

MASLON

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November 7, 2019

Via E-filing and hand delivery

The Honorable John H. Guthmann
Ramsey County District Court
1470 Ramsey County Courthouse
15 Kellogg Boulevard West
St. Paul, MN 55102

**Re: *In the Matter of ... Proposed Northmet Project St. Louis County Hoyt Lakes
and Babbitt Minnesota***
Ramsey County Court File No. 62-cv-19-4626

Dear Judge Guthmann:

I write regarding the evidentiary hearing in the above-referenced matter, which is scheduled to commence on January 13, 2020. I represent three Relators: Minnesota Center for Environmental Advocacy, Friends of the Boundary Waters Wilderness, and Center for Biological Diversity. I do not represent Relators WaterLegacy or the Fond du Lac Band of Lake Superior Chippewa. My clients have selected me to be lead counsel for the evidentiary hearing. Unfortunately, due to a scheduling conflict beyond my control, I must request a modest continuance of the hearing, so that it would commence on January 21, 2020.

On October 11, 2019, the Court entered an order setting certain pre-hearing deadlines, and setting the commencement date for the evidentiary hearing as January 13, 2019. (Order Setting Prehearing Conference and Hearing, Docket No. 74, Oct. 11, 2019 (“Scheduling Order”).) Following this order, Relators continued to undertake expedited discovery and began diligently preparing for the hearing to commence on January 13, 2020. As part of this preparation, my clients have selected me to represent them at the evidentiary hearing.

However, an unavoidable conflict arose on November 1, 2019. I represent U.S. Bank National Association in *In re the Financial Oversight and Management Board for Puerto Rico as representative of The Commonwealth of Puerto Rico and as representative of Puerto Rico Electric Power Authority*, Case No. 17-04780-LTS (D.P.R.). On November 1, 2019, the U.S. District Court for the District of Puerto Rico issued an order in that matter that has changed a hearing that had been scheduled to take place on December 13 (and which had been rescheduled twice previously), which necessitates my request for a continuance in this matter. (Seventh Revised Order Extending and Establishing Certain Deadlines Applicable to the Joint Motion of Puerto Rico Electric Power Authority and AAFAF Pursuant to Bankruptcy Code Sections 263, 502, 922, and 928, and Bankruptcy Rules 3012(a)(1) and 9019 for Order Approving Settlements

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Embodied in the Restructuring Support Agreement, ECF No. 1716, Nov. 1, 2019 (“Puerto Rico Order”) (attached as Exhibit A.)

By way of background, we have been representing U.S. Bank as Indenture Trustee for \$8.3 billion of bond indebtedness of the Puerto Rico Electric Power Authority (“PREPA”) since 2014. PREPA went into reorganization proceedings in July 2017 pursuant to a specially enacted Congressional Act referred to as PROMESA. Recently several lawsuits were filed by other creditors of PREPA, as well as by the oversight body for Puerto Rico created by Congress, seeking to subordinate and restrict the lien rights of the bondholders for whom U.S. Bank is Trustee. There has also been a Restructuring Support Agreement entered into between approximately 90% of those bondholders which the oversight board and PREPA are seeking to have approved by the Court, and which is vociferously opposed by many creditors and others.

U.S. Bank’s motions to dismiss the various lawsuits, as well as the motion to approve the Restructuring Support Agreement, are both rescheduled to January 14 in San Juan. I was unable to influence the other parties or the Court in the rescheduling or the date chosen. U.S. Bank wants me to argue its Rule 12 motions and to be available to participate in other aspects of the hearing, which we have been working on for many, many months.

The continuance came about as the result of the filing, on October 31, 2019, made by various private and governmental parties filed an Urgent Joint Motion of Government Parties and Anticipated Objectors for Seventh Revised Order Extending and Establishing Certain Deadlines Applicable to the Joint Motion of Puerto Rico Electric Power Authority and AAFAF Pursuant to Bankruptcy Code Sections 362, 502, 922 and 928, and Bankruptcy Rules 3012(A)(1) and 9019 for Order Approving Settlement Embodied in the Restructuring Support Agreement (the “Urgent Motion”). (*Id.* at 2.) The next day, the U.S. District Court for the District of Puerto Rico granted the Urgent Motion and set deadlines that apply to U.S. Bank National Association, including the hearing to be held in Puerto Rico, on January 14, 2020. (*Id.* at 4.) Traveling to Puerto Rico for the Hearing will require me to be out of Minnesota at least from January 13 to at least January 15.

This Court has ordered that the evidentiary hearing in the matter before it will commence on January 13, 2020, and that the hearing will not be held on January 16 or 20. (Scheduling Order at ¶ 2.) Thus, unless the Court grants a modest continuance, I will be unavailable to represent my clients until January 17, which would be the fourth day of the hearing. My absence would prejudice my clients and effectively deprive them of their selected counsel at the hearing. As this hearing will require taking testimony of witnesses for whom there have been no depositions, or limited depositions, my clients have selected me due to my extensive trial experience and examination skills. My clients would not be represented at the evidentiary hearing by counsel for WaterLegacy or the Fond du Lac Band of Lake Superior Chippewa (who each have separate counsel and separate interests). Further, while co-counsel for my clients are excellent attorneys, none have my years of experience and skills honed over hundreds of trials. Further, my clients have a right to choose who will represent them at the hearing.

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I understand the Court has been ordered by the Court of Appeals order to commence this evidentiary hearing “as soon as practicable.” (Order, 1, Docket No. 70, Sept. 9, 2019.) This mandate, however, is flexible by its terms. ‘As soon as practicable’ does not mean this Court is under a certain deadline, or that this Court cannot amend its scheduling orders for good cause shown. Here, because I cannot attend the first three days of the hearing, commencing the hearing on January 13, 2020 is not practicable for my clients. It would be practicable to commence the hearing on January 21, 2020. Further, Relators have heretofore made every practicable effort to meet the Court’s deadlines, to undertake expedited discovery and prepare for the evidentiary hearing. In fact, my clients and co-Relators were diligently preparing for the evidentiary hearing to commence pursuant to the Court’s order—with me as lead counsel for my clients at the evidentiary hearing—until the Puerto Rico Order required my appearance for the 9019 Motion Hearing on January 14.

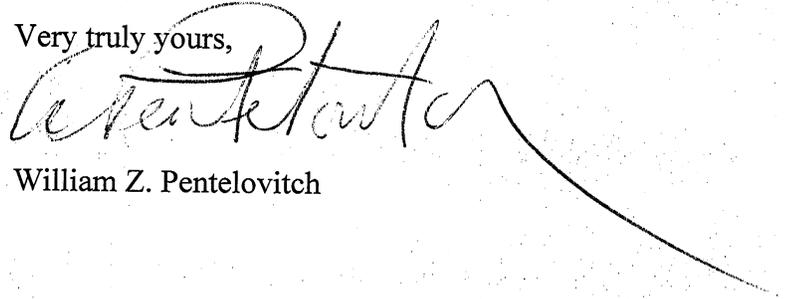
I have conferred with counsel for WaterLegacy and Fond du Lac Band of Lake Superior Chippewa regarding this request for a continuance, and they have no objection. I also emailed counsel for Respondents Minnesota Pollution Control Agency (“MPCA”) and Poly Met Mining, Inc. (“PolyMet”) to inquire whether they would not oppose this request. As of the writing of this letter, MPCA has not responded. PolyMet indicated that they would object to this request, stating that “given the stay of the NPDES [permit], PolyMet has an especially strong interest in an expeditious resolution of this matter.” (Email from Monte Mills to William Pentelovitch (Nov. 6, 2019) (attached as Exhibit B).) First, an eight-day continuance for good cause shown does not mean this matter is no longer expeditious. Second, PolyMet’s interest in haste is greatly outweighed by the public’s and judiciary’s interest in fully and fairly reviewing the issuance of permits necessary for PolyMet’s project.¹

I apologize for the inconvenience caused by this request; I would have much preferred to make my argument in Puerto Rico in December as scheduled (or in September, October, or November, as originally scheduled). Regrettably, good cause exists for a modest continuance of the evidentiary hearing, so that I may represent my clients at the evidentiary hearing. Therefore, on behalf of my clients Minnesota Center for Environmental Advocacy, Friends of the Boundary Waters Wilderness, and Center for Biological Diversity, I request that the Court grant an eight-day continuance of the evidentiary hearing, so that it commences on January 21, 2020.

¹ Indeed, PolyMet’s project is currently on hold not only by the stay of the NPDES permit, but the Court of Appeals has separately stayed PolyMet’s permits issued by the Minnesota Department of Natural Resources until the Court of Appeals issues its decision on the merits of appeals of those permits. (Order, *In the Matter of the NorthMet Project Permit to Mine Application Dated December 2017 (A18-1952, A18-1958, A18-1959)*, and *In the Matter of the Applications for Dam Safety Permits 2016-1380 and 2016-1383 for the NorthMet Mining Project (A18-1953, A18-1960, A18-1961, Oct. 24, 2019)* (attached as Exhibit C).)

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Very truly yours,

A handwritten signature in black ink, appearing to read "W. Pentelovitch", with a long, sweeping horizontal line extending to the right.

William Z. Pentelovitch

Enclosures

cc: Counsel of record (via Odyssey)

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p style="text-align: center;">as representative of</p> <p>THE COMMONWEALTH OF PUERTO RICO <u>et al.</u>,</p> <p style="text-align: center;">Debtors.¹</p>	<p>PROMESA Title III</p> <p>Case No. 17 BK 3283-LTS (Jointly Administered)</p>
<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p style="text-align: center;">as representative of</p> <p>PUERTO RICO ELECTRIC POWER AUTHORITY,</p> <p style="text-align: center;">Debtor.</p>	<p>PROMESA Title III</p> <p>Case No. 17 BK 4780-LTS</p>

SEVENTH REVISED ORDER EXTENDING AND ESTABLISHING CERTAIN
DEADLINES APPLICABLE TO THE JOINT MOTION OF PUERTO RICO ELECTRIC
POWER AUTHORITY AND AAFAF PURSUANT TO BANKRUPTCY CODE SECTIONS 362, 502,
922, AND 928, AND BANKRUPTCY RULES 3012(A)(1) AND 9019 FOR ORDER APPROVING
SETTLEMENTS EMBODIED IN THE RESTRUCTURING SUPPORT AGREEMENT [ECF No. 1235]

- 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 (the “Commonwealth”) (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”, and together with the Commonwealth, COFINA, HTA, ERS, and PREPA, the “Debtors”) (Bankruptcy Case No. 19-BK-5532-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

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Upon consideration of the *Urgent Joint Motion of Government Parties and Anticipated Objectors for Seventh Revised Order Extending and Establishing Certain Deadlines Applicable to the Joint Motion of Puerto Rico Electric Power Authority and AAFAF Pursuant to Bankruptcy Code Sections 362, 502, 922 and 928, and Bankruptcy Rules 3012(A)(1) and 9019 for Order Approving Settlements Embodied in the Restructuring Support Agreement [ECF No. 1235]* (ECF No. 1713 in Case No. 17-4780) filed October 31, 2019 (the “Urgent Motion”), and the Court having found and determined that (i) the Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1331 and 48 U.S.C. § 2166(a); (ii) venue of this proceeding is proper under 28 U.S.C. § 1391(b) and 48 U.S.C. § 2167(a); (iii) no party has objected to the proposed schedule set forth in the Urgent Motion; and (iv) the Court having found good cause to enter the modification to the schedule requested therein, it is HEREBY ORDERED THAT:

1. The following deadlines shall apply to any person or entity (i) that seeks discovery, (ii) from whom discovery is sought (whether by notice or subpoena), (iii) that objects to the 9019 Motion or to any discovery with respect thereto, or (iv) is a signatory to the RSA:²

November 25, 2019	Disclosure of rebuttal experts and service of rebuttal expert reports.
December 6, 2019	Deadline for Moving Parties, Objectors and Supporters to serve and disclose the declarations they plan to introduce in their respective principal cases (whether or not those declarations were previously served and disclosed), and to identify trial exhibits and any live testimony expected to be presented through third-party witnesses not under the participants’ control. ³

² Capitalized terms not defined herein shall have the same meaning as set forth in the original scheduling order related to the 9019 Motion (“Original Scheduling Order”) (ECF No. 1253). All parties in interest reserve all rights to seek relief from this schedule from the Court and to oppose any applications seeking such relief.

³ To the extent new declarations are served by this deadline from witnesses who have not been deposed or have not previously submitted declarations, the opposing parties shall have

EXHIBIT A

December 9, 2019	Deadline to exchange deposition designations.
December 11, 2019	Deadline for completion of expert depositions.
December 13, 2019	Deadline for counter-designations, objections to deposition designations, objections to declarations and exhibits, and designation of witnesses for cross-examination. The parties must promptly meet and confer in an effort to resolve any objections to declarations, designations, witnesses, and exhibits.
December 17, 2019	Deadline for any objections to deposition counter-designations.
December 18, 2019	Deadline for Moving Parties to file reply briefs and Supporters to file supporting statements.
December 20, 2019	Deadline for filing motions in limine. Parties may seek relief from this deadline upon a showing of cause and that such application shall not result in any delay of the 9019 Hearing Date. The Court retains discretion as to whether to (1) entertain later-filed motions in limine; and (2) set alternative briefing schedules for earlier-filed motions in limine.
January 3, 2019	Deadline for responses to timely motions in limine.
January 7, 2020	Deadline for replies in support of timely motions in limine. Any hearing on such motions to be set at the Court's discretion.
January 8, 2020	Deadline for parties to file a joint status report as to any remaining objections to declarations, deposition designations, witnesses, and exhibits.
January 8, 2020	Deadline for filing compilations of listed declarations and exhibits.
January 9, 2020	Deadline to deliver hard copy compilations of declarations and exhibits to the District of Puerto Rico courthouse for Judge

the right to take a deposition of the declarant within 7 days without waiver of any motions to exclude testimony by the declarant.

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	Swain and USB drive or DVD containing properly marked and identified exhibits and an exhibit list for the Clerk's Office. ⁴
January 14, 2020	Hearing on the 9019 Motion at 9:30 a.m. (Atlantic Standard Time) (the "9019 Hearing Date")

2. Aside from as set forth above, the *Fourth Revised Order Extending and Establishing Certain Deadlines Applicable to the Joint Motion of Puerto Rico Electric Power Authority and AAFAF Pursuant to Bankruptcy Code Sections 362, 502, 922, and 928, and Bankruptcy Rules 3012(A)(1) and 9019 for Order Approving Settlements Embodied in the Restructuring Support Agreement [ECF No. 1235]* (ECF No. 1639) (the "Fourth Revised Order"), as amended by the *Sixth Revised Order Modifying Certain Deadlines Applicable to the Joint Motion of Puerto Rico Electric Power Authority and AAFAF Pursuant to Bankruptcy Code Sections 362, 502, 922, and 928, and Bankruptcy Rules 3012(A)(1) and 9019 for Order Approving Settlements Embodied in the Restructuring Support Agreement* (ECF No. 1684), shall govern.⁵

3. This Order resolves Docket Entry No. 1713 in Case No. 17-4780.

SO ORDERED.

Dated: November 1, 2019

/s/ Laura Taylor Swain
HONORABLE LAURA TAYLOR SWAIN
UNITED STATES DISTRICT JUDGE

⁴ See [https://www.prd.uscourts.gov/promesa/sites/promesa/files/documents/23/Jury Evidence Recording System PROMESA_VS_MJB_MO.pdf](https://www.prd.uscourts.gov/promesa/sites/promesa/files/documents/23/Jury%20Evidence%20Recording%20System%20PROMESA_VS_MJB_MO.pdf)

⁵ Consistent with the Fourth Revised Order, new fact discovery requests, including deposition notices, will not be issued on or after September 8, 2019 other than to the extent permitted or required by Paragraph 2 in the Fourth Revised Order, the Fourth Joint Informative Motion Regarding Schedule for Motion to Compel Depositions of Nelson Morales and José Roque Torres (ECF No. 1699), or the Order on Motion to Compel (ECF No. 1678).

Evan Nelson

From: Monte A. Mills <MMills@greeneespel.com>
Sent: Wednesday, November 6, 2019 9:18 AM
To: Bill Pentelovitch; 'mmills@greeneespel.com'; 'jcmartin@hollandhard.com'
Cc: Margo Brownell; Evan Nelson; Floyd, Kathryn K.; Jay C. Johnson
(jjohnson@venable.com); Robisch, Kyle W.; Davida S. Williams; John C. Martin; Richard E. Schwartz; Susan M. Mathiascheck; Bryson C. Smith
Subject: RE: January 13 Hearing

Mr. Pentelovitch:

I try to accommodate scheduling conflicts whenever possible. But the unusual circumstances here constrain me from saying what I'd typically say. Almost a month ago, on October 11, Judge Guthmann set the hearing to begin on January 13, 2020. Judge Guthmann's order setting that hearing date said the parties could raise any other issues "with the exception of the hearing commencement date." Judge Guthmann's order also said, in all-caps font: "NO CONTINUANCES WILL BE GRANTED WITHOUT WRITTEN COURT PERMISSION." Judge Guthmann seems to be attempting to follow the court of appeals' August 6 instruction that "the hearing is to be held as soon as practicable." Further, the hearing cannot start on January 20 as you suggest because Judge Guthmann's order states that "[t]here will be no court on either January 16 or January 20." Finally, given the stay of the NPDES, PolyMet has an especially strong interest in an expeditious resolution of this matter. Under these circumstances, PolyMet objects to any delay in the hearing.

Monte A. Mills

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612.373.0830 *phone* 612.373.0929 *fax* www.greeneespel.com

From: Bill Pentelovitch <Bill.Pentelovitch@maslon.com>
Sent: Tuesday, November 5, 2019 2:14 PM
To: 'mmills@greeneespel.com' <mmills@greeneespel.com>; 'jcmartin@hollandhard.com' <jcmartin@hollandhard.com>
Cc: Margo Brownell <Margo.Brownell@maslon.com>; Evan Nelson <Evan.Nelson@maslon.com>
Subject: January 13 Hearing

Counsel:

Due to circumstances over which I have no control, I am required to attend a hearing in federal court in San Juan, Puerto Rico on January 14, 2020. Since I will be lead counsel for the relators in the hearing scheduled to begin on January 13, I therefore find it necessary to ask Judge Guthmann for a postponement of the commencement of the hearing to January 20, 2020. We plan to send a letter to Judge Guthmann forthwith. Please advise whether we can represent to the Court that you have no objection to the one week delay. Thank you.

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FILED

October 24, 2019

**OFFICE OF
APPELLATE COURTS****STATE OF MINNESOTA
IN COURT OF APPEALS**

In the Matter of the NorthMet Project
Permit to Mine Application Dated
December 2017 (A18-1952, A18-1958,
A18-1959), and In the Matter of the
Applications for Dam Safety Permits
2016-1380 and 2016-1383 for the
NorthMet Mining Project (A18-1953,
A18-1960, A18-1961).

ORDER
A18-1952
A18-1953
A18-1958
A18-1959
A18-1960
A18-1961

Considered and decided by Cleary, Chief Judge; Hooten, Judge; and Smith, Tracy
M., Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE
FOLLOWING REASONS:**

1. These consolidated appeals are taken from November 1, 2018 decisions by respondent Minnesota Department of Natural Resources (DNR) denying petitions for a contested-case hearing and issuing a permit to mine (PTM) and dam-safety permits (DSP) to respondent Poly Met Mining Inc. (PolyMet) in relation to its NorthMet project.

2. On July 26, 2019, relators moved to stay the permits pending this court's disposition of the appeals. On September 18, 2019, a special term panel of this court issued an order granting a temporary stay of the permits pending further order from this panel assigned to decide the appeals on the merits. The September 18, 2019 order directed

the parties to be prepared to discuss the propriety of continuing the stay at oral argument, which was held on October 23, 2019.

3. Based on the record and the arguments of the parties, we conclude that it is appropriate to continue the stay through this court's disposition of the appeals.

IT IS HEREBY ORDERED: The NorthMet permit to mine and dam safety permits 2016-1380 and 2016-1383 shall remain stayed pending a decision by this court on the merits of these appeals.

Dated: October 24, 2019

BY THE COURT



Edward J. Cleary
Chief Judge