

Bond Case Briefs

Municipal Finance Law Since 1971

Assured Guaranty Files Adversary Complaint Challenging PREPA's Failure to Remit Special Revenue Bond Collateral For the Payment of its Bonds.

HAMILTON, Bermuda-(BUSINESS WIRE)-Assured Guaranty Ltd. (NYSE: AGO) (together with its subsidiaries, Assured Guaranty) released the following comments regarding the adversary complaint filed yesterday challenging the Puerto Rico Electric Power Authority's (PREPA) failure to remit special revenue bond collateral for the timely payment of debt service on its bonds (Bonds).

Two Assured Guaranty bond insurance subsidiaries, Assured Guaranty Municipal Corp. and Assured Guaranty Corp., filed an adversary complaint in Federal District Court in Puerto Rico yesterday seeking (i) a judgment declaring that the application of pledged special revenues to the payment of the Bonds is not subject to the automatic stay under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) and that PREPA has violated the special revenue protections provided to the Bonds under the Bankruptcy Code by failing to remit such revenues for the payment of the Bonds; (ii) a judgment declaring that capital expenditures and other PREPA expenses that are not reasonable and necessary to operate the electric system do not constitute "necessary operating expenses" under the Bankruptcy Code and therefore may not be charged against PREPA's special revenues prior to the payment of the Bonds; (iii) a judgment declaring that the use of PREPA's special revenues to pay capital expenditures and other PREPA expenses that are not reasonable and necessary to operate the electric system prior to the payment of the Bonds violates the Takings and Due Process Clauses of the U.S. Constitution; (iv) an injunction enjoining PREPA from (A) taking or causing to be taken any action that would further violate the special revenue protections provided to the Bonds under the Bankruptcy Code, and (B) using its special revenues to pay for capital expenditures and other PREPA expenses that are not reasonable and necessary to operate the electric system prior to the payment of the Bonds; and (v) an order requiring PREPA to remit the pledged special revenues securing the Bonds in accordance with the terms of the special revenue provisions set forth in the Bankruptcy Code.

With this action, Assured Guaranty seeks to remedy PREPA's failure to comply with its obligation to remit pledged special revenues on a monthly basis to the bond trustee for the timely payment of debt service on the Bonds. Rather than comply with its obligations under the bond documents, PREPA has chosen to use its Title III bankruptcy proceeding to withhold and misapply special revenue bond collateral securing the payment of the Bonds, without providing just compensation to PREPA bondholders and their insurers. PREPA has no basis to ignore those contractual obligations or take collateral pledged as security for PREPA bondholders. Congress incorporated the special revenue protections of the Bankruptcy Code into PROMESA when it was enacted. These federal statutory protections guarantee that holders of PREPA's special revenue bonds and their insurers receive the benefit of their bargain by protecting the lien on PREPA's postpetition special revenues and ensuring the Title III bankruptcy filing does not operate as a stay against application of the pledged special revenues to the timely repayment of the Bonds. Enforcement of these protections is essential to the orderly marketing of municipal revenue bonds and for municipal issuers to retain critical access to the revenue bond market nationwide. Finally, this failure to apply special revenue

bond collateral to the timely payment of the Bonds should prevent PREPA and other Commonwealth public corporations from accomplishing a primary objective of PROMESA, which is the ability to return to the capital markets.

Irrespective of PREPA's Title III bankruptcy filing and failure to remit pledged special revenues to the timely payment of debt service on the Bonds, payments to holders of the Bonds insured by Assured Guaranty will continue to be paid without interruption for the life of the bonds. Assured Guaranty unconditionally and irrevocably guarantees full and timely payment of scheduled debt service, in accordance with the terms of Assured Guaranty's insurance policies, and upon payment, takes over the rights of the insured bondholders. Assured Guaranty is determined to take reasonable and necessary actions to protect its rights as insurer of Bonds.

With \$12 billion* in claims-paying resources across its group of companies, which includes an \$11 billion investment portfolio that alone generates approximately \$400 million of annual investment income each year, Assured Guaranty's liquidity and capital positions are very strong.

*Aggregate data for operating subsidiaries within the Assured Guaranty Ltd. group. Claims on each subsidiary's insurance policies / financial guarantees are paid from that subsidiary's separate claims-paying resources. Details of the components of claims paying resources are set forth in the most recent Assured Guaranty Ltd. Financial Supplement, which may be found at Assuredguaranty.com/agldata.

August 08, 2017 09:09 AM Eastern Daylight Time