

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

IN RE:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

EMPLOYEES RETIREMENT SYSTEM OF
THE GOVERNMENT OF THE
COMMONWEALTH OF PUERTO RICO
("ERS")

Debtors.¹

PROMESA
Title III

Case No. 17-cv-01685 (LTS)
Case No. 17-bk-03566 (LTS)

(Joint Administration Requested)

**OBJECTION TO MOTION OF CERTAIN SECURED CREDITORS
OF THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT
OF THE COMMONWEALTH OF PUERTO RICO FOR REQUEST FOR ADEQUATE
PROTECTION AND FOR RELIEF FROM THE AUTOMATIC STAY**

To the Honorable United States District Judge Laura Taylor Swain:

The Official Committee of Retired Employees of the Commonwealth of Puerto Rico (the "Retiree Committee") respectfully submits this opposition to the Motion of Secured Creditors of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("Movants") Request for Adequate Protection and for Relief from the Automatic Stay [D.I. 26] (the "Motion").

Preliminary Statement

1. The Retiree Committee represents the approximately 160,000 retirees of Puerto Rico who spent their working years earning the pensions and other benefits that are now threatened

¹ The last four (4) digits of ERS's federal tax identification number are 9686.

by the Commonwealth's and ERS's Title III Cases. Indeed, according to the Oversight Board, Puerto Rico owes \$49 billion in pension liabilities to its retirees, and by the Oversight Board's projections, the pension funds, including those that ERS administers, are expected to run out of money to fund those pension liabilities as soon as this summer. The Commonwealth's fiscal plan further proposes significant cuts to the retirees' pensions, which if approved, will cause extreme hardship to Puerto Rico's retirees.

2. Against this landscape, the Motion asks this Court to take money away from the already limited and inadequate general revenues—in effect, out of the pockets of the financially strapped retirees—and place that money in the hands of certain ERS bondholders. As set forth below, the Motion should be denied, not only because the relief it seeks is inequitable, but also because it fails as a matter of law.

Objection

3. The Retiree Committee joins in the objections set forth in the Opposition of Financial Oversight and Management Board to Motion of Certain Secured Claim Holders of Employees Retirement System of the Government of the Commonwealth of Puerto Rico for Adequate Protection and Stay Relief [D.I. 98] (the "Oversight Board Opposition").

4. As set forth in the Oversight Board Opposition, the ERS bondholders' financing statements are fatally defective by virtue of their failure to adequately describe their collateral, and as such, they have no enforceable lien on ERS property and no basis for relief from the stay. (Oversight Board Opposition at 12-16.) And as the Oversight Board argues, even if perfection were not an issue, the Motion should still be denied because Section 552(a) of the Bankruptcy Code precludes any lien from attaching to the post-petition employer contributions to which Movants claim a security interest and because Movants cannot establish that their purported collateral is diminishing in value. (*Id.* at 17; 25.)

5. In addition to joining in the objections set forth in the Oversight Board Opposition, the Retiree Committee makes a further point. The Motion suggests that there is some significance to ERS' and the Commonwealth's purported acknowledgement of the enforceability of Movants' liens in pre-Title III proceeding litigation. Putting aside the fact that the stipulations entered into in the *Altair* proceeding pertained only to employer contributions received during a limited time frame and reserved all of ERS' rights (*see* Motion, Ex. D at ¶¶ 2, 5; Ex. E at ¶¶ 1, 7), the Movants' argument that positions ERS and the Commonwealth took in the *Altair* proceeding somehow precludes the Oversight Board from now challenging the validity of the Movants' alleged liens is flatly inconsistent with Section 544 of the Bankruptcy Code.

6. Section 544(a), which is made applicable to this Title III proceeding pursuant to Section 301 of PROMESA, gives ERS the status of a judicial lien creditor and allows ERS, through the Oversight Board, to avoid any unperfected liens. 48 U.S.C. §§ 2161(a) (incorporating 11 U.S.C. § 544(a)(1)). Thus, even had ERS or the Commonwealth taken the position that the ERS bondholders' liens were secured in the pre-Title III litigation (and they did not actually do so), that position would not preclude *debtor* ERS (*id.* § 2161(c)(7)) from using the "strong-arm" powers of Section 544 to attack the validity of those liens. *See In re El Comandante Management Co.*, 404 B.R. 47, 54 (D. P.R. 2008) (holding that representations that the *pre-petition* debtor "are not material" in a preference action because the *post-petition* trustee is not bound by statements the debtor made before it filed its petition when bringing avoidance actions).

7. For each of these reasons, and as set forth in greater detail in the Oversight Board Opposition, the Retiree Committee respectfully requests that this Court deny the Motion.

Dated: June 21, 2017

Respectfully submitted,

JENNER & BLOCK LLP

BENNAZAR, GARCÍA & MILIÁN, C.S.P.

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