



# APPLYING SOLUTIONS FROM COMPLEX CLAIMS PROGRAMS IN ADMINISTERING PROMESA

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The Puerto Rico Oversight, Management and Economic Stability ACT (“PROMESA” or “Act”) was enacted to resolve Puerto Rico’s debt crisis. This Act establishes a seven-member Oversight Board responsible for negotiating with creditors and creating a restructuring plan for Puerto Rico’s \$70+ billion in debt while maintaining essential government services.

As the Oversight Board begins its work, it is useful to consider the practical steps it must take to ensure efficient and effective administration of PROMESA. To be successful, the Oversight Board will require: (1) a process to notify creditors of proposed debt restructuring plans; (2) an opportunity to interact with creditors and to solicit feedback about the proposed restructuring plans; (3) a mechanism for creditors to vote on proposed restructuring plans; (4) a review process for the approval of all future legislation proposed by Puerto Rico under an adopted Fiscal Plan; (5) protocols to evaluate requests for Critical Projects addressing infrastructure needs in Puerto Rico; and (6) a review of Fee Applications submitted by professionals retained by the Oversight Board.

The first step in effectively implementing PROMESA is to recognize the Act for what it is: a complex administrative program designed to reach a resolution among multiple, potentially adversarial stakeholders. Developing processes and innovative solutions to find common ground and mutually acceptable solutions between opposing parties is an art that BrownGreer, as a leading administrator of complex claims programs, has implemented for decades. We believe these best practices developed in complex claims programs are directly transferrable as solutions to challenges the Oversight Board will face while administering PROMESA.

This paper addresses the challenges we expect the Oversight Board to encounter and the corresponding solutions we have implemented in complex claim programs:

- 1. Data Integrity, Access and Common Interfaces.** The Oversight Board will face obstacles related to data access, data security and the appropriate transfer of information with various stakeholders across multiple platforms.
- 2. Transparency.** Maintaining transparency will be a challenge that the Oversight Board will face. The infrastructure and processes required to provide access to all public records and actions taken by the Board will be substantial.
- 3. Vendor Sourcing.** The Oversight Board will likely require many support functions and can achieve significant cost savings through single vendor sourcing for various administrative tasks.
- 4. Professional Fee Management.** The Oversight Board will be responsible for reviewing fees of professionals retained in administration of the Program and charged with ensuring that these fees are reasonable and necessary.

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## A. DATA INTEGRITY, ACCESS AND COMMON INTERFACES

The Oversight Board will be responsible for receiving, normalizing and analyzing voluminous data sets from the numerous stakeholders identified by PROMESA. Other interested stakeholders will require access to this data and, subsequently, will create data sets of their own. The public will request access to much of this data and information. Table 1 below illustrates the complex web of interested stakeholders and their relationship to data in PROMESA.

### PROMESA PARTIES AND RELATIONSHIPS TO DATA

	Interested Party	Provide Data	Receive and Evaluate Data or Documentation	Interface with Public
1.	Oversight Board		✓	✓
2.	Executive Director		✓	✓
3.	Commonwealth of Puerto Rico and Territory Government Issuers	✓	✓	✓
4.	Bond Holders	✓	✓	
5.	Pensioners		✓	
6.	Calculation Agent	✓	✓	
7.	Information Agent	✓	✓	✓
8.	Revitalization Coordinator	✓	✓	✓
9.	Project Sponsors	✓		✓
10.	Planning Board	✓	✓	
11.	Puerto Rico Electric Power Authority (PREPA)	✓	✓	✓
12.	Puerto Rico Permitting Agencies	✓	✓	✓
13.	U.S. Congress		✓	
14.	Federal Courts		✓	
15.	Retained Professionals		✓	

Failure to navigate the challenges presented by the data and multiple interested parties will lead to frustration among all stakeholders, needless delays, and inefficiencies that will increase administrative costs. The good news is that these challenges can be overcome.

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- 1. Data Normalization and Integrity.** The Oversight Board must receive documentation and data from numerous sources. This material will not be consistent from source to source. Often, data points with dissimilar meanings cannot easily be distinguished in different data sets. Conversely, data points with similar meanings will often be mischaracterized because the similarities are not clear. The data from various sources must be organized in such a way that it can be instantaneously accessed and reported upon. Developing and adopting data integrity standards to normalize these discrepancies is an essential step in creating data sets that can be relied upon by the public and every interested stakeholder.
- 2. Data Access and Security.** Each interested stakeholder will require some degree of access to data and documentation, though their degree of access will differ depending on their credentials. For example, the type of data the Revitalization Coordinator will require when evaluating a project will certainly be different than the type of data the Information Agent requires to solicit votes on a proposed modification. Both will look to the Oversight Board and Executive Director for direction. Both will require appropriate access to data maintained by the Board. The Oversight Board must implement appropriate measures to control data access and security, maintain the integrity of the data exchanged in the performance of PROMESA's duties, and ensure that resources are used efficiently.
- 3. Coordination of Distinct and Sometimes Adversarial Parties.** Nearly all of the parties will require some coordination with one another. For example, the Oversight Board, Executive Director, Revitalization Coordinator, Planning Board, PREPA, and multiple agencies will all have some interest in the submission and evaluation of proposed projects under Title V of the Act. As another example, the Commonwealth, retained professionals, the Calculation Agent, Executive Director and staff, and the Oversight Board will all have some involvement with one another in identifying and analyzing debt pools and developing a plan to adjust those debts. That plan must then be conveyed through an Information Agent to bond holders, who will create new data records in the form of votes on those proposed modifications. All of the stakeholders will have questions and need input from the Oversight Board and Executive Director as they work to fulfill their duties under the Act. No interested party should be left wondering who to contact at the Oversight Board, or frustrated at an inability to reach someone when they need help.

As an industry-leading administrator for complex settlement programs, BrownGreer has dealt with these issues for decades and developed solutions that the Oversight Board should consider as it begins its work:

- 1. Customized Database Solutions.** The Oversight Board requires an expertly customized database solution to receive data from the multiple interested stakeholders. The organization that develops the database should have significant experience implementing solutions in the context of legal proceedings and a proven track record for synthesizing data provided by multiple sources. A central, customized database can quickly connect credentialed stakeholders to the information they need to fulfill their respective responsibilities. Equally important, a careful and systematic approach to normalizing data will ensure that the reports provided to the various stakeholders use data consistently and report on data accurately.
- 2. Web-Based Portals with Credentialed Access to Documentation and Data.** The Oversight Board should leverage a web-based environment with access to data and documentation through secure,

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customized portals. By working with an experienced settlement administrator to develop its own proprietary database application, the Oversight Board will be more nimble, more adaptable, and better positioned to control the data landscape. Such a database application can provide stakeholders with specific, real-time access to this secured environment based upon their credentialed roles as defined by the Oversight Board.

- 3. Oversight Board Contacts.** The Oversight Board should work closely with stakeholders to establish project teams with industry experience and subject matter expertise that best support the needs of each of those stakeholders. Each stakeholder should be provided a personal contact at the office of the Executive Director who can field questions and resolve the inevitable issues which arise in a complex program. A direct point of contact at the Executive Director's office will provide continuity that adds incalculable value to the overall functioning of the program by increasing efficiency and consistency.

### B. TRANSPARENCY

Transparency should be a paramount concern of the Oversight Board. In our experience, when people are left without information related to a complex program, they invent narratives to fill the information void. No matter how baseless, these theories can nevertheless make their way into the public domain through media stories or even Court filings. It is possible to mitigate these challenges through a thoughtful communications plan with transparency as a central focus. The Oversight Board should take steps now to address certain issues common to any complex program.

- 1. Informing the Public.** The Oversight Board should provide absolute transparency to the tax payers of Puerto Rico and other stakeholders. Any member of the media or public should be able to easily locate and access the Oversight Board's policies, bylaws and the contracts. When the public has a question about the administration of the program, the Oversight Board should have the answer readily available.
- 2. Preserving History of Bylaw and Policy Adoption.** The Oversight Board must develop a plan to record the comprehensive history of negotiations leading to its bylaws and proposed modifications as those processes sometimes require adjudication in Federal Court. In our experience, there is no substitute for a careful audit trail, timeline of meaningful decisions, and records reflecting input from the stakeholders when explaining the basis of a policy.
- 3. Publishing Contracts.** The Oversight Board will inevitably enter into contracts with a Calculation Agent, Information Agent, Revitalization Coordinator and other professionals during the course of fulfilling its duties. The public has an interest in those contracts, and indeed, Title II of the Act requires that the Oversight Board make those contracts and any amendments to them available through a public database.

The issue of transparency is one that leading administrators of complex claims programs deal with frequently. The Oversight Board should consider adopting both the best practices and the more recent cutting-edge solutions that these administrators employ:

- 1. Informational Websites.** At a minimum, the Oversight Board should continue to build out an informational website available in both English and Spanish where the public and other stakeholders can access basic information regarding the program.

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- 2. By-Law Proposal, Review and Record Keeping Applications.** Programs where the stakeholders are adversarial require the administrator to keep careful records related to the development and adoption of policies. In most complex programs, the policies that govern the workings of its participants are developed in coordination with various stakeholders, and we expect PROMESA to be no different. The Oversight Board should consider deploying an application where credentialed stakeholders can propose bylaws, comment on them, and vote on them. Leveraging technology in this fashion provides four critical advantages to the Oversight Board: (1) it makes the process for proposing and adopting bylaws organized and transparent; (2) it produces a library of adopted bylaws that can be referenced by the parties charged with implementing them; (3) adopted bylaws can be easily published in a logical and easy-to-locate format for the public, Courts and other stakeholders; and (4) the historical input received from each stakeholder in the development of those bylaws is permanently recorded and can be referenced in any subsequent adjudication on the merits of the bylaw or policy. We can also envision scenarios where this technology could be used to assist in the development and documentation of the Fiscal Plan, or evaluation of proposed Legislation by the Commonwealth and its compliance with the Fiscal Plan.
- 3. Contract Keeping Applications.** The Oversight Board should deploy a contract keeping application which houses adopted contracts and their amendments. This application should be searchable and made available publically.
- 4. Communications Management.** The Oversight Board should develop a comprehensive communications strategy employing some combination of the following components that administrators deploy in complex settlement programs.
- (a) *Toll-Free Call Center.* The Board requires a customized call center solution including self-service call systems with recorded informational prompts and an option to speak with a live agent fluent in English or Spanish through call routing systems.
  - (b) *Dedicated Email Address.* The program should maintain a dedicated email address to receive inquiries and provide responses. The Executive Director should assign staff to promptly review and respond to questions sent to this email address.
  - (c) *Communications Reporting.* The Oversight Board should utilize robust reporting features that allow constant monitoring and maintenance of call center performance to ensure proper response times. Equally important, reporting functions should track caller feedback and identify frequent topics through agent-applied categorization of calls. The categorization of frequent topics is a central step in developing a comprehensive and responsive communications strategy.
  - (d) *Frequently Asked Questions and Responsive Script Development.* The Oversight Board should adopt procedures for reviewing commonly received questions and topics and develop responsive scripts to each that provide its authorized position. These questions and responsive scripts should be used to regularly update the Frequently Asked Questions posed on the Informational Website.
  - (e) *Site Offices and Local Hiring.* Finally, the Oversight Board should consider establishing local site offices in the Commonwealth employing residents of Puerto Rico as information agents. Employees of these site offices could provide one-on-one interaction between the residents of Puerto Rico

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and the Oversight Board, and could assist in fielding calls to the Toll-Free Call Center. In our experience, the presence of site offices staffed by persons living in the community can significantly improve the public's impression of an administrator, and generate good will toward the program.

### C. SINGLE VENDOR SOURCING

PROMESA suggests multiple roles may be contracted by the Executive Director and Oversight Board. Additional roles not listed in PROMESA will almost certainly be required as well. Explicitly identified roles include: (1) the Revitalization Coordinator called for in Title V of the Act; (2) the Calculation Agent described in Title VI; (3) the Information Agent called for in Title VI; and (4) the Executive Director and his/her staff. The Oversight Board might also be expected to contract with: (5) a database developer; (6) a website developer; (7) a communications agent; (8) a payment agent; and (9) and legal counsel to develop and enforce contracts, along with other duties.

Many of these roles are frequently filled by administrators in complex settlement programs. When multiple roles are served by a single organization, natural efficiencies are achieved which streamline response times and reduce administrative costs.

With this in mind, the Oversight Board should consider contracting a single vendor with a broad array of experience in the following fields: (1) data management and database development; (2) website development; (3) notice campaign management; (4) contract management; (5) communications management; (6) review and routing platforms; (7) payment disbursements; (8) significant reporting capabilities and (8) legal/administrative expertise.

### D. PROFESSIONAL FEE MANAGEMENT

Maximizing the value of the estate's assets for the benefit of the Commonwealth and bond holders should be a primary objective of the Oversight Board. PROMESA differs from typical bankruptcy resolution proceedings by replacing an adversarial process with a mediated compromise. This alters the structural dynamics that subject the assets of the bankrupt estate to continual diminution by professional fees. In spite of this basic reform, the Oversight Board should expect that any payments it makes to vendors with which it has contracted will likely receive scrutiny by the public and media. Additionally, Section 310 of Title III contemplates that professional fees may be the subject of examination by the U.S. Trustees and the Courts for their reasonableness.

The Oversight Board should anticipate this criticism and welcome examination by adopting, at the outset of the program, bylaws with certain provisions to manage and control the fees of the professionals it retains.

- 1. Hourly Rate Discounts.** The Oversight Board should demand a discount on any professional's standard hourly rate for the privilege of working on this program. Such a discount should be codified in any contract and verified on any billing submission.
- 2. Fixed Fee and Not-to-Exceed Arrangements as Risk-Avoidance Techniques.** The Oversight Board should, wherever possible, demand from its vendors Fixed Fee or Not-to-Exceed payment arrangements that limit the estate's exposure to professional inefficiency.

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- 3. Billing Guideline By-Laws.** The Oversight Board should develop bylaws directing the examination of hourly fee submissions from its vendors that incorporate and anticipate the rules enumerated in Section 330 of the Bankruptcy Code, 11 U.S.C.
- 4. Examination of Fees for Reasonableness.** The Oversight Board should dedicate staff to evaluate fee submissions from its vendors according the provisions and standards it adopts in its bylaws and contracts. Additionally, the Oversight Board should require electronic submission of invoices in a standardized format that can be automatically integrated into an appropriate review platform.

### CONCLUSION: THE VALUE OF EXPERT ADMINISTRATION

PROMESA, at its core, is a complex program that requires expert administration. Industry-leading administrators in complex settlement programs have developed several best practices that are directly transferrable to challenges we expect PROMESA's Oversight Board to face. Adopting some or all of our proposed solutions will benefit every stakeholder affected by the Act by reducing red-tape, enabling efficiency, and uniting them in the common goal of righting the Commonwealth's financial situation while preserving as much of the estate as possible to re-pay debt obligations.

## AUTHORS



### **William G. Atkinson** — *Partner*

Bill has been with BrownGreer since its inception. Bill's legal experience, his undergraduate degree in Computer Science, and his past experience as a computer programmer form a unique combination of skills that allow Bill to bridge the gap between the lawyers and the programmers who design and build BrownGreer's mass claims computer applications. At BrownGreer, Bill has helped implement and administer some of the firms' largest and most notable settlements, including personal injury settlements and consumer and financial services settlements. As a team lead for BrownGreer in the Gulf Coast Claims Facility, Bill oversaw the development and implementation of claim evaluation frameworks and procedures to compensate individuals and businesses claiming damages as a result of the BP Oil Spill in the Gulf of Mexico. Bill currently continues his work supporting the Claims Administrator in the Deepwater Horizon Settlement Program leading BrownGreer's claims evaluation team for Business Economic Loss claims.

Bill came to BrownGreer after serving eight years in the public sector. Bill began his public sector work as an Assistant Attorney General with the Office of the Attorney General of Virginia where he was a litigator in the Employment Law Section. He later served as the Deputy Director of Virginia's Department of Employment Dispute Resolution and then as Deputy Director of the State Board of Elections for Virginia. Prior to his public sector work Bill was in private practice at an insurance defense firm.



### **Philip R. Strunk** — *Partner*

Phil's work at BrownGreer focuses primarily on developing efficient protocols for the evaluation of thousands of claims, while ensuring compliance with the terms of settlement agreements and the distribution of benefits to eligible claimants. Currently, Phil is a team lead for BrownGreer's work on the \$2.45 billion U.S. ASR Hip Settlement, in which BrownGreer serves as Claims Processor. Phil works directly with the Claims Administrator, Special Masters, Settlement Oversight Committee, and others to process claims in accordance with the Settlement Agreement. Phil also leads BrownGreer's team responsible for evaluating Seafood Compensation Program claims in the Deepwater Horizon Settlement Program.

In the past, Phil served the Claims Administrator of the nation-wide class action settlement In re: Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation. In addition, Phil supported the Liaison Counsel for Wyeth in the \$4 billion diet drug settlement. He also led the team of BrownGreer attorneys who evaluated claims in In Re Black Farmers Discrimination Litigation Settlement, a program designed to compensate claimants for allegations of racial discrimination by agents of the USDA. As a team lead for BrownGreer in the Gulf Coast Claims Facility, Phil developed and managed reporting procedures and coordinated the implementation of claimant services in more than 20 site offices throughout the Gulf Coast. Through his work on these settlement programs, Phil has gained the experience required to oversee the claims processing, database design, and payment of sizable class action settlements.