

**PUERTO RICO BANKRUPTCY DISCLOSURE
HEARING**

Thursday, July 29, 2021

Chairman Manchin's Opening Statement

- The Committee will come to order.
- The Committee is meeting today to consider S. 375, Senators Menendez's bill to require greater disclosure by professionals involved in the Puerto Rico bankruptcy cases, and H.R. 1192, the House companion measure, which the House passed earlier this year.
- I am pleased to welcome Senator Menendez, who has joined us this morning to provide a few remarks.
- We are also very fortunate to have Judge Arthur Gonzales with us.
- Early in his career, Judge Gonzales served as a United States Trustee, which for those of us not familiar with bankruptcy law, is a Justice Department official who oversees the administration of bankruptcy cases.
- He served for 17 years as a bankruptcy judge in the Southern District of New York, and for the past 5 years, he

has been a member of the Financial Oversight and Management Board for Puerto Rico.

- Judge Gonzales has not only 30 years of experience with bankruptcy law but also firsthand knowledge of the cases that are the focus of the bills before us.
- We are also fortunate to have Professor Stephen Lubben, who teaches bankruptcy law at Seton Hall and is a recognized authority on the subject.
- And I appreciate Anthony Suarez joining us today who is an experienced trial attorney, former Florida state legislator, and former President of the Puerto Rico Bar Association of Florida.
- Professor Lubben and Mr. Suarez will both be testifying remotely. We are very pleased to have their testimony.
- I want to take a few minutes to review how we got here today because this is a unique and complicated situation and I think it's important that we all start from the same place.
- Five years ago, Congress passed a law known as "PROMESA" to address Puerto Rico's financial crisis.

- Puerto Rico was over \$70 billion debt at the time and faced another \$50 billion in unfunded pension liabilities.
- It could no longer pay its debts as they became due.
- But unlike a municipal government in one of the 50 states, Puerto Rico could not declare bankruptcy because our bankruptcy laws exclude Puerto Rico from “Chapter 9,” as the municipal bankruptcy provisions in the Bankruptcy Code are known.
- To address Puerto Rico’s financial crisis, PROMESA created the Financial Oversight Board and it gave the Board sweeping powers to help put Puerto Rico’s financial affairs in order.
- It also created a new, unique bankruptcy-like procedure by which the Oversight Board could come up with plans to restructure Puerto Rico’s debt, subject to the approval of a district court judge designated by Chief Justice Roberts.
- Four years ago, the Oversight Board filed six of these bankruptcy-like cases to restructure the debts of the Commonwealth and five of its public authorities.

- Considerable progress has been made since then. The restructuring plan in one of these cases has already been confirmed by the court, the joint plan covering three cases is now awaiting approval by the court, and the two remaining cases could be completed next year.
- Which brings us to the legislation before us.
- Puerto Rico's bankruptcy cases, like any large corporate bankruptcy case or any municipal bankruptcy case, are complicated affairs.
- They require legions of lawyers and accountants and consultants and other professionals, all of whom expect to be paid for their work.
- In a corporate bankruptcy, the debtor cannot hire professional help without the bankruptcy court's approval, and the court won't approve hiring professionals until they disclose any potential conflicts of interest.
- That is not the case with municipal bankruptcies. To protect state sovereignty, Chapter 9 lets municipal governments hire professionals without court approval and

without requiring applicants to disclose potential conflicts before they are hired.

- As Puerto Rico is a sovereign territory, PROMESA's bankruptcy provisions were modeled after the municipal bankruptcy provisions in Chapter 9.
- The bills before us would change that and require professionals retained to work on cases under PROMESA to make the same sorts of disclosures that professionals must make in corporate bankruptcy cases.
- That strikes me as a sensible thing to do. I suspect we can all agree that professionals should disclose potential conflicts. That is likely why the House was able to pass the bill unanimously.
- I, too, support requiring more disclosure, but I am concerned that the way the bill goes about it may have adverse effects on the pending cases.
- I don't think I am alone in having these concerns.
- Robert Keach, a former President of the American Bankruptcy Institute, warned the House Judiciary Committee two years ago that enactment of the bill "could

be highly disruptive of the current proceedings and the considerable progress” that has been made in the PROMESA cases.

- Similarly, Natalie Jaresko, the Oversight Board’s Executive Director, warned the House Natural Resources Committee last year that the bill was “overly expansive” and that requiring disclosure on the scale proposed “would be an impossible exercise.”
- Those points were not addressed when the House passed this bill.
- It is my hope that this can be part of our discussion with our witnesses this morning and that it will help us find a way to increase disclosure and guard against conflicts of interest, which I support, but in a way that is more feasible and will not disrupt the pending cases.
- With that, let me turn to Ranking Member Barrasso for his opening remarks.