

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

<p>PEAJE INVESTMENTS LLC,</p> <p style="text-align: right;"><i>Plaintiff,</i></p> <p style="text-align: center;">-v-</p> <p>ALEJANDRO GARCIA-PADILLA, <i>et al.,</i></p> <p style="text-align: right;"><i>Defendants.</i></p>	<p>Civil No. 16-2365 (FAB)</p>
<p>ASSURED GUARANTY CORP., <i>et al.,</i></p> <p style="text-align: right;"><i>Plaintiffs,</i></p> <p style="text-align: center;">-v-</p> <p>COMMONWEALTH OF PUERTO RICO, <i>et al.,</i></p> <p style="text-align: right;"><i>Defendants.</i></p>	<p>Civil No. 16-2384 (FAB)</p>
<p>ALTAIR GLOBAL CREDIT OPPORTUNITIES FUND (A), LLC, <i>et al.,</i></p> <p style="text-align: right;"><i>Movants,</i></p> <p style="text-align: center;">-v-</p> <p>ALEJANDRO GARCIA-PADILLA, <i>et al.,</i></p> <p style="text-align: right;"><i>Respondents.</i></p>	<p>Civil No. 16-2696 (FAB)</p>

**FINANCIAL OVERSIGHT AND MANAGEMENT BOARD'S
MOTION FOR RECONSIDERATION**

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:

PRELIMINARY STATEMENT

Currently before the Court are three consolidated motions for relief from the PROMESA stay. On October 28, 2016, the Oversight Board moved to intervene in each of these consolidated actions and attached to its motion a copy of the Oversight Board’s opposition to each of the Plaintiffs’ motions to lift the PROMESA stay. It did not attach any other pleading – for instance, an answer with counter- or cross-claims – because no complaints have been filed in any of the actions and because it did not wish to be heard on the underlying merits (at least at this time); the Oversight Board proposed to respond to the only pleadings before the Court: the lift stay motions.

By three Memorandum and Orders dated November 1, 2016 (the “Orders”), the Court denied the Oversight Board’s motions to intervene. The Court appears to have held that the Oversight Board failed to comply with Rule 24(c) of the Federal Rules of Civil Procedure because it failed to attach to its motion a pleading addressing the substantive merits of the litigation. Civil No. 16-2365, Dkt. No. 70; Civil No. 2384, Dkt. No. 55; Civil No. 16-2696, Dkt. No. 62. The Oversight Board respectfully submits that the Court’s narrow interpretation of Rule 24(c) is incorrect as a matter of law and fact and would frustrate the Oversight Board’s mandate under PROMESA and its ability to do its job. The Oversight Board requests that the Court reconsider the Orders and grant the Oversight Board leave to intervene in each of these consolidated actions.

ARGUMENT

I. THE COURT SHOULD RECONSIDER THE ORDERS AND GRANT THE OVERSIGHT BOARD LEAVE TO INTERVENE IN THESE ACTIONS

A motion for reconsideration should be granted if a court committed a manifest error of law or fact. *See Marie v. Allied Home Mortg. Corp.*, 402 F.3d 1, 7 n.2 (1st Cir. 2005). Here, the Court incorrectly found that the Oversight Board's opposition did not satisfy Rule 24(c) of the Federal Rules of Civil Procedure, which requires a party seeking intervention to include a "pleading that sets out the claim or defense for which intervention is sought." Fed. R. Civ. P. 24(c).

The Court's decision is incorrect for three reasons:

First, the Oversight Board did, in fact, include with its intervention motion a pleading that satisfies Rule 24(c). The Court appears to have taken the view that the Oversight Board's pleading should have addressed the substantive merits of the parties' constitutional claims, but that interpretation cannot possibly be correct because none of the Plaintiffs in these actions has filed a complaint yet. The Plaintiffs in *Peaje Investments* and in *Assured Guaranty* each attached a proposed complaint to their motion papers, but those complaints will not be filed unless and until the Court lifts the PROMESA stay. Civil No. 16-2365, Dkt. No. 1 at 1, Ex. A; Civil No. 16-2384, Dkt. No. 1 at 1, Ex. B. The Plaintiffs in *Altair Global Credit Opportunities Fund* did not even attach a proposed complaint to their motion papers. They concede that they will not file a complaint unless and until the Court lifts the PROMESA stay. Civil No. 16-2696, Dkt. No. 61 at 2.

Rule 24(c) must be interpreted to require a pleading that is appropriate to the particular proceeding. *See* Fed. R. Civ. P. 1 (directing that the Federal Rules of Civil Procedure should be "construed, administered, and employed by the court and the parties to secure the just,

speedy, and inexpensive determination of every action and proceeding”); Fed. R. Civ. P. 8 (directing the Court to construe pleadings “so as to do justice”).¹ Here, the Oversight Board’s opposition addresses the only claim that is currently before the Court – whether or not to lift the PROMESA stay – and the Oversight Board submitted its proposed response to the only pleadings on file – the lift stay motions – thereby complying with Rule 24(c).

Second, even if the Plaintiffs had filed complaints, the Oversight Board was not required to take a substantive position on the Plaintiffs’ constitutional claims. Courts routinely allow parties to intervene and to seek relief or take positions that are unrelated to the merits of the underlying litigation. *See, e.g., Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 783–84 (1st Cir. 1988) (holding that intervention is the appropriate mechanism for a third-party to seek modification of a protective order); *Twenty First Century Corp. v. LaBianca*, 801 F. Supp. 1007, 1009–1011 (E.D.N.Y. 1992) (granting the United States’ motions to intervene and to stay discovery). Thus, here, it would be entirely appropriate for the Oversight Board to intervene in these actions solely for the purpose of opposing the Plaintiffs’ lift stay motions or seeking a stay of the actions pursuant to Section 212(b)(1) of PROMESA and the Court’s inherent power to control its docket.

Third, requiring the Oversight Board to respond to the merits of these actions now would undermine clear Congressional intent. The PROMESA stay was intended (among other reasons) 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.

¹ The First Circuit’s decision in *Public Service Company of New Hampshire v. Patch*, 136 F.3d 197, 205 n. 6 (1st Cir. 1998), does not require a different result. The footnote cited by the Court stands for the unremarkable proposition that a party seeking to intervene must include a proposed pleading in accordance with Rule 24(c). Of course, here, the Oversight Board did file a pleading. The First Circuit did not have reason to specify what form a pleading must take because the proposed intervenors apparently failed to file *any* pleading whatsoever.

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). It would be illogical to require the Oversight Board to take a position on the merits of the yet-to-be-filed complaints in these actions when the named defendants have not responded to them yet, and may not be required to respond to them until sometime after February 15, 2017. In accordance with express Congressional intent, the Oversight Board sought to intervene in these actions on behalf of the Commonwealth to protect the Oversight Board’s and the Commonwealth’s right to the breathing spell provided by the PROMESA stay so that they can concentrate on fiscal plans and capital market strategy instead of on multiple litigations.

CONCLUSION

For the foregoing reasons, the Court should (i) reconsider the Orders and grant the Oversight Board leave to intervene in each of these consolidated actions and (ii) grant such other and further relief as the Court deems just and proper.

WE HEREBY CERTIFY that on November 2, 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 2nd day of November, 2016.

/s/ Luis F. del Valle-Emmanuelli
LUIS F. DEL VALLE-EMMANUELLI
USDC NO. 209514
P.O. Box 79897
Carolina, Puerto Rico 00984-9897
Tel. 787.977.1932
Fax 787.722.1932
dvelawoffices@gmail.com

Of counsel for
Bufete Adames-Soto
434 Hostos Avenue
San Juan, Puerto Rico 00918
Tel. 787.751.6764/763.0565
Fax 787.763.8260
eadames@adameslaw.com
mrodriguez@adameslaw.com

-and-

/s/ Michael Luskin
Michael Luskin*
Stephan E. Hornung*
LUSKIN, STERN & EISLER LLP
Eleven Times Square
New York, New York 10036
Tel. 212.597.8200
Fax 212.974.3205
luskin@lsellp.com
hornung@lsellp.com
*Applications for *pro hac vice* admission
pending

*Attorneys for the Financial Oversight and
Management Board for Puerto Rico*