

**UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO**

<p>Brigade Leveraged Capital Structures Fund Ltd., <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>Alejandro Garcia-Padilla, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil No. 16-1610 (FAB)</p>
<p>National Public Finance Guarantee Corporation,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>Alejandro Garcia-Padilla, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil No. 16-2101 (FAB)</p>
<p>Dionisio Trigo-Gonzalez, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>Alejandro Garcia-Padilla, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil No. 16-2257 (FAB)</p>
<p>U.S. Bank Trust National Association, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>The Commonwealth of Puerto Rico, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil No. 16-2510 (FAB)</p>

**RESPONSE OF DEFENDANTS THE COMMONWEALTH OF PUERTO RICO AND  
ALEJANDRO J. GARCIA PADILLA, JUAN C. ZARAGOZA GOMEZ, LUIS F. CRUZ  
BATISTA, AND VICTOR SUAREZ MELENDEZ, IN THEIR OFFICIAL CAPACITIES  
("THE COMMONWEALTH DEFENDANTS"), TO THE MOTION AND OPPOSITION  
OF THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD**

## STATEMENT OF THE COMMONWEALTH DEFENDANTS

The Commonwealth of Puerto Rico has been denied the benefit of the litigation stay that Congress and the President believed would be critical to both the implementation of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”) and the Commonwealth’s ability to address its financial crisis. Instead of receiving the “immediate—but temporary—stay [that] is essential to stabilize the region for the purposes of resolving this territorial crisis,” PROMESA § 405(m)(5), 48 U.S.C. § 2194(m)(5), the Commonwealth and its officials have been subjected to constant litigation over the application of the PROMESA stay. In the two months since August 22, 2016, when the Court ruled that the PROMESA stay applies in these cases, the Commonwealth has had to devote its attention and resources to preparing for two full-blown, multi-day evidentiary hearings, filing no fewer than 44 substantive briefs in this Court, and addressing claims across 14 different cases.

The results, as the Commonwealth attempted to show during the September 22, 2016 hearing, are a massive disruption to the Commonwealth’s efforts to deal with its existing financial emergency and a serious impediment to the Commonwealth’s ability to fulfill its obligations under PROMESA. And still there is no end in sight. Creditors are filing new cases, and existing plaintiffs are trying to narrow and re-cast their collection actions to circumvent the statutory litigation stay. In the absence of intervention by this Court, the Commonwealth will have to devote even more time and resources to addressing the new and pending cases. At present, the PROMESA stay may be the least effective litigation stay in American history.

The Oversight Board’s opposition to plaintiffs’ motions reflects this unfortunate but undeniable reality. The Board agrees that “[t]he unprecedented fiscal crisis facing the Commonwealth, and Congress’ clear intention in staying litigation against the Commonwealth, its instrumentalities, and its public officials for a short period of time to allow for a ‘breathing spell’

are well documented and not in dispute.” Dkt. No. 137, Ex. A at 21 (citing PROMESA §§ 405(m), (n)). The Board also agrees that “the Commonwealth’s limited resources are better spent working with the Oversight board and helping the Oversight Board begin its monumental tasks of negotiating fiscal plans and ensuring that Puerto Rico regains access to capital markets, rather than litigating the four cases, the other eight related cases the Commonwealth is currently defending, and the additional cases that will likely follow in the event the stay is lifted.” Dkt. No. 137, Ex. A at 21. Moreover, the Board acknowledges the evidence the Commonwealth produced at the September 22, 2016 hearing “outlining the severe adverse impact that it believes lifting the stay and deciding the merits of the parties’ claims could have on the Commonwealth and its ability to function, and demonstrating that even without resolution of the constitutional issues, negotiations are possible.” *Id.*, Ex. A at 22 (citations omitted). Accordingly, the Board is asking the Court to deny plaintiffs’ motions and to preserve the PROMESA stay.

The Commonwealth Defendants respectfully submit that the Court should deny the requests of plaintiffs to lift the PROMESA stay in these cases and all other cases. As the Oversight Board observed, it does not appear “that any of the Plaintiffs would suffer irreparable or even material harm during the pendency of the stay: whatever damages the Plaintiffs would incur would be quantifiable and could be dealt with as part of the negotiation process or in future restructuring proceedings under PROMESA.” *Id.*, Ex. A at 10. The same is true in all of the cases where various creditors and insurers are claiming some “special” status that would justify lifting the PROMESA stay. In fact, these plaintiffs are merely trying to gain an early tactical advantage for themselves in the inevitable negotiations and restructuring proceedings that will take place under PROMESA, without regard for the prejudicial impact on the Commonwealth of this prolonged litigation. The burdens of this litigation, and the litigation about this litigation, are threatening the entire

PROMESA process. Unless the Court exercises its authority to give the Commonwealth the “breathing room” it needs under PROMESA, the situation will only worsen.

The Commonwealth Defendants are committed to trying to make the PROMESA process work. They are committed to providing necessary and relevant information to the Oversight Board and creditors. They are committed to achieving the goals of PROMESA, including regaining access to capital markets, while protecting the health, safety, education, and welfare of the residents of Puerto Rico. But the Commonwealth cannot make progress toward these objectives when facing an onslaught of lawsuits by various creditors and insurers. The Commonwealth Defendants ask the Court, therefore, to deny the motions to lift the stay in these cases and in other cases, so the Commonwealth can focus its resources on addressing the financial crisis and working with the Oversight Board, as directed by PROMESA.

#### **CONCLUSION**

For the foregoing reasons, the Commonwealth Defendants respectfully ask the Court to deny the plaintiffs’ motions to lift the stay.

**RESPECTFULLY SUBMITTED.**

**I HEREBY CERTIFY** that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

In San Juan, Puerto Rico, this 28<sup>th</sup> day of October, 2016.

**ANTONETTI MONTALVO & RAMIREZ COLL**  
P.O. Box 13128  
San Juan, PR 00908  
Tel: (787) 977-0303  
Fax: (787) 977-0323

**s/ Salvador Antonetti-Zequeira**  
SALVADOR ANTONETTI-ZEQUEIRA  
USDC-PR No. 113910  
santonet@amrclaw.com

**s/ José L. Ramírez-Coll**  
JOSÉ L. RAMÍREZ-COLL  
USDC-PR No. 221702  
jramirez@amrclaw.com

and

**KIRKLAND & ELLIS LLP**  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
Tel: (202) 879-5000  
Fax: (202) 879-5200

**s/ Michael F. Williams**  
MICHAEL F. WILLIAMS  
*Pro Hac Vice*  
mwilliams@kirkland.com

**s/ Peter A. Farrell**  
PETER A. FARRELL  
*Pro Hac Vice*  
pfarrell@kirkland.com