

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

BRIGADE LEVERAGED CAPITAL
STRUCTURES FUND LTD., *et al.*,

Plaintiffs,

-v-

ALEJANDRO GARCIA-PADILLA, *et al.*,

Defendants.

Civil Action No. 16-1610 (FAB)

NATIONAL PUBLIC FINANCE
GUARANTEE CORPORATION,

Plaintiff,

-v-

ALEJANDRO GARCIA-PADILLA, *et al.*,

Defendants.

Civil Action No. 16-2101 (FAB)

DIONISIO TRIGO-GONZALEZ, *et al.*,

Plaintiffs,

-v-

ALEJANDRO GARCIA-PADILLA, *et al.*,

Defendants.

Civil Action No. 16-2257 (FAB)

U.S. BANK TRUST NATIONAL
ASSOCIATION,

Plaintiff,

-v-

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

Defendants.

Civil Action No. 16-2510 (FAB)

**FINANCIAL OVERSIGHT AND MANAGEMENT BOARD’S
MOTION FOR AN EXTENSION OF TIME TO FILE A RESPONSE TO
PLAINTIFFS’ MOTIONS FOR RELIEF FROM THE AUTOMATIC STAY
AND FOR LEAVE TO INTERVENE IN THESE ACTIONS**

TO THE HONORABLE COURT:

COMES NOW the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), through its undersigned attorneys, and respectfully alleges and prays:

On August 31, 2016, the President of the United States appointed seven members to the Oversight Board pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”). The Oversight Board’s bipartisan congressional mandate is to help Puerto Rico “achieve fiscal responsibility and access to the capital markets.” PROMESA § 101(a).

Since its formation on August 31, 2016, the Oversight Board has been working diligently to prepare itself for its assigned tasks: it has met, both in person and telephonically; it has received multiple technical assistance briefings from the United States Department of the Treasury in accordance with Section 104(c)(1) of PROMESA; and on September 30, 2016, the Oversight Board held its first public meeting during which it elected a Chair, adopted written bylaws, made its initial designation of “covered” instrumentalities, established procedures for retaining key personnel, and authorized the Chair to conduct the official business of the Oversight Board until the Oversight Board is able to retain a staff and advisors. Nonetheless, additional work must be done to make the Oversight Board fully operational before it can even begin its “monumental task of ensuring Puerto Rico regains access to capital markets.” H.R. REP. NO. 114-602, at 52 (2016).

Currently before the Court are four litigations against the Government of Puerto Rico and various public officials, instrumentalities and municipalities – all of which are covered

by the automatic stay, but not all of which are necessarily covered by PROMESA's substantive provisions. The Oversight Board has the statutory right to intervene in any litigation filed against the Government of Puerto Rico or any "covered territorial instrumentality."

See PROMESA §§ 101(d)(1)(A), 212.¹ As PROMESA makes clear, the automatic stay was intended (among other things) to provide the Oversight Board time "to determine whether to appear or intervene on behalf of the Government of Puerto Rico in any litigation." *Id.*

§ 405(m)(5)(A). Given the short amount of time since the Oversight Board was appointed, the Oversight Board's focus to date on threshold organizational tasks, and the volume of filings, testimony and evidence to go through, the Oversight Board is not in a position now to address the merits of the lift stay motions or the underlying claims or to decide whether intervention is appropriate.²

The Oversight Board requests a reasonable amount of time (14 days) to retain staff and counsel, to review the record in these cases, and to formulate its positions on both the lift stay motions and the underlying issues raised in these actions. In light of the central role the Oversight Board will play in the implementation of PROMESA and the short amount of time that has passed since the Oversight Board was fully appointed, the Oversight Board submits that good cause exists to grant the Oversight Board an additional 14 days to prepare its responses to the lift stay motions.

¹ Accordingly, the Oversight Board may intervene, as of right, in three of the four consolidated actions. See *Brigade Leveraged Capital Structures Fund Ltd., et al. v. Garcia-Padilla, et al.*, Civil Action No. 16-1610; *Dionisio Trigo-Gonzalez, et al. v. Garcia-Padilla, et al.*, Civil Action No. 16-2257; *U.S. Bank Trust Nat'l Assoc. v. The Commonwealth of Puerto Rico, et al.*, Civil Action No. 16-2510. The fourth – *National Public Finance Guarantee Corporation v. Garcia-Padilla, et al.*, Civil Action No. 16-2101 – names only public officials and, therefore, arguably does not come under the purview of Section 212 of PROMESA.

² No motion to intervene or proposed pleading under Rule 24 of the Federal Rules of Civil Procedure should be required now, since the time to respond to the complaint does not begin to run unless and until the automatic stay has been lifted.

FACTS

A. PROMESA and the Oversight Board

On June 30, 2016, the President signed PROMESA into law. As the Court has previously observed, PROMESA envisioned that the Oversight Board would be fully appointed by September 15, 2016, and fully operational sometime thereafter. (Civil Action No. 16-2257, Dkt. No. 26 (citing PROMESA §§ 101(e)(2)(G), (h).) In fact, the President appointed seven members to the Oversight Board on August 31, 2016. (*See* accompanying Declaration of Jose Carrión III, dated October 7, 2016 (“Carrión Decl.”) ¶ 3.)

Since their appointment on August 31, 2016, the seven members of the Oversight Board have held telephonic and in-person meetings to address threshold organizational issues and to educate themselves regarding the issues facing Puerto Rico and its instrumentalities. Members of the Oversight Board have also met multiple times in Washington, D.C. with the United States Department of the Treasury to receive technical assistance briefings. (*Id.* ¶¶ 4–6.)

On September 30, 2016, the Oversight Board held its first public meeting, during which it (i) elected José Carrión III as Chair; (ii) adopted written bylaws; (iii) made its initial designation of covered instrumentalities under PROMESA;³ (iv) requested a Fiscal Plan from the Governor of Puerto Rico (which is due by October 14, 2016); (v) established a process for the hiring of an Executive Director and other key personnel, including a Revitalization Coordinator and General Counsel; and (vi) authorized the Chair to contract for services needed to organize, support and carry out the responsibilities required of the Oversight Board, open bank accounts,

³ Those initial designations included, among others, the Government Development Bank for Puerto Rico, the University of Puerto Rico, and the Puerto Rico Public Finance Corporation. Each of these instrumentalities is a defendant in one or more of these consolidated actions. (Carrión Decl. ¶ 9.)

sign leases, sign contracts, implement reimbursement policies and conduct the other official business of the Oversight Board. (*Id.* ¶¶ 7–8.)

The Oversight Board’s next public meeting is scheduled for October 14, 2016, at which time, it is expected that the Governor of Puerto Rico will present the Governor’s first Fiscal Plan. The Oversight Board intends to begin its review of the Fiscal Plan immediately upon receipt from the Governor. (*Id.* ¶¶ 10–11.)

B. Procedural Background

On April 4, 2016, Brigade Leveraged Capital Structures Fund Ltd. and others commenced an action against the Government Development Bank for Puerto Rico. *Brigade Leveraged Capital Structures Fund Ltd., et al. v. Garcia-Padilla, et al.*, Civil Action No. 16-1610.

On June 15, 2016, National Public Finance Guarantee Corporation commenced its action against Alejandro Garcia-Padilla and others. *Nat’l Pub. Fin. Guarantee Corp. v. Garcia-Padilla, et al.*, Civil Action No. 16-2101.

On June 30, 2016, Dionisio Trigo-Gonzalez and others commenced an action against the Government Development Bank for Puerto Rico, the Puerto Rico Public Finance Corporation and others. *Dionisio Trigo-Gonzalez, et al. v. Garcia-Padilla, et al.*, Civil Action No. 16-2257.

On August 19, 2016, U.S. Bank Trust National Association (“U.S. Bank”) filed its complaint against the Commonwealth of Puerto Rico, the University of Puerto Rico and others, and an accompanying motion for relief from the automatic stay and for a preliminary injunction. *U.S. Bank Trust Nat’l Assoc. v. The Commonwealth of Puerto Rico, et al.*, Civil Action No. 16-2510.

On August 22, 2016, the Court held that Section 405(b)(1) of PROMESA stayed the *Brigade*, *Trigo-Gonzalez*, and *National Public Finance Guarantee Corporation* actions, and on August 29, 2016, the Court scheduled an evidentiary hearing for September 22, 2016, to determine whether cause existed to lift the automatic stay. (Civil Action No. 16-2257, Dkt. No. 26.)

On August 25, 2016, U.S. Bank requested that its motion for relief from the automatic stay be heard at the same time as the *Brigade*, *Trigo-Gonzalez*, and *National Public Finance Guarantee Corporation* motions. The Government of Puerto Rico consented to the request, and on September 1, 2016, the Court granted U.S. Bank's motion. (Civil Action No. 16-2510, Dkt. Nos. 19, 23–24.)

On September 21, 2016, the United States Department of Justice filed a Statement of Interest on Behalf of the United States urging the Court to construe the “‘for cause’ provision as narrowly as possible” and asking the Court to delay its decision until after the Oversight Board is fully operational and in a position to determine whether to intervene in these cases. (Civil Action No. 16-2510, Dkt. No. 45.)

On September 22 and September 23, 2016, the Court held an evidentiary hearing. At the conclusion of the hearing, the Court directed the parties to file their post-trial briefs, including any response to the United States' Statement of Interest, within ten days of receipt of the transcripts. (Civil Action No. 16-2510, Dkt. No. 47.)

On September 27, 2016, notice was filed on the docket that the transcripts were available, and on the same day, the Court entered an order directing the parties to file their post-trial briefs by October 7, 2016. (Civil Action No. 16-2510, Dkt. Nos. 48–50.)

ARGUMENT

Good cause exists to grant the Oversight Board an additional 14 days to review the record in these consolidated cases and to determine how to respond to the lift stay motions and the underlying complaints. Rule 6 of the Federal Rules of Civil Procedure authorizes a court to extend any party's time to file a pleading for "good cause." Fed. R. Civ. P. 6(b)(1)(A). Courts have explained that "good cause" is not difficult to show, and extensions of time should generally be granted absent bad faith on the part of the requesting party or prejudice to the adverse party. *See, e.g., Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259–60 (9th Cir. 2010). Here, as discussed more fully below, the Oversight Board can easily meet this standard.

Based on their opening statements to the Court at the outset of the September 22 hearing, it appears that all parties to these cases expect and welcome the Oversight Board's intervention and participation in these cases as part of the Oversight Board's overriding mandate to negotiate and approve the Fiscal Plans that must be put in place over the coming months.⁴ The Oversight Board has the right to begin to consider the procedural and substantive issues raised in these cases, and needs more time before it can take a position.

The Oversight Board was constituted on August 31, 2016. As set forth in the Oversight Board Chair's Declaration, in the one month since then, the Oversight Board has worked diligently to prepare itself for its assigned tasks. The Oversight Board has met, received technical assistance briefings from the United States Department of the Treasury, elected a Chair, adopted bylaws, began to search for an Executive Director, General Counsel and support staff, made its initial designations of covered instrumentalities, and has requested that the

⁴ Both the Government of Puerto Rico's brief and the United States' Statement of Interest highlight the role the Oversight Board will take in discussing and approving Fiscal Plans for Puerto Rico and its instrumentalities. (Civil Action No. 16-2510, Dkt. No. 33 at 7–8, Dkt. No. 45 at 2; *see* PROMESA §§ 201–204, 207, 301–317.)

Governor provide a fiscal plan. However, the Oversight Board has not had sufficient time to consider adequately the merits of the lift stay motions or the merits of the underlying claims or to decide whether intervention is appropriate. (*See* Carrión Decl. ¶¶ 4–9, 16–17.)

The automatic stay was intended (among other things) to “allow[] the Oversight Board the opportunity to establish its foundational structure and begin its monumental task of ensuring Puerto Rico regains access to capital markets,” H.R. REP. NO. 114-602, at 52 (2016), and to provide the Oversight Board a short period of time “to determine whether to appear or intervene on behalf of the Government of Puerto Rico in any litigation.” PROMESA § 405(m)(5)(A). The Oversight Board should be given a reasonable amount of time to prepare itself for its assigned tasks before it is required to make any decisions regarding these litigations.

The automatic stay was also intended to “allow the Government of Puerto Rico a limited period of time during which it can focus its resources on negotiating a voluntary resolution with its creditors instead of defending numerous, costly creditor lawsuits.” PROMESA § 405(n)(2). The Oversight Board is responsible for conducting the negotiations with creditors, and should be given a reasonable amount of time to do so without being under the pressure of having to participate in multiple litigations.

There have been no decisions interpreting the meaning of “for cause” under Section 405 of PROMESA. Plaintiffs have urged a broad interpretation that is consistent with Section 362 of the Bankruptcy Code. (*See* Civil Action No. 16-1610, Dkt. No. 17 at 10–11; 16-2510, Dkt. No. 40 at 2–4.) By contrast, the United States and the Government of Puerto Rico have urged a narrower interpretation of “for cause” in light of the extraordinary posture of the cases before the Court. (Civil Action No. 16-2510, Dkt. No. 33 at 7–9, Dkt. No. 45 at 5–6.) The

Oversight Board is just beginning to consider its positions on this issue and the others raised in these litigations and has not yet determined how it intends to proceed.

The Oversight Board requests a reasonable period of time (14 days) to develop its own position on these issues before the Court makes a decision. The requested extension would also give the Oversight Board time to begin the review process of the Fiscal Plan to be submitted by the Governor on October 14, 2016. To decide the Plaintiffs' motions now, at the outset, just weeks after the Oversight Board was constituted and before the Oversight Board has been given a chance to retain counsel and review the merits of the lift stay motions and the underlying actions, would undermine clear congressional intent. The Oversight Board does not believe that the requested extension would prejudice any of the parties to these actions.

CONCLUSION

For the foregoing reasons, the Oversight Board requests that the Court enter an order (i) granting the Oversight Board an additional 14 days, or until October 21, 2016, to file a response to Plaintiffs' motions for relief from the automatic stay and for leave to intervene in these actions; (ii) delaying its decision on the motions to lift the automatic stay until after the Oversight Board has filed a response; and (iii) granting such other and further relief as the Court deems just and proper.

WE HEREBY CERTIFY that on October 7, 2016, we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel for all parties.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 7th day of October, 2016.

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