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

| | | |
|---|---|---|
| In re: | : | |
| THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, | : | PROMESA Title III |
| as representative of | : | Case No. 17-BK-3283 (LTS) |
| THE COMMONWEALTH OF PUERTO RICO, *et al.*, | : | (Jointly Administered) |
| Debtors.[1] | : | |
| In re: | : | |
| THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, | : | PROMESA Title III |
| as representative of | : | Case No. 17-BK-4780 (LTS) |
| PUERTO RICO ELECTRIC POWER AUTHORITY, *et al.*, | : | |
| Debtors. | : | |

**OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OBJECTION TO REQUEST FOR ORDER AUTHORIZING EMPLOYMENT AND PAYMENT OF PJT PARTNERS LP AS FINANCIAL ADVISOR TO MEDIATION TEAM**

[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) 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-5233 (LTS)) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

**TABLE OF CONTENTS**

## TABLE OF AUTHORITIES

**Cases**

**Statutes**



**Other Authorities**



**Rules**

To the Honorable United States District Judge Laura Taylor Swain:

The Official Committee of Unsecured Creditors of PREPA (the "Committee") submits this objection (the "Objection") to the *Oversight Board Presentment of Mediation Team Request for Order Authorizing Employment and Payment of PJT Partners LP As Financial Advisor for Mediation Team* [Docket No. 5506] (the "Application") submitted by the Financial Oversight and Management Board for Puerto Rico ("Oversight Board") on behalf of the Mediation Team.[2] In support of this Objection, the Committee respectfully states as follows:

## PRELIMINARY STATEMENT

1. The Committee recognizes and acknowledges the dedicated efforts of the Mediation Team to encourage the consensual resolution of this Title III case. It is only reluctantly that the Committee interposes this objection as to the proposed terms of PJT Partners LP's retention. The Committee does not intend this narrow objection to take away from its appreciation for the work performed by the Mediation Team.

## RELEVANT BACKGROUND

### A. Generally

2. On May 3, 2017, the Oversight Board, as representative of the Commonwealth, commenced the Commonwealth's Title III case. The Oversight Board later commenced Title III cases for the remaining Debtors as their representative (collectively, together with the Commonwealth's Title III case, the "Title III Proceedings").

3. On August 23, 2017, the Court entered the *Order Setting Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [Docket No. 1150]. On November 8, 2017, the Court entered the *First Amended Order Setting Procedures for Interim*

[2] Capitalized terms used but not otherwise defined in this Objection shall have the meanings given to them in the Application.

*Compensation and Reimbursement of Expenses of Professionals* [Docket No. 1715]. On June 6, 2018, the Court entered the *Second Amended Order Setting Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [Docket No. 3269] (the "Interim Compensation Order").

4. Pursuant to the Interim Compensation Order, all professionals are subject to Appendix A (non-attorney Professionals) or Appendix B (attorney-Professionals) of the *U.S. Trustee's Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Large Chapter 11 Cases Effective as of November 1, 2013* (the "U.S. Trustee Guidelines"), as applicable.

5. As a courtesy and accommodation to the prior mediation team, on August 13, 2017, the Oversight Board sought the Court's approval [Docket No. 1018] for the employment of Phoenix Management Services, LLC ("Phoenix") as financial advisor to that prior mediation team. Phoenix's application sought compensation at hourly rates ranging from $495 - $695 for senior managing directors, $400 - $650 for senior advisors, and $395 - $525 for managing directors. Phoenix did not seek a success fee, deferred fee, or any additional compensation contingent on a specified outcome.

6. As a courtesy and accommodation, on June 14, 2022, the Oversight Board sought the Court's approval [Docket No. 2849 in Case No. 17-04780-LTS] for the employment of Moelis & Company LLC ("Moelis") as financial advisor to the current Mediation Team. Moelis and the Mediation Team previously agreed upon the following terms of compensation: fees of $250,000 per month for the first three (3) months, and then $150,000 per month. Moelis did not seek a success fee, deferred fee, or any additional compensation contingent on a specified outcome.

7. On June 23, 2022, the Court entered the *Order Authorizing Employment and Retention of Moelis & Company LLC as Financial Advisor for the Mediation Team* [Docket No. 2859 in Case No. 17-4780-LTS], authorizing the Mediation Team to retain Moelis as its financial advisor *nunc pro tunc* to April 15, 2022. As set out in its final fee application [Docket No. 27662] ("Moelis Fee Application"), Moelis rendered services to the Mediation Team through ***August of 2023***.

**B. PJT's Involvement in the Title III Proceedings**

8. PJT has already played a significant role in the Title III Proceedings on behalf of multiple parties.

9. Pursuant to section 2(b)(1) of the Puerto Rico Recovery Accuracy in Disclosures Act, Pub. L. No. 117-82 ("PRRADA"),[3] on May 16, 2022 Steve M. Zelin, PJT's global head of restructuring, submitted his declaration [Docket No. 20811] (the "PRRADA Declaration") concerning PJT's disinterestedness in the Title III Proceedings. This PRRADA Declaration disclosed PJT's historical relationship with PJT's predecessor-in-interest, Blackstone Advisory Partners L.P. ("Blackstone Advisory") and National Public Finance Corporation ("National"). *See* PRRADA Declaration, Docket No. 20811, ¶ 10(a).

10. PJT's PRRADA Declaration disclosed that, on September 14, 2014, the law firm of Weil Gotshal & Manges retained Blackstone Advisory on behalf of National "to provide investment banking services concerning the ***potential restructuring of bonds*** or other debt obligations of the Commonwealth ***and related entities*** . . . ." *See* PRRADA Declaration, Docket No. 20811, ¶ 10(a) (emphasis added).

[3] PRRADA was signed into law on January 20, 2022. PRRADA sets forth disclosure requirements for professional persons seeking compensation pursuant to sections 316 and 317 of PROMESA after PRRADA's enactment.

11. The term "related entities" is not defined but most likely includes PREPA based on contemporaneous public sources. For example, while employed by or on behalf of National, Blackstone Group's Tim Coleman publicly expressed criticism of efforts to restructure PREPA's debt that were occurring in July of 2015.[4]

12. Components of Blackstone's financial advisory and restructuring business later spun-off into PJT in October 2015, but continued working on behalf of National.[5]

13. PJT continued to play a direct role in PREPA's restructuring efforts for National both before and after PREPA's Title III petition date.

14. In an October 28, 2016 article, the International Financing Review ("IFR") described PJT's "leading role" in PREPA's pre-Title III restructuring efforts:

> Another innovative deal saw PJT advise insurer MBIA on its position in Puerto Rico, as the commonwealth succumbed to a US $70bn debt crisis. ***The firm took a leading role restructuring the state power utility's debt, creating a template for a larger restructuring of the island's liabilities***.[6]

15. During PJT's representation, National and others filed a motion seeking to lift the automatic stay under PROMESA to pursue the appointment of a receiver for PREPA in a non-Title III court [Docket No. 74] (the "Initial Receiver Motion") on July 18, 2017.

16. The Initial Receiver Motion alleged that for nearly three years before PREPA's Title III filing, National and other stakeholders played central roles in negotiating a comprehensive

---

[4] Nick Brown & Megan Davies, REUTERS, *Puerto Rico's PREPA Bondholders Propose $8 Billion Restructuring: Outline* (July 23, 2015), *available at* https://www.reuters.com/article/economy/puerto-rico-s-prepa-bondholders-propose-8-billion-restructuring-outline-idUSKCN0PX0DO/

[5] *Blackstone Successfully Completes Spin-Off of PJT Partners*, BLACKSTONE (Oct. 1, 2015), *available at* https://www.blackstone.com/news/press/blackstone-successfully-completes-spin-off-of-pjt-partners/; *see also* Video Interview, Bloomberg Daybreak: Americas, *Bloomberg Go Full Episode*, BLOOMBERG (Dec. 1. 2015) available at https://www.bloomberg.com/news/videos/2015-12-01/bloomberg-go-full-episode-12-01- (interview of PJT's Tim Coleman explaining PJT's launch).

[6] *See* Philip Scipio & Sandrine Bradley, INTERNATIONAL FINANCING REVIEW, *US Restructuring Adviser: PJT Partners* (Oct. 28, 2016), *available at* https://www.ifre.com/story/1436889/us-restructuring-adviser-pjt-partners-ymrxjdhk80.

restructuring of PREPA's debt, culminating in the 2015 Restructuring Support Agreement ("PREPA RSA"). *See generally* Initial Receiver Motion, Docket No. 74, at 11-21. In mid-2014, National and other creditor groups purportedly entered into an agreement to forbear from exercising certain remedies against PREPA, while setting out the outline of a three-year plan to reach a global resolution through the PREPA RSA. *See id.* at 11. According to the Initial Receiver Motion, these efforts laid the foundation for a restructuring framework, approved by Puerto Rico's legislature through the enactment of the Electric Power Authority Revitalization Act in February 2016. *See id.* at 12.

17. The Initial Receiver Motion then described how the negotiations purportedly cratered in 2017. In April 2017, PREPA requested that the Oversight Board authorize implementation of the PREPA RSA under PROMESA's Title VI process. The Oversight Board ultimately declined to certify the PREPA RSA in late June 2017. *See id.* at 15-21.[7]

18. After the PREPA RSA fell through, on June 26, 2017, National and others sued the Oversight Board (and others) to compel compliance with their alleged mandate to certify certain modifications to the PREPA RSA pursuant to Section 601(g)(2)(B) of PROMESA. *See Nat'l Pub. Fin. Guarantee Corp. v. Fin. Oversight & Mgmt. Bd.*, No. 17-cv-1882 (D.P.R.).

19. Days later, the Oversight Board initiated PREPA's Title III case.

20. Throughout this period, PJT continued to represent National, even as its relationship with the Oversight Board grew more adversarial. The day after National sued the Oversight Board, on June 28, 2017 PJT's Tim Coleman appeared on Bloomberg Markets,

[7] In the Oversight Board's response to the Initial Receiver Motion, the Oversight Board challenged the summary of events: "Movants' brief contains a misleading and incomplete discussion of a Restructuring Support Agreement ("RSA") that was negotiated between PREPA and certain creditors. . . . The RSA, to which the FOMB was not a party, terminated by its terms prior to the filing of the Title III based on the failure of the parties to achieve numerous milestones contained in that document. The RSA is of no further force and effect." *See* Docket No. 149 at 12 n.4.

apparently in his capacity as "an advisor to one of the largest bond insurers involved in Puerto Rico's debt crisis," confirmed that he advised National, and described PREPA's restructuring as a "pre-existing deal" that should have been certified by the Oversight Board under PROMESA.[8] Mr. Coleman claimed that the Oversight Board improperly rejected the deal without sufficient analysis and "broke the rule of law" by placing PREPA into a Title III case.[9] Mr. Coleman went on to state that the PREPA RSA was expiring due to what he characterized as the Oversight Board's "bad faith" counteroffer, suggesting the proposal was presented too late to allow meaningful negotiation.[10]

21. Weil Gotshal & Manges terminated PJT's engagement with National effective November 29, 2017. *See* PRRADA Declaration, Docket No. 20811, ¶ 10(a).

22. PJT's PRRADA Declaration further discloses that, National entered into a February 2019 agreement ("February 2019 Agreement"), by which National agreed not to object to PJT's representation of the Oversight Board on the condition that PJT not provide financial services with respect of PREPA (the "PREPA Limitation"). *See id.*

23. National thus retains the veto over PJT's ability to provide financial services regarding PREPA. This highlights the fact that PJT's participation in PREPA-specific matters poses a conflict with National. This also underscores the extent of PJT's role in PREPA's restructuring efforts for National.

24. On February 1, 2019, the Oversight Board retained PJT as investment banker and financial advisor. Pursuant to its engagement letter, the Oversight Board agreed to pay PJT as

---

[8] Video Interview, Bloomberg Markets, *PJT's Coleman Says Puerto Rico Board is Breaking the Law*, BLOOMBERG (June 28, 2017), *available at* https://www.bloomberg.com/news/videos/2017-06-28/pjt-s-coleman-puerto-rico-board-is-breaking-law-video.

[9] *Id.*

[10] *See id.*

follows: (a) a fixed monthly advisory fee in the amount of $1,250,000 per month payable monthly in arrears commencing on February 1, 2019; and (b) reimbursement of all reasonable out-of-pocket expenses incurred during the engagement. That engagement did not include a success fee or any other fee that was contingent on any specific outcome.

25. Pursuant its engagement agreement, PJT was engaged to provide various services to the Oversight Board, including, among others (the "FOMB Advisory Services"): (a) "assist in the evaluation of the Specified Entities' current fiscal situation and prospects"; (b) "assist in the development of financial data and presentations to the Oversight Board, various creditors and other third parties"; (c) "analyze the financial liquidity and evaluate alternatives to improve such liquidity for the Commonwealth and Specified Entities"; (d) "analyze various restructuring scenarios and the potential impact of these scenarios on the recoveries of those stakeholders impacted by the Restructuring"; (e) "provide strategic advice with regard to restructuring or refinancing the Specified Entities' Obligations"; (f) "review and evaluate the Specified Entities' capital structure, debt capacity, and alternative capital structures"; (g) "participate in negotiations among the Oversight Board, the Specified Entities, and their creditors, suppliers, lessors and other interested parties"; (h) "value securities offered by the Specified Entities in connection with a Restructuring"; and (i) "provide expert witness testimony concerning any of the subjects encompassed by the other investment banking services."[11]

26. PJT was paid a total of $57,500,000 in conjunction with the services it rendered to the Oversight Board for a 45-month long period. *See Final Fee Application Of PJT Partners LP As Investment Banker And Financial Advisor To The Financial Oversight And Management Board*

[11] *See* PJT Fee Application, Docket No. 24855, at ¶¶ 11-12. PJT's 2019 engagement letter with the Oversight Board is available on the Oversight Board's contract database. https://oversightboard.pr.gov/fomb-contracts/

*Of Puerto Rico For Compensation And Reimbursement Of Out-Of-Pocket Expenses Incurred For The Period Of February 1, 2019 Through November 30, 2022* [Docket No. 24855] ("PJT Fee Application").

**C. PJT's Supporting Declaration**

27. As an accommodation and courtesy to the Mediation Team, the Oversight Board presented the Application along with the *Declaration of Steven N. Zelin in Support of Mediation Team Request for Order Authorizing Employment and Payment of PJT Partners LP as Financial Advisor for the Mediation Team* (the "Supporting Declaration") on February 19, 2025.

28. Consistent with the Supporting Declaration, the Application[12] states the following concerning National:

> On or about September 14, 2014, an affiliate of PJT Partners' predecessor in interest, Blackstone Advisory Partners L.P., was retained by Weil Gotshal & Manges, as counsel to National Public Finance Corporation, one of the PREPA Related MIP List Parties, to provide investment banking services concerning the potential restructuring of bonds or other debt obligations of the Commonwealth of Puerto Rico and related entities (the "National Engagement"). The National Engagement was terminated effective as of November 29, 2017. On or about February 1, 2019, the Oversight Board retained PJT Partners as its financial advisor in respect of certain matters relative to the Title III case of the Puerto Rico Highways and Transportation Authority (the "Oversight Board Engagement"). The Oversight Board Engagement was wholly unrelated to PREPA and PREPA's Title III Case and terminated as of November 30, 2022. Thereafter, PJT Partners provided financial advisory services to the Oversight Board in respect of the Puerto Rico Industrial Development Company through December 2023. The Oversight Board has consented to the Mediation Team's retention of PJT Partners in the PREPA Title III Case.

*See* Application, Docket No. 5506, ¶¶ 20-21; *see also* Supporting Declaration, Docket No. 5506, Ex. B, ¶¶ 18-19.

[12] The Oversight Board asserted in the Application that all "representations [in the Application] are matters of public record or representations of the Mediation Team and PJT Partners." *See* Application, Docket No. 5506, at 2-3.

29. In contrast to PJT's PRRADA disclosure, the Supporting Declaration does not disclose the February 2019 Agreement, the PREPA Limitation, or that PJT was subject to restrictions by National on providing financial services respecting PREPA. Nor does it disclose National's conditional agreement not to object to PJT's later representation of the Oversight Board or whether PJT was required to seek yet another waiver from National for this proposed representation.[13]

30. Further, the Supporting Declaration does not disclose PJT's significant involvement with the PREPA RSA and negotiations leading up to PREPA's Title III case. From the PRRADA Declaration and other publicly available information detailing PJT's involvement, it is evident that the "related entities" referenced in the Supporting Declaration[14] included PREPA.

31. Under the engagement proposed by the Application, PREPA will pay PJT the following fees ("Proposed Compensation"):

> [A] monthly advisory fee (the "Monthly Fee") in the amount of $1,000,000 per month . . . payable by PREPA in cash as follows: (a) to the extent that the Effective Date occurs after the 1st day of the month, for the period beginning on the Effective Date through the end of the first calendar month (the "Stub Period"), a prorated monthly fee in advance upon approval of this Agreement by the Court; (b) for the first full calendar month following the Stub Period, if applicable, or the Effective Date if there is no Stub Period, in advance upon approval of this Agreement by the Court; and (c) for each month thereafter, in advance on the first day of each month; provided that, (1) the payment of $350,000 (inclusive of any holdback required by the Court under any interim compensation order) of the $1,000,000 Monthly Fee for each month (pro-rated as applicable) shall be deferred (all such deferred amounts, collectively, the "Deferred Amounts") and paid upon consummation of a Restructuring, and (2) the minimum amount (the "Minimum Amount") of Monthly Fees to be paid to PJT Partners pursuant to this Agreement shall be (A) $12,000,000 if a Restructuring is consummated (the "Full Minimum Amount"), and (B)

[13] The disclosure does represent that the Oversight Board has "consented" to this proposed representation, even though the disclosure states that PJT did not represent the Oversight Board regarding PREPA. *See* Application, Docket No. 5506, ¶¶ 20-21; *see also* Supporting Declaration, Docket No. 5506, Ex. B, ¶¶ 18-19.

[14] *See, e.g.*, Supporting Declaration, ¶ 18.

> $7,800,000 if no Restructuring is consummated (the "Reduced Minimum Amount", with any shortfall in payment of the applicable Minimum Amount (the "Shortfall Amount") being payable to PJT Partners upon the (I) dismissal of PREPA's Title III Case in the case of the Reduced Minimum Amount and (II) consummation of a Restructuring in the case of the Full Minimum Amount. For the avoidance of doubt, the Deferred Amounts shall not be payable in the event that no Restructuring occurs , subject to payment of the Reduced Minimum Amount.

32. The Proposed Compensation under PJT's proposed retention has the following material characteristics:

- PJT is entitled to a $1,000,000 monthly advisory fee, payable by PREPA in cash.
- $650,000 of this fee is payable monthly.
- $350,000 of this monthly fee is "deferred" and paid contingent on a particular outcome (*i.e.* the consummation of a restructuring).
- PJT will be guaranteed at least $12,000,000 if a restructuring is consummated. Thus, if a restructuring occurs next month or 12 months from now, PJT would be paid $12,000,000.
- PJT will be guaranteed at least $7,800,000 in fees if no restructuring occurs.
- Either of these fees is guaranteed, contingent on the outcome, but irrespective on any minimum commitments of professional services rendered. Thus, these fees are guaranteed even if litigation occurs and the mediation team's involvement in the restructuring process is decreased or even if the case is dismissed.
- PJT could be entitled to a significant fee contingent on a successful mediated resolution. For example: if the engagement lasts for six months, PJT will earn $3,900,000 in monthly fees. And, if a restructuring occurs, PJT will receive $12,000,000, resulting in a $8,100,000 success fee. If no restructuring occurs, PJT will still receive $7,800,000, which includes $3,900,000 in earned fees and an additional $3,900,000 failure fee.

33. The Supporting Declaration does not cite any precedent to which the financial advisor to a mediation team was entitled to a fee, in whole or in part, that is contingent on a specified outcome.

**D. Current Status**

34. Moelis concluded its service as the Mediation Team's financial advisor on ***August 9, 2023***. *See* Moelis Fee Application, Docket No. 27662, at 2.[15] To the Committee's knowledge, the Mediation Team has not engaged a financial advisor since the conclusion of the Moelis engagement 18 months ago.

**OBJECTION**

The Committee objects to PJT's retention on three grounds. First, PJT's proposed fee structure for the Mediation Team runs afoul of established impartiality guidelines for such neutrals. Second, the Proposed Compensation for a non-debtor, non-party is excessive and unsupported by PROMESA and the reasonableness standards applied in bankruptcy proceedings. Third, PJT's Supporting Declaration does not provide sufficient disclosures regarding PJT's prior engagements to allow the Committee (and other interested parties) to evaluate whether PJT has a conflict of interest that compromises its proposed service as a neutral financial advisor to the Mediation Team. This lack of disclosure is an apparent effort not to reveal the scope of financial services provided to National concerning PREPA.

Each of these points is examined more fully below.

**A. PJT's Proposed Fee Structure Should Not Be Approved**

35. PJT characterizes its fee as $1,000,000 per month, but only $650,000 is to be paid with $350,000 "deferred" if, and until, a successful restructuring. Fundamentally, the Proposed Compensation is really a guaranteed $650,000 monthly fee, payable in advance, with an outcome-

[15] According to the timesheets submitted with the Fee Application, Moelis' services as a financial advisor seem to have concluded earlier, with the remaining period of the engagement relating to winding down, administration, and fee application materials.

based success fee that could entitle PJT to a windfall of at least $4.2 million, and perhaps more. The Committee respectfully submits that neither component is appropriate for at least four reasons.

36. **First**, the Committee recognizes and appreciates the Mediation Team's role in serving as an impartial neutral in this Title III case. But, PJT's proposed success-based compensation structure is inappropriate.

37. The Mediation Team is not compensated based on the outcome of its efforts, nor could it be because fees contingent on the outcome are prohibited. *See* Model Standards of Conduct for Mediators ("ABA Model Mediator Standards"), Standard VIII (Am. Arbitration Ass'n, Am. Bar Ass'n. & Ass'n for Conflict Resolution 2005) (providing that a "mediator shall not charge fees in a manner that impairs a mediator's impartiality" and should not "enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement"); ABA Section of Dispute Resolution Ethics Subcommittee, *Behind the Curtain: Ethics for Mediators, Prof. Law.* ("ABA ADR Ethics Subcommittee"), 2019, at 6 (describing the ABA Model Mediator Standards as "the most influential code of ethics for mediators"). Numerous jurisdictions specifically prohibit collecting a fee that is contingent on the outcome. *See, e.g.*, Standards of Conduct for New York State Community Dispute Resolution Center Mediators, Standard III, VII (N.Y. State Unified Ct. Sys. Div. of Prof. and Ct. Servs.).[16] As Judge Atlas observed: "[c]ontingency fees or fees based on the outcome of negotiations are deemed inappropriate under most codes of mediation ethics, generally because such fees destroy the mediator's neutrality (or at least the appearance of neutrality) and create a financial interest in the

[16] *See also* Rule 2.5 Mediation Costs, IN R USDCTSD A.D.R. Rule 2.5 (Southern District of Indiana); Local Civil Rule 83.6 Settlement and Alternative Dispute Resolution, VA R USDCTED Local Civil Rule 83.6 (Eastern District of Virginia local rules); Rule 9072-7. Appointment of Mediator, AZ R USBCT Rule 9072-7 (Bankruptcy Court for the District of Arizona); Rule 9019-1. Settlement and Alternative Dispute Resolution, VA R USBCTED LBR 9019-1 (Bankruptcy Court for the Eastern District of Virginia local rules); Fl. St. Mediator Rule 10.380; Ky. R. Civ. P. 100.08; SC R ADR App'x B; Mississippi Mediation Rules for Civil Litigation, Rule XV.

outcome." *See* Hon. Nancy F. Atlas, *Mediation in Bankruptcy Cases (Part 1)*, 41 Practical Lawyer 39, 52 (1995).

38. In other words, a mediator cannot be economically incentivized – even subconsciously – to push for an outcome motivated by the compensation structure. This would be contrary to the concept of neutrality and appearance of neutrality that is central to the mediation process. To be clear, the Mediation Team itself is free of any such issue.

39. Certainly, if a mediator is ethically prohibited from charging a fee based on the outcome, the advisors counseling and representing the mediator should also be bound by the same requirements. *See, e.g.*, *Lisowski v. Walmart Stores, Inc.*, 552 F. Supp. 3d 519, 529 (W.D. Pa. 2021) (noting that agents generally stand in the shoes of their principals). The concerns that support the prohibition against contingent fees also apply to the mediator's financial advisors. *See, e.g.*, ABA ADR Ethics Subcommittee at 6-7 (providing that if a mediator is impartial, then the mediator will not be acting in favor of one party's interests, and mediators have significant control over the process—which can potentially influence the substance of the mediation). The Committee has not found any authority to support a mediation team's financial advisor being awarded a fee that is contingent on a certain outcome.

40. As these foregoing ethics rules make clear, a fatal flaw in PJT's proposed retention is its failure to recognize the unique role of the Mediation Team, which distinguishes it from the debtor or Oversight Board. Unlike its representation of the Oversight Board— a central advocate in these Title III proceedings—PJT's proposed representation is of an impartial Mediation Team, whose compensation necessarily cannot be tethered to a specific outcome.[17] PJT's proposal to tie

[17] Neither Moelis nor Phoenix asked for or received a guaranteed restructuring or success fee, nor did they structure their compensation in a way that effectively tied payment to a specific case outcome.

compensation to outcomes is unprecedented and undermines the fundamental principle of impartiality in mediation, potentially circumventing ethical safeguards designed to prevent conflicts of interest.

41. **Second**, the monthly advisory fee that PJT proposes is excessive, irrespective of whether it is viewed as a $1,000,000 monthly fee with deferments or a $650,000 monthly fee. Section 316 of PROMESA generally governs the compensation of professionals in Title III proceedings, and it closely mirrors the standards of 11 U.S.C. § 330. *Compare* 48 U.S.C. § 2176(a), *with* 11 U.S.C. § 330(a). Under PROMESA § 316(a), the Court may award retained professionals reasonable compensation for *actual* and *necessary* services rendered. 48 U.S.C. § 2176(a). Even though PJT is not among the professionals contemplated by § 316,[18] it cannot rely on § 105(a) to achieve an end run around the reasonable standards of § 316 of PROMESA or § 330 of the Bankruptcy Code.

42. Here, the Mediation Team's prior professionals were paid significantly less. Moelis was paid a maximum of $250,000 per month (which was reduced to $150,000 per month after the first three months of the engagement) and Phoenix was compensated at standard hourly rates. PJT cannot offer any justification for a compensation structure that is several times higher than its predecessors, especially given its vastly more limited role advising a neutral Mediation Team. For instance, as financial advisor to the Oversight Board, PJT provided a broad range of complex services that far surpass the services PJT proposes to provide the Mediation Team, including: developing financial presentations for the Oversight Board and creditors; providing expert testimony for the Oversight Board in conjunction with confirmation proceedings; analyzing

[18] On its face, this provision does not apply to the Mediation Team's professionals; it applies only to professionals retained by (i) the debtor, (ii) the Oversight Board, (iii) a committee appointed under § 1103, or (iv) a trustee appointed under § 926. *See* 48 U.S.C. § 2176(a).

liquidity and recommending improvements; evaluating the fiscal condition of the Commonwealth and certain other of the Debtors; and valuing securities in connection with restructuring. In contrast, the Mediation Team's role is limited to facilitating negotiations among stakeholders, which does not warrant the extensive compensation PJT seeks. *Compare* PJT Fee Application, Docket No. 24855, at ¶¶ 11-12 (disclosing scope of PJT's services to the Oversight Board), *with* Application, Docket No. 5506, ¶ 16 (disclosing more limited scope of services).

43. **Third**, even if, for the sake of argument, the proposed success fee does not implicate the above ethical standards, it is still excessive. The engagement guarantees PJT a minimum fee whether or not its services produce value, turning what should be performance-based compensation into an unearned windfall detached from results. PJT will receive at least $7.8 million even if no restructuring occurs, effectively creating a failure fee that rewards it for achieving nothing. If, for example, this Title III case were dismissed next month – PJT's proposed engagement would entitle it to a $7.8 million windfall.

44. On the other hand, if a restructuring is consummated any time within the next 12 months, PJT's total guaranteed compensation jumps to at least $12 million. If PJT's engagement lasts six months, it will earn $3.9 million in base fees. If a restructuring occurs, its total compensation triples to $12 million, amounting to an $8.1 million success fee. At twelve months, its base fees will reach $7.8 million, yet a restructuring would still trigger a $12 million payout, creating a $4.2 million windfall in success fees. The longer the engagement lasts, the more disproportionate the result. If the engagement extends to twenty-four months, PJT will accrue $15.6 million in base fees and collect an additional $8.4 million in deferred success fees, bringing its total payout to $24 million—regardless of whether all creditor groups see any actual benefit.

45. Additionally, PJT did not even receive a success fee or an outcome-based fee when it represented the Oversight Board in the non-PREPA Title III matters — it received a flat monthly fee. Nor does the Supporting Declaration justify why PJT should be paid for services rendered to the Mediation Team commensurate with the far more extensive services it previously provided the Oversight Board.

46. While all parties are hopeful for a consensual and fair resolution through mediation, there is a possibility that mediation will give way to litigation. *See* Docket No. 28909 ¶ 21 (recent filing of bondholder parties, stating that "[a]s the Board stated in a recent submission, the mediation parties are not close to reaching any consensual resolution and, despite the passage of time and valiant efforts of the mediators, "[n]othing has changed."); Docket No. 5442 ¶ 4 (report of Mediation Team stating that, as of December report, "there is simply no prospect for any mediated or consensual resolution here"). PJT's proposed engagement terms do not contemplate that its efforts in mediation may be decreased at any point if the parties do turn to litigation. Unlike other parties, such as the Oversight Board or National, that would use financial advisors through mediation or litigation, the Mediation Team's efforts, and consequently its advisor's efforts, would be severely circumscribed if litigation ensues in place of mediation.

47. PJT's requested fee structure bears no relationship to actual performance and its engagement provides no justification for locking in such a structure. It gets paid whether creditors benefit or not, or whether mediations are ongoing, or even whether it performs work for the Mediation Team or not. Courts have repeatedly rejected success fees unless professionals deliver extraordinary, unexpected results. *See Consol. Bancshares Inc*., 785 F.2d 1249, 1257 (5th Cir. 1986) (explaining that a successful reorganization is precisely the result contemplated by Congress in enacting Chapter 11); *In re Interlogic Trace, Inc*., 188 B.R. 557, 561 (Bankr. W.D. Tex. 1995)

(providing that success fees "are designed to reward extraordinary effort, not simply to pay one for the job one was hired to do in the first place"). This is particularly true where, as here, the professional is seeking prospective approval of a success fee that may, in fact, turn out to be a "failure" fee. No party in interest can assess at this time whether PJT will produce the sort of extraordinary results that have warranted success fees in other cases. *See, e.g., In re Arnold & Baker Farms*, No., 2005 WL 1213818, at *1-3 (Bankr. D. Ariz. 2005) (fee enhancement awarded where debtor's counsel obtained exceptional result, faced risk of non-payment at the outset of the case and, at the conclusion of the case, unsecured creditors were paid in full); *In re Morris Plan Co. of Iowa*, 100 B. R. 451, 453-54 (Bankr. N. D. Iowa 1989) (fee enhancement awarded where plan as confirmed paid creditors the full amount of their claims plus interest); *In re Nucentrix Broadband Networks, Inc*., 314 B.R. 574, 579 (Bankr. N.D. Tex. 2004) (awarding enhancement of 10% for counsel to the debtors); *In re Hillsborough Holdings Corp*., 191 B.R. 937, 940-41 (Bankr. M.D. Fla. 1995) (awarding enhancements of 5 and 10% to estate professionals).

48. **Fourth**, the Court should reject any attempt to pre-approve PJT's fee structure. Courts have consistently warned against pre-approving success fees before a full record is developed. *See In re Smart World Techs.*, 552 F.3d 228, 232-33 (2d Cir. 2009) (noting that pre-approval under § 328 requires the court to fully evaluate the reasonableness of the fee arrangement at the outset). The Court should instead reserve judgment on the propriety of PJT's fees until the mediation process concludes.

### B. PJT's Retention Cannot Be Approved Under § 105(a) Without PJT's Full Disclosure of its Prior Engagements

49. Without full disclosure relating to its prior engagement with National—including more information about its agreement not to provide financial services related to PREPA—the Court and parties in interest cannot assess whether PJT can serve as a disinterested advisor to the

neutral Mediation Team. This concern is heightened by public filings and other information suggesting that PJT played a significant role in PREPA's restructuring negotiations—details that should have been disclosed here but were not. As a threshold matter, in the February 2019 Agreement, National extracted an agreement that PJT would not provide services with respect to PREPA, but there is no representation in the Supporting Declaration that PJT has obtained such a waiver from National.

50. The Supporting Declaration lacks the adequate disclosure that would permit a meaningful review of potential conflicts of interest under PROMESA and PRRADA for the following three reasons.

51. **First**, The Application seeks to retain PJT exclusively under 11 U.S.C. § 105(a), relying on the Court's equitable powers.[19] But PJT cannot rely on the equitable powers set out in § 105(a) without complying with the disclosure requirements of PRRADA and the Federal Rule of Bankruptcy Procedure 2014. The Supreme Court and this Court have made clear that § 105(a) does not give a court a roving commission to do equity. *See Harrington v. Purdue Pharma L. P.*, 603 U.S. 204, 216 n.2 (2024); *Cooperativa de Ahorro y Crédito Abraham Rosa v. Commonwealth of Puerto Rico*, 578 F. Supp. 3d 267, 288 (D.P.R. 2021) (Swain, J.) (noting limitations of equitable authority under § 105(a)). The Court's equitable discretion under § 105 "can only be exercised within the confines of the Bankruptcy Code" and PROMESA. *See Cooperativa*, 578 F. Supp. 3d at 288. PROMESA does not incorporate 11 U.S.C. § 327, which governs professional retentions in bankruptcy, but it does require compliance with PRRADA and Bankruptcy Rule 2014, both of which impose strict disclosure obligations. *See* 48 U.S.C. § 2178(b)(1). The Committee submits

[19] *See* Application, Docket No. 5506, ¶¶ 1, 34.

that the Application and Supporting Declaration would not constitute sufficient disclosure under either PRRADA or Rule 2014.

52. PJT's Supporting Declaration has not met these disclosure obligations because they fail to disclose the extent of its and its predecessor's direct involvement in PREPA's restructuring and bond negotiations. As a matter of fact, PJT's predecessor, Blackstone Advisory, advised National on PREPA's pre-Title III restructuring efforts, including advocating for bond insurers in negotiations over billions in debt. After spinning off from Blackstone, PJT continued working with National, playing a "leading role" in restructuring PREPA pre-petition and negotiating PREPA RSA.[20] In the 2017 Bloomberg interview, PJT's lead restructuring advisor, Mr. Coleman, publicly confirmed that he advised National and criticized the Oversight Board's handling of PREPA's restructuring, accused it of making "bad faith" offers, and argued that the Oversight Board broke "the rule of law" by not certifying the PREPA RSA.. None of this is disclosed in the Supporting Declaration. The February 2019 Agreement—through which PJT committed to National not to provide financial services in respect of PREPA—was also omitted.

53. PJT has apparently played a direct, critical role in the very subject matter over which the Mediation Team will preside as a neutral. But that is not disclosed. Accordingly, PJT's insufficient disclosures concerning its prior engagements—particularly its extensive involvement with National in PREPA's restructuring—render its retention under § 105(a) improper and inconsistent with PRRADA's disclosure requirements.

54. **Second**, and relatedly, additional disclosures from PJT are necessary to satisfy the critical purpose of transparency in Rule 2014, which PRRADA incorporates, are satisfied. The Federal Rules of Bankruptcy Procedure impose strict disclosure obligations on professionals

[20] *See* Scipio & Bradley, *supra* note 6.

seeking retention. Rule 2014(a) mandates that a professional file a verified statement disclosing all connections with any party in interest, placing the burden of disclosure squarely on the professional, not the court or interested parties. *See* Fed. R. Bankr. P. 2014(a). The duty of disclosure under Bankruptcy Rule 2014 is not a mere formality; it is a bedrock principle that ensures the integrity of bankruptcy proceedings. *See, e.g.*, *In re NNN 400 Capital Ctr. 16, LLC*, 619 B.R. 802, 809 (Bankr. D. Del. 2020). The reason is simple: the bankruptcy court must be able to evaluate a professional's disinterestedness and the absence of conflicts of interest without undertaking its own investigation. *See In re Universal Bldg. Prods.*, 486 B.R. 650, 663 (Bankr. D. Del. 2010).

55. PJT's failure to disclose its longstanding involvement in PREPA's restructuring prevents the Court and interested parties from assessing its disinterestedness. Ensuring PJT's disclosures are adequate will serve a critical purpose of Rule 2014 to ensure that all potentially relevant connections are brought to light so the court and interested parties can properly evaluate a professional's neutrality. *See In re Granite Partners, L.P.*, 219 B.R. 22, 35 (Bankr. S.D.N.Y. 1998) (noting that a professional's duty to disclose is "self-policing" and that the court "should not have to rummage through files or conduct independent factfinding investigations to determine if the professional is disqualified"). The lack of disclosure of the above-referenced information along and the PREPA Limitation creates, at minimum, an appearance of conflict that should have been fully disclosed and explained. See *In re Leslie Fay Cos.*, 175 B.R. 525, 533 (Bankr. S.D.N.Y. 1994) (noting that "failure to disclose relevant connections is an independent basis for the disallowance of fees or even disqualification").

56. **Third**, PJT cannot rely on § 105(a) to achieve a result that is outside the confines of what it means to be "disinterested" under § 101(14) of the Bankruptcy Code. Under § 101(14),

disinterestedness requires that a professional "not have an interest materially adverse to the estate or any class of creditors." Section 101(14)'s broad scope includes any relationship that "might faintly color the independence and impartial attitude required" of estate professionals. *See In re BH & P, Inc.*, 949 F.2d 1300, 1309 (3d Cir. 1991). As discussed above, available information shows that PJT very publicly advocated National's interests with respect to PREPA and its restructuring pre- and post-Title III. A high-ranking representative of PJT accused the Oversight Board of violating the law and operating in bad faith. When PJT was involved in negotiations over PREPA's restructuring before, National's interests were antagonistic to the Oversight Board and other constituencies. Additional disclosures are necessary to enable the Committee and the Court to determine whether PJT can impartially advise the Mediation Team on a subject for which PJT so passionately advocated in National's favor. Retaining PJT under § 105(a) despite without additional disclosures risks undermining the principles of neutrality and disinterestedness embedded in § 101(14).

57. The Oversight Board's consent to PJT's retention does not cure this conflict, because the Mediation Team and its advisors are involved with other classes of creditors, whom may be impacted by such a conflict.

58. The Supporting Declaration's lack of disclosure reflects an apparent effort to sidestep the facts that could reveal a conflict of interest.

## CONCLUSION

59. The Court should decline to approve PJT's retention. As for the disclosure, PJT could address the issue of insufficiency and resubmit adequate disclosures that would permit interested parties the ability to meaningfully consider the resubmitted Application. As for the proposed fee itself, the Committee would not object to a reasonable fee relating to work performed

for the Mediation Team that is not contingent on the success of the mediation, restructuring, a plan of adjustment, or any other outcome and that comports with the guidelines set forth above.

**NOTICE**

60. Notice of this Motion has been provided to the following entities, or their counsel, if known: (i) the U.S. Trustee; (ii) the Oversight Board; (iii) AAFAF; (iv) the PREPA Bond Trustee; and (v) all parties that have filed a notice of appearance in the above-captioned Title III cases.

**WHEREFORE**, the Committee respectfully requests that the Court sustain this objection, and grant such other relief as the Court deems necessary and proper.

[*Remainder of page intentionally left blank.*]

Dated: March 4, 2025

*/s/ John Arrastia*
John Arrastia (*Pro Hac Vice*)
Angelo M. Castaldi (*Pro Hac Vice*)
CONTINENTAL PLLC
255 Alhambra Cir, Suite 640
Coral Gables, FL 33134
Tel: 305-677-2707
jarrastia@continentalpllc.com
acastaldi@continentalpllc.com

*Special Litigation and Conflicts Counsel to the Official Committee of Unsecured Creditors*

- and -

*/s/ Juan J. Casillas Ayala*

CASILLAS, SANTIAGO & TORRES LLC
Juan J. Casillas Ayala, Esq. (USDC - PR 218312)
Israel Fernández Rodríguez, Esq. (USDC - PR 225004)
Juan C. Nieves González, Esq. (USDC - PR 231707)
Cristina B. Fernández Niggemann, Esq. (USDC - PR 306008)
PO Box 195075
San Juan, PR 00919-5075
Tel.: (787) 523-3434
Fax: (787) 523-3433
jcasillas@cstlawpr.com
ifernandez@cstlawpr.com
jnieves@cstlawpr.com
cfernandez@cstlawpr.com

*Local Counsel to the Official Committee of Unsecured Creditors*