

**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

THE COMMONWEALTH OF PUERTO RICO,  
*et al.*,

Debtors.<sup>1</sup>

PROMESA  
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

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.

PROMESA  
Title III

No. 17 BK 3566-LTS

**JOINDER OF THE OFFICIAL COMMITTEE OF RETIRED EMPLOYEES OF THE  
COMMONWEALTH OF PUERTO RICO TO ERS'S OPPOSITION TO THE PUERTO  
RICO FUNDS' MOTION CONDITIONING THE AUTOMATIC STAY  
ON THE CONTINUATION OF ERS BONDHOLDER PROTECTIONS**

<sup>1</sup> The Debtors in these jointly-administered PROMESA Title III cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are: (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 (Bankruptcy Case No. 17 BK 3284) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686).

The Official Committee of Retired Employees of the Commonwealth of Puerto Rico (the “**Retiree Committee**”) hereby submits this joinder to the *Opposition to the Puerto Rico Funds’ Motion Conditioning the Automatic Stay on the Continuation of ERS Bondholder Protections or, Alternatively, to Enforce the Court’s July 17, 2017 Order* [Dkt. No. 1978] (the “**Opposition**”) filed by the Employees Retirement System (“**ERS**”).

1. On November 28, 2017, certain creditors holding bonds issued by ERS filed *The Puerto Rico Funds’ Motion Conditioning the Automatic Stay on the Continuation of ERS Bondholder Protections or, Alternatively, to Enforce the Court’s July 17, 2017 Order* [Dkt. No. 1866] (the “**Motion**”). In their Motion, the ERS Bondholders argue that the Court should order the continued payment of post-petition interest.

2. On December 12, 2017, the FOMB on behalf of ERS filed its Opposition, pointing out that the ERS bondholders alleged liens in certain funds are adequately protected by the fact that since October 31, 2017, when interest payments stopped, “nothing has diminished the Bondholders’ alleged lien rights in the prepetition and postpetition accounts.” (Opposition at ¶2.)

3. The Retiree Committee joins the FOMB and ERS in opposing the Motion for the reasons stated in the Opposition. In addition, the Retiree Committee notes that when the FOMB filed the Joint Stipulation that is the subject of the Motion with the Court, the Retiree Committee filed a Response and Reservation of Rights [Dkt. No. 803, Ex. A hereto] stating that (a) despite the FOMB’s representation that it would provide the Retiree Committee with a copy of the Joint Stipulation and opportunity to comment on it before it was filed, the FOMB failed to do so, and (b) the Retiree Committee objected to the payment of interest to the ERS bondholders because doing so would not preserve the status quo, but would instead improve the ERS bondholders’

position by among other things paying interest to bondholders that they might not be entitled to receive and in circumstances where their alleged collateral was not diminishing in value.

4. As FOMB asserts in its Opposition, the purpose of adequate protection is to protect the value of the creditor's collateral as of the petition date, not to improve the creditor's position. (See Opposition at ¶¶ 9-10.) Based on ERS's representation that nothing has diminished the value of the deposits in the accounts on which the ERS Bondholders claim a lien and that those accounts are being held pending this Court's ruling on the summary judgment motion, there is no reason to pay the ERS Bondholders' post-petition interest. Preserving the *status quo* does not mean conducting business as usual; it means standing in place. Making interest payments does not preserve the *status quo*, it changes it.

5. Moreover, because the funds held in the accounts are less than the amount owed to the ERS bondholders, the ERS bondholders are under-secured creditors, at best, and not entitled to interest payments. See 48 U.S.C. § 301 incorporating 11 U.S.C. §506(b); *United Savings Assoc. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 382 (1988)). While the ERS bondholders have argued that they continue to enjoy a lien in payments to be made in the future by various government entities to the Commonwealth (and not ERS), if that argument were found to be valid (and it is not), the existence of those future payments itself provides the adequate protection, making the payment of interest today unnecessary to provide adequate protection. Indeed, as the Retiree Committee noted in its previously-filed Reservation, the Court should not allow the payment of interest when there is a real question about the ERS bondholders' entitlement to the same and no adequate means of recouping the funds if they have been paid in error.

WHEREFORE, the Retiree Committee respectfully requests that the court enter an order denying the Motion and granting such other relief as may be just.

December 15, 2017

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By:

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# Exhibit A

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

THE COMMONWEALTH OF PUERTO RICO,  
*et al.*

Debtors.<sup>1</sup>

PROMESA  
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**RESERVATION OF RIGHTS OF THE OFFICIAL COMMITTEE OF  
RETIRED EMPLOYEES OF THE COMMONWEALTH OF  
PUERTO RICO WITH RESPECT TO THE ERS JOINT STIPULATION**

The Official Committee of Retired Employees of the Commonwealth of Puerto Rico (the “**Retiree Committee**”) submits this reservation of rights (the “**Reservation of Rights**”) with respect to the *Joint Stipulation Regarding (I) Motion of Certain Secured Claimholders of Employees Retirement System of the Government of the Commonwealth of Puerto Rico for Adequate Protection and Stay Relief and Reservation of Rights and (II) Motion of Debtors Pursuant to PROMESA Section 301(a) and Bankruptcy Code Sections 105(a), 362(a), 365, and 922 for Entry of an Order Confirming Application of the Automatic Stay, Stay of Prepetition Lawsuits and Actions and Application of Contract Protection*, dated July 14, 2017 [Dkt. No. 170

<sup>1</sup> The Debtors in these jointly-administered PROMESA title III cases (these “**Title III Cases**”), along with each Debtor’s respective title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are: (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 (Bankruptcy Case No. 17 BK 3284) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686).

in Case No. 17-BK-3566 (LTS)] (the “**ERS Stipulation**”) and so ordered by this Court on July 17, 2017 [Dkt. No. 171 in Case No. 17-BK-3566 (LTS)]. In support of its Reservation of Rights, the Retiree Committee states as follows:

### **Reservation of Rights**

1. The Retiree Committee is a statutorily created committee pursuant to 11 U.S.C. § 1102(a)(1). The Retiree Committee’s constituents—the Commonwealth’s approximately 160,000 retirees—are owed at least \$49 billion in pension liabilities, making them the largest group of creditors in these Title III Cases.

2. On May 31, 2017, certain holders of bonds (the “**ERS Bondholders**”) issued by title III debtor The Employment Retirement System of The Government of The Commonwealth of Puerto Rico (“**ERS**”) filed the *Motion of Certain Secured Claimholders of Employees Retirement System of the Government of the Commonwealth of Puerto Rico for Adequate Protection and Stay Relief and Reservation of Rights* [Dkt. No. 26 in Case No. 17-BK-3566 (LTS)] (the “**ERS Motion**”).

3. On June 21, 2017, the Retiree Committee timely filed its objection to the ERS Motion, in which it joined the objection filed by the Financial Oversight and Management Board (the “**Oversight Board**”). [Dkt. Nos. 98, 99 in Case No. 17-BK-3566 (LTS).] The Court did not rule on the ERS Motion at the June 28, 2017 hearing. Instead, the Court continued the hearing to allow parties the opportunity to negotiate a consensual resolution of the ERS Motion.

4. Following the June 28, 2017 hearing, counsel for the Retiree Committee requested, and counsel for the Oversight Board agreed to provide, a draft of any proposed stipulation resolving the ERS Motion. Regrettably, despite this agreement (and despite the fact that the Oversight Board *did* share a draft of the stipulation with the Official Committee of

Unsecured Creditors (the “UCC”), the Oversight Board did not provide the Retiree Committee with a draft of the proposed stipulation. In addition to being told it would be allowed to comment on any stipulation, the Retiree Committee was told that the Commonwealth would not pay interest to the ERS Bondholders. Counsel for the Retiree Committee did not see the ERS Stipulation until the Oversight Board filed it with the Court late in the evening on Friday, July 14. This Court entered the ERS Stipulation on the next business day, Monday, July 17.<sup>2</sup>

5. Had the Retiree Committee had the opportunity to review the ERS Stipulation before it was filed with this Court, it would have raised the issue it now raises in this Reservation of Rights: the payment of interest to the ERS Bondholders. The ERS Stipulation provides for the payment of interest to the ERS Bondholders through October 1, 2017 (the “**Interest Payments**”), from the Post-Petition Segregated Account (as defined in the ERS Stipulation). The Retiree Committee files this Reservation of Rights to preserve its ability, as a party in interest and statutory committee, to demand that the ERS Bondholders return the Interest Payments to ERS’s estate.

6. Pursuant to the terms of the ERS Stipulation, Debtor ERS, through the Oversight Board, has filed an Adversary Proceeding for a declaratory judgment attacking the validity, priority, extent and enforceability of the prepetition liens and security interests asserted by the ERS Bondholders. To the extent the Oversight Board prevails in its Adversary Proceeding, the ERS Bondholders should be required to return all Interest Payments to the ERS estate. In addition, the Retiree Committee reserves all rights with respect to any and all claims for the return of the Interest Payments and with respect to the validity of the ERS Bondholders’ liens,

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<sup>2</sup> As noted by the UCC in its reservation of rights, there was some confusion about the deadline to object or respond to the ERS Stipulation. (Dkt. No. 734.)



including but not limited to those claims not raised by the Oversight Board in its Adversary Proceeding, such as the validity of the authorization of the ERS bonds.

July 28, 2017

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