." And you told me that
11 "DTC" was "Depository Trust Company."

12 In the first exhibit, I told you
13 what was -- what "Book Entry Only" meant
14 for me. And now, given your insistence,
15 I am saying that it has to do with
16 something of accounting.

17 And as my lawyer has said, I am not
18 here to testify about --

19 BY MR. GRAY:

20 Q Mr. Collazo, at the bottom of page 2
21 of Exhibit 9 in the paragraph, the second
22 sentence reads:

23 "The Series B bonds will be held at DTC
24 pending verbal notification from UBS and the trustee
25 that the transaction has been successfully closed

1 and delivered to the trustee at the office of
2 Fiddler, González & Rodríguez."

3 Did you know if the Series B bonds
4 were delivered to the trustee at the office of
5 Fiddler, González & Rodríguez?

6 MR. SUSHON: Objection. Beyond the
7 scope.

8 [Question interpreted.]

9 THE WITNESS: With the information I
10 have at this time and the information
11 I've had before me, I could not answer
12 that question.

13 BY MR. GRAY:

14 Q Let's look at the next document in
15 the folder, Doc 6 - Series C Equivalent.

16 [Reporter requested clarification.]

17 THE INTERPRETER: "C."

18 MR. SUSHON: "C" as in "Charlie,"
19 and that was Exhibit 10; is that correct,
20 Neil?

21 MR. GRAY: That's correct, it was
22 marked as Exhibit 10 yesterday.

23 THE WITNESS: Yes.

24 BY MR. GRAY:

25 Q Look on page 2 at the top where it

1 says "Form of bonds," it says "DTC Book Entry
2 Only." I asked you about that in connection
3 with the Series A and Series B closing
4 memorandum.

5 Do you have anything to add to the
6 question: Do you know what that means?

7 MR. SUSHON: Objection. Beyond the
8 scope.

9 [Question interpreted.]

10 THE WITNESS: No, nothing to add to
11 what I have already said.

12 BY MR. GRAY:

13 Q And at the bottom of that page in
14 the paragraph, the second sentence reads:

15 "The Series C bonds will be held at DTC
16 pending verbal notification from UBS and the trustee
17 that the transaction has been successfully closed
18 and delivered to the trustee at the office of
19 Fiddler, González & Rodríguez."

20 Do you know, Mr. Collazo, if the
21 bonds, Series C bonds, were transferred to the
22 trustee at the office of Fiddler, González &
23 Rodríguez?

24 MR. SUSHON: Same objection.

25 [Question interpreted.]

1 THE WITNESS: According to the
2 information that I have had up until
3 today and according to the best of my
4 knowledge, I don't know the answer to
5 your question.

6 BY MR. GRAY:

7 Q Mr. Collazo, do you know in
8 connection with the ERS bond offerings -- and
9 when I say that, I mean any of the series --
10 whether there were physical bond certificates
11 issued?

12 MR. SUSHON: Same objection.

13 [Question interpreted.]

14 THE WITNESS: I would have to view
15 all of the documents regarding the
16 transactions with those bonds and those
17 transactions have multiple documents. I
18 would have to look at them to see if they
19 existed or not.

20 I cannot mention from memory all of
21 the documents that may have been present
22 in that transaction.

23 BY MR. GRAY:

24 Q Mr. Collazo, do you know at what
25 point the Depository Trust Company initially

1 became involved with the offering of the ERS
2 bonds.

3 MR. SUSHON: Objection. Beyond the
4 scope.

5 [Question interpreted.]

6 THE WITNESS: No, at this moment, I
7 couldn't tell you.

8 MR. GRAY: Mr. Collazo, thank you.
9 I have no further questions.

10 MR. SUSHON: Does anyone else have
11 any questions for Mr. Collazo?

12 [No response.]

13 MR. SUSHON: Going once, going
14 twice.

15 Matt, do you have any redirect
16 within the scope of what Mr. Gray asked?

17 MR. PAPEZ: No, I don't.

18 MR. SUSHON: Okay.

19 Before we go off the record, because
20 it does affect many people's schedules
21 tomorrow, I wanted to make it clear that
22 Ms. Tirado will be available for her
23 deposition and she will show up for her
24 deposition.

25 If you choose not to question her,

BNYM / Puerto Rico - Employee Retirement System
Daniels, Elan - Vol. I
2/28/2020

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF PUERTO RICO

3

4 _____

5 In Re:)

6 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD) PROMESA TITLE II

7 FOR PUERTO RICO) Case No.

8 as representative of) 17-BK-03283 (LTS)

9 THE COMMONWEALTH OF PUERTO RICO, et. al,)

10 Debtors.)

11 _____)

12 In Re:)

13 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD) PROMESA Title III

14 FOR PUERTO RICO) Case No.

15 as representative of) 17-BK-03566 (LTS)

16 THE EMPLOYEES RETIREMENT SYSTEM OF THE)

17 GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO,)

18 Debtor.)

19 _____)

20

21 C O N F I D E N T I A L

22 Videotaped Deposition of Elan Daniels

23

24 Reported by:

25 LORRAINE B. ABATE, CSR, RPR

1 _____
2 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL)
3 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,) ADV. PROC. NC
4 ACTING BY AND THROUGH ITS MEMBERS,) 19-00356 (LTS)
5 and)
6 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS)
7 OF ALL TITLE III DEBTORS (OTHER THAN COFINA))
8 as co-trustees of)
9 THE EMPLOYEES RETIREMENT SYSTEM OF THE)
10 GOVERNMENT OF PUERTO RICO,)
11 Plaintiff,)
12 vs.)
13 DEFENDANT IM, et al.,)
14 Defendants.)
15 _____)
16 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL)
17 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,) ADV. PROC. NO
18 ACTING BY AND THROUGH ITS MEMBERS,) 19-00357 (LTS)
19 and)
20 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS)
21 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),)
22 as co-trustees of)
23 THE EMPLOYERS RETIREMENT SYSTEM OF THE)
24 GOVERNMENT OF PUERTO RICO,)
25 Plaintiff,)
26 vs.)
27 STOEVEER GLASS & CO., et al.,)
28 Defendants.)
29 _____)

1 _____
2 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL)
3 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,) ADV. PROC. NO
4 ACTING BY AND THROUGH ITS MEMBERS,) 19-00359 (LTS)
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8 as co-trustees of)
9 THE EMPLOYEES RETIREMENT SYSTEM OF THE)
10 GOVERNMENT OF PUERTO RICO,)
11 Plaintiff,)
12 vs.)
13 DEFENDANT 1H-78H,)
14 Defendants)
15 _____)

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1 _____
2 THE SPECIAL CLAIMS COMMITTEE OF THE FINNCIAL)
3 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,) ADV. PROC. NO
4 ACTING BY AND THROUGH ITS MEMBERS,) 19-00361(LTS)
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8 as co-trustees of)
9 THE EMPLOYEES RETIREMENT SYSTEM OF THE)
10 GOVERNMENT OF PUERTO RICO,)
11 Plaintiff,)
12 vs.)
13 DEFENDANT 1G-50G, et. al.,)
14 Defendants.)
15 _____)

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1 _____
2 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD)
3 FOR PUERTO RICO,) ADV. PROC. NO.
4 as representative of) 19-00366(LTS)
5 EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT)
6 OF THE COMMONWEALTH OF PUERTO RICO,)
7 and)
8 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS)
9 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),)
10 as Section 926 trustee of)
11 THE COMMONWEALTH OF PUERTO RICO,)
12 Plaintiffs,)
13 vs.)
14 ANDALUSIAN GLOBAL DESIGNATED)
15 ACTIVITY COMPANY, et. al,)
16 Defendants.)
17 _____)

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1 _____
2 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD)
3 FOR PUERTO RICO) ADV. PROC. NO.
4 as representative of) 19-00367 (LTS)
5 EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT)
6 OF THE COMMONWEALTH OF PUERTO RICO,)
7 and)
8 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS)
9 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),)
10 as Section 926 trustee of)
11 THE COMMONWEALTH OF PUERTO RICO,)
12 Plaintiffs,)
13 vs.)
14 GLENDON OPPORTUNITIES FUND, L.P., et. al,)
15 Defendants.)

16 _____)

17

18 TRANSCRIPT of the stenographic notes of the
19 deposition of Elan Daniels in the above-entitled
20 matter, as taken by and before LORRAINE B. ABATE, a
21 Certified Shorthand Reporter and Notary Public of the
22 State of New York and Registered Professional
23 Reporter, held at the offices of Proskauer & Rose,
24 LLP, 11 Times Square, New York, New York, on February
25 28, 2020, commencing at 10:03 a.m., pursuant to Notice.

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13 ALSO PRESENT:

14 Chris Martin, Videographer

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18 Government Parties' Amended Notice of

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23 Pursuant to Federal Rule of Civil

24 Procedure 26(a)(1) 72

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1 Elan Daniels

2 that mean?

3 A. Distinguishing between a record holder
4 and a beneficial holder. So it's a beneficial holder
5 of the bonds.

6 Q. What is the difference between -- one
7 moment. I'm sorry.

8 MR. DALSEN: If you're on the phone
9 line, can you please mute.

10 MS. RIOS: Yes.

11 MR. DALSEN: Thank you.

12 Q. Mr. Daniels, what is the difference
13 between a record holder and a beneficial holder of
14 bonds?

15 A. As far as I know, there's only one
16 record holder, and that's CDN Co. which is a DTC
17 affiliate, and everyone else who holds the bonds is a
18 beneficial holder.

19 Q. And what does it mean to be a beneficial
20 holder?

21 A. It means you have the economic -- you
22 have the economic interest in the bonds as opposed to
23 having actual title which I think is in the record
24 holder's name.

25 Q. Has -- I assume King Street Capital

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Doty, Robert - Vol. 1
8/11/2020

1 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
2 PROMESA TITLE III
CASE NO: 17-BK-03283 (LTS)

3
IN RE: THE FINANCIAL OVERSIGHT AND
4 MANAGEMENT BOARD FOR PUERTO RICO
as representative of
5
THE COMMONWEALTH OF PUERTO RICO, et al.,
6 Debtor(s).

7
IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF PUERTO RICO
PROMESA TITLE III
9 CASE NO: 17-BK-03566 (LTS)
10 IN RE: THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO
11 as representative of
12 THE EMPLOYEES RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE COMMONWEALTH OF PUERTO
13 RICO,
Debtor(s).

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17 CONFIDENTIAL
18
19 REMOTE VIDEOTAPED EXPERT DEPOSITION UNDER
20 ORAL EXAMINATION OF
21 ROBERT DOTY
22 DATE: August 11, 2020
23
24
25 REPORTED BY: MICHAEL FRIEDMAN, CCR

1 IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF PUERTO RICO
2 ADV. PROC. NO: 17-00356 (LTS)
3 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL
 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,
4 ACTING BY AND THROUGH ITS MEMBERS,
 -and-
5 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
 OF ALL TITLE III DEBTORS (OTHER THAN COFINA)
6 -as co-trustees of
 THE EMPLOYEES RETIREMENT SYSTEM OF THE
7 GOVERNMENT OF PUERTO RICO,
 Plaintiff(s),
8
 vs.
9
 DEFENDANT IM, et al.,
10 Defendant(s).

11
12
13
 IN THE UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF PUERTO RICO
 ADV. PROC. NO: 17-00357 (LTS)
15
16 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL
 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,
17 ACTING BY AND THROUGH ITS MEMBERS,
 -and-
18 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
 OF ALL TITLE III DEBTORS (OTHER THAN COFINA)
19 -as co-trustees of
 THE EMPLOYEES RETIREMENT SYSTEM OF THE
20 GOVERNMENT OF PUERTO RICO,
 Plaintiff(s),
21
 vs.
22
 STOEVER GLASS & CO., et al.,
23 Defendant(s).

24
25

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO
3 ADV. PROC. NO: 19-00359 (LTS)
4
5 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL
6 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,
7 ACTING BY AND THROUGH ITS MEMBERS,
8 -and-
9 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
10 OF ALL TITLE III DEBTORS (OTHER THAN COFINA)
11 -as co-trustees of
12 THE EMPLOYEES RETIREMENT SYSTEM OF THE
13 GOVERNMENT OF PUERTO RICO,
14 Plaintiff(s),
15 vs.
16 DEFENDANT 1H-78H, et al.,
17 Defendant(s).

18 IN THE UNITED STATES DISTRICT COURT
19 FOR THE DISTRICT OF PUERTO RICO
20 ADV. PROC. NO: 19-00361 (LTS)
21
22 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL
23 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,
24 ACTING BY AND THROUGH ITS MEMBERS,
25 -and-
26 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
27 OF ALL TITLE III DEBTORS (OTHER THAN COFINA)
28 -as co-trustees of
29 THE EMPLOYEES RETIREMENT SYSTEM OF THE
30 GOVERNMENT OF PUERTO RICO,
31 Plaintiff(s),
32 vs.
33 DEFENDANT 1G-50G, et al.,
34 Defendant(s).

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO
3 ADV. PROC. NO: 19-00366 (LTS)
4 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD
5 FOR PUERTO RICO,
6 -as representative of
7 EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT
8 OF THE COMMONWEALTH OF PUERTO RICO,
9 -and
10 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
11 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),
12 -as Section 926 trustee of
13 THE COMMONWEALTH OF PUERTO RICO,
14 Plaintiff(s),
15 vs.
16 ANDALUSIAN GLOBAL DESIGNATED ACTIVITY
17 COMPANY, et al.,
18 Defendant(s).

19 IN THE UNITED STATES DISTRICT COURT
20 FOR THE DISTRICT OF PUERTO RICO
21 ADV. PROC. NO: 19-00367 (LTS)
22 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD
23 FOR PUERTO RICO,
24 -as representative of
25 EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT
26 OF THE COMMONWEALTH OF PUERTO RICO,
27 -and
28 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
29 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),
30 -as Section 926 trustee of
31 THE COMMONWEALTH OF PUERTO RICO,
32 Plaintiff(s),
33 vs.
34 GLENDON OPPORTUNITIES FUND, LP, et al.,
35 Defendant(s).

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TRANSCRIPT of the virtual videotaped
deposition of the expert witness, called for Oral
Examination in the above-captioned matter, said
deposition being taken by and before MICHAEL
FRIEDMAN, a Notary and Certified Court Reporter of
the State of New Jersey, via video teleconference,
by WebEx, on August 11, 2020, commencing at
approximately 9:35 in the morning.

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23

24 * * * * *

25

1 Q Did each maturity of the ERS bonds
2 have its own CUSIP number?

3 A That is my understanding.

4 Q It says here the registered owner
5 is Cede, C-E-D-E, and Company?

6 A Yes, sir.

7 Q Could you tell us what Cede and
8 Company is?

9 A Cede and Company is the designee of
10 Depository Trust Company to be shown as the
11 owner of the bonds for purposes of
12 facilitating electronic trading.

13 Q And for the record, could you tell
14 us what the Depository Trust Company is?

15 A The Depository Trust Company is a
16 company created to facilitate electronic
17 trading, and to eliminate paperwork so that
18 we no longer have paper bonds. We have
19 electronic bonds.

20 Q Have you heard of something called
21 a "global" or "jumbo" bond certificate?

22 A I have heard the term. I mean, my
23 understanding is there would be a jumbo
24 certificate for Depository Trust Company
25 here.

1 It's been a while since I dealt
2 with that, but it -- and I'm a little bit
3 uncertain about how it relates specifically
4 to each individual maturity.

5 Q Okay. Now, if we look at
6 Exhibit 6, it says registered owner is Cede
7 and Company.

8 Does that indicate that Cede and
9 Company owns this maturity for all purposes?

10 MR. BASSETT: Objection. Calls for
11 a legal -- sorry. That's my fault. I
12 wanted to clarify that my objection was
13 on the basis that the question called
14 for a legal conclusion.

15 Q Okay. And you can answer it,
16 Mr. Doty.

17 A I don't think the fact that Cede
18 and Company's name is on this bond as -- by
19 itself, that broad indication.

20 Q Why not?

21 A What it shows is that Cede and
22 Company is the registered owner. That
23 doesn't mean that it is -- if we could go
24 back -- I'm recalling -- I'm going to have to
25 ask to have the question reread.

1 I think I need to have the question

2 more firmly in my mind.

3 Q Okay. Let me go back.

4 What does it mean to say that

5 someone is a "registered owner" of the bond?

6 A It means that they are the

7 registered owner of the bond with the

8 trustee.

9 So that's what that means.

10 Q Does that mean they're the only

11 person with legal rights to the bond?

12 MR. BASSETT: Objection.

13 A Not by itself, it doesn't.

14 Q What else would one need to know in

15 order to learn who has other legal rights to

16 the bond?

17 A You would need to read the bond

18 resolution and see what rights the bond

19 resolution gives.

20 Q Now, these bond issues, as I think

21 you've testified, were sold to the public

22 through an underwriting syndicate.

23 Correct?

24 A Correct.

25 Q Do you know whether this particular

1 I have always used the term "beneficial
2 owner."

3 Q Is there a difference between the
4 legal owner and the beneficial owner?

5 MR. BASSETT: Objection.

6 A I believe that's a legal opinion.
7 If you want me to answer it, I will answer
8 it.

9 Q Please do.

10 A My understanding is that the legal
11 owner is different from the beneficial owner.

12 Q Okay. So who is the legal owner?

13 A Cede and Company.

14 Q Who is the beneficial owner?

15 A I don't know.

16 Q Would it be the investors who
17 purchased the bond through the underwriting
18 syndicate at the time the bonds were sold to
19 the public?

20 A It would be the individuals who
21 have rights to the bonds through their broker
22 dealers and their broker dealers'
23 relationships to DTC from time to time.

24 Q And those would be individuals who
25 purchased the bonds?

1 A They are the individuals who
2 purchased the bonds.

3 Q Or maybe we call them "investors."
4 Is that a better word?

5 A That's fine. That's a shorter way
6 of saying it.

7 Q So Cede and Company has legal title
8 to the bonds and the investors have equitable
9 title to the bonds?

10 MR. BASSETT: Objection, legal
11 conclusion.

12 A I do believe that's a legal
13 conclusion. I guess I think that's right. I
14 guess saying it's equitable would be a way of
15 doing it.

16 I haven't actually seen it said
17 that way, but the phrase "beneficial owner"
18 and so on implies that.

19 I think that's probably correct.

20 Q Okay.

21 MR. STEWART: We've been on the
22 record. This is a good break point for
23 me. If you would like to take a break,
24 Mr. Doty, we can take one now. If you
25 would like to keep going, we can keep

1 all simultaneous. The bonds had been sold,
2 the public is obligated to buy the bonds.

3 And the -- they are paying for the
4 bonds that -- at the time of the closing, and
5 the underwriters are getting that money from
6 them, and the bonds are going directly to DTC
7 and -- into the various accounts at DTC.

8 It's all simultaneous.

9 Q So is it your testimony that at no
10 point the underwriters own the bonds?

11 MR. BASSETT: Objection.

12 A I think that you're -- I mean,
13 we're getting pretty far afield from my
14 opinions. There -- you know, I can't speak
15 for the universe of every single transaction.

16 But as a general rule, the
17 underwriters would not go into the
18 transaction without having commitments on the
19 other side from the investors. And when the
20 bonds are issued, you see the -- we saw
21 specific maturities and so on going to DTC.

22 And when they go to DTC, they're
23 going to the accounts for the participants at
24 DTC. It's going to be a legal -- a legal
25 conclusion as to whether, for some nanosecond

1 or something, underwriters might or might not
2 own the bonds.

3 I think that's a legal conclusion.

4 But as a practical matter, the underwriters
5 are not going to enter into the transaction
6 without having the commitments from investors
7 on the other side.

8 Q Do you know one way or the other,
9 in this particular bond transaction, whether
10 the underwriters did or did not have
11 commitments from investors to purchase all of
12 the bonds?

13 A No.

14 Q Now, is it not the case that the
15 underwriters themselves are participants in
16 DTC?

17 MR. BASSETT: Objection, outside of
18 the scope of his report.

19 A I don't actually know. But I can
20 surmise.

21 Q What is your surmise?

22 A Well, UBS is a major firm. I would
23 surmise that they're a participant in DTC.

24 Q And the other underwriters, do you
25 have any reason to believe they're not direct

1 or indirect DTC participants?

2 A Well, I don't know about all of
3 them. They may or may not be direct or
4 indirect participants in DTC. They might
5 have relationships with other underwriters
6 who are participants.

7 That gets to be fairly complicated.

8 Q At the time the underwriters buy
9 the bonds, is it not the case that the folks
10 at DTC show, in the first instance, the
11 underwriters as the registered owners of the
12 bonds?

13 MR. BASSETT: Objection, lack of
14 foundation, outside of the scope of his
15 report. I don't see how any of this is
16 relevant to the opinions that Mr. Doty
17 is offering in this case, which is the
18 meaning of certain terms in municipal
19 finance.

20 Q You can answer the question.

21 MR. STEWART: Nick, the speaking
22 objections are unnecessary.

23 Q You can answer the question,
24 Mr. Doty.

25 A I don't know.

1 Q You don't know one way or the
2 other?

3 A No.

4 Q Now, under the bond purchase
5 agreement that we're looking at, Exhibit 7,
6 Paragraph 1, it says, "The underwriters agree
7 to purchase from the system and the system
8 agrees to sell to the underwriters the
9 bonds."

10 Do you remember that language that
11 we looked at?

12 A Yes.

13 Q Did the underwriters ever own the
14 bonds?

15 MR. BASSETT: Objection. Asking
16 for a legal conclusion.

17 A I believe that's a legal
18 conclusion. And I don't know the answer to
19 that as to whether, for a nanosecond, they
20 may have owned some bonds.

21 Q You don't know whether they would
22 have owned the bonds for more than a
23 nanosecond either.

24 Correct?

25 MR. BASSETT: Same objection.

1 A Correct.

2 Q And there it says, "Upon receipt of
3 payment, Bank of New York will contact the
4 Depository Trust Company and close the issue
5 and release the series of bonds."

6 A Right. That's when -- that is when
7 the fiscal agent acting for ERS delivers the
8 bonds to DTC, which at that point has a list
9 of names of participants in whose accounts
10 those bonds will be deposited.

11 Q And the participants can include
12 the underwriters.

13 Correct?

14 MR. BASSETT: Objection.

15 A They could. But the underwriters
16 are not investing in the bonds, so it's -- I
17 mean, they -- they can be a participant, but
18 they may have -- and they probably have
19 customers on their records.

20 So yes, they would -- I'm thinking
21 this through out loud, but as a -- the answer
22 is yes, they would -- if they're a
23 participant, which I suspect they were, then
24 there would be bonds that would be delivered
25 to them for their customers.

1 Got it.

2 Q Is everybody there?

3 MR. BASSETT: Yes, thank you.

4 Q Okay. Do you see the heading,

5 "What are Municipal Securities?"

6 A Yes.

7 Q Okay. And there, you write

8 "Municipal" -- and I'm going to just direct

9 your attention to the second sentence where

10 you say, "Municipal securities are debt

11 securities, effectively loans, payable from

12 taxes of governmental or other project

13 revenues."

14 Why do you call them "municipal

15 securities loans"?

16 A Well, they are loans from the

17 investing public.

18 Q Who is the borrower?

19 A The borrower is the governmental

20 issuer.

21 Q Okay. Now, what's the evidence of

22 the loan?

23 MR. BASSETT: Objection.

24 A There is no paper evidence of it,

25 except in the DTC, the paper bonds. There's

1 a -- I guess there's a paper bond at DTC.

2 Maybe that's what you're referring
3 to as the "jumbo bond," but that would be it.

4 Q Okay. But there's a means of
5 determining who's the owner beneficially of
6 the bond?

7 A On DTC's books, yes.

8 Q And every bond has a beneficial
9 owner.

10 Correct?

11 A I suppose so.

12 Q So -- and the evidence of the
13 beneficial ownership is the chain of book
14 entries running through DTC down to the
15 retail account of the individual investor.

16 Correct?

17 A Correct.

18 Q Do you know how an issuer knows who
19 to send payments of interest to?

20 A It's specified in the bond
21 resolution in this case.

22 Q Okay. And do you know how they --
23 how they -- the identity of the individual
24 investor is determined?

25 A That flows through the DTC, from

1 the trustee to DTC, to the individual
2 investors.

3 Q Okay. And so --

4 A To the direct and indirect
5 participants, and from there, down to the
6 individual investors.

7 Q So going back to this, is it fair
8 to say that the lender is the person who has
9 the beneficial rights to the bond?

10 MR. BASSETT: Objection.

11 A Yes. Once you get to the investor
12 level, yes.

13 Q Okay. And that would be whoever it
14 is who happens to own those beneficial
15 rights.

16 Correct?

17 MR. BASSETT: Objection, misstates
18 testimony.

19 A Right. But once the bonds are
20 placed through DTC and the bond issue is
21 completed, it's the individual investor.

22 Q Okay.

23 A By "individual," I don't mean
24 people. I mean specific -- the specific
25 parties.

BNYM / Puerto Rico - Employee Retirement System
Hildreth, Dr. William - Vol. 1
8/10/2020

1 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
2 PROMESA TITLE III
CASE NO: 17-BK-03283 (LTS)

3
IN RE: THE FINANCIAL OVERSIGHT AND
4 MANAGEMENT BOARD FOR PUERTO RICO
as representative of
5
THE COMMONWEALTH OF PUERTO RICO, et al.,
6 Debtor(s).

7
IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF PUERTO RICO
PROMESA TITLE III
9 CASE NO: 17-BK-03566 (LTS)
10 IN RE: THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO
11 as representative of
12 THE EMPLOYEES RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE COMMONWEALTH OF PUERTO
13 RICO,
Debtor(s).

14
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17 CONFIDENTIAL
18
19 REMOTE VIDEOTAPED EXPERT DEPOSITION UNDER
20 ORAL EXAMINATION OF
21 DR. WILLIAM HILDRETH
22 DATE: August 10, 2020
23
24
25 REPORTED BY: MICHAEL FRIEDMAN, CCR

1 IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF PUERTO RICO
2 ADV. PROC. NO: 17-00356 (LTS)
3 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL
 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,
4 ACTING BY AND THROUGH ITS MEMBERS,
 -and-
5 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
 OF ALL TITLE III DEBTORS (OTHER THAN COFINA)
6 -as co-trustees of
 THE EMPLOYEES RETIREMENT SYSTEM OF THE
7 GOVERNMENT OF PUERTO RICO,
 Plaintiff(s),
8
 vs.
9
 DEFENDANT IM, et al.,
10 Defendant(s).

11
12
13
 IN THE UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF PUERTO RICO
 ADV. PROC. NO: 17-00357 (LTS)
15
16 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL
 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,
17 ACTING BY AND THROUGH ITS MEMBERS,
 -and-
18 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
 OF ALL TITLE III DEBTORS (OTHER THAN COFINA)
19 -as co-trustees of
 THE EMPLOYEES RETIREMENT SYSTEM OF THE
20 GOVERNMENT OF PUERTO RICO,
 Plaintiff(s),
21
 vs.
22
 STOEVEER GLASS & CO., et al.,
23 Defendant(s).

24
25

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO
3 ADV. PROC. NO: 19-00359 (LTS)
4
5 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL
6 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,
7 ACTING BY AND THROUGH ITS MEMBERS,
8 -and-
9 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
10 OF ALL TITLE III DEBTORS (OTHER THAN COFINA)
11 -as co-trustees of
12 THE EMPLOYEES RETIREMENT SYSTEM OF THE
13 GOVERNMENT OF PUERTO RICO,
14 Plaintiff(s),
15 vs.
16 DEFENDANT 1H-78H, et al.,
17 Defendant(s).

18 IN THE UNITED STATES DISTRICT COURT
19 FOR THE DISTRICT OF PUERTO RICO
20 ADV. PROC. NO: 19-00361 (LTS)
21
22 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL
23 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,
24 ACTING BY AND THROUGH ITS MEMBERS,
25 -and-
26 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
27 OF ALL TITLE III DEBTORS (OTHER THAN COFINA)
28 -as co-trustees of
29 THE EMPLOYEES RETIREMENT SYSTEM OF THE
30 GOVERNMENT OF PUERTO RICO,
31 Plaintiff(s),
32 vs.
33 DEFENDANT 1G-50G, et al.,
34 Defendant(s).

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO
3 ADV. PROC. NO: 19-00366 (LTS)
4 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD
5 FOR PUERTO RICO,
6 -as representative of
7 EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT
8 OF THE COMMONWEALTH OF PUERTO RICO,
9 -and
10 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
11 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),
12 -as Section 926 trustee of
13 THE COMMONWEALTH OF PUERTO RICO,
14 Plaintiff(s),
15 vs.
16 ANDALUSIAN GLOBAL DESIGNATED ACTIVITY
17 COMPANY, et al.,
18 Defendant(s).

19 IN THE UNITED STATES DISTRICT COURT
20 FOR THE DISTRICT OF PUERTO RICO
21 ADV. PROC. NO: 19-00367 (LTS)
22 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD
23 FOR PUERTO RICO,
24 -as representative of
25 EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT
26 OF THE COMMONWEALTH OF PUERTO RICO,
27 -and
28 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
29 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),
30 -as Section 926 trustee of
31 THE COMMONWEALTH OF PUERTO RICO,
32 Plaintiff(s),
33 vs.
34 GLENDON OPPORTUNITIES FUND, LP, et al.,
35 Defendant(s).

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TRANSCRIPT of the virtual videotaped
deposition of the expert witness, called for Oral
Examination in the above-captioned matter, said
deposition being taken by and before MICHAEL
FRIEDMAN, a Notary and Certified Court Reporter of
the State of New Jersey, via video teleconference,
by WebEx, on August 10, 2020, commencing at
approximately 9:30 in the morning.

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1 statements and the final official statements?

2 A Those were the two that I named

3 explicitly.

4 Q And what else would be included in

5 the term "market disclosure documents"?

6 A Could be other disclosures that are

7 made. There could be supplemental statements

8 that come out, revised official statements.

9 It could be a number of things.

10 Q What else did you refer to

11 specifically for purposes of this report in

12 this case by using the term "market

13 disclosure documents" other than preliminary

14 official statements and final official

15 statements?

16 A I looked at the transcript for the

17 bond transactions. And those -- that

18 transcript would go to some parties in the

19 transaction.

20 Q So other than the preliminary

21 official statements and the final -- so by

22 the phrase "market disclosure documents," you

23 mean the preliminary official statements, the

24 final official statements, the bond

25 transcripts.

1 Is there anything else?

2 A Sitting here today, I can't think

3 of anything else.

4 Q Are those categories of documents

5 also market-oriented disclosure documents?

6 A Some of the transcript material

7 would only be provided to, say, the

8 underwriters or DTC, or retained at the bond

9 counsel firm. So those would not go to

10 others outside those participants.

11 It would be available to them if

12 needed. It may go to the bond rating

13 agencies.

14 So there are -- so I think that

15 covers the basics.

16 Q Okay. So you just talked about how

17 some parts of the transcripts would not go to

18 others.

19 Is that what makes market-oriented

20 disclosure documents different from market

21 disclosure documents?

22 A No.

23 Q Then why did you just say that --

24 what is the relevance to your opinions of the

25 fact that certain parts of the transcript