

## First Circuit Clarifies Key Requirements for PR Creditors Seeking Relief from Stay under PROMESA

### ATTORNEYS

- Antonio A. Arias-Larcada
- Arturo J. García-Solá
- Juan A. Marqués-Díaz
- Samuel T. Céspedes Jr.
- Rubén Méndez-Benabe
- Nayuan Zouairabani-Trinidad

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### An McV Bankruptcy & Debt Restructuring Alert

January 13, 2017

On January 11, 2017, the United States Court of Appeals for the First Circuit (the “First Circuit”) clarified a key requirement for creditors to be able to seek relief from the stay of litigation against the Commonwealth of Puerto Rico (the “Commonwealth”) imposed under the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”). Specifically, the First Circuit held that creditors bear the burden of showing the existence of sufficient “cause” to warrant the relief from stay, including lack of adequate protection.

In July 2016, Peaje Investments LLC (“Peaje”), who is the beneficial owner of certain bonds issued by the Puerto Rico Highways and Transportation Authority (“PRHTA”), and whose bonds are secured by a lien on toll revenues, filed a motion for relief of the PROMESA stay before the United States District Court for the District of Puerto Rico (the “District Court”) to challenge the diversion of PRHTA toll revenues by the Commonwealth pursuant to the Puerto Rico Emergency Moratorium and Financial Rehabilitation Act (the “Moratorium Act”). Shortly thereafter, the plaintiffs in the District Court case of [Altair Global Credit Opportunities Fund \(A\), LLC et al. v. Garcia Padilla](#), Civil No. 16-2696 (FAB) (the “Altair Movants”), who are the holders of certain bonds issued by the Commonwealth’s Employees Retirement System (“ERS”), also moved for relief from stay due to the Commonwealth’s suspension of transfers of employer contributions pledged as collateral for the bonds.

The District Court held that neither Peaje nor the Altair Movants lacked adequate protection, and proceeded to deny their motions without conducting a hearing on the merits. Peaje and the Altair Movants appealed to the First Circuit essentially disputing two issues: (1) whether the Commonwealth’s actions to impair or remove collateral securing the pertinent bonds constitute “cause” for lifting the PROMESA stay for failure to provide adequate protection; and (2) whether the District Court erred in denying Peaje and the Altair Movants’ request without having conducted a hearing.

In deciding these issues, the First Circuit drew parallels between the PROMESA stay and the automatic stay of the Bankruptcy Code (the “Code”), and considered whether PROMESA’s omissions of certain language included in the

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Code constitutes an express rejection of such language for purposes of PROMESA. Accordingly, the First Circuit determined that: (1) similarly as with the Code, lack of adequate protection will constitute sufficient cause for relief from the stay under PROMESA notwithstanding the fact that PROMESA does not define “cause”; and (2) similarly as with the Code, the District Court need not require a hearing for relief from stay when the movant fails to plead sufficient facts to satisfy its burden of proof.

In discussing the creditors’ burden, the First Circuit deviated from the established evidentiary norm outlined in the Bankruptcy Code. Under the Code, a creditor seeking relief from stay need only demonstrate lack of equity on its collateral while the debtor bears the burden on all other issues (cause included). However, upon analyzing PROMESA’s language, the First Circuit held that it is the creditors (not the debtor) who must shoulder the responsibility of showing the existence of cause. The First Circuit explained that policy reasons support this shift in burden since (a) the PROMESA stay was designed to address the immediate and imminent fiscal crisis in Puerto Rico and (b) the PROMESA stay lasts a maximum of about ten months and is less burdensome to creditors than the Bankruptcy stay.

The First Circuit cautions that not every omissions in PROMESA on matters addressed by the Code entail a legislative rejection of the Code’s approach on that issue. As a result, creditors must carefully consider and contrast both statutes in order to determine which Code’s provisions are extensive, or not, in the event of a vacuum or inconsistency with PROMESA.

The First Circuit affirmed the District Court’s denial of the Peaje motion for relief from stay, but vacated the denial of the Altair Movant’s motion and remanded the same to the District Court for an evidentiary hearing since the Altair Movants’ motion pleaded sufficient facts to satisfy their initial burden on existence of cause for relief from stay.

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