

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

NATIONAL PUBLIC FINANCE  
GUARANTEE CORPORATION

Plaintiffs,

v.

ALEJANDRO GARCÍA PADILLA et al.,

Defendants.

CIVIL NO. 16-2101 (FAB)

**NOTICE OF AUTOMATIC STAY**

**TO THE HONORABLE COURT:**

COME NOW co-defendants Hon. Alejandro García Padilla, Hon. Juan C. Zaragoza Gómez and Hon. Luis F. Cruz Batista, in their respective official capacities (collectively “Defendants”), specially appearing and without submitting to the jurisdiction or venue of this Court, and hereby state and pray as follows:

1. The Complaint in this case was filed on June 15, 2016. Docket No. 1.
2. Summons on the appearing Defendants was served on June 16, 2016. Docket No. 19. The deadline to answer the Complaint or otherwise plead, as extended by this Court, expires on July 11, 2016. Id.; Docket No. 27.
3. On June 22, 2016 plaintiff filed a Motion for Partial Summary Judgment. Docket No. 21. The Court ordered that any response to this motion must be filed by July 11, 2016. Docket No. 23.

4. On June 30, 2016, the President of the United States signed into law the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA” or the “Act”), S. Res. 2328, Pub. L. No. 114-\_\_\_ (2016).<sup>1</sup>

5. While preserving all other arguments about the effects of PROMESA, arguments that will be asserted after careful review of the newly enacted legislation, Defendants respectfully request that the Court acknowledge that this litigation has been temporarily stayed by the Act.

6. Section 405(b)(1) of PROMESA mandates the automatic stay of, among others, “the . . . continuation . . . of a judicial . . . proceeding against the Government of Puerto Rico<sup>2</sup> that was . . . commenced before the enactment of this Act” with respect to a “Liability,” as said term is defined in the Act.<sup>3</sup> This temporary stay shall last until at least February 15, 2017. PROMESA, Section 405(d)(1).

7. PROMESA defines the term “Liability” as:

... a bond, loan, letter of credit, other borrowing title, obligation of insurance, or other financial indebtedness, including rights, entitlements, or obligations whether such rights, entitlements, or obligations arise from contract, statute, or any other source of law related to such a bond, loan, letter of credit, other borrowing title, obligation of insurance, or other financial indebtedness in physical or dematerialized form, of which—(A) the issuer, obligor, or guarantor is the Government of Puerto Rico; and (B) the date of issuance or incurrence precedes the date of enactment of this Act.

PROMESA, Section 405(a)(1).

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<sup>1</sup> See, <https://www.gpo.gov/fdsys/pkg/BILLS-114s2328enr/pdf/BILLS-114s2328enr.pdf>

<sup>2</sup> The term “Government of Puerto Rico,” as defined in PROMESA, includes officers such as Defendants, sued in their official capacity (Section 405(i)(1)), as well as government instrumentalities (Section 5(11)).

<sup>3</sup> Defendants respectfully submit that Section 405(b)(1) of PROMESA mandates a stay in two different situations: (1) the commencement or continuation of a proceeding with respect to a “Liability” and (2) an action to recover a “Liability Claim” (as defined in Section 405(a)(2) of the Act) arising before the enactment of the Act. This conclusion is supported not only by the clear language of the statute, but also by its legislative history. See Report from the Committee on Natural Resources of the House of Representatives (to accompany H.R. 5278), Rept. 114-602 at 51 (“This section automatically stays **all litigation** against Puerto Rico and its instrumentalities, **as well as** any other judicial, administrative or other action or proceedings to enforce or collect claims.”) (emphasis added).

8. Plaintiff alleges that it “insures \$2.4 billion in debt issued by the Commonwealth (including general obligation debt), as well as debt issued by the Puerto Rico Sales Tax Financing Corporation (“COFINA”), PRHTA [the Puerto Rico Highways and Transportation Authority], and the Puerto Rico Industrial, Tourist, Educational, Medical, and Environmental Control Facilities Financing Authority (“AFICA”).” Docket No. 1 at ¶ 3. Plaintiff claims that it “has a variety of property and contractual rights pertaining to this insured debt” (*id.*), including the alleged “right, among others, to timely payment of principal and interest on the debt that it insures.” *Id.* at ¶ 4.

9. Plaintiff’s lawsuit, commenced before the enactment of PROMESA with respect to a “Liability” as defined in Section 405(a)(1) of the Act, falls squarely within the temporary stay provisions of Section 405(b) of PROMESA. These provisions are self-executing and this action must be automatically stayed until February 15, 2017 or as provided by Section 405(d) of PROMESA.

10. In approving PROMESA, Congress found that Puerto Rico is undergoing a “fiscal emergency” and that “an immediate—but temporary—stay is essential to stabilize the region for the purposes of resolving this territorial crisis.” PROMESA, Section 405(m)(1) and (5). It declared that such stay “advances the best interests common to all stakeholders, including but not limited to a functioning independent Oversight Board” (to be appointed pursuant to PROMESA) that will need time to determine “whether to appear or intervene on behalf of the Government of Puerto Rico” in this and other litigation pending before this Court, and that the stay is “limited in nature and narrowly tailored to achieve the purposes of this Act.” PROMESA, Section 405(m)(5).

**WHEREFORE**, Defendants respectfully request that the Court take note of the above and automatically stay all proceedings until February 15, 2017, or as provided by Section 405(d) of PROMESA.

**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 7<sup>th</sup> day of July, 2016.

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