

US District Court: PROMESA Stay Broad in Scope, But Not All Encompassing

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An McV Bankruptcy & Debt Restructuring Alert

February 24, 2017

On February 17, 2017, the United States District Court for the District of Puerto Rico (the “District Court”) issued an Opinion and Order in the case of [Lex Claims v. Garcia-Padilla](#) (“[Lex Claims](#)”), No. 16-2374 (FAB), 2017 U.S. Dist. LEXIS 23248 (D.P.R.), distinguishing that not all actions that may be asserted by creditors against the Commonwealth of Puerto Rico (the “Commonwealth”) are subject to the stay of litigation imposed under the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”).

The plaintiffs in [Lex Claims](#) filed thirteen causes of actions against the Commonwealth, as well as the Office of Management and Budget of the Commonwealth, the Puerto Rico Sales Tax Financing Corporation (“COFINA”). Four of these actions (the “Excepted Claims”) sought declaratory and injunctive relief under specific provisions of PROMESA to challenge the Commonwealth’s diversion of the income sales and use tax (“IVU”) pursuant to the Puerto Rico Emergency Moratorium and Financial Rehabilitation Act (the “Moratorium Act”) and Executive Order 2016-30 (the “Executive Order”).

In considering the Excepted Claims, the District Court, once again, drew parallels between the PROMESA stay and the automatic stay of the Bankruptcy Code. Specifically, it identified that, although the stay is broad in scope, it is not all encompassing. Ultimately, the District Court determined that the Excepted Claims are not covered by the stay of litigation created by PROMESA because (i) they are specifically premised on the Commonwealth’s alleged violations to PROMESA, which actions could not have been asserted prior to the enactment of the PROMESA statute, (ii) they are neither actions to collect on a debt or harass the Commonwealth, (iii) they do not attempt to exercise control over Commonwealth assets, and (iv) they do not create, enforce or perfect a lien against the Government of Puerto Rico. Finally, the District Court held that it was improper to stay the continued prosecution of the Excepted Claims under the Court’s inherent authority.

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