

Bond Case Briefs

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PROMESA - PUERTO RICO

Lex Claims, LLC v. Financial Oversight and Management Board

United States Court of Appeals, First Circuit - April 4, 2017 - 853 F.3d 548

Bondholders filed suit against governor of Puerto Rico, seeking declaratory judgment that measures taken by Puerto Rico violated Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) and seeking injunction preventing enforcement of measures until PROMESA Financial Oversight and Management Board determined their propriety.

Governor moved to stay. Various entities moved to intervene. The United States District Court entered orders determining, inter alia, that four of bondholders' claims were not subject to PROMESA's automatic stay provision. Appeal was taken.

The Court of Appeals held that:

- The subject counts of the complaint, which, if successful, would have led the Commonwealth to default on a large tranche of its debt while preserving the corresponding funds for a rival class of bonds, exercised "control" over the Commonwealth's property within meaning of PROMESA's automatic stay provision, and
- PROMESA's stay applies to litigation seeking declaratory and injunctive relief, at least where the express purpose of the lawsuit is to preclude the Commonwealth from using its own funds as it sees fit.

Litigation against governor of Puerto Rico and others by which bondholders attempted to alter the Commonwealth's allocation of its own revenues, in particular, by leading the Commonwealth to default on a large tranche of its debt to one group of bondholders while preserving the corresponding funds for a rival class of bonds, exercised "control" over the Commonwealth's property within meaning of automatic stay provision of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), which stayed, among other things, any act "to exercise control over property of the Government of Puerto Rico."

Automatic stay provision of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), in staying, among other things, any act "to exercise control over property of the Government of Puerto Rico," encompasses more than possession and constructive possession of Commonwealth property.

Term "control," as used in the section of the Bankruptcy Code staying conduct that exercises control over property belonging to the bankruptcy estate, is defined quite broadly to encompass conduct above and beyond obtaining possession of an asset.

Automatic stay provision of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) applies to litigation seeking declaratory and injunctive relief, at least where the express purpose of the lawsuit is to preclude the Commonwealth from using its own funds as it sees fit.

