UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO, Debtor.[1]	PROMESA Title III Case No. 17-cv-01685 (LTS) Case No. 17-bk-03566 (LTS)
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO, Plaintiff, -against- ALTAIR GLOBAL CREDIT OPPORTUNITIES FUND (A), LLC, ET AL., Defendants-Counterclaimants.	Adv. Proc. No. 17-00213 (LTS)

[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 (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); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

REPLY OF OFFICIAL COMMITTEE OF RETIREES TO ERS BONDHOLDERS' OPPOSITION TO ERS'S MOTION FOR SUMMARY JUDGMENT ON ISSUES RELATING TO PERFECTION AND APPLICATION OF SECTION 552 OF THE BANKRUPTCY CODE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

INTRODUCTION

The Official Committee of Retirees of the Commonwealth of Puerto Rico submits this Reply to the "*ERS Bondholders' Brief in Opposition to the ERS's Motion For Summary Judgment On Issues Relating To Perfection And Application Of Section 552 Of The Bankruptcy Code*" [ECF 120]. The Committee limits this Reply to the issues raised in Section I and III of the Bondholders'[2] Opposition—whether the Bondholders properly perfected their security interest under the Puerto Rico Uniform Commercial Code and the post-petition effect of section 552 of the Bankruptcy Code on their security interest—and supports the Plaintiff ERS's Motion for Summary Judgment on these and the other issues.

REPLY

I. The Prepetition Employer Contribution Obligations Were Not Binding Obligations.

To support their arguments that ERS's name change does not affect the perfection of their security interest and that section 552 does not terminate their security interest in postpetition ERS receipts, the Bondholders argue that the employers who were Employee Retirement System members, whether or not they had any employees, had absolute obligations to make employer contributions to ERS, those obligations were ERS's prepetition assets, ERS pledged those assets to the Bondholders, and actual cash received is proceeds of those obligations.[3] Even if it were correct to characterize employer contribution obligations, rather than the actual "Revenues" pledged in the Bond Resolution, as the collateral, which the Committee does not concede, there were and are in fact no binding employer obligations that could serve as collateral until obligations become fixed or payments are actually made.

[2] Capitalized terms used in this Reply without definition have the meanings ascribed to them in the Committee's Opposition to the Bondholders' Motion for Summary Judgment [ECF 139].
[3] Bondholders' Opp., Dkt. No. 120, ¶¶ 44-57.

> The ERS Bonds Official Statement made this clear to the Bondholders, twice:
>
> The Legislature of the Commonwealth could reduce the Employer Contribution rate or make other changes in existing law that adversely affect the amount of Employer Contributions.

O.S. at 26, 37.[4] The Bond Resolution contained an implied warning to the same effect:

> The System shall oppose any attempt by the Legislature of the Commonwealth to reduce the Employers' Contribution Rate or to make any other change in the Act or any other relevant legislation that would have a material adverse effect on Bondholders. Such opposition shall include delivering written position papers … to make legislators and other government officials aware that such reductions in the Employers' Contribution Rate or other changes may adversely affect the ability of the System to comply with its obligations ….

Bond Resolution, § 709(2).[5]

Thus, the purported asset—the asset that the Bondholders argue generates the proceeds they claim as collateral—was only a revocable obligation or a future expectation, which is no asset at all. It became an asset only when the trigger for each payment—an employee providing services and earning a paycheck—occurred. A right to payment does not become property until the payment obligation arises. For example, where before bankruptcy, a debtor suffered crop losses and expected crop disaster relief funds, funds the debtor became entitled to receive under the crop disaster relief program Congress enacted after bankruptcy were not property of the debtor as of the commencement of the case, even though the debtor's entitlement to the funds was determined before bankruptcy. *Bracewell v. Kelley*, 454 F.3d 1234, 1239 (11th Cir. 2006); *Burgess v. Sikes*, 438 F.3d 493, 503 (5th Cir. 2006) (en banc). Though the debtors' crop losses were "sufficiently rooted in the prebankruptcy past," *Segal v. Rochelle*, 382 U.S. 375, 380 (1966), there was no property right until the expectancy was converted into a binding obligation. And as a thoughtful

[4] Copy attached to Committee's Joinder of Intervenor to Motion to Dismiss the Amended Complaint in *Altair Global v. Commonwealth*, Adv. Proc. No. 17-219, Dkt. No. 43, Ex A, at 30, 41.
[5] Copy attached to Committee's Joinder of Intervenor to Motion to Dismiss the Amended Complaint in *Altair Global v. Commonwealth*, Adv. Proc. No. 17-219, Dkt. No. 43, Ex A, at 232.

analysis of bankruptcy's effects on securitization shows, "[e]xecutory future flows are *not* assets; they are cash flows dependent on some event occurring in the future that creates an asset.… It is true that assets such as receivables also represent future cash flows. The difference is that the event upon which the cash flows depend has already occurred." Thomas J. Gordon, *Securitization of Executory Future Flows as Bankruptcy-Remote True Sales*, 67 U. CHI. L. REV. 1317, 1318-19 (2000) (emphasis in original; footnotes omitted). Here, postpetition employer contribution obligations, if any, become fixed only upon events that will occur postpetition, employees' providing postpetition services and earning compensation.

Once revoked or otherwise terminated by the Puerto Rico Legislative Assembly, there was no property and therefore no proceeds to which the Bondholders' security interest court attach. *See* U.C.C. § 9-203(b)(2) (a security interest does not attach until the debtor (here, ERS) has rights in the collateral). The Legislative Assembly did in fact terminate the obligation—twice. H.R. Concurrent Resolution 188, § 4, adopted June 6, 2017, provides:

> 3) employer contributions by the Central Government, Public Corporations, and Municipalities to the Puerto Rico Government Employee Retirement System and to the Teachers' Retirement System shall be eliminated, given the burden that the respective payments to these systems' pensioners places on the General Fund;
>
> 4) the obligation to pay the Additional Uniform Contribution [under 3 L.P.R.A. § 787q] shall be eliminated.

To the same effect, Act 106-2017, § 2.4, adopted August 23, 2017,[6] provides:

> (d) As of July 1, 2017, Participants will no longer make any individual contributions or payment to the Accumulated Pensions Payment Account or any additional contributions to their respective Retirement Systems.
>
> (e) As of July 1, 2017, the Government of Puerto Rico, Public Corporations, Municipalities, Legislative Branch, Judicial Branch and other covered entities shall no longer be required to make employer contributions, including the

[6] Copy of Act 106-2017 attached to the Amended Complaint in *Altair Global v. Commonwealth*, Adv. Proc. No. 17-219, Dkt. No. 39, Ex. C, at 23.

> Uniform Additional Contribution, and the Teacher's Justice Uniform Contribution, to the Accumulated Pensions Payment Account or the Retirement Systems, but they will be required to pay the applicable "Pay-Go" Fee, as applicable to each one based on the parameters established in this Law.

Thus, even if the prepetition employer contribution obligations were a temporary asset of ERS that it could pledge to secure the Bonds, there are no longer any employer contribution obligations to generate postpetition proceeds in which the Bondholders could retain a security interest, nor are there even employer contributions. The Bondholders no longer have any collateral or proceeds of collateral.[7]

II. The ERS Bondholders' Security Interest Is Not Perfected.

A. ERS's 2013 Name Change Terminated The Perfection (If Any) Of The Bondholders' Security Interest.

The ERS Bondholders do not dispute that the English version of ERS's legal name was changed in 2013,[8] that the Bondholders' filed their 2008 Initial Financing Statements and 2015 Financing Statement Amendments only under ERS's 2008 English name, and that they did not file new or amended financing statements under ERS's new name.[9] Nor do they dispute that to maintain a perfected security interest in collateral a debtor acquires more than four months after its name change, Revised Article 9 (as well as original Article 9) requires the filing of a name-change amendment or new financing statement under the debtor's new correct legal name. *See*

[7] To the extent, if any, that the Puerto Rico statutes violated the Bondholders' property rights, which the Committee disputes, their remedy lies elsewhere, and the Bondholders have already asserted such claims in a different adversary proceeding in this Title III case. *Altair Global v. Commonwealth*, Adv. Proc. 17-219.

[8] Act No. 3-2013 (eff. July 1, 2013). Act No. 3-2013 clearly designates ERS's new name in Section 1 of the Act and uses that full new name in at least twenty operative sections of the Act. The old name of ERS is used primarily in the Statement of Motives portion of the Act, for historical references, and in an abbreviated form, generically (e.g., "Systems").

[9] The fact that the Spanish name of ERS did not change when its official English name changed does not help the ERS Bondholders. Puerto Rico's UCC filing office does not translate the English corporate or entity names on UCC financing statements into Spanish nor does it maintain a dual filing system for corporate entities under both their English and Spanish names. The name of the debtor on the UCC financing statement as filed is what is maintained in the filing office.

§R9-507(c)(2).[10] As a result, ERS's name change made ERS's name on the Initial Financing Statements seriously misleading.[11] A search under ERS's new name reveals no financing statements on file against it.[12]

In response, the Bondholders argue that ERS's Complaint does not allege lack of perfection based on the name change, and the pleadings in the case do not use ERS's new name. No matter. A complaint need not plead every legal theory supporting a claim, only "a short and plain statement of the claim showing the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Morales-Vallellanes v. Potter*, 339 F.3d 9, 14 (1st Cir. 2003) ("[A] complaint sufficiently raises a claim even if it points to no legal theory …." (quoting *Tolle v. Carroll Touch, Inc.*, 977 F.2d 1129, 1134 (7th Cir. 1992))). The Complaint placed in issue whether the Bondholders security interest was perfected, which was sufficient to put lack of perfection at issue, on whatever legal ground. And if necessary, the

---

[10] 19 L.P.R.A. §2327(c)(2):

> (c) **Change in debtor's name.** if the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under §2323(a) of this title so that the financing statement becomes seriously misleading under §2326 of this title:
>
> ….
>
> (2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four (4) months after the filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed with four (4) months after the event.

[11] Section R9-503(a)(1) [19 L.P.R.A. §2323(a)(1), eff. Jan 17, 2013] provides:

> (a) **Sufficiency of debtor's name**. A financing statement sufficiently provides the name of the debtor:
>
> (1) … if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, *only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend or restate the registered organization's name.* (Emphasis added.)

Section R9-506(b) and (c) [19 L.P.R.A. §2326(b) and (c), eff. Jan. 17, 2013] provide:

> (b) **Financing statement seriously misleading**. Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with § 2323(a) of this title is seriously misleading.
>
> (c) **Financing statement not seriously misleading**. If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with § 2323(a) of this title, the name provided does not make the financing statement seriously misleading.

[12] Exhibit 11 to the Committee's Opposition [ECF 139], which is a certificate in response to a UCC financing statement search, authenticated by Louis G. Rivera Marin, Secretary of State of Puerto Rico, certifying that as of November 14, 2017, no financing statements are on file under ERS's current legal name, "Retirement System for Employees of the Government of the Commonwealth of Puerto Rico."

pleadings may be amended to conform to the undisputed proof that the Bondholders did not file financing statements or amendments under the ERS's current official name. Fed. R. Civ. P. 15(b)(1).

Nor does it matter that the FOMB has used ERS's unofficial or prior name in the pleadings in this adversary proceeding or elsewhere or that ERS's original name remains a carryover in various places in ERS's Enabling Statute.[13] Section 9-503(a)[14] expressly provides that the correct current legal name of the debtor as officially designated by the state must be used to maintain perfection in after-acquired property of that debtor. Article 9 provides for a filing system to put third parties on notice of a secured party's security interest in the debtor's collateral. The integrity and proper operation of the Article 9 filing system requires that the debtor's correct current legal name, not a seriously misleading prior name, be used on financing statements to maintain perfection of security interests in the debtor's after-acquired collateral.

The relevant fact is that the ERS name was changed as recorded in Puerto Rico's official records and the ERS Enabling Statute. How the parties refer to themselves in these proceedings or otherwise does not control whether, under Revised Article 9, the Bondholders maintained a perfected security interest in Pledged Property acquired more than four months after ERS changed its name. What matters is ERS's official name and the failure of the Bondholders to amend their Initial Financing Statements to change the debtor name to ERS's official name within four months after its name was changed. As a result, the ERS Bondholders' security interest in any property acquired by ERS more than four months after its name-change became unperfected.

The Bondholders also attempt to avoid the effect of ERS's name change on the perfection of its security interest by arguing that the Bondholders' collateral was acquired in 2008 upon ERS's

[13] See note 8, *supra*.
[14] 19 L.P.R.A. §2323(a)(1), eff. Jan 17, 2013, quoted in note 11, *supra*.

pledge of the employers' contributions.[15] As shown above, the asset the Bondholders claim as collateral was illusory and did not extend to employer contributions made postpetition. As such, future employer contributions were not proceeds. The future employer contributions became collateral only when the employer's actual obligation to pay arose. Under the statutes in effect in 2008 and at the time of the filing of this Title III case, an employer's obligation to ERS arose only when its employees actually worked and earned a paycheck. That obligation was not in existence, let alone acquired by ERS, in 2008.

B. Sections R9-704 and R9-707(b) Do Not Extend The Life Of The Bondholders' Lapsed Initial Financing Statements.

The ERS Bondholders misconstrue §R9-704[16] and §R9-707(b)[17] to argue that these are transition rules that extend the duration of their financing statements from five years to some longer period.[18] Nothing in either of these sections grants an extension to a financing statement subject to Puerto Rico's new five year duration.[19] Under R§9-704, an unperfected security interest becomes perfected when applicable requirements for perfection are satisfied. Because the Initial Financing Statements had lapsed, the "applicable requirement" to perfect the Bondholders' unperfected security interest when Revised Article 9 fully took effect on January 16, 2014 was to file a new financing statement adequately describing the collateral. The Bondholders didn't do so, so their security interests remain unperfected.

---

[15] Bondholders' Opp. ¶¶ 34-35, at 17-18.
[16] 19 L.P.R.A. §2404.
[17] 19 L.P.R.A. §2407(b).
[18] ERS Bondholders Br., Dkt. No. 120, ¶ 17.
[19] *See* Committee Opposition to Bondholders' Motion for Summary Judgment, Dkt. No. 139, at 9-12. Under §9-515(a) and the transition rules of part 7 of Revised Article 9 in Puerto Rico, the duration of the Initial Financing Statements lapsed after five years because they were ineffective due to an insufficient collateral description.

Similarly, under §R9-707(b), the ERS Bondholders could have amended their pre-effective date financing statements, but again only in accordance with the rules that applied for doing so when Revised Article 9 took effect:

> (b) **Applicable law.** After this act takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement *only in accordance with the law of the jurisdiction governing perfection as provided in Subchapter 3*.[20]

To amend their pre-effective date Initial Financing Statements, the Bondholders had to do so before they lapsed; thereafter they had to file new financing statements. They did neither and therefore cannot use §R9-707(b) to extend the duration of their lapsed Initial Financing Statements to 2015 and 2016 when they filed their Financing Statement Amendments.

C. The Puerto Rico UCC Corrective Transition Amendment Applied Retroactively To Existing Secured Transactions.

The Bondholders argue that their 2008 Initial Financing Statement remained effective for 10 years, despite Puerto Rico's adoption of Revised Article 9 in 2013, because PL17-2014, the 2014 correction of a drafting error in Revised Article 9's initial enactment to shorten the duration of a financing statement to five years,[21] did not apply to existing financing statements.[22] They cite no authority for that proposition. In fact, PL17-2014 amended three sections of Revised Article 9. Those sections were already subject to §R9-702, which provides that except as otherwise provided in Revised Article 9, Revised Article 9 applies to a transaction or lien within its scope "even if the transaction or lien was entered into or created before this act [Revised Article 9] takes effect." Two of the three amended sections are transition sections of Revised Article 9—§R9-703(b) and §R9-

[20] 19 L.P.R.A. § 2407(b) (eff. Jan. 17, 2013) (emphasis added).
[21] Revised Article 9 became effective in Puerto Rico on January 17, 2013. To conform to Revised Article 9 as adopted in the 50 states, §R9-515(a) was intended to reduce the duration of a financing statement to five years, as shown by its section heading and other subsections. But due to a drafting error, subsection (a) mistakenly contained a 10-year duration. PL 17-2014, enacted on January 16, 2013 and effective one year later, corrected that error.
[22] ERS Bondholders Br., ¶18.

705(c). PL17-2014's modification of transition sections for existing secured transactions shows a clear intent that the amendments to apply to those sections. That PL17-2014's express purpose was to correct a drafting error, rather than change policy, also shows a clear intent that the amendments be subject to §R9-702. Moreover, because of PL 17-2014's delayed effective date, the Bondholders had one year to address its consequences. They took no action, perhaps mistakenly relying on the transition provisions of Revised Article 9 that applied to perfected security interests when in fact their Initial Financing Statements were ineffective to perfect their security interests.

III. Section 552 Terminated the ERS Bondholders' Security Interest.

A. The Prepetition Employer Contribution Obligations Were Not ERS Assets That Could Generate Proceeds Protected Under Section 552(b).

In their Opposition to ERS's motion for summary judgment, the Bondholders argue that section 552 does not terminate or limit their security interest in postpetition employer contributions to ERS, because those contributions are proceeds of the prepetition employer contribution obligations. As shown above, those obligations were never binding. They were not an asset that could generate proceeds indefinitely into the future. Even if they generated proceeds until the Puerto Rico Legislative Assembly's adoption of House Concurrent Res. 188 and Act 2017-106, they no longer do. Thus, section 552(b) does not continue a security interest in any employer payments, whether to the Commonwealth under those statutes' PAYGO system or to ERS.

Even if the employers' obligations were binding, Congress's enactment of the special revenue amendments shows that Congress did not intend future revenues be treated as proceeds of a "right to receive" revenues in a municipal bankruptcy case. The Senate Judiciary Committee Report made clear that a municipal bankruptcy special revenue exception to section 552 was needed for future revenues precisely because future revenues are not proceeds unless the payment owing to the municipality was fixed before bankruptcy. The Report distinguished between

"revenues which are collected after the filing, but which are proceeds of tax assessments or levies made before the filing" and "those which are assessed, levied and collected after filing." S. Rept. No. 100-506, at 6 (1988). In the case of the former, "[t]he right to collect an assessed tax, where the only matter remaining outstanding is the collection of the revenue, would seem to be 'property' and the subsequent revenue would be 'proceeds' thereof," *id*., much as the postpetition collection of a prepetition account receivable is proceeds. But here, the payments were not fixed or owing before bankruptcy, so the postpetition revenues are not proceeds. Indeed, 3 L.P.R.A. 782 requires employers to make contribution payments to ERS *only* once the ERS Administrator certifies to the employer the contributions rates or amounts for a particular year, and then *only* concurrently with the employer's payments to its employees.

B. The Code's Special Revenue Provisions Do Not Apply To The Bondholders' Security Interest.

As an alternative argument to their claim to a security interest in proceeds under section 552(b), the Bondholders try to escape section 552 entirely. They argue the Bankruptcy Code's special revenue provision apply to their security interest by characterizing ERS as a "system" that provides "services" to perform "particular functions," as those terms are used in section 902(2)(A) and (D). Congress did not intend such a broad construction and application of chapter 9's special revenue provisions. Although reference to the legislative history is disfavored where the statute is unambiguous, the terms "system," "services," and "particular functions" could be subject to multiple meanings. Thus, the House and Senate Judiciary Committee Reports on the 1988 special revenue bond amendments, which reflect the same concepts, are reliable and appropriate indicators of Congressional intent in providing special treatment to special revenues. The House and Senate Committee Reports make clear the definition's narrower scope:

> General obligation bonds are like unsecured debt. Special revenue bonds, on the other hand, are usually backed by and repaid only from the revenues generated from the physical asset built with the money raised by the bond offering.

H.R. Rept. No. 100-1011, at 4 (1988).

> Revenue bonds are issued to finance projects or programs, and the revenues from such a project or program are pledged to prepay the bonds—for example, toll roads, water systems, sports and convention centers, health care facilities, sewer and waste water treatment facilities, power generating facilities, waste disposal facilities, or low and moderate income house programs.…
>
> At the same time the municipality approves financing through a revenue bond project or program, however, it has made the assumption that the project or program will generate adequate revenues to repay the bondholders and operate the project or program without any general financial obligation on the part of the municipality.

S. Rept. 100-506, at 4-5 (1988).

Thus, "special revenues" was not intended to encompass payments such as the employer contributions, which do not derive from any income-producing asset, let alone a physical asset, financed with the bond proceeds. Here, the Bonds were not issued to provide financing to create the Employer Contributions, so the Employer Contributions are not "special revenues."

C. The Bondholders' Argument Would Deny Bankruptcy's Fresh Start To Municipal Debtors.

If the Bondholders' arguments were the law, a municipality could permanently mortgage its future, precluding any possible bankruptcy relief. The legislative history of the 1988 special revenue amendments shows that Congress rejected such a position, adhering instead to bankruptcy's important fresh start policy to permit distressed municipalities to restructure their debts. *See Local Loan Co. v. Hunt*, 292 U.S. 234, 244-45 (1934).

In 1980, the House and the Senate each passed a bill that would have repealed section 552 in municipal bankruptcy cases for all municipal bonds, but the bill failed for unrelated reasons.[23]

[23] 126 Cong. Rec. 26,492 (House, Sept. 22, 1980); *see* H.R. Rep. No. 96-1195, at 6 (1980) ("**1980 House Report**"); 126 Cong. Rec. 31,146 (Senate, Dec. 1, 1980). The argument then was that lenders would be unwilling to lend to municipalities in distress—at the time, Cleveland—if they risked having their liens cut off by a chapter 9 petition. Hearing Before the Subcommittee on Monopolies and Commercial Law of the Committee on the Judiciary, House of

The National Association of Bond Lawyers and the National Bankruptcy Conference ("**NBC**") criticized the 1980 attempt as "hasty and ill-considered." House Hrgs. 27-28; Senate Hrgs. 537-38. The NBC Report explained:

> [I]f the municipality's revenues could be pledged in perpetuity, the rehabilitative prospects for a financially distressed municipality would be impaired or non-existent. The only asset that a municipality has to offer its creditors in a municipal reorganization is its future revenues. If some creditors have obtained a priority with respect to these revenues due to prior financing, then reorganization would be next to impossible unless other creditors are willing to give up their claims entirely.

NBC Rep. at 8.The NBC Report noted further, a "debtor does not acquire rights in revenues until the tax or assessment is levied or the service from which the revenue is derived is provided." *Id*. at 9.

Congress agreed. It rejected the overly broad exemption for municipal bonds proposed in 1980, which would have eliminated section 552 in municipal bankruptcy cases altogether. Instead, Congress adopted the 1988 special revenue amendments, limiting the kinds of bonds the Bankruptcy Code would protect in a municipal bankruptcy: Except to secure a narrowly defined class of special revenue bonds, a municipality may not pledge its revenues in perpetuity. Bondholders may not sweep postpetition revenues, prevent the municipality from adjusting its debts, and start a death spiral leading to a municipal black hole, where nothing escapes. Rather, only bonds secured by special revenues that were generated by the project the bonds financed would survive a chapter 9 filing. These carefully crafted amendments would have been both unnecessary and ineffective if a transfer of future revenues were effective and granted property rights. Instead, agreeing with the NBC report, Congress concluded that a "debtor does not acquire

---

Representatives, on H.R. 3845, 100th Cong., 2d Sess. 26-27 (1988) ("**House Hrgs.**"), available at http://heinonline.org/HOL/Page?handle=hein.cbhear/cbhearings4289&start_page=I&collection=congrec&id=1; Hearing Before the Subcommittee on Courts and Administrative Practice of the Committee on the Judiciary, United States Senate, 100th Cong. 2d Sess. 536-37 (1988) ("**Senate Hrgs.**") (Report of the National Bankruptcy Conference ("**NBC Rep.**")), available at http://heinonline.org/HOL/Page?handle=hein.cbhear/cbhearings3602&start_page=I&collection=congrec&id=1.

rights in revenues until the tax or assessment is levied or the service from which the revenue is derived is provided." NBC Rep. at 9.

Twenty-eight years later, Congress incorporated its 1988 policy decision, without any modification, into PROMESA. That policy must be applied in these cases as Congress intended.

CONCLUSION

For the foregoing reasons, the Retiree Committee respectfully requests summary judgment in favor of Plaintiff Financial Oversight and Management Board as representative of the Employees Retirement System of the Commonwealth of Puerto Rico.

November 22, 2017

Respectfully submitted,

JENNER & BLOCK LLP

By:
/s/ Robert Gordon
Robert Gordon (admitted *pro hac vice*)
Richard Levin (admitted *pro hac vice*)
919 Third Ave
New York, NY 10022-3908
rgordon@jenner.com
rlevin@jenner.com
212-891-1600 (telephone)
212-891-1699 (facsimile)

Catherine Steege (admitted *pro hac vice*)
Melissa Root (admitted *pro hac vice*)
353 N. Clark Street
Chicago, IL 60654
csteege@jenner.com
mroot@jenner.com
312-222-9350 (telephone)
312-239-5199 (facsimile)

BENNAZAR, GARCÍA & MILIÁN, C.S.P.

By:
/s/ A.J. Bennazar-Zequeira
A.J. Bennazar-Zequeira
Edificio Union Plaza
PH-A piso 18
Avenida Ponce de León #416
Hato Rey, San Juan
Puerto Rico 00918
ajb@bennazar.org
787-754-9191 (telephone)
787-764-3101 (facsimile)

Counsel for The Official Committee of Retired Employees of Puerto Rico