

Proskauer Reaches Milestone in Long-Running, Wide-Ranging Assignment for Puerto Rico Financial Oversight Board

“It’s not about us. It’s about the Commonwealth.”

By Ross Todd
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The “brag sheet” that Proskauer Rose litigation chair **Tim Mungovan** has put together tallying the firm’s wins on behalf of the Financial Oversight and Management Board for Puerto Rico over the past four-and-a-half years is about a month old, but it’s impressive.

Of the contested matters the firm has handled in front of U.S. District Judge Laura Taylor Swain springing out of Puerto Rico’s restructuring case, Mungovan has counted 96 wins for the board, five losses and 14 split decisions, with three issues pending. At the First Circuit, he says his team has 15 wins, four losses and one split decision with two appeals pending. “These aren’t just bankruptcy issues,” Mungovan said. “In fact, we have Contracts Clause, Appointments Clause, Takings Clause, Due Process Clause, Territorial Clause, Commerce Clause of the Constitution, the First Amendment, the 11th Amendment, the 13th amendment and then, of course, a smattering of bankruptcy-related issues.”

I apologize if starting with the brag sheet led you to believe that Mungovan is some sort of stat-tracking egomaniac. It would be easy for that sort of track record to go to a litigator’s head. The sheet only came up at the end of about 45 minutes



I spent with him via Zoom Tuesday morning and as he was trying to explain the sort of all-encompassing assignment that representing the board has become for the firm. The board is seeking to unwind Puerto Rico’s debt woes of the past decade and put the territory’s people on sound economic footing going forward.

Let’s back up a bit here.

The board was created in the wake of Puerto Rico’s debt crisis in 2016 by the U.S. Congress through the Puerto Rico Oversight, Management, and Economic Stability Act, or PROMESA. The law that created the board set mandated a “comprehensive approach to fiscal, management, and structural problems and adjustments that exempts no part of the Government of Puerto Rico.”

PROMESA has effectively given the board, made up of volunteer members who are not paid for their service, veto power over the spending decisions of the territory's government until its debts are restructured. All that makes the board a very interesting and demanding client.

"It's not just a single case. It's not just a single mandate," said Mungovan, who spent his 25th wedding anniversary on the phone trying to help the board's executive director and general counsel avoid a strike by truckers in Puerto Rico. "It's like we're part of the government. And sometimes we're aligned with them and sometimes we're adverse."

On Tuesday the board reached a milestone in its efforts as it filed its sixth amended plan of adjustment for the Commonwealth of Puerto Rico. The case filed under Title III of PROMESA is the functional equivalent of chapter 11 restructuring. This particular deal for the first time brings to the table two key creditors, Ambac Financial Group and Financial Guaranty Insurance Company, with a proposed deal concerning debt issued by the Puerto Rico Infrastructure Financing Authority.

Mungovan told the *Litigation Daily* Tuesday morning that there's still plenty of work to do before the scheduled confirmation hearing for the plan in November, but this feels like the moment mountain climbers refer to as the time to "rush the peak."

"It's a really big deal that we've gotten to this point," said Mungovan, who's led a team of about 20 litigators overseeing litigation between the board and the Puerto Rican government. His group is just a sliver of the 100 or so lawyers at Proskauer who have been working for the board over the

past four-and-half years under the direction of Mungovan and firm bankruptcy chair **Martin Bienenstock**. Bienenstock heads the restructuring efforts alongside partner **Brian Rosen** with support from partners **Ehud Barak**, **Jeff Levitan**, and **Paul Possinger**. Mungovan and Bienenstock oversee the litigation effort with support from a large team including partners **Margaret Dale**, **Mike Firestein**, **Mark Harris**, **Mike Mervis**, **Lary Rappaport**, **John Roberts**, **Guy Brenner** and **Hadassa Waxman**.

Mungovan acknowledged there are still obstacles before a scheduled November confirmation hearing on the plan. Although the plan has increased support from creditors, the Puerto Rican government opposes certain pension cuts. Mungovan and his team sued the government earlier this month on behalf of the board, seeking to bar legislation that would effectively reinstate pension cuts that are part of the current plan.

"The approach board has tried to take, and that I've tried to take working with the board, is to be really respectful, but firm," Mungovan says.

He says that respect for the perspective of the legislators and the governor is a big part of it, but so is acknowledging that government officials are coming at the issues from a different perspective than the board given its mandate.

"They were elected for a reason, and they're doing what they believe is in furtherance of their constituencies interests in good faith," he said.

"As much as many litigators always make it about them or they would like it to be about them, it's not about us," Mungovan said. "It's not about the law firms or the professionals and, frankly, it's really not even about the board. It's about the Commonwealth," he said.