

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **EMINENT DOMAIN - PUERTO RICO**

### **Dinh v. United States**

**United States Court of Federal Claims - June 5, 2023 - Fed.Cl. - 2023 WL 3815051**

Bondholders filed putative class action against United States, seeking just compensation under Fifth Amendment for alleged taking of their private property as owners of first subordinated secured bonds issued by instrumentality of Commonwealth of Puerto Rico, as alleged direct and intended result of Congress's enactment of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), allowing Puerto Rico and its instrumentalities to adjust their debts in bankruptcy, that resulted in loss of significant portion of principal and interest on holder's bonds and their security interests and liens on revenues.

Government moved to dismiss for lack of subject matter jurisdiction or, alternatively, for failure to state claim.

The Court of Federal Claims held that:

- Subject matter jurisdiction could be exercised over claim;
- PROMESA did not displace jurisdiction over claim;
- Exercising jurisdiction was not impermissible collateral attack;
- Claims added in amended complaints related back to original timely complaint;
- Bondholders adequately alleged cognizable property interests;
- Collateral estoppel did not bar litigation of issue of PROMESA's enactment effecting taking; but
- Enactment of PROMESA did not constitute regulatory taking.

Bondholders' sufficiently alleged Fifth Amendment taking effected by Congress's enactment of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) that resulted in loss of significant portion of their principal and interest on bonds by allowing Puerto Rico to adjust its debts in bankruptcy, as required for exercise of Tucker Act jurisdiction over claim, since bondholders' complaint unambiguously alleged that federal action took their property without just compensation.

Tucker Act jurisdiction over bondholders' Fifth Amendment taking claims allegedly effected by Congress's enactment of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) that resulted in loss of significant portion of their bonds' principal and interest by allowing Puerto Rico to adjust its debts in bankruptcy, was not displaced by PROMESA, stating that any action against Oversight Board for Puerto Rico, and any action otherwise arising out of PROMESA, in whole or in part, "shall" be brought in United States district court for covered territory, since PROMESA did not reflect Congress's unambiguous intent to displace Tucker Act jurisdiction, given that PROMESA did not waive sovereign immunity for monetary relief claims against United States, unlike Tucker Act.

Bondholders' claim for Fifth Amendment taking allegedly effected by Congress's enactment of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), that resulted in loss of significant portion of bonds' principal and interest by allowing Puerto Rico to adjust its debts in bankruptcy, was not impermissible collateral attack on decision by district court confirming plan of

debt adjustment under Title III of PROMESA, since district court's confirmation of plan simply described part of process that resulted in taking of bondholders' property to which they did not attribute any legal error, and their takings claim did not require Court of Federal Claims to scrutinize Title III court's reasoning or result in confirming plan.

Proposed amendment to bondholders' class action complaint to allege Fifth Amendment taking by additional bondholders related back, for purposes of six-year statute of limitations for claims before Court of Federal Claims, to original complaint claiming that taking was allegedly effected by Congress's enactment of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) that resulted in loss of significant portion of bonds' principal and interest by allowing Puerto Rico to adjust its debts in bankruptcy.

Bondholders sufficiently alleged property interest cognizable under Fifth Amendment Takings Clause, as required to state claim that taking was effected by Congress's enactment of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) allowing Puerto Rico and its instrumentalities to adjust their debts in bankruptcy, since bondholders alleged that enactment of PROMESA resulted in loss of significant portion of principal and interest on their bonds as well as their lien on revenues that could be enforced in event of default on their contractual right to repayment of principal and interest.

Prior proceeding in which district court assigned under Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) determined that plan of debt adjustment for Puerto Rico and its instrumentalities and settlement agreement did not take bondholders' property without just compensation did not collaterally estop bondholders from litigating issue of whether United States was liable for taking based on Congress's enactment of PROMESA.

Congress's enactment of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), allowing Puerto Rico and its instrumentalities to adjust their debts in bankruptcy, did not constitute Fifth Amendment regulatory taking of bondholders' property interests in their contractual right to repayment of principal and interest on bonds and liens against revenue, since bondholders' property interests were impaired only after Oversight Board for Puerto Rico, which was non-federal entity, took series of discretionary actions resulting in restructuring of debts under PROMESA, and taking involving third-party non-federal entities was insufficient to warrant just compensation, as Board did not act as agent of United States and was not coerced to file petition for adjustment under PROMESA.