UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

Brigade Leveraged Capital Structures Fund Ltd., *et al.*, Plaintiffs, v. Alejandro Garcia-Padilla, *et al.*, Defendants.	Civil No. 16-1610 (FAB)
National Public Finance Guarantee Corporation, Plaintiff, v. Alejandro Garcia-Padilla, *et al.*, Defendants.	Civil No. 16-2101 (FAB)
Dionisio Trigo-Gonzalez, *et al.*, Plaintiffs, v. Alejandro Garcia-Padilla, *et al.*, Defendants.	Civil No. 16-2257 (FAB)
U.S. Bank Trust National Association, *et al.*, Plaintiff, v. The Commonwealth of Puerto Rico, *et al.*, Defendants.	Civil No. 16-2510 (FAB)

POST-HEARING BRIEF 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")

INTRODUCTION

At the § 405(e) hearing on September 22 and September 23, 2016, the parties in these consolidated cases presented the Court with two alternatives. On the one hand, the Commonwealth Defendants asked the Court to maintain the stay established by § 405 of the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA"), 48 U.S.C. § 2194, so that the Commonwealth could focus its resources on addressing the financial crisis and preparing to meet its obligations under PROMESA. This approach would require the Court to keep the stay in place for just over four months more, and it would provide an opportunity for the Oversight Board established by PROMESA to decide whether to participate in these cases and to present briefing on its positions. Maintaining the temporary stay under § 405 would allow for the potential involvement of other stakeholders with interests in the disputes raised by the plaintiffs. This approach would also allow the Commonwealth and the Oversight Board to make progress toward the objectives of PROMESA before turning their attention to this litigation.

On the other hand, the plaintiffs in these cases urged the Court to turn immediately to the merits of their lawsuits. Under this approach, the Court would resolve the plaintiffs' claims (or partial claims) on an *ad hoc* basis simply because these plaintiffs were the first to the courthouse. The Court, the plaintiffs, and the Commonwealth Defendants would proceed to litigation, with consequences for the Commonwealth and its residents, as well as consequences for the processes that Congress established in PROMESA. This approach would not afford the Oversight Board its statutory opportunity to become meaningfully involved in the litigation. The only benefit to this second approach is that the Court would begin to address plaintiffs' claims now, rather than addressing those claims after the expiration of the PROMESA stay on February 15, 2017.

The Commonwealth Defendants submit that only the first of these two approaches is consistent with the text and purposes of PROMESA. Moreover, the evidence presented at the

hearing established that lifting the stay would cause significant harm to the Commonwealth and the PROMESA processes. At the same time, plaintiffs have not put forward any valid basis in argument or evidence for lifting the stay and proceeding to the merits of their claims. For these reasons, and for the reasons set forth at the hearing, the Commonwealth Defendants respectfully ask the Court to deny plaintiff's motions to lift the stay under PROMESA § 405(e)(2).

ARGUMENT

I. LIFTING THE STAY WOULD CAUSE SIGNIFICANT HARM TO THE COMMONWEALTH AND ITS PEOPLE.

The evidence that lifting the stay would cause significant harm to the Commonwealth and its residents was essentially undisputed at the hearing. As set forth below, the Commonwealth Defendants demonstrated that lifting the stay would cause serious harm in three respects: (1) by diverting important Commonwealth personnel and resources from addressing the financial crisis and the Government's obligations under PROMESA; (2) by creating the risk that this Court or other courts may enter rulings that impede the ability of the Commonwealth to perform basic government functions for the people of Puerto Rico; and (3) by compounding the burdens and risks resulting from continued litigation by incentivizing more plaintiffs to file lawsuits and to ask that the Court lift the stay in their cases.

First, lifting the stay will divert important Commonwealth personnel and resources from addressing the immediate financial crisis and the Government's obligations under PROMESA. This litigation is already drawing Commonwealth officials away from their governmental responsibilities in the face of the financial crisis. As Assistant Secretary of the Treasury Yaimé Rullán-Cabrera explained, Commonwealth officials "have had to provide all the documentary information in preparation for this and other litigation." 9/23/16 Tr. at 75:16–17. Ms. Rullán recounted that she has "had to testify in this and other cases, other litigation, and also have …

needed to provide all the necessary information to build the state's case." *Id.* at 75:22–25.

The burdens of litigation—even at this preliminary stage, which is supposed to be limited to resolving the application of the PROMESA stay—are interfering with the efforts of Ms. Rullán and others to govern the Commonwealth on a day-to-day basis. *See id.* 90:5–6 ("So, therefore, my duties as assistant treasurer – the work that I perform is running behind."). The need to support the litigation has an impact that extends beyond requiring the attention of the Commonwealth officials who actually testify in court. *See id.* 90:6–9 ("And I have also had to designate additional resources from the Treasury area in order to gather the necessary information so we can prepare for the case …."). Moreover, the burdens associated with litigation affect "not only what are the daily duties [of governance] but also the work that [Commonwealth officials] perform with the Working Group in order to provide the necessary information to complete what would be a sustainable fiscal recovery plan." *Id.* at 90:9–12. The litigation burdens affect both the internal personnel and resources of the Commonwealth, as well as those of the Commonwealth's outside advisors. *See id.* at 138:23–139:1. Lifting the stay would contravene PROMESA's purpose of allowing "the Government of Puerto Rico a limited period of time during which it can focus its resources on negotiating a voluntary resolution with its creditors instead of defending numerous, costly creditor lawsuits." PROMESA § 405(n)(2).

It bears emphasis that the PROMESA stay was intended to allow the Commonwealth to deploy the resources it needs "to address an immediate existing and imminent crisis." *Id.* § 405(n)(1). The evidence at the hearing demonstrated in stark terms how that purpose is already being subverted by litigation over the stay. During the hearing, Ms. Rullán and the Treasury Department were in the midst of dealing with an island-wide power outage. *See* 9/23/16 Tr. at 88:23–89:2. Minutes before testifying, Ms. Rullán received a call from Banco Popular

concerning overdrafts on the police payroll account resulting from the blackout. *See id.* at 89:3–89:5. Immediately after testifying, Ms. Rullán had to authorize transactions so there would be funding to deal with the crisis. *See id.* at 89:5–89:7. As Ms. Rullán explained to the Court: "The crisis is real and I see it every day." *Id.* at 89:8. Lifting the stay here would only result in more, and potentially more damaging, diversion of the Commonwealth's personnel and resources.

Second, lifting the stay creates the risk that this Court or other courts may enter rulings that impede the ability of the Commonwealth to perform basic government functions for the people of Puerto Rico during the most difficult phase of the financial crisis. Separate and apart from the burdens associated with litigation, the plaintiffs are seeking relief that would disrupt the Government's processes for managing the Commonwealth, interfere with the government's ability to provide essential services to residents of the Commonwealth, and threaten the vitality of instrumentalities of the Commonwealth. As Ms. Rullán testified, invalidating Act 21 and the executive orders would restrict the Commonwealth's ability, "in an ordered [and] structured manner, [to] pay the assets that [it] currently ha[s] right now while the [Oversight] Board comes and a final fiscal plan is established." *Id.* at 88:3–6. Ms. Rullán went on to describe the impact of invalidating the existing laws on government operations:

> And in turn, but not less important, in practical and operational terms, when not having enough funds to cover debts, which it would imply not having the executive orders or the Moratorium Act, ***we would be obligated to just paralyze the Government*** and wait for enough collections to come in in order to accrue enough monies to pay the Government obligations, which, in fact, would be impossible because the agencies themselves who are in charge of the oversight, of those collections coming into the Government, would not be operational.

Id. at 88:9–18 (emphasis added). The result would be a "death spiral": a paralyzed government would be unable to provide essential services, resulting in economic contraction and in turn leading to even more impairment of the Commonwealth's ability to fund the essential services necessary to promote economic stability and growth. *See id.* 88:19–23 ("And we would also

have to stay the payment of payroll, of tax refunds, of payment suppliers, which potentially are the only ones who currently are generating some fiscal activity, which in turn is what generates enough so that we can comply with our general obligations."). In this respect, lifting the stay would bring about the opposite effect from PROMESA's stated purpose of providing "the Government of Puerto Rico with the resources and the tools it needs to address an immediate existing and imminent crisis." PROMESA § 405(n)(2).

Third, lifting the stay in any of these cases raises the prospect of compounding the harms to the Commonwealth and its people by inviting even more litigation from other creditors and insurers. As the United States explained in its statement to this Court,[1] there is a "cascading effect that granting relief to one creditor may have on the overall scheme designed by PROMESA." Statement of Interest of the United States at 6. This risk is not merely hypothetical. At least two additional cases, involving dozens of the Commonwealth's creditors, have been filed in just the ten days since the hearing. *See Altair Global Credit Opportunities, et al. v. Garcia Padilla, et al.*, No. 3:16-cv-02696 (D.P.R) and *Scotiabank de Puerto Rico v. Garcia-Padilla, et al.*, No. 3:16-cv-02736 (D.P.R.). A slew of still other creditors have remained on the sidelines to date but will almost certainly join the race to the courthouse that will emerge if the Court grants plaintiffs here the relief that they seek. This multiplicity of suits against the Commonwealth—along with the prospect of additional hearings on whether to lift the stay, one of which is already scheduled for November 3—will not only tax the Commonwealth's limited resources, it will also increase the number of creditors who will be pursuing their claims against the Commonwealth outside the PROMESA framework, further undermining the comprehensive restructuring effort that PROMESA was designed to facilitate.

[1] The Commonwealth Defendants agree with the United States's position on whether to lift the PROMESA Stay, as set forth in its Statement of Interest, Dkt. No. 116, 3:16-cv-01610-FAB.

Although the plaintiffs contend that the Court could lift the stay in a manner that is limited to each of their claims, a ruling allowing any of their claims to proceed "will invite other participants in the litigation process to seek to do the same." 9/23/16 Tr. at 223:4–6. As Dr. Jonathan Arnold explained, plaintiffs who "have already filed a case will also seek to have stays lifted, either under the precise basis that the Court uses to grant a lifting of the stay or picking at the edges and trying to expand it and trying to analogize whatever the new Plaintiffs' situation is to the ones that have already appeared before the Court." *Id.* at 223:9–14. The result will be a "wave of litigation, first at the stage of petitioning to lift the stay, and then to the extent that it's granted, then it will be the ongoing litigation after that." *Id.* at 223:15–18. Accordingly, a ruling that lifts the stay with respect to any of these plaintiffs is likely to touch off more lawsuits, invite more requests to lift the PROMESA stay, and, if allowed, more litigation on the merits. This will further exacerbate the harm to the Commonwealth set forth above, and it will further deprive the Commonwealth of breathing room from litigation that PROMESA is supposed to provide.

II. LIFTING THE STAY WOULD CONTRAVENE THE EXPRESS PURPOSES OF PROMESA AND DISRUPT THE MECHANISMS CONGRESS ESTABLISHED FOR ADDRESSING THE FINANCIAL CRISIS.

As with the evidence of harm to the Commonwealth, the evidence of disruption to the PROMESA process that was presented at the hearing was essentially undisputed. As set forth below, the Commonwealth Defendants demonstrated that lifting the stay now would contravene the purposes of PROMESA in the following ways: (1) by depriving the Oversight Board of its statutory opportunity to participate in cases involving the Commonwealth; (2) by interfering with the Oversight Board's ability to address the financial crisis on a comprehensive basis; and (3) by creating the risk of *ad hoc* and potentially inconsistent resolutions in individual cases that would frustrate the Oversight Board's ability to coordinate a consolidated approach to restructuring the Commonwealth's debts.

First, lifting the stay now and allowing litigation to proceed in any of these cases will deprive the Oversight Board of its opportunity to put forward its own position on the issues. One of the basic purposes of the PROMESA stay is to allow "a functioning independent Oversight Board created pursuant to this Act to determine whether to appear or intervene on behalf of the Government of Puerto Rico in any litigation that may have been commenced prior to the effectiveness or upon expiration of the stay." PROMESA § 405(m)(A). The Board has already convened, elected a chairperson, announced initial designations of "covered entities" under the Act, and announced that it will reconvene later this month. *See* General Public Release, Financial Oversight and Management Board for Puerto Rico (Sept. 23, 2016), attached as Ex. A. Indeed, on October 7, 2016 the Oversight Board filed a motion asking the Court for additional time to determine whether it will intervene and participate in these cases. *See* Dkt. No. 126, 3:16-cv-01610-FAB. On this record, there is no good reason to lift any stay before the Oversight Board has had the chance to make its views known to the Court.

Second, lifting the stay will interfere with the Oversight Board's ability to address the financial crisis on a comprehensive basis. In enacting PROMESA, Congress explicitly found that a "comprehensive approach to fiscal, management, and structural problems and adjustments that exempts no part of the Government of Puerto Rico is necessary, involving independent oversight and a Federal statutory authority for the Government of Puerto Rico to restructure debts in a fair and orderly process." PROMESA § 405(m)(4). The Board is responsible for taking into account the interests of all stakeholders, with the benefit of the best available information, in working to develop a fiscal plan for the Commonwealth. *See id.* § 201(a)–(b). It is also charged with making recommendations to the Commonwealth and its officials relating to financial stability and economic growth, including recommendations concerning "the effects of

the territory's laws and court orders on the operations of the territorial government." *Id.* § 205(a)(7). In short, the Oversight Board is central to the operation of the PROMESA regime.

Allowing these plaintiffs' claims to proceed would hinder the work of the Oversight Board. In the words of Elizabeth Abrams, who leads the restructuring team for Puerto Rico at Millstein & Co., "lifting the stay and having creditors pursue individual litigations on a variety of different claims effectively preempts the Oversight Board." 9/23/16 Tr. at 139:12–14. As Ms. Abrams explained, "[t]he Oversight Board has fairly broad authority to oversee, for lack of a better word, the negotiations to set the rules and ultimately to approve the restructuring agreements that are reached." *Id.* at 139:15–18. If the stay were lifted in these cases, however, "[i]nstead of reaching a restructuring agreement subject to the Oversight Board, creditors are instead litigating solutions in court," and "the purpose of the Oversight Board is effectively preempted." *Id.* at 139:19–22. In the end, the plaintiffs' approach would sacrifice the Oversight Board's position within the PROMESA process in the interest of securing some advantage in future proceedings for these particular plaintiffs. That result turns PROMESA on its head.

Despite the central role of the Oversight Board to the PROMESA process, the plaintiffs repeatedly argued that the Court should lift the stay for purposes of "set[ting] the rules of the road as the Oversight Board begins its work." *See* 9/22/16 Tr. at 24:12–13 (J. Polkes). The problem with this argument is that PROMESA expressly gives the Oversight Board a role in deciding what the "rules of the road" will be. Congress could have taken an approach that allowed precedent-setting litigation to proceed while the Board was becoming operational, so the Board would have the benefit of judicial opinions when it began its work. PROMESA does just the opposite, however, imposing a stay of litigation that is intended to preserve the Board's right to appear and intervene in litigation involving the Commonwealth. *See* PROMESA § 405(m)(A).

To be sure, PROMESA respects the important role of Article III courts in interpreting the law. The PROMESA stay is temporary in duration, lasting only until February 15, 2017. *See id.* § 405(d)(1)(A)(i). This temporary stay does not alter the rights of the parties in any substantive respect. *See id.* § 405(k). PROMESA also provides for the designation of a specially-appointed federal judge to preside in restructuring cases brought under Title III of the Act. *See id.* § 308. But the process that Congress established in PROMESA is far more comprehensive and detailed than the approach that plaintiffs urge on the Court, under which the Court might issue advisory opinions about constitutional questions because the Board would not understand the law otherwise. *See* 9/22/16 Tr. at 23:2–3 ("Now, how can the Oversight Board know if those are legally appropriate liens unless Your Honor decides it?") (J. Polkes). Indeed, the process that Congress actually established in PROMESA has provisions, like § 405, that are plainly designed to deter the resolution of individual creditors' claims before the Board is fully operational.

Third, lifting the stay will create the risk of *ad hoc* and potentially conflicting resolutions in cases like this, where the plaintiffs are asking for disparate—and even inconsistent—rulings from the Court. There was at least one point on which Brigade's restructuring expert (Bradley Meyer), the Commonwealth Defendants' restructuring expert (Elizabeth Abrams), and the Commonwealth Defendants' economics expert (Jonathan Arnold) were all in agreement: the advantage of a consolidated approach to restructuring the debts of an entity like Puerto Rico. *See id.* at 192:4–6 ("Q. That is, if you want to fix the problem and you can do it, you would go for a consolidated approach; true? A. If you could, yes.") (B. Meyer); *see* 9/23/16 Tr. at 101:22–24 (E. Abrams); *id.* at 222:5–11 (J. Arnold). As Ms. Abrams explained, "the optimal outcome for the Commonwealth is to reach a settlement with all of its … holders of its tax supporte[d] debt at once. It's the most fair and equitable way for the Commonwealth to determine – and for the

creditors to determine what the appropriate recoveries are, given that all of their debt is … effectively supported by the same economy." *Id.* at 101:25–102:6. One of the benefits of having an Oversight Board at the center of the PROMESA process is that there exists an entity capable of organizing a consolidated approach to restructuring the Commonwealth's tax-supported debts.

The plaintiffs' claims here demonstrate how piecemeal litigation would preclude a consolidated approach to restructuring. The plaintiffs in each of the cases are asking the Court to issue rulings that would advance their own particularized interests without regard for the impact on other stakeholders. Two sets of plaintiffs currently before the Court—both creditors of the Government Development Bank ("GDB")—are asking for relief that is at odds with the other's interests. The *Trigo* plaintiffs are asking for invalidation of an executive order, Executive Order 2016-10, *see* Dkt. No. 1, 3:16-cv-02257-FAB at 14, that the *Brigade* plaintiffs acknowledge to have preserved the liquidity of GDB, *see* Dkt. No. 35, 3:16-cv-01610-FAB ¶ 7. At the same time, both sets of plaintiffs are seeking invalidation of a statute that allegedly benefits (and presumably would be defended by) a third set of GDB creditors who are not currently before the Court. *See* Dkt. No. 52, 3:16-cv-01610-FAB ¶ 29. While each of these plaintiffs depicts its request to lift the stay as motivated by an unselfish desire to establish ground rules for an eventual restructuring, the fact of the matter is they are all actually trying to secure an advantage in anticipated proceedings that will occur under Title III or Title VI of PROMESA.

The plaintiffs' requests for piecemeal resolution of their claims are antithetical to the consolidated restructuring approach. As Ms. Abrams testified, "if you have got a handful or even one creditor pursuing a litigated resolution, the value that they get pursuant to that is carved out of the consolidated approach." 9/23/16 Tr. at 140:7–10. If the Court lifts the stay and resolves these plaintiffs' claims now, "you again have this kind of piecemeal approach where

creditors that are not part of that litigation or that are seeking a consensual resolution with the Commonwealth are potentially prejudiced by value being cleaved off and handed to other creditors." *Id.* at 140:10–15. One of the objectives of the PROMESA stay, however, is that "instead of having a rush to be the first in line to get money out of the GDB or to get paid on one particular bond issue or another, … there would be a more systemic process that would give an assurance of equitable distribution of the monies that are available to be paid to creditors." *Id.* at 221:24–222:4 (J. Arnold); *see also* 9/22/16 Tr. at 13:11–14 ("It is also intended to avoid the proverbial race to the courthouse and prevent creditors from trying to grab assets from the estate and, thus, impede an orderly restructuring.") (B. Kaminetzky). This is because the restructuring is far more likely to achieve an equitable result "by maintaining a stay and having all claims considered in parallel, rather than having one or two or five cases have a stay lifted and having them proceed ahead of other people." 9/23/16 Tr. at 222:7–11 (J. Arnold).

In the final analysis, plaintiffs' requests to lift the PROMESA stay for a resolution (or partial resolution) of their claims offer a stark choice for the Court. On the one hand, the Court could maintain the stay so that the Oversight Board can determine whether to participate in these proceedings and make its views known. On the other hand, the Court could accept the plaintiffs' invitation to press forward immediately with the litigation, even though to do so would imperil a consolidated restructuring that both plaintiffs and defendants agree would lead to an optimal result. The Commonwealth Defendants respectfully submit that Congress called for the first course of action when it enacted PROMESA, and these plaintiffs have provided no legitimate basis for upending the process that Congress established.

III. THE PLAINTIFFS HAVE NOT SHOWN CAUSE FOR LIFTING THE STAY.

In contrast to the well-demonstrated harm to the Commonwealth and the PROMESA process that would result from lifting the stay, the plaintiffs could not satisfy their burden of

showing "cause" to lift the stay. *See* PROMESA § 405(e)(2). The plaintiffs offered no evidence or argument establishing that the Court should address the merits of their claims now, as opposed to four months from now, after the expiration of the PROMESA stay. Nor did the plaintiffs offer any reason for the Court to consider the merits of their claim now, before the Oversight Board has had an opportunity to participate in these cases. To the contrary, and even though it was not their burden, the Commonwealth Defendants proved at the hearing that there was an ***absence*** of cause or irreparable damage that would justify an order lifting the stay with respect to any of these plaintiffs' claims.

A. The *National* and *Trigo* Plaintiffs Have Not Shown Cause To Lift The Stay.

The plaintiffs in the *National* and *Trigo* cases have not remotely demonstrated that the Court should lift the stay to consider granting the relief they request. These plaintiffs are asking the Court to invalidate Act 21 and the executive orders in order to prevent alleged pecuniary harm. *See* 9/22/16 Tr. at 20:12–14 ("I don't know what more harm – what more concrete harm could possibly be shown than people taking our money every single month."); *see id.* at 29:19–23 ("The Plaintiffs … were thus deprived of their absolute and unconditional … right to receive payment of principal and interest of their bond without notice or consent."). But harm that can be remedied through an award of money damages, like that claimed by these plaintiffs, is the very opposite of irreparable damage. There is no reason that these plaintiffs cannot wait four months to proceed with their claims, after expiration of the temporary stay in § 405, and after the Oversight Board has had an opportunity to consider intervening or appearing in their cases.

B. The *Brigade* Plaintiffs Have Not Shown Cause To Lift The Stay.

The *Brigade* plaintiffs have not demonstrated cause for lifting the stay either. It is telling that the *Brigade* plaintiffs have shifted their litigation positions several times in an effort to avoid a stay of litigation. In the end, their lead argument for lifting the PROMESA stay is that there

would be only a *de minimis* burden if the Court were to resolve a motion for summary judgment raising constitutional and pre-emption arguments even though the Commonwealth Defendants have not even filed an opposition to their motion yet. *See* 9/22/16 Tr. at 14:14–16. This argument rests on the flawed premise—thoroughly refuted by the evidence at the hearing, as set forth above—that the only burden to the Commonwealth or the PROMESA process that would result from lifting the stay is the "additional burden, distraction, and expense" associated with continued litigation in this Court of a summary-judgment motion that has neither been fully briefed nor argued. *See* 9/23/16 Tr. at 91:20–22 (B. Kaminetzky).

The *Brigade* plaintiffs' stated purpose in seeking to lift the stay is equally flawed. They claim that "the Moratorium Act provisions [they] are challenging are frustrating [their] efforts to bring [a] consensual restructuring framework to completion." 9/22/16 Tr. at 15:7–9 (D. Kaminetzky). The evidence showed that these allegations are simply inaccurate as a matter of fact. Although the *Brigade* plaintiffs initially claimed that Act 21 was a "hand grenade that was thrown into the restructuring," *id.* at 15:18–19, cross-examination revealed that restructuring negotiations between the *Brigade* plaintiffs and GDB came to fruition after Act 21 became law, *see id.* 198:15–19 ("Q. So in spite of the critical foundational building block changing midstream, you managed to reach an agreement; true? A. We did ultimately reach the agreement, but it did create tremendous under certainty [sic] and, you know, severely harmed the rights and position of the noteholders.") (B. Meyer). Then additional evidence at the hearing refuted Brigade's claim that it was actually Law 40, an amendment to Act 21, that brought an end to continued negotiations between the *Brigade* plaintiffs and GDB. *See* 9/23/16 Tr. at 126:14–17 ("Q. So the negotiations continued after Law 40; correct? A. Yes. I mean, that's what these two documents show. You don't send this type of information back and forth unless

you are trying to negotiate and to get a deal.") (E. Abrams).

More importantly, the *Brigade* plaintiffs' arguments are also misplaced as a matter of law. The claim that invalidating Act 21 would make negotiations easier for these particular plaintiffs provides no legitimate basis for lifting the stay now, before the Oversight Board has had an opportunity to make its views known in the case. Indeed, even if the Court were to expedite briefing and argument on the plaintiffs' summary-judgment motion, and even assuming that the Court were to rule in plaintiffs' favor before the PROMESA stay expires four months from now, there would still be no benefit to anyone from lifting the stay. The evidence at the hearing showed that "'[i]n the absence of federal legislation, the GDB would not be able to complete the deal as proposed, and the Commonwealth as a whole would not be able to move towards a comprehensive restructuring of the island's debt.'" *Id.* at 114:8–17 (E. Abrams). Indeed, under PROMESA itself, there can be no issuance or exchange of debt under—a critical element of any comprehensive restructuring—without the approval of the Oversight Board. *See* PROMESA § 207. Accordingly, the *Brigade* plaintiffs cannot implement their agreement with GDB in all events until the Oversight Board facilitates a mechanism for attaining 100% creditor participation in the context of a global restructuring of the Commonwealth's debts. *See id.* 112:18–20 (E. Abrams).

In sum, the *Brigade* plaintiffs are asking the Court to resolve some of their claims now, instead of four months from now, so they can implement an agreement with GDB. But even assuming plaintiffs' arguments are correct (and they are not), these plaintiffs could not implement an agreement with GDB before the Oversight Board is fully operational anyway. This fundamental flaw in the *Brigade* plaintiffs' arguments lays bare that their motion to lift the stay is merely a tactical effort by certain unsecured creditors to gain an advantage in anticipated

restructuring proceedings rather than a genuine attempt to advance the interests of a comprehensive and efficient restructuring that is fair and equitable to all stakeholders.

C. The *U.S. Bank* Plaintiffs Have Not Established Cause To Lift The Stay.

The *U.S. Bank* plaintiffs have also not demonstrated cause the lift the PROMESA stay. They do not allege that the University of Puerto Rico has missed a single payment of principal or interest on their bonds. In fact, these plaintiffs admit that the trustee's reserve fund associated with their bonds currently "holds $12 million more than its required level." 9/22/16 Tr. at 33:11–13 (T. Moers). The gravamen of plaintiffs' claims is that 75% of the reserve fund will be exhausted by June 1, 2017—several months after the expiration of the PROMESA stay. *See id.* at 33:13–16. They also claim that the reserve fund will be exhausted by December 2017, nearly ten months after the PROMESA stay expires. *See id.* at 33:17–18. The *U.S. Bank* plaintiffs do not identify any exigency, or even an existing harm, that would justify lifting the stay right now.

The plaintiffs' argument rests on their citation of "numerous authorities in [their] brief that loss of collateral constitutes irreparable harm, both in and out of bankruptcy." *Id.* at 34:2–4. The problem with this argument is that PROMESA § 405, in contrast to 11 U.S.C. § 362, omits lack of adequate protection for cash collateral as a basis for lifting a stay. This omission was no accident, as Congress intended the temporary, emergency stay established by PROMESA § 405 to provide breathing room for the Commonwealth as it addressed the financial crisis and prepared for restructuring processed according to the terms of PROMESA. Accordingly, the *U.S. Bank* plaintiffs' have not presented a valid justification for lifting the stay in their case.

CONCLUSION

For the foregoing reasons, and based upon the evidence and argument presented at the hearing convened by the Court on September 22 and September 23, 2016, 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 7th day of October, 2016.

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