First Circuit Reinstates PROMESA Stay in Bondholders' Case

ATTORNEYS

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

PRACTICE AREAS

- Bankruptcy & Debt Restructuring
- PROMESA Task Force

An McV Bankruptcy & Debt Restructuring Alert

April 5, 2017

On April 4, 2017, the Court of Appeals for the First Circuit (the "First Circuit") issued a decision in the appeals of Lex Claims v. Garcia-Padilla, Appeal No. 17-1241, 17-1248, and 17-1272 ("Lex Claims 2"), where the First Circuit reversed the February 17, 2017 Opinion and Order entered by the United States District Court for the District of Puerto Rico (the "District Court") which allowed the plaintiffs to continue to pursue four causes of action (the "Excepted Claims") against the Commonwealth of Puerto Rico (the "Commonwealth").

The plaintiffs in Lex Claims filed thirteen causes of action against the Commonwealth, as well as the Puerto Rico Sales Tax Financing Corporation ("COFINA"). The Excepted Claims sought declaratory and injunctive relief under specific provisions of the Puerto Rico Oversight, Management, and Economic Stability Act ("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"). The District Court held that the Excepted Claims were not subject to the stay of litigation imposed under PROMESA.

The First Circuit noted the unitary nature of the Excepted Claims with plaintiffs' remaining causes of action. Specifically, it held that the relief in the Excepted Claims was sweeping in nature, and that the effect of such actions would ultimately force the Commonwealth to either set aside revenues and assets, commence making payments to bondholders, and/or force the Commonwealth to default on other creditors. The First Circuit resolved that this type of action constitutes an act to exercise control over property of the Commonwealth and, thus, subject to the stay of litigation of PROMESA.