United States Court of Appeals

for the

First Circuit

Case No. 15-1218

FRANKLIN CALIFORNIA TAX-FREE TRUST; FRANKLIN NEW YORK TAX-FREE TRUST; FRANKLIN TAX-FREE TRUST; FRANKLIN MUNICIPAL SECURITIES TRUST; FRANKLIN CALIFORNIA TAX-FREE INCOME FUND; FRANKLIN NEW YORK TAX-FREE INCOME FUND; FRANKLIN FEDERAL TAX-FREE INCOME FUND; OPPENHEIMER ROCHESTER FUND MUNICIPALS; OPPENHEIMER MUNICIPAL FUND; OPPENHEIMER MULTI-STATE MUNICIPAL TRUST; OPPENHEIMER ROCHESTER OHIO MUNICIPAL FUND; OPPENHEIMER ROCHESTER ARIZONA MUNICIPAL FUND; OPPENHEIMER ROCHESTER VIRGINIA MUNICIPAL FUND; OPPENHEIMER ROCHESTER MARYLAND MUNICIPAL FUND; OPPENHEIMER ROCHESTER LIMITED TERM CALIFORNIA MUNICIPAL FUND; OPPENHEIMER ROCHESTER CALIFORNIA MUNICIPAL FUND;

(For Continuation of Caption See Inside Cover)

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT OF PUERTO RICO, SAN JUAN

BRIEF FOR DEFENDANTS-APPELLANTS MELBA ACOSTA-FEBO IN 15-1271 AND JOHN DOE IN 15-1272

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Plaintiffs-Appellees,

v.

COMMONWEALTH OF PUERTO RICO; ALEJANDRO GARCIA-PADILLA, as Governor Of the Commonwealth of Puerto Rico,

Defendants-Appellants,

PUERTO RICO ELECTRIC POWER AUTHORITY (PREPA); MELBA ACOSTA, as Government Development Bank for Puerto Rico Agent; JOHN DOE,

Defendants.

Case No. 15-1221

BLUEMOUNTAIN CAPITAL MANAGEMENT, LLC, for and on behalf of investment funds for which it acts as investment manager,

Plaintiff-Appellee,

v.

ALEJANDRO GARCIA-PADILLA, in his official capacity as Governor of Puerto Rico; CESAR R. MIRANDA-RODRIGUEZ, in his official capacity as Secretary of Justice of the Commonwealth of Puerto Rico,

Defendants-Appellants,

JOHN DOE, in his official capacity as employee or agent of the Government of Puerto Rico Development Bank for Puerto Rico,

Defendant.

Case No. 15-1271

FRANKLIN CALIFORNIA TAX-FREE TRUST; FRANKLIN NEW YORK TAX-FREE TRUST; FRANKLIN TAX-FREE TRUST; FRANKLIN MUNICIPAL SECURITIES TRUST; FRANKLIN CALIFORNIA TAX-FREE INCOME FUND; FRANKLIN NEW YORK TAX-FREE INCOME FUND; FRANKLIN FEDERAL TAX-FREE INCOME FUND; OPPENHEIMER ROCHESTER FUND MUNICIPALS; OPPENHEIMER MUNICIPAL FUND; OPPENHEIMER MULTI-STATE MUNICIPAL TRUST; OPPENHEIMER ROCHESTER OHIO MUNICIPAL FUND; OPPENHEIMER ROCHESTER

ARIZONA MUNICIPAL FUND; OPPENHEIMER ROCHESTER VIRGINIA MUNICIPAL FUND; OPPENHEIMER ROCHESTER MARYLAND MUNICIPAL FUND; OPPENHEIMER ROCHESTER LIMITED TERM CALIFORNIA MUNICIPAL FUND; OPPENHEIMER ROCHESTER CALIFORNIA MUNICIPAL FUND; ROCHESTER PORTFOLIO SERIES; OPPENHEIMER ROCHESTER AMT-FREE MUNICIPAL FUND; OPPENHEIMER ROCHESTER AMT-FREE NEW YORK MUNICIPAL FUND; OPPENHEIMER ROCHESTER MICHIGAN MUNICIPAL FUND; OPPENHEIMER ROCHESTER MASSACHUSETTS MUNICIPAL FUND; OPPENHEIMER ROCHESTER NORTH CAROLINA MUNICIPAL FUND; OPPENHEIMER ROCHESTER MINNESOTA MUNICIPAL FUND,

Plaintiffs-Appellees,

v.

MELBA ACOSTA-FEBO, as Government Development Bank for Puerto Rico Agent,

Defendant-Appellant,

PUERTO RICO ELECTRIC POWER AUTHORITY (PREPA); COMMONWEALTH OF PUERTO RICO; ALEJANDRO GARCIA-PADILLA, as Governor of the Commonwealth of Puerto Rico,

Defendants.

Case No. 15-1272

BLUEMOUNTAIN CAPITAL MANAGEMENT, LLC, for and on behalf of investment funds for which it acts as investment manager,

Plaintiff-Appellee,

v.

JOHN DOE, in his official capacity as employee or agent of the Government of Puerto Rico Development Bank for Puerto Rico,

Defendant-Appellant,

ALEJANDRO GARCIA-PADILLA, in his official capacity as Governor of Puerto Rico; CESAR R. MIRANDA-RODRIGUEZ, in his official capacity as Secretary of Justice of the Commonwealth of Puerto Rico,

Defendants.

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PRELIMINARY STATEMENT

This appeal is from a district court's decision striking down on preemption grounds a Puerto Rico statute intended to enable the Commonwealth's public corporations—the utilities that provide electricity, water, and other vital services—to continue to provide such essential functions to the Commonwealth's residents. The Puerto Rico Public Corporation Debt Enforcement and Recovery Act (the "Recovery Act" or the "Act") provides the Commonwealth's public corporations with mechanisms to reorganize their debts while giving creditors a means to recover ultimately more than they otherwise would have through a race to the courthouse. It was enacted as a legitimate exercise of the Commonwealth's police power in the face of a state of fiscal emergency to deal with the debt problem plaguing Puerto Rico's public corporations while also enabling the Commonwealth to treat its creditors fairly.

According to the district court, the Recovery Act is preempted by section 903 of Title 11 of the United States Code (the "Bankruptcy Code"), which it interpreted to both block Puerto Rico's insolvent public corporations from seeking protection under the Bankruptcy Code and, at the same time, bar the Commonwealth from passing its own laws to protect those public corporations. In

other words, the district court attributed to Congress the intent to leave Puerto Rico with no territorial power to rescue its cash-strapped utilities.

Nothing in the text of the Bankruptcy Code, or in its structure, history, or policy, supports the district court's astonishing conclusion. The plain text of 11 U.S.C. § 903(1)—the sole basis for the district court's preemption holding—compels the opposite result. The Bankruptcy Code makes clear that section 903(1) does not apply to Puerto Rico. Any contrary interpretation of section 903(1) flies in the face of the long-standing doctrine that federal law does not supersede a state's historic powers unless that is the clear and manifest purpose of Congress.

Two overarching policies have consistently animated Congress's legislation in this area: (1) Congress's desire to protect insolvent municipalities, and (2) Congress's desire to respect the rights of states and territories to manage their own fiscal affairs. Prior to this ruling, all distressed municipalities had some avenue to seek relief, either through chapter 9 or through state laws authorizing them to reorganize debt. The district court's view that Congress took a sharp turn here and deliberately shut off all the options for Puerto Rico's public corporations runs directly contrary to these longstanding policies.

This appeal is on expedited review because several Puerto Rico public corporations are in dire financial health. With federal bankruptcy protection

unavailable to Puerto Rico municipalities (*see* 11 U.S.C. § 101(52)), the Recovery Act is the Commonwealth's best hope for saving its cash-strapped public corporations and for maximizing returns to creditors by invoking an orderly process. The district court's erroneous and cavalier decision to invalidate the statute must be reversed.

JURISDICTIONAL STATEMENT

The two litigations underlying this appeal featured claims arising under the United States Constitution. Consequently, the district court had jurisdiction over both suits pursuant to 28 U.S.C. § 1331. The appellants were subject to jurisdiction in Puerto Rico because they are either the Commonwealth itself or Commonwealth officials sued in their official capacities.

District court case no. 14-1518 resulted in a final judgment on the merits. This Court has jurisdiction to hear an appeal of that final judgment pursuant to 28 U.S.C. § 1291. In district court case no. 14-1569, the court issued an order that permanently enjoins the Commonwealth from enforcing the Recovery Act. This Court has jurisdiction under 28 U.S.C. § 1292(a)(1) to review that order.

The district court entered its judgment in both cases on February 10, 2015. Appellants Melba Acosta, in her capacity as Government Development Bank for Puerto Rico agent, and John Doe, in his official capacity as employee or agent of

the Government Development Bank for Puerto Rico, timely filed notices of appeal in both respective matters on February 19, 2015.

STATEMENT OF ISSUE PRESENTED FOR REVIEW

Did the district court err when it concluded that the Puerto Rico Public Corporation Debt Enforcement and Recovery Act was expressly preempted by section 903(1) of the federal Bankruptcy Code, 11 U.S.C. § 903(1)?

STATEMENT OF THE CASE AND FACTS

With its public corporations on the verge of debt-overload and insufficient funds to continue performing vital public functions such as supplying electricity, Puerto Rico's legislature undertook the only responsible act it could. It declared a state of fiscal emergency and enacted the Recovery Act to maintain its public corporations' functions while ensuring that all creditors will be paid more than they could otherwise collect from enforcing their contractual claims.[1] In doing so, the Puerto Rico legislature did what the United States Supreme Court has long recognized that states could do: It crafted a debtor-creditor statute applicable to its public corporations, just as states have always done for entities ineligible to invoke

[1] For the convenience of the Court, the English version of the Puerto Rico Public Corporation Debt Enforcement and Recovery Act is reproduced in its entirety in the Addendum to this brief. *See* Addendum 76.

federal bankruptcy law, such as banks, insurance companies, and, when federal municipal bankruptcy laws were unavailable, municipalities.

As explained in the Act's preamble, the Commonwealth is in the midst of a protracted recession that has caused the Legislative Assembly to declare a fiscal state of emergency; among other things, the Commonwealth has faced billions of dollars in annual deficits and an unemployment rate hovering around 15%. Indeed, the situation has become so dire that Puerto Rico's public debt has been downgraded to below investment-grade—junk status—by the principal rating agencies for the first time in its history. Recovery Act, Statement of Motives § A.

On account of the current financial crisis, severe cash shortages and unmanageable debt levels are threatening the ability of some public corporations to survive as going concerns, even after the Commonwealth drastically cut pensions and executed a host of other revenue-raising and cost-cutting measures. *Id.* The three major public corporations in the Commonwealth (the Puerto Rico Electric Power Authority ("PREPA"), the sewer authority, and the highway authority) hold a staggering $20 billion in combined debt, and they accrued a total deficit of approximately $800 million for fiscal years 2012-2013. *Id.* At least PREPA faces the real prospect of default—and the concomitant race to the courthouse by creditors. But default is not an option for the citizens of Puerto Rico, who cannot

live without essential services, or for the bondholders whose liens against the public corporations' net revenues can never be more worthless than when there are no revenues at all.

In any of the 50 states, an insolvent municipality can file for protection under chapter 9 of the Bankruptcy Code with its state's consent. During the chapter 9 case, enforcement of all creditor claims and remedies against the municipality is stayed, while the municipality proposes a plan subject to court scrutiny that satisfies certain debts and discharges others. *See* 11 U.S.C. §§ 901 *et seq.* But Puerto Rico's public corporations do not have the option of restructuring their debts under federal law because Congress explicitly excluded Puerto Rico municipalities and instrumentalities from chapter 9's purview by requiring that every chapter 9 petition be "specifically authorized" by a state (*id.* § 109(c)(2)) and then defining "state" as not including Puerto Rico for that purpose, *id.* § 101(52) ("The term 'State' includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title.").

The Recovery Act is modeled in part on chapter 9 of the Bankruptcy Code, but it is first and foremost true to its actual name, a debt enforcement act. It provides a set of orderly procedures akin to those that any court would invoke to deal with hundreds of thousands of creditor claims against a single debtor, to

ensure that a creditors' race to the courthouse does not result in unequal justice. The Act imposes additional obligations on the public corporations to observe new substantive and procedural creditor protections, and it ensures that the public corporations' creditors will be paid more than what they would be entitled to receive under a chapter 9 plan.

A. The Recovery Act

The Recovery Act was enacted by the Commonwealth on June 24, 2014. The Act provides specifically authorized public corporations in the Commonwealth with two pathways for adjusting their debt—chapter 2 and chapter 3.

Under chapter 2, the public corporation negotiates with its creditors to alter the terms of its debt instruments through amendments, modifications, waivers, or exchanges. Recovery Act § 202(a). The chapter 2 process commences with the service of a "suspension period notice" identifying the financial debt instruments to be renegotiated. *Id.* § 201(d). The rights of creditors holding those instruments to pursue legal remedies against the public corporation, other than those remedies provided under the Act, are suspended temporarily during the pendency of the chapter 2 process. *Id.* § 205. Meanwhile, section 129(a), which applies to chapter 2 and 3 cases, entitles creditors to "adequate protection" of their interests in property such as net revenues, and section 128 prohibits any substantial

impairment of contractual obligations without an adequate remedy unless the impairment is reasonable and necessary under the United States Constitution and the Puerto Rico Constitution, and thereby justified by Puerto Rico's police power. *Id.* §§ 128, 129(a).

Any debt relief transaction negotiated between the public corporation and its creditors during the chapter 2 process will take effect only if approved by a supermajority of creditors, the Government Development Bank, and the special court created by the Act. *Id.* § 202(d). For purposes of voting on the debt relief transaction, creditors are grouped into classes with others holding "substantially similar" claims; creditors holding at least 50% of the debt in each class must vote, and at least 75% of the amount of debt voted in each class must approve the proposed reorganization. *Id.* § 202(d). The supermajority requirement ensures that a proposed transaction is in the best interests of all creditors, while preventing a few holdouts from effectively blocking a necessary restructuring.

In conjunction with a chapter 2 debt-relief transaction, a public corporation must commit itself to a "recovery program" that implements financial reforms (such as reducing operating expenses and costs) to achieve financial independence. *Id.* § 202(b). An independent oversight commission also must be convened to monitor compliance with the recovery program. *Id.* § 203.

As an alternative to chapter 2, a public corporation can adjust its debt under chapter 3 of the Act, which is partially modeled after chapter 9 of the federal Bankruptcy Code. *Id.*, Statement of Motives § E. A public corporation files for chapter 3 protection by submitting to the special court a petition that lists, among other things, all of the debts and creditors that will be affected by the proceeding. *Id.* §§ 301, 302. The court must hold an eligibility hearing to establish that the petitioner is insolvent, properly authorized to file the petition, and ineligible for relief under the U.S. Bankruptcy Code. *Id.* §§ 113(b), 306.

The petitioner can then avail itself of either of two approaches. It can (1) conduct a foreclosure sale to another Commonwealth entity or, if otherwise permitted by Commonwealth law, to an independent entity that will continue performing the relevant public functions, or (2) it can propose a chapter 3 plan. *Id.* §§ 307, 310-16. All creditors are given notice of the foreclosure sale or plan and opportunities to object to any aspect of each procedure, as prior court approval is required each step of the way. *Id.* §§ 303, 307-08, 314(b). Meanwhile, to prevent dismemberment of the public corporations and disruption of critical services, certain types of lawsuits and other enforcement actions against the petitioner are automatically stayed during the pendency of the chapter 3 case, but creditors can

seek relief from the stay or to enforce their rights to adequate protection by applying to the court. *Id.* §§ 129, 304, 324.

The court may not confirm a chapter 3 plan unless it meets all the criteria in chapter 3, including that: (1) consistent with chapter 9, at least one class of debt approves the plan by a majority in number of creditors voting and at least two-thirds of the amount of debt voted, *id.* § 315(e); and (2) each creditor receives more under the plan than it would have received if all creditors had enforced their claims on the date of the chapter 3 petition, *id.* § 315(d).

To provide public corporations' creditors with more than they would have received under chapter 9, each creditor whose debt is affected under a chapter 3 plan is entitled to a pro rata share of half of the debtor's excess cash flow during the subsequent ten years until the debt is fully satisfied. *Id.* § 315(k).[2] The 50/50 split of future positive free cash flows both incentivizes the debtor to be financially stronger going forward while at the same time maximizes the amount that creditors will receive and the likelihood that they will be fully repaid.

[2] As the Supreme Court has explained, a discharge relieves a debtor of the obligation to use post-bankruptcy earnings to repay pre-bankruptcy debt. *See, e.g.*, *Stegwallen v. Klum*, 245 U.S. 605, 616 (1917). Chapter 3 does not enact a discharge because it requires each public corporation to pay creditors half of its excess cash flow for ten years or until the creditor is fully paid, in addition to the value of its assets (*i.e.*, what the creditors would recover from enforcing their claims).

At its core, the central tenet of the Act is that everyone (creditors and residents of the Commonwealth alike) will be worse off if public corporations are unable to continue performing their public functions. That nightmare scenario is not an option. Creditors necessarily would suffer because no new revenues would be generated that can repay their debts, while the residents would endure the obvious detriment of losing vital services unavailable from any other entity in the Commonwealth. The Act is thus tailored to balance the interests of creditors with the paramount responsibility of the Commonwealth to deploy its police power to protect its residents.

B. Procedural History

The same day that the Act was enacted into law, dozens of investment funds that hold more than $1.7 billion in PREPA bonds, all of whom are affiliated with the Franklin Templeton and Oppenheimer financial firms (the "Franklin plaintiffs"), sued the Commonwealth, certain Commonwealth officials, and PREPA in the U.S. District Court for the District of Puerto Rico to block enforcement of the Act. *See* JA 19. In their amended complaint, the Franklin plaintiffs sought a declaration that the Act is preempted by the federal Bankruptcy Code and that it violates the Bankruptcy, Contract, and Takings Clauses of the

United States Constitution. JA 48-49; *see also* U.S. Const. art. 1, § 8; *id.* art. 1, § 10, cl. 1; *id.* amends. V, XIV.

Less than a month later, another PREPA bondholder, BlueMountain Capital Management, LLC ("BlueMountain"), brought a similar suit in the same court, naming the Commonwealth's governor and other officials as defendants. JA 272. In its operative complaint, BlueMountain alleged that "any prospective enforcement of" the Act would contravene the Bankruptcy and Contract Clauses of the federal Constitution, would violate the Contract Clause of the Puerto Rico Constitution, and would be preempted by federal law. JA 329-30.

On August 20, 2014, the district court consolidated the two cases, and the defendants in both suits moved to dismiss the respective complaints. The Franklin plaintiffs opposed the motion to dismiss and cross-moved for summary judgment on its preemption claim. BlueMountain, for its part, opposed the motion to dismiss but did not cross-move for summary judgment.

Without holding oral argument, on February 6, 2015, the district court issued a decision granting the Franklin plaintiffs summary judgment on their preemption claim and granting in part the defendants' motions to dismiss. On the threshold issue of standing, the court held that the Franklin plaintiffs did not have standing to sue PREPA because the utility did not enact the Recovery Act and thus caused no

injury; PREPA was therefore dismissed from the case. Addendum ("Add.") 27-28. The court nevertheless concluded that the plaintiffs did have standing to sue the Commonwealth and its officials. Add. 26-27.

Turning to the merits, the district court held that 11 U.S.C. § 903(1) expressly preempts the Act. Add. 31-42. According to the court, section 903(1) by its terms bars Puerto Rico from implementing any orderly process to enforce claims against distressed public corporations even though Puerto Rico's public corporations are forbidden from invoking federal bankruptcy protection under chapter 9, *see* 11 U.S.C. § 101(52). The court opined that Congress intended that Puerto Rico's instrumentalities would have no resort to any federal or Commonwealth law so that Congress could stay in control. Add. 39.

Based on its express preemption conclusion, the district court declared that the Act in its entirety is "void pursuant to the Supremacy Clause of the United States Constitution." Add. 75. Accordingly, it permanently enjoined the Commonwealth and its officials from enforcing the Act. *Id.*[3]

[3] Even if some portion of the Act were unconstitutional (which is not the case), the district court erred by holding the Act void in its entirety and permanently enjoining the defendants from enforcing any portion of the Act. Add. 75. At the very least, the district court was required to consider whether the remaining portions of the statute could have been severed from its preempted portions. *See, e.g.*, *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 501 (1985); *Midwest Media Prop., L.L.C. v. Symmes Twp.*, 503 F.3d 456, 464 (6th Cir. 2007). Several

The district court went on to examine the plaintiffs' other claims. The court first held that the Bankruptcy Clause has no force independent of the Contract Clause and therefore dismissed the Bankruptcy Clause claim from the case. Add. 45-46. The court next declined to dismiss the plaintiffs' claims under the Contract Clause, Add. 49-65, and partially dismissed the claims brought under the Takings Clause, Add. 65-74.

The Commonwealth and several of its officials timely filed notices of appeal in the two district court cases. Melba Acosta, in her capacity as Agent for the Government Development Bank for Puerto Rico, and John Doe, in his official capacity as employee or agent of the Government Development Bank for Puerto Rico, timely appealed separately. This Court consolidated all of the appeals and ordered expedited briefing.[4]

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provisions of the Act unquestionably fall outside the district court's preemption analysis and, as such, pass constitutional muster. These provisions include, among other things, the Act's foreclosure mechanism (§§ 307-09) and the Governor's power to appoint an emergency manager (§ 135).

[4] The district court did not issue a final decision on either the Contract Clause or the Takings Clause claims because no party had moved for summary judgment on those issues. Consequently, neither claim is subject to a "final decision" that is appealable under 28 U.S.C. § 1291. The district court's rulings on the Contract Clause and Takings Clause were woefully off the mark and exposed the district court's inadequate review of the Recovery Act. Because the district court had no case or controversy to determine once it ruled that the Act was preempted in its entirety, we join in the Commonwealth's argument that all of the district court's holdings beyond its preemption ruling must be vacated. *See* Fed. R. App. P. 28(i).

SUMMARY OF THE ARGUMENT

The district court held that 11 U.S.C. § 903(1) preempts the Recovery Act. On that basis, it permanently enjoined the Commonwealth from enforcing a statute designed to save its public corporations from default and from creditors racing to the courthouse, ensuring continued performance of critical, revenue-generating services while providing creditors with more protections than they otherwise would have. The district court's decision was in error.

A state statute is preempted only when it is the clear and manifest purpose of Congress. There is a strong presumption that Congress does not intend for its statutes to displace the legitimate police power of a state. That presumption can be overcome only by evidence of clear congressional intent to the contrary. No such evidence can be found here.

Contrary to the district court's holding, the plain text of section 903(1) makes clear that it does not apply to Puerto Rico or its municipalities. Section 903 begins with the premise that chapter 9 does not impair a state's power to control its municipalities, and section 903(1) provides that "a State law prescribing a method of composition of indebtedness of such municipality may not bind any *creditor* that does not consent to such composition." 11 U.S.C. § 903(1) (emphasis added). By its terms, then, section 903(1) bars only laws affecting non-consenting

"creditors." No entity affected by the Recovery Act qualifies as a "creditor" as that term has been explicitly defined in the Act. The definition of "creditor" shows that to be a creditor, an entity must have a claim against a debtor that commenced a case under the Bankruptcy Code. 11 U.S.C. § 101(10). None of Puerto Rico's municipalities can commence such cases. As a result, the Act is not barred by section 903(1).

Section 903(1) also does not apply to Puerto Rico because it refers only to municipalities other than Puerto Rico municipalities. Bankruptcy Code section 101(52) provides that the term "State" does not include Puerto Rico for the "purpose of defining who may be a debtor under chapter 9." To qualify as a chapter 9 "debtor," an insolvent municipality must have specific "State law" authorization. 11 U.S.C. § 109(c). Since Puerto Rico is not a "State" for that purpose it cannot pass such a law, and therefore no Puerto Rico municipality can be authorized to be a chapter 9 debtor. Thus, section 903's prohibition (that chapter 9 shall not limit a state's power, by legislation or otherwise, to control a municipality) cannot refer to a Puerto Rico municipality. Accordingly, section 903(1)'s provision that nonconsenting creditors of "such" municipality shall not be bound by any state composition law cannot refer to creditors of Puerto Rico municipalities.

This conclusion is further reinforced by the fact that it would not make sense for Congress to, on the one hand, explicitly exclude Puerto Rico as it did from chapter 9, but, on the other hand, include it in the one subsection of chapter 9 that would effect a massive encroachment on its legitimate police power. If Congress had intended to do this, it would have been explicit.

The district court's decision striking down the Recovery Act upends nearly a century of policy and Supreme Court decisions approving state debtor-creditor statutes for entities ineligible for federal bankruptcy relief. Nothing in the legislative history of section 903 evinces a congressional intent to upset this status quo.

At bottom, the district court failed to undertake a careful review of the pertinent provisions of the Bankruptcy Code and, in so doing, ignored Congressional intent, as evinced in the text of the statute, long-standing practice, and legislative history, as well as substantial Supreme Court precedent. The district court's holding thereby creates an unprecedented and untenable situation in which a group of municipalities are left with neither federal nor state law to protect themselves or their creditors in the face of insolvency. The doctrine of preemption does not presume that Congress intended such an encroachment on a state or territory absent a clear statement that it has done so. Here, Congress has spoken

through its actual legislation, the plain meaning of which shows that Congress did not intend to preempt Puerto Rico debtor-creditor statutes.

STANDARD OF REVIEW

A district court's grant of summary judgment engenders *de novo* review. *Hicks v. Johnson*, 755 F.3d 738, 743 (1st Cir. 2014). In reviewing a summary judgment order, the record must be viewed in the light most favorable to the non-moving party and all reasonable inferences drawn in its favor. *Genereux v. Am. Beryllia Corp.*, 577 F.3d 350, 359 (1st Cir. 2009). "Federal preemption issues are questions of statutory construction that [are] review[ed] de novo." *Bower v. Egyptair Airlines Co.*, 731 F.3d 85, 92 (1st Cir. 2013).

ARGUMENT

Preemption may be found only when "that was the clear and manifest purpose of Congress." *Wisc. Pub. Intervenor v. Mortier*, 501 U.S. 597, 605 (1991) (internal quotations omitted); *Merit Constr. Alliance v. City of Quincy*, 759 F.3d 122, 128 (1st Cir. 2014). Indeed, as a starting point, there is a strong presumption that Congress does not intend for its statutes to displace otherwise valid exercises of a state's police power. *Nat'l Ass'n of Tobacco Outlets, Inc. v. City of Providence, R.I.*, 731 F.3d 71, 79 (1st Cir. 2013). That presumption can be overcome only by evidence of "clear and contrary congressional intent." *Antilles*

Cement Corp. v. Fortuño, 670 F.3d 310, 323 (1st Cir. 2012); *see also Phillip Morris, Inc. v. Harshbarger*, 122 F.3d 58, 68 (1st Cir. 1997) ("[T]here exists an assumption that federal law does not supersede a state's historic police powers unless that is the clear and manifest purpose of Congress." (quotation marks and alteration omitted)). For purposes of a preemption analysis, Puerto Rico's statutes are treated the same as those of any state. *See P.R. Dep't. of Consumer Affairs v. Isla Petroleum Co.*, 485 U.S. 495, 499 (1988).

Congressional intent to preempt a state statute can manifest itself in one of three ways. *Weaver's Cove Energy, LLC v. R.I. Coastal Resources Mgmt. Council*, 589 F.3d 458, 472-73 (1st Cir. 2009). First, Congress can convey its desire to preempt state law in the express provisions of a federal statute. *Barnett Bank of Marion Cnty., N.A. v. Nelson*, 517 U.S. 25, 31 (1996). Alternatively, Congress can communicate its intent to preempt an entire field of law by enacting a regulatory scheme "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Finally, Congress is presumed to intend for its statutes to preempt any state law that lies in unmistakable conflict—"such as where it is physically impossible to comply with both laws or where the state law stands as an

obstacle to the accomplishment and execution of the full objectives of Congress." *Antilles Cement*, 670 F.3d at 323-24 (quotation marks omitted).

The district court relied exclusively on express preemption to strike down the Act. In the court's view, Congress expressly communicated its intent to preempt the Recovery Act in 11 U.S.C. § 903(1). Add. 31-43. The court then proceeded briefly to discuss conflict and field preemption, but it made no holding with respect to those forms of preemption.[5] Add. 43-45.

Accordingly, the sole question before this Court is whether the Recovery Act is preempted by Bankruptcy Code section 903(1). That provision states:

> This Chapter [chapter 9 of the bankruptcy code] does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality, including expenditures for such exercise, but—
>
> (1) a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition; and
>
> (2) a judgment entered under such a law may not bind a creditor that does not consent to such composition.

[5] The district court could not have concluded that Congress has preempted the field of debt reorganization because the Supreme Court has long recognized the power of territories to enforce debt reorganization plans provided that those plans do not conflict with the federal Bankruptcy Code. *See, e.g.*, *Am. Ins. Co. v. 356 Bales of Cotton*, 26 U.S. 511 (1828) (upholding Florida territorial court applying the bankruptcy principle distributing asset proceeds to salvors rather than to the insurer of the assets' owner).

In the district court's view, the Recovery Act is a "State law" that attempts to bind non-consenting "creditors" to a composition of indebtedness of a "municipality" within the meaning of section 903. Add. 32-37. Based on that conclusion, the district court held that section 903(1) by its terms precludes Puerto Rico from enforcing the Act.

The district court's express preemption ruling was in error because (a) section 903 by its terms applies only to laws affecting "creditors" under the Bankruptcy Code, and today neither plaintiffs nor any other entities can be "creditors" within the plain meaning of section 903; (b) section 903 proscribes only laws governing the reorganization of municipal debt enacted by states whose municipalities have not been excluded from chapter 9 in the first instance; and (c) the district court's ruling violates the cardinal rule that bankruptcy statutes should not be interpreted to change established law unless Congress explicitly expressed its intent to do so, which did not happen here.

The district court thus misapprehended the text and plain meaning of section 903(1), which does not preempt the Act. In so doing, the district court effectively eliminated Puerto Rico's legitimate exercise of its police power in the face of a massive fiscal emergency. Moreover, even if the plain text were somehow ambiguous on this point (which it is not, as shown below), the Supreme Court's

recognition of the power of states and territories to enact debtor-creditor laws for entities not covered by federal law, as well as the history of chapter 9, resolve any doubts concerning the Recovery Act's validity. And, critically, there is no statutory text and no legislative history evincing Congress's intent to supersede the historic and legitimate police power of a territory or state.

A. Section 903(1) Does Not Preempt the Recovery Act Because, by its Defined Terms, It Does Not Apply to Plaintiffs or to Any Other Entities While Public Corporations Are Ineligible for Chapter 9.

Any express preemption analysis must begin with the words of the statute. *See, e.g.*, *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241-42 (1989). Here, the plain text of the Bankruptcy Code interpreted in accordance with the Bankruptcy Code's definitions demonstrates that section 903 does not preempt Puerto Rico from passing the Recovery Act. Critically, section 903 bars only state laws that bind non-consenting "creditors." 11 U.S.C. § 903(1). Neither Plaintiffs nor any other entities can be "creditors" today once the proper statutory definitions are considered. *See, e.g.*, *Stenberg v. Carhart*, 530 U.S. 914, 942 (2000) (holding that explicit statutory definition must control); *Meese v. Keene*, 481 U.S. 465, 484 (1987) (same).

"Creditor" is a term defined in section 101(10) of the Bankruptcy Code.[6] It means:

> (A) an entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;
>
> (B) an entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or
>
> (C) an entity that has a community claim.

11 U.S.C. § 101(10).

Neither Plaintiffs nor any other entity can qualify today as "creditors" under any of these subsections.[7] Subsection (A) of section 101(10) requires that a creditor have a claim that arose at the time of or before the "order for relief concerning the debtor." "Debtor," in turn, is defined as a "person or municipality *concerning which a case under this title [Title 11] has been commenced*." 11 U.S.C. § 101(13) (emphasis added). No Puerto Rico instrumentality has ever

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[6] Section 901(b) is explicit that terms appearing in chapter 9 must be interpreted in accordance with the Bankruptcy Code sections made applicable to chapter 9 by either (i) section 901(a), or (ii) section 103(e). 11 U.S.C. § 901(b). The reference to section 103(e) is a scrivener's error—clearly the intended reference is to section 103(f), which makes all of chapter 1, including the statutory definition of "creditor" in section 101, applicable to chapter 9. *Id*. § 103(f).

[7] We say "today" because if and when Congress renders Puerto Rico's instrumentalities eligible for chapter 9 and they commence chapter 9 cases, it may be possible for Plaintiffs to be "creditors" within the meaning of 11 U.S.C. §§ 101(10) and 903.

commenced, or since 1984 (the year Congress excluded the public corporations from being eligible chapter 9 debtors) could commence a case under Title 11, and thus cannot be a "debtor" under the statutory definition. An "order for relief," meanwhile, can exist only after a petition has been filed in accordance with Bankruptcy Code section 301(b), which is made applicable to chapter 9 cases by Bankruptcy Code section 901(a). Taken together, these provisions demonstrate that neither plaintiffs nor any entity can qualify as "creditors" under subsection (A) of section 101(10) because PREPA is not and cannot be a title 11 "debtor" that receives an "order for relief." The district court erred by neglecting to take the words "order for relief" into account and overlooking the requirement that a case must have commenced under the Bankruptcy Code for an entity to qualify as a "debtor."

Section 101(10)(B) defines creditors as those having "a claim against the estate." The "estate" is created by Bankruptcy Code section 541(a). There can be no "estate" unless there is a case under the Bankruptcy Code and section 541(a) applies. Since Puerto Rico municipalities cannot bring a case under the code, *see* 11 U.S.C. § 101(52), neither plaintiffs nor any other entity can have a claim against an estate and be a creditor today within the meaning of sections 101(10)(B) and 903. Additionally, chapter 9 of the Bankruptcy Code does not incorporate section

541(a). *See* 11 U.S.C. § 901. Therefore, no "estate" is ever created in chapter 9 cases, so that even if Congress today rendered the public corporations eligible for chapter 9, neither Plaintiffs nor any entity could be a "creditor" within the meaning of sections 101(10)(B) and 903.

Finally, section 101(10)(C) provides that a creditor can be an entity holding a "community claim." A "community claim" is:

> [A] claim that arose before the commencement of the case concerning the debtor for which property of the kind specified *in section 541(a)(2)* of this title is liable, whether or not there is any such property at the time of the commencement of the case.

11 U.S.C. § 101(7) (emphasis added). In turn, section 541(a)(2) states that "community property" is property in which the debtor and the debtor's spouse have an interest as of the commencement of the case under the Bankruptcy Code. Accordingly, to be a "creditor" under section 101(10)(C), the creditor must have a claim against an individual (human) debtor that has commenced a case under Title 11, because only human debtors have spouses. None of the public corporations is human and, in any event, none of the public corporations is eligible to be a debtor, *see* 11 U.S.C. § 101(52). Accordingly, neither plaintiffs nor any other entity today can be "creditors" under sections 101(10)(C) and 903.

The Bankruptcy Code's express definitions therefore make clear that today

neither plaintiffs nor any other entity are or can be "creditors" as that term is used in sections 101(10) and 903 of the Bankruptcy Code. Not being "creditors," they are not protected by section 903(1), which bars only state laws binding non-consenting "creditors." This appeal begins and ends with the foregoing analysis. But the result of that analysis is corroborated by much more.

The foregoing plain meaning of section 903(1) perfectly comports with the terms of section 101(52), which was the focus of the district court's decision. That key provision provides:

> The term "State" includes the District of Columbia and Puerto Rico, *except for the purpose of defining who may be a debtor under chapter 9 of this title*.

11 U.S.C. § 101(52) (emphasis added). Section 109(c)(2) of the Bankruptcy Code prescribes that an "entity may be a debtor under chapter 9 . . . if and only if," among other things, it is a "municipality" authorized by its State to be a chapter 9 debtor. By excluding Puerto Rico from being a "State" for purposes of defining who may be a chapter 9 debtor, section 101(52) prevents all Puerto Rico municipalities from being eligible for chapter 9 because there is no "State" to authorize them to be chapter 9 debtors to satisfy the authorization requirement in section 109(c)(2).

Thus, because section 101(52) prevents all Puerto Rico municipalities from being eligible chapter 9 debtors, and because "creditor" is defined to mean solely a creditor of a chapter 9 debtor, sections 101(52) and 903 combine to show that section 903 does not refer to any *creditors of Puerto Rico municipalities*.

The structure of the Bankruptcy Code further compels the conclusion that the Act is beyond the preemptive grip of section 903(1). The debtor-eligibility requirements for each chapter of the Bankruptcy Code are set forth in 11 U.S.C. § 109. Consequently, if section 903(1) were intended to decree a general rule that did not turn on any eligibility requirements or the existence of a case under chapter 9, Congress would have located it outside the Bankruptcy Code, or would have written a provision like it did in section 103(k) expressly providing that a certain section applies regardless of the actual pendency of a bankruptcy case under the Bankruptcy Code. *See* 11 U.S.C. § 103(k). But instead, it located section 903(1) inside chapter 9, a chapter that has no application to Puerto Rico municipalities because they are all ineligible for chapter 9 relief. It is difficult to imagine this placement as evidencing Congress's intent that section 903 apply to Puerto Rico. *See Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000) (noting "that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme"). It simply

makes no sense that Congress would place in chapter 9 a provision intended to govern entities ineligible to trigger chapter 9.

Indeed, with one exception Congress expressly identified, none of the substantive provisions of the Code applies when no case under the Code is pending. *See* 11 U.S.C. § 103. When Congress intended to create an exception and make a substantive provision generally applicable, it did so explicitly. For example, section 103(k)(2) provides that "section 1509 applies *whether or not a case under this title is pending*." 11 U.S.C. § 103(k)(2) (emphasis added). No such exception is made for section 903. Thus, since Puerto Rico municipalities are not subject to chapter 9, they *a fortiori* cannot be subject to section 903.

B. In the Alternative, Section 903 Does Not Apply to Laws Affecting Puerto Rico Municipalities.

Even if section 903 somehow has force outside a chapter 9 proceeding, by its plain terms it does not preempt laws governing the reorganization of insolvent Puerto Rico municipalities. As a general matter, the only entities that can be debtors in chapter 9 are municipalities. *See* 11 U.S.C. § 109(c). Municipalities, in turn, are "political subdivision[s] or public agenc[ies] or instrumentalit[ies] of a State." *Id.* § 101(40). When section 101(52) speaks of defining "who may be a debtor under chapter 9," it is therefore modifying the definition of "municipality," not "State" (as states can never be chapter 9 debtors). Section 101(52) provides

that whenever chapter 9 uses the word "municipality," Puerto Rico and the District of Columbia municipalities should be excluded. In other words, "municipality" as it appears in chapter 9 should be read as a "political subdivision or public agency or instrumentality of a State (other than the District of Columbia and Puerto Rico)."

With this proper understanding of section 101(52) in mind, the inapplicability of section 903 to the Act is clear. Section 903(1) prohibits only laws that "prescribe[e] a method of composition of indebtedness of [a] municipality." Read in conjunction with section 101(52), that prohibition does not extend to laws—like the Recovery Act—that pertain to Puerto Rico municipalities.

The preamble of section 903 confirms this reading. Section 903 begins by providing that "[t]his chapter"—i.e., chapter 9—does not limit or impair the power of a state to control a "municipality" of or in that state. 11 U.S.C. § 903. As a matter of logic, that opening clause cannot be referring to any Puerto Rico "municipality" because section 101(52) excludes the Commonwealth's municipalities from being chapter 9 debtors. Indeed, it would be pointless for section 903 to state that Puerto Rico's control over its municipalities is unimpaired by chapter 9, when Puerto Rico's municipalities are ineligible for chapter 9 in the

first place. *See Direct Mktg. Ass'n v. Brohl*, 135 S. Ct. 1124, 1132 (2015) (applying canon against rendering statutory language as surplusage).

If the preamble of section 903 does not apply to Puerto Rico municipalities, then section 903(1) cannot either. That is because that subdivision uses the phrase "such municipality," thereby referring back to the same "municipality" mentioned in the opening clause of section 903. *See Pennsylvania v. Coxe*, 4 U.S. (4 Dall.) 170, 202 (1800) ("[T]he terms 'such actual settlement' . . . refer to the settlement described in the foregoing part.") (Yeates, J., concurring). Thus, the restriction spelled out in section 903(1) that state laws for debt compositions for such municipalities shall not bind nonconsenting creditors simply does not apply to laws that bind the creditors of Puerto Rico municipalities.

C. The District Court's Reading of Section 903 Was Misguided and Leads to Several Anomalous Results.

The district court rejected a straightforward reading of the statute based on its belief that if Congress had intended to exempt Puerto Rico from section 903(1), it would have done so in a more direct fashion. Add. 33-34. According to the district court, if Congress had wanted to permit Puerto Rico to pass the Recovery Act, then it would have written section 101(52) to read: "The term 'State' includes . . . Puerto Rico, *except under chapter 9 of this title*." *Id.* (emphasis added). But, there are three serious flaws in the district court's reasoning.

First, as demonstrated above, the statutory meanings of "creditor" and "debtor" show that section 903 cannot apply to any creditor of a public corporation that is ineligible for chapter 9 and has not commenced a chapter 9 case.

Second, arguments about the various ways Congress could have expressed its intent make dubious guides to statutory interpretation. The question is what Congress meant by the words it chose, not whether a court with the advantage of hindsight can craft a better way to express the same idea. *Cf. United States v. Powell*, 423 U.S. 87, 321 (1975) ("The fact that Congress might, without difficulty, have chosen clearer and more precise language equally capable of achieving the end which it sought does not mean that the statute which it in fact drafted is unconstitutionally vague." (quotation marks and alteration omitted)).

Third, the district court's alternative language defining State not to include Puerto Rico in chapter 9 would not accomplish the objective of rendering section 903 inapplicable to Puerto Rico's public corporations. That is because the eligibility of Puerto Rico public corporations for chapter 9 does not turn on any definition of "State" within chapter 9; to the contrary, their eligibility is governed by section 109(c) in chapter 1 of the Bankruptcy Code. To block Puerto Rico's municipalities from availing themselves of chapter 9 relief, there must be a limitation on "[w]ho may be a debtor" in section 109.

The district court's conclusion—that Puerto Rico municipalities are ineligible for chapter 9, but section 903 nevertheless applies to creditors of Puerto Rico's municipalities—is not only directly contrary to the definitions in the Bankruptcy Code. It also leads to absurd results. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) (explaining venerable principle that "interpretations of a statute which would produce absurd results are to be avoided"); *see also Hartford Underwriters Ins. Co. v. Union Planters Bank*, 530 U.S. 1, 6 (2000) (same); *FutureSourceLLC v. Reuters Ltd.*, 312 F.3d 281, 284-85 (7th Cir. 2002) (same).

For one thing, the district court's holding creates a situation unprecedented in American bankruptcy law: A group of municipalities are left without recourse under either federal or state law to preserve vital public functions and to treat all creditors fairly in the case of insolvency. Prior to the district court's ruling, municipalities have always either been covered by chapter 9 or, if not, their states have been permitted to provide a means of reorganizing debt. *See Faitoute Iron & Steel Co. v. City of Asbury Park*, 316 U.S. 502, 516 (1942) (upholding municipal reorganization plan implemented under New Jersey law when federal chapter 9 was not in effect); *Meriwether v. Garrett*, 102 U.S. 472, 520 (1880) (upholding legislature's repeal of insolvent city's charter and appointment of receiver to

collect back taxes, conduct foreclosures, and provide "creditors all the relief which might be given" over five years). Yet despite nearly a century of this policy, the district court concluded that with respect to Puerto Rico municipalities, Congress made the unparalleled decision to leave them without *any* option upon insolvency and that it did so using language that, under any reading, does not show any Congressional intent to prohibit Puerto Rico from exercising its police power to save itself from fiscal crisis when chapter 9 is unavailable.

Significantly, the underlying understanding and assumption when the U.S. Constitution was formulated was that the states, as sovereigns, had the power to determine how their debt would be repaid. Alexander Hamilton made that clear in The Federalist No. 81. This concept must extend equally to a state's power to determine how debts of its municipalities should be paid. *See, e.g.*, *Bennett v. City of Holyoke*, 362 F.3d 1, 12 (1st Cir. 2004) (explaining that "municipalities are creatures of the state" subject to control of the state's legislature).

Furthermore, prior to the ruling below, the Supreme Court had many times approved state debtor-creditor statutes for entities ineligible for federal bankruptcy, including banks, insurance companies, and municipalities. The ruling below cited, but overlooked the significance of, *Sturges v. Crowninshield*, which held that although the federal constitution does not grant states the power to pass bankruptcy

laws, states had the power in the first place and could exercise that power until and unless Congress legislated to the contrary. 17 U.S. (4 Wheat.) 122, 199 (1819). As Chief Justice Marshall explained, "it may be thought more convenient, that much of [the subjects of bankruptcies and insolvencies] should be regulated by state legislation, and congress may purposely omit to provide for many cases to which their power extends." *Id.* at 195-96; *see also In re Thompson,* 894 F.2d 1227, 1231 (10th Cir. 1990) (Baldock, J., concurring) (holding that where Congress has not spoken "on the issue of *when* a debtor may cure a default on a residential mortgage in a chapter thirteen proceeding" the matter is left to state law (citing *Crowninshield*, 17 U.S. at 191-208)).

Following this model, Congress has historically deferred to state law bankruptcy regimes governing entities "affected with a public interest," like banks and insurance companies, by making them ineligible to seek relief under the Bankruptcy Code. *German Alliance Ins. Co. v. Kansas*, 233 U.S. 389, 406, 413 (1914) (stating that where insurance companies distribute risk "so as to fall as lightly as possible on the public at large, [t]heir efficiency . . . and solvency, are of great concern"); *see also* 11 U.S.C. § 109(b), (d) (excluding banks and insurance companies from bankruptcy protection); *U.S. Dep't of Treasury v. Fabe*, 508 U.S. 491, 519 (1993) (Kennedy, J., dissenting) (explaining that state prerogative to

establish liquidation procedures for insolvent insurance companies "emanate[s]. . . from the longstanding decision of Congress to exempt insurance companies from the federal bankruptcy code").

The Supreme Court has accordingly consistently upheld state insolvency regimes governing banks and insurance companies. *See, e.g.*, *Neblett v. Carpenter*, 305 U.S. 297, 305 (1938) (upholding California insurance company reorganization plan paying policyholders at least what they would receive upon liquidation); *Doty v. Love*, 295 U.S. 64, 70-74 (1935) (upholding Mississippi bank reorganization statute requiring payment of liquidation value of assets to creditors); *Gibbes v. Zimmerman*, 290 U.S. 326, 332 (1933) (upholding South Carolina laws governing insolvent banks); *Noble State Bank v. Haskell*, 219 U.S. 104, 109 (1911) (upholding Oklahoma measures as authorized use of police power to ensure full payment of depositor claims in case of bank insolvency). On the strength of these decisions, nearly every state has exercised its police power to pass statutes governing the restructuring of banks and insurance companies that are ineligible for relief under the Bankruptcy Code. *See, e.g.* Cal. Fin. Code § 648 (banks); N.Y. Banking Law § 610 (banks); Okla. Stat. tit. 6 §§ 1201-1207 (banks); Ky. Rev. Stat. Ann. §§ 304.33-010 - 304.33-600 (insurance companies); 40 Pa. Stat. Ann.

§§ 221.1-221.63 (insurance companies); Wis. Stat. Ann. §§ 645.01 - 645.90 (insurance companies).

It is beyond dispute that Puerto Rico, like any state, can exercise its police power to protect the health, safety, and welfare of its citizens. *See, e.g., Armstrong v. Goyco*, 29 F.2d 900, 902 (1st Cir. 1928) ("In the matter of local regulations and the exercise of police power Porto Rico possesses all the sovereign powers of a state, and any exercise of this power which is reasonable and is exercised for the health, safety, morals, or welfare of the public is not in contravention of … any provision of the Federal Constitution."). Like most states, Puerto Rico has exercised that police power to establish legal regimes governing insolvencies of banks and insurance companies, since these entities are excluded from Bankruptcy Code protection. P.R. Laws Ann. tit. 7, §§ 201-15 (banking); P.R. Laws Ann. tit. 26 §§ 4001-13 (insurance); *see also Mercado Boneta v. Fernandez*, 950 F. Supp. 432, 435 (D.P.R. 1996) ("For protection of the general welfare, the Commonwealth of Puerto Rico has, as have all of the States, enacted a comprehensive scheme to regulate the insurance industry, including the liquidation of insurers.").

The district court's decision therefore imposes a sea-change in prior law and ignores Congress's longstanding policies of (1) permitting state creditor-debtor

laws that govern entities excluded from the Bankruptcy Code; and (2) giving States the opportunity to allow insolvent municipalities recourse under either federal or state law. Had Congress intended such a radical departure from past practice, it would not have manifested that intent in a provision (section 903) in a chapter of the Bankruptcy Code that does not even apply to Puerto Rico municipalities in the first place. *See Whitman v. Am. Trucking Assocs.*, 531 U.S. 457, 468 (2001) ("Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes."); *Cohen v. de la Cruz*, 523 U.S. 213, 221 (1998) ("We . . . will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure. …" (quotation marks omitted)); *Antilles Cement*, 670 F.3d at 324 (explaining that Congress would not commandeer Puerto Rico's ability to manage its fiscal affairs "without making that intent clear").

Indeed, when the Supreme Court interprets bankruptcy statutes, it assumes Congress does not amend judicially created concepts in bankruptcy law without manifesting clear intent to do so:

> The normal rule of statutory construction is that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific. The Court has followed this rule with

> particular care in construing the scope of bankruptcy codifications. If Congress wishes to grant the trustee an extraordinary exemption from nonbankruptcy law, "the intention would be clearly expressed, not left to be collected or inferred from disputable considerations of convenience in administering the estate of the bankrupt…"

Midlantic Nat'l Bank v. N.J. Dep't of Envt'l Prot., 474 U.S. 494, 501 (1986) (citation omitted).

Congress plainly did not intend the result reached by the district court. As explained below, the legislative history of chapter 9 generally—and section 903 specifically—demonstrates that Congress did not intend to change longstanding bankruptcy policy and render Puerto Rico municipalities helpless in the face of insolvency. *See* Point D, *infra*.

D. The District Court Erred When It Concluded that Giving Section 903 Its Plain Meaning Would Render the Provision Meaningless and Contravene Congressional Intent.

In its footnote 18, the district court ignored the plain meaning of section 903 based on two contentions, namely that (1) section 903 would have no practical effect if it only applied when a chapter 9 case for the public corporation is pending because a municipality could undergo a state law restructuring and then not commence a chapter 9 case, and (2) the legislative history showing that Congress intended to have a uniform law impact municipal debt on a nationwide basis is

contrary to allowing the Act to apply to debt in Puerto Rico when chapter 9 applies to municipalities in the states. Both contentions fail.

As a threshold matter, given that section 903 and all of chapter 9 do not apply to Puerto Rico's public corporations for the reasons explained above, section 903 does not have any effect on such public corporations. Thus, the district court was really asking what effect section 903 would have on entities eligible for chapter 9, which question seeks an advisory opinion. *See City of Pontiac Retired Emps. Ass'n v. Schimmel*, 751 F.2d 427, 431, 433-34 (6th Cir. 2014) (McKeague, J., concurring) (observing that section 903(1) may formulate "a specific limitation on State power only where Chapter 9 has been invoked").

Adding section 903 to chapter 9 results in two practical effects for municipalities eligible for chapter 9. One effect is that if the municipality undergoes a state law restructuring and then becomes insolvent again and commences a chapter 9 case, the provisions of the state law restructuring will not be enforceable against the nonconsenting creditors. This is a straightforward practical effect of section 903 that disproves the district court's contention that section 903 would have no practical effect.

The second effect relates to a circumstance in which a court determines that the existence of section 903 creates field preemption at the time of the state law

restructuring. The nonconsenting creditors may be able to assert that the state court cannot enforce the restructuring against them because Congress has attempted to occupy the field.

Conversely, there is no likelihood or even possibility of field preemption against Puerto Rico's public corporations undergoing a restructuring under the Act because Congress has expressly determined not to occupy the field and manifested that determination by barring chapter 9 from applying to Puerto Rico's public corporations.

The foregoing practical effects of section 903 demonstrate that giving the statute its plain meaning will not lead to any absurd result or render the provision meaningless. The plain meaning of section 903 must therefore be given effect. *See Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there."); *Ron Pair Enters.,* 489 U.S. at 241-42 (same); *United States* v. *Goldenberg*, 168 U.S. 95, 102-03 (1897) (same).

Footnote 18's second contention, that enforcement of the Recovery Act would thwart Congressional intent to render uniform the treatment of distressed municipal debt, is erroneous on its face. Puerto Rico's public corporations are ineligible for chapter 9. Therefore, their debt cannot today be treated under chapter

9. There is thus no possibility of uniformity of treatment of the public corporations' debts and chapter 9 debtors' debts even under the district court's ruling.

Rather, the policy choice is between allowing restructuring or leaving Puerto Rico's insolvent public corporations without recourse. And permitting restructuring under the Recovery Act would provide more uniformity with chapter 9 than the chaos that would otherwise result from the public corporations having no access to any debtor-creditor regimen.

In its footnote 18, as noted above, the district court also erred by deciding an issue not before it. Once the definitions of "creditor" and "debtor" are taken into account, or once the jurisprudence showing states can enact debtor-creditor laws for entities until Congress enacts conflicting laws for such entities is taken into account, it becomes clear that section 903 does not apply to the Commonwealth's public corporations. How it would apply if the public corporations were eligible chapter 9 debtors is not an issue in this case.

E. The Legislative History Further Demonstrates that the Recovery Act Is Not Preempted by Section 903.

As explained above, the plain meaning of section 903 shows that it was carefully crafted not to affect creditors of entities ineligible for chapter 9. The analysis should rightfully end there. Nevertheless, resort to legislative history

points to the same conclusion, namely that Congress wanted to preempt state laws only for entities invoking chapter 9.

Congress first implemented a federal process for reorganizing municipal debt during the Great Depression, when many municipalities found themselves on the brink of insolvency. Indeed, the situation was so dire that by 1934 more than 1,000 municipalities had defaulted on their bond obligations. *See* S. Rep. No 73-407, at 2 (1934). Those defaults resulted in seriatim litigation by creditors, which further deteriorated the municipalities' financial positions and threatened their very survival. *See, e.g.*, *Uniform System of Bankruptcy: Hearing on S. 5699 Before the S. Comm. on the Judiciary*, 72d Cong. 6-7, 9, 45 (1933); *Amendment of Bankruptcy Laws—Bankruptcy of Municipalities*: *Hearing on S. 1868 and H.R. 5950 Before a Subcomm. of the S. Comm. on the Judiciary*, 73d Cong. 45, 144 (1934).

To provide relief to struggling municipalities, in 1934 Congress passed amendments to the Bankruptcy Act of 1898 that for the first time created federal protections for municipal debtors. Act of May 24, 1934, ch. 345, Pub. L. No. 73-251, 48 Stat. 798. The purpose of the 1934 amendments was unmistakable: Congress believed that it was imperative to protect American municipalities from the consequences of default. *See id.* § 78 (citing "national emergency caused by

increasing financial difficulties of many local government units"). According to Congress, the legislation was necessary to allow municipalities,

> by mutual and effective agreement with their creditors, to adjust their existing indebtedness as to carry forward without too hurtful a diminution the discharge of their governmental duties of fire, police, and sanitary protection, and education, and meet the increased burden incident to caring for those who must seek public assistance in order to live.

H.R. Rep. No. 73-207, at 2 (1933).[8]

The 1934 amendments proved to be short-lived, however. Less than two years after enactment, the Supreme Court in a 5-4 decision struck down the municipal bankruptcy laws on the ground that they impinged on state sovereignty. *See Ashton v. Cameron Cnty. Water Improvement Dist., No. 1*, 298 U.S. 513, 532 (1936). In the Court's view, the restrictions imposed on municipalities in bankruptcy amounted to "unwarranted interference with fiscal matters of the state." *Id.* at 529.

But Congress was unbowed. Underscoring its judgment that protecting municipal debtors is vital to the nation's well-being, Congress passed new provisions for the reorganization of municipal debt just one year later. *See* Act of

[8] The 1934 municipal bankruptcy amendments were originally scheduled to sunset in 1936. Pub. L. No. 73-251 § 79. That date was extended to 1940 by subsequent legislation. *See* Act of Apr. 10, 1936, ch. 186, Pub. L. No. 74-507, § 79, 49 Stat. 1198, 1198 (1936).

Aug. 16, 1937, ch. 657, Pub. L. No. 75-302, 50 Stat. 653. However, Congress was all too aware of the possibility of Supreme Court intervention. So it took great pains within the new municipal bankruptcy laws to avoid interference with the fiscal affairs of the states. Most significant for the present appeal, Congress enacted section 903 (titled "Reservation of State Power to Control Municipalities"), which made it pellucid that the federal municipal bankruptcy laws would not impinge on state sovereignty:

> Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures therefor.

Pub. L. 75-302, § 83(i), 50 Stat. 659 (1937) (codified as amended at 11 U.S.C. § 903);[9] *see also United States v. Bekins*, 304 U.S. 27, 50 (1938) (upholding Pub. L. No. 75-302 and observing that "Congress was especially solicitous to afford no ground for this objection" concerning state sovereignty); H.R. Rep. No. 75-517, at

[9] For ease of exposition, this brief will refer to this provision as section 903 (where it was subsequently codified) and to the federal municipal bankruptcy regime as chapter 9. Language similar to section 903 had appeared in section 80(k) in chapter IX of the Bankruptcy Act of 1898, as amended in 1934. The 1937 version of the provision was originally codified in chapter X of the Bankruptcy Act, but further amendments in 1946 returned it to chapter IX. Congress re-codified the provision as section 903 of the Bankruptcy Code in 1978 without making substantive changes to the language quoted above.

2-3 (1937) ("The bill here recommended for passage expressly avoids any restriction on the powers of the States or their arms of government in the exercise of sovereign rights and duties.").

Accordingly, two strong policy objectives undergird the modern municipal Bankruptcy Code. First, Congress emphatically intended for cash-strapped municipalities to have the option to reorganize their debts and avoid default, as evidenced by its immediate reenactment of municipal reorganization laws following *Ashton*. Second, Congress did not intend for chapter 9 to interfere in any manner with the ability of states to organize their fiscal affairs. Indeed, any interference by chapter 9 in the fiscal affairs of the states would raise serious constitutional problems. *Ashton*, 298 U.S. at 529.

The provision at the center of this appeal, subdivision (1) of section 903, was not added to chapter 9 until 1946. Subdivision (1) was at least in part a response to the Supreme Court's decision in *Faitoute*. *See Ropico, Inc. v. City of N.Y.*, 425 F. Supp. 970, 979 (S.D.N.Y. 1976). In *Faitoute*, the Supreme Court sustained a municipal debt reorganization that was implemented under a New Jersey municipal bankruptcy statute. 316 U.S. at 516. Holders of bonds issued by the city of Asbury Park had argued that federal chapter 9 preempted New Jersey's attempt to pass its own municipal bankruptcy law. The Supreme Court demurred; it held that

the New Jersey municipal bankruptcy provision was not preempted by chapter 9 because section 903 expressly "reserve[d] full freedom to the states," including the freedom to regulate "problems as peculiarly local as the fiscal management of its own household." *Id.* at 508-09.

Faitoute's holding raised the specter of every state passing its own version of chapter 9. *See, e.g.*, JA 67, *Amending Municipal Bankruptcy Act: Hearings on H.R. 4307 Before Special Subcomm. on Bankruptcy and Reorganization of the H. Comm. of the Judiciary*, 79th Cong. 16 (1946) (expressing concern that after *Faitoute*, "the 48 States can have their bankruptcy laws running right along at the same time as [chapter 9]"). Recognizing that municipal bonds are typically sold well beyond a state's borders, Congress determined that investor expectations would benefit if municipal debt reorganizations were governed by a uniform set of laws instead of a patchwork of state laws. JA 55, H.R. Rep. No. 79-2246, at 4 (1946). Accordingly, in 1946 Congress added the following coda to section 903:

> [N]o State law prescribing a method of composition of indebtedness of such agencies shall be binding upon any creditor who does not consent to such composition.

JA 120, Act of July 1, 1946, ch. 532, Pub. L. No. 79-481, 60 Stat. 409, § 83(i) (1946) (codified as amended at 11 U.S.C. § 903(1)-(2)).

The legislative history demonstrates that Congress viewed section 903(1) as a kind of *quid pro quo*: Because Congress was giving municipalities a method of restructuring their debts, when municipalities availed themselves of chapter 9, Congress could render state-law restructurings nonbinding on creditors who did not consent to them.

The *quid pro quo* nature of section 903(1) is further highlighted by the provision's legislative record. The House's early draft of section 903(1) stated that the ban on state municipal bankruptcy laws would be in place only "while this chapter [9] is in effect." H.R. 4307, 79th Congress, 1st session, at 18 (1946); *see also Ropico*, 425 F. Supp. at 979 & n.7 (referencing 1946 congressional testimony of Millard Parkhurst, municipal bond attorney, who explained that section 903(1) would apply only "while this chapter is in effect"). That was likely because historically Congress had enacted bankruptcy laws having sunset provisions; moreover, the House was likely still smarting from the Supreme Court's invalidation of federal municipal bankruptcy laws in *Ashton*, and it sought to clarify that states would be free to enforce their own versions of chapter 9 against nonconsenting creditors when chapter 9 is not invoked.

Significantly, no one proposed a version of section 903(1) providing that states could not continue to enact their own restructuring laws for their

municipalities. The only proposal expressly provided state composition laws would not be binding on nonconsenting creditors, and the proposal was to be embedded in chapter 9. Moreover, much of the congressional testimony surrounding section 903(1) focused on the need to bolster the federal municipal bankruptcy laws because states would no longer have the option of enforcing their own restructuring laws to the extent provided by section 903(1). *See Amending Municipal Bankruptcy Act*, 79th Cong. at 22 ("[W]e would really do harm if we recommended and succeeded in obtaining the passage of an amendment to the Federal law which would outlaw the State laws without at the same time making the Federal law a useful one." (statement of Hon. E.J. Dimock, Former Chairman of Subcomm. on Legal Remedies of Municipal Bondholders of the American Bar Association)).

The immediate background of section 903(1) also helps explain why it was crafted as it was. Congress well knew that when the Supreme Court upheld a municipal bankruptcy law replacing the one it had ruled unconstitutional in *Ashton* on the ground that the bankruptcy law violated the states' Tenth Amendment sovereignty, the Supreme Court addressed its second holding to the issue presented, namely: "whether the exercise of the federal bankruptcy power in dealing with a composition of the debts of the irrigation district, *upon its voluntary*

application and with the State's consent, must be deemed to be an unconstitutional interference with the essential independence of the State as preserved by the Constitution." *Bekins*, 304 U.S. at 49 (emphasis added). Therefore, it is no surprise that Congress inserted section 903(1) inside chapter 9 where it would not intrude on state restructuring laws until a municipality invokes it voluntarily.

Indeed, as a constitutional matter, Congress likely intended section 903(1) not to violate the Tenth Amendment by intruding on a state's rights to deal with its municipalities' distress. The *Ashton* Court was clear that Congress cannot use the federal Bankruptcy Code to meddle with the fiscal affairs of a state. 298 U.S. at 529. It is difficult to imagine a more harmful example of interference with a state's fiscal affairs than to render a state feckless to save its insolvent municipalities unless they voluntarily reorganize municipal debt under federal law.

Following the 1946 amendments, chapter 9 remained mostly unchanged for nearly three decades. During that period, municipal debtors in Puerto Rico and each of the states could seek protection under chapter 9. In 1976, however, chapter 9 was amended again. In 1978, when Congress enacted the Bankruptcy Code to replace the longstanding Bankruptcy Act of 1898, it "inadvertently" omitted a statutory definition of "State." S. Rep. No. 96-305, at 2 (1979).

To rectify this "inadvertent" omission, Congress in 1984 amended the Bankruptcy Code again to clarify that the Commonwealth's citizens and businesses were eligible for the various chapters of bankruptcy relief. *See* H. R. Rep. No. 96-1195 at 8 (1980) (explaining that the "amendment adds a . . . definition for 'State' primarily to assure that residents and domiciliaries of Puerto Rico can become debtors under title 11"). But for reasons that are conspicuously absent from the legislative record,[10] Congress at the same time decided to exclude Puerto Rico municipalities from invoking chapter 9 protection:

> The term "State" includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title.

JA 145, Act of July 10, 1984, Pub. L. No. 98-353, § 421, 98 Stat. 353, 369 (codified at 11 U.S.C. § 101(52)).

In claiming that Congress rendered Puerto Rico's public corporations ineligible for chapter 9 and unable to restructure under Commonwealth law

[10] Indeed, Professor Frank R. Kennedy, who had served as the Executive Director of the Commission on Bankruptcy Laws established by Congress in 1970 to formulate what would become the Bankruptcy Code, testified that he did not understand why Puerto Rico's public corporations were excluded from eligibility under chapter 9. *Bankruptcy Improvements Act: Hearing on S. 333 and S. 445 Before the S. Comm. on the* Judiciary, 98th Cong. 326 (1983) ("I do not understand why the municipal corporations of Puerto Rico are denied by the proposed definition of 'State' of the right to seek relief under chapter 9, but the addition of the definition of 'State' is useful." (statement of Frank R. Kennedy)).

because Congress wanted to maintain control, the district court assumes things having no basis in the legislative history, namely that Congress wanted to change its historical practice of allowing ineligible entities to restructure under state or territorial law and that Congress wanted sole control. It cannot be gainsaid that the fundamental purpose animating Congress's chapter 9 legislation for the past nearly 100 years has been the desire to provide insolvent municipalities with a means of reorganizing their debt. *See, e.g.*, H. R. Rep. No. 94-686, at 4 (1975) ("The need for and the purpose of the bill have remained unchanged in the 42 years since the first Municipal Bankruptcy Act was passed."). The district court's cavalier reading of section 903(1), which leaves insolvent Puerto Rico municipalities with no legal recourse under either federal or state law, could not be more antithetical to history or anathema to congressional intent.

The legislative history of section 903 further demonstrates that Congress does not intend to interfere with the internal fiscal matters of a state. The district court's holding that Congress decided completely to bar Puerto Rico from reorganizing municipal debt simply cannot be squared with the pro-federalism concerns of section 903. Indeed, in the district court's view, Congress intended to force Puerto Rico to stand idly by while its public corporations fail. That would represent a fundamental departure from decades of previous congressional policy.

There is no reason that Congress intended such a radical change when neither the text of the statute nor the legislative history supports such a view.

As explained above, the district court's mantra of "uniformity" does not hold water because it was Congress that decided to exclude Puerto Rico's public corporations from the "uniform law," and the district court's holding does not alter that result. The 1946 Congress discussed a desire for uniformity of municipal bankruptcy laws. But the 1984 Congress jettisoned municipal-bankruptcy uniformity as far as Puerto Rico is concerned because it opted to *exclude* Puerto Rico—and only Puerto Rico (and the District of Columbia)—from chapter 9. Thus, the district court's decision fails to promote the "uniformity" that provides its sole policy support.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

March 16, 2015

Respectfully submitted,

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March 16, 2015

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CERTIFICATE OF FILING AND SERVICE

I, Robyn Cocho, hereby certify pursuant to Fed. R. App. P. 25(d) that, on March 17, 2015 the foregoing Brief for Defendants-Appellants Melba Acosta-Febo in 15-1271 and John Doe in 15-1272 was filed through the CM/ECF system and served electronically on the individual registered on the courts CM/ECF system.

The required copies will be forwarded to the court upon approval.

/s/ Robyn Cocho
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ADDENDUM

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

FRANKLIN CALIFORNIA TAX-FREE TRUST, *et al.*, **Plaintiffs**, **v.** COMMONWEALTH OF PUERTO RICO, *et al.*, **Defendants**.	**Civil No.** 14-1518 (FAB)
BLUEMOUNTAIN CAPITAL MANAGEMENT, LLC, **Plaintiff**, **v.** ALEJANDRO J. GARCIA-PADILLA, *et al.*, **Defendants**.	**Civil No.** 14-1569 (FAB)

OPINION AND ORDER

BESOSA, District Judge.

Plaintiffs in these two cases seek a declaratory judgment that the Puerto Rico Public Corporation Debt Enforcement and Recovery Act ("Recovery Act") is unconstitutional. (Civil No. 14-1518, Docket No. 85; Civil No. 14-1569, Docket No. 20.) Before the Court are three motions to dismiss plaintiffs' complaints and one cross-motion for summary judgment.

For the reasons explained below, the Court **GRANTS in part** and **DENIES in part** the three motions to dismiss, (Civil No. 14-1518,

Docket Nos. 95 & 97; Civil No. 14-1569, Docket No. 29), and **GRANTS in part** and **DENIES in part** the cross-motion for summary judgment, (Civil No. 14-1518, Docket No. 78). Because the Recovery Act is preempted by the federal Bankruptcy Code, it is void pursuant to the Supremacy Clause of the United States Constitution.

I. BACKGROUND

Plaintiffs collectively hold nearly two billion dollars of bonds issued by the Puerto Rico Electric Power Authority ("PREPA"). As background for the bases of plaintiffs' claims challenging the constitutionality of the Recovery Act, the Court first summarizes relevant provisions of the PREPA Authority Act (which authorized PREPA to issue bonds), the Trust Agreement (pursuant to which PREPA issued bonds to plaintiffs), the Recovery Act itself, and Chapter 9 of the federal Bankruptcy Code.

A. The Authority Act of May 1941

In May 1941, the Commonwealth of Puerto Rico ("the Commonwealth") enacted the Puerto Rico Electric Power Authority Act ("Authority Act"), P.R. Laws Ann. tit. 22 §§ 191-239, creating PREPA and authorizing it to issue bonds, id. §§ 193, 206. Through the Authority Act, the Commonwealth expressly pledged to PREPA bondholders "that it will not limit or alter the rights or powers hereby vested in [PREPA] until all such bonds at any time issued, together with the interest thereon, are fully met and discharged." Id. § 215. The Authority Act also expressly gives PREPA

bondholders the right to seek the appointment of a receiver if PREPA defaults on any of its bonds. Id. § 207.

B. The Trust Agreement of January 1974

PREPA issued the bonds underlying these two lawsuits pursuant to a trust agreement with U.S. Bank National Association as Successor Trustee, dated January 1, 1974, as amended and supplemented through August 1, 2011 ("Trust Agreement"). The Trust Agreement contractually requires PREPA to pay principal and interest on plaintiffs' bonds promptly. Trust Agreement § 701. Plaintiffs' bonds are secured by a pledge of PREPA's present and future revenues, id., and PREPA is prohibited from creating a lien equal to or senior to plaintiffs' lien on these revenues, id. § 712. Upon the occurrence of an "event of default," as the term is defined in the Trust Agreement, plaintiff bondholders may accelerate payments, seek the appointment of a receiver "as authorized by the Authority Act," and sue at law or equity to enforce the terms of the Trust Agreement. Id. §§ 802-804. An event of default occurs when, among other things, PREPA institutes a proceeding "for the purpose of effecting a composition between [PREPA] and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any federal or Commonwealth statute now or hereafter enacted." Id. § 802(g).

C. The Recovery Act of June 2014

On June 25, 2014, the Commonwealth Senate and House of Representatives approved the Recovery Act, and on June 28, 2014, the Governor signed the Recovery Act into law. The Recovery Act's Statement of Motives indicates that Puerto Rico's public corporations, especially PREPA, "face significant operational, fiscal, and financial challenges" and are "burdened with a heavy debt load as compared to the resources available to cover the corresponding debt service." Recovery Act, Stmt. of Motives, § A. To address this "state of fiscal emergency," the Recovery Act establishes two procedures for Commonwealth public corporations to restructure their debt. Id., Stmt. of Motives, §§ A, E. It also creates the Public Sector Debt Enforcement and Recovery Act Courtroom (hereinafter, "special court") to preside over proceedings and cases brought pursuant to these two procedures. Id. § 109(a).

The first restructuring procedure is set forth in Chapter 2 of the Recovery Act and permits an eligible public corporation to seek debt relief from its creditors with authorization from the Government Development Bank for Puerto Rico ("GDB"). Recovery Act § 201(b). The public corporation invoking this approach proposes amendments, modifications, waivers, or exchanges to or of a class of specified debt instruments. Id. § 202(a). If creditors representing at least fifty percent of the debt in a given class

vote on whether to accept the changes, and at least seventy-five percent of participating voters approve, then the special court may issue an order approving the transaction and binding the entire class. Id. §§ 115(b), 202(d), 204.

Chapter 3 of the Recovery Act sets forth the second restructuring approach. Under this approach, an eligible public corporation, again with GDB approval, submits to the special court a petition that lists the amounts and types of claims that will be affected by a restructuring plan. Recovery Act § 301(d). The public corporation then files a proposed restructuring plan or a proposed transfer of the corporation's assets. Id. § 310. The special court may confirm the plan if the plan meets certain requirements, id. § 315, including a requirement that "at least one class of affected debt has voted to accept the plan by a majority of all votes cast in such class and two-thirds of the aggregate amount of affected debt in such class that is voted," id. § 315(e). The special court's confirmation order binds all of the public corporation's creditors to the restructuring plan. Id. § 115(c).

Chapter 2 of the Recovery Act provides for a suspension period and Chapter 3, an automatic stay, during which time creditors may not assert claims or exercise contractual remedies against the public corporation debtor that invokes the Recovery Act. See Recovery Act §§ 205, 304.

D. Chapter 9 of the Federal Bankruptcy Code

The Recovery Act is modeled on Title 11 of the United States Code ("the federal Bankruptcy Code"), and particularly on Chapter 9 of that title. Recovery Act, Stmt. of Motives, § E. Chapter 9 governs the adjustment of debts of a municipality, 11 U.S.C. §§ 901 *et seq*., and "municipality" includes a public agency or instrumentality of a state, id. § 101(40). A municipality seeking to adjust its debts pursuant to Chapter 9 must receive specific authorization from its state. Id. § 109(c)(2). Puerto Rico municipalities are expressly prohibited from seeking debt adjustment pursuant to Chapter 9. Id. § 101(52).

II. THE PRESENT LITIGATION

A. Franklin and Oppenheimer Rochester Plaintiffs' Second Amended Complaint (Civil No. 14-1518)

Franklin plaintiffs[1] are Delaware corporations or trusts that collectively hold approximately $692,855,000 of PREPA bonds. (Civil No. 14-1518, Docket No. 85 at ¶ 3.) Oppenheimer Rochester

[1] The Court refers to the following parties collectively as "Franklin plaintiffs": Franklin California Tax-Free Trust (for the Franklin California Intermediate-Term Tax Free Income Fund), Franklin Tax-Free Trust (for the series Franklin Federal Intermediate-Term Tax-Free Income Fund, Franklin Double Tax-Free Income Fund, Franklin Colorado Tax-Free Income Fund, Franklin Georgia Tax-Free Income Fund, Franklin Pennsylvania Tax-Free Income Fund, Franklin High Yield Tax-Free Income Fund, Franklin Missouri Tax-Free Income Fund, Franklin Oregon Tax-Free Income Fund, Franklin Virginia Tax-Free Income Fund, Franklin Florida Tax-Free Income Fund, Franklin Louisiana Tax-Free Income Fund, Franklin Maryland Tax-Free Income Fund, Franklin North Carolina Tax-Free Income Fund, and Franklin New Jersey Tax-Free Income Fund), Franklin Municipal Securities Trust (for the series Franklin California High Yield Municipal Bond Fund and Franklin Tennessee Municipal Bond Fund), Franklin California Tax-Free Income Fund, Franklin New York Tax-Free Income Fund, and Franklin Federal Tax-Free Income Fund.

plaintiffs[2] are Delaware statutory trusts that hold approximately $866,165,000 of PREPA bonds. Id. at ¶ 4. On August 11, 2014, the Franklin and Oppenheimer Rochester plaintiffs filed a second amended complaint against the Commonwealth of Puerto Rico, Alejandro Garcia-Padilla (in his official capacity as Governor of Puerto Rico), Melba Acosta (in her official capacity as a GDB agent), and PREPA. (Civil No. 14-1518, Docket No. 85.) The Franklin and Oppenheimer Rochester plaintiffs seek declaratory relief on the following claims: (1) Preemption: that the Recovery Act in its entirety is preempted by section 903 of the federal Bankruptcy Code and violates the Bankruptcy Clause of the United States Constitution; (2) Contract Clause: that sections 108, 115, 202, 312, 315, and 325 of the Recovery Act violate the Contract Clause of the United States Constitution by impairing the contractual obligations imposed by the Authority Act and the Trust Agreement; (3) Takings Clause: that the Recovery Act violates the Takings Clause of the United States Constitution by taking without

[2] The Court refers to the following parties collectively as "Oppenheimer Rochester plaintiffs": Oppenheimer Rochester Fund Municipals, Oppenheimer Municipal Fund (on behalf of its series Oppenheimer Rochester Limited Term Municipal Fund), Oppenheimer Multi-State Municipal Trust (on behalf of its series Oppenheimer Rochester New Jersey Municipal Fund, Oppenheimer Rochester Pennsylvania Municipal Fund and Oppenheimer Rochester High Yield Municipal Fund), Oppenheimer Rochester Ohio Municipal Fund, Oppenheimer Rochester Arizona Municipal Fund, Oppenheimer Rochester Virginia Municipal Fund, Oppenheimer Rochester Maryland Municipal Fund, Oppenheimer Rochester Limited Term California Municipal Fund, Oppenheimer Rochester California Municipal Fund, Rochester Portfolio Series (on behalf of its series Oppenheimer Rochester Limited Term New York Municipal Fund), Oppenheimer Rochester AMT-Free Municipal Fund, Oppenheimer Rochester AMT-Free New York Municipal Fund, Oppenheimer Rochester Michigan Municipal Fund, Oppenheimer Rochester Massachusetts Municipal Fund, Oppenheimer Rochester North Carolina Municipal Fund, and Oppenheimer Rochester Minnesota Municipal Fund.

just compensation plaintiffs' contractual right to seek the appointment of a receiver, see Recovery Act § 108(b), and plaintiffs' lien on PREPA revenues, see id. §§ 129(d), 322(c); and (4) Stay of Federal Court Proceedings: that section 304 of the Recovery Act unconstitutionally authorizes a stay of federal court proceedings when a public corporation files for debt relief pursuant to the Recovery Act. (Civil No. 14-1518, Docket No. 85 at ¶¶ 58-71.)

B. Franklin and Oppenheimer Rochester Plaintiffs' Cross-Motion for Summary Judgment

On August 11, 2014, the Franklin and Oppenheimer Rochester plaintiffs filed a cross-motion for summary judgment on their preemption and stay of federal court proceedings claims (while opposing original motions to dismiss). (Civil No. 14-1518, Docket No. 78.)

C. Plaintiff BlueMountain's Amended Complaint (Civil No. 14-1569)

BlueMountain Capital Management, LLC (for itself and for and on behalf of investment funds for which it acts as investment manager) ("BlueMountain") is a Delaware company that holds PREPA bonds and that manages funds that hold more than $400,000,000 of PREPA bonds. (Civil No. 14-1569, Docket No. 20 at ¶ 6.) On August 12, 2014, BlueMountain filed an amended complaint against Alejandro Garcia-Padilla (in his official capacity as Governor of Puerto Rico), Cesar R. Miranda Rodriguez (in his official capacity as the Attorney General of Puerto Rico), and John Doe (in his official

capacity as a GDB agent). (Civil No. 14-1569, Docket No. 20.) Plaintiff BlueMountain seeks declaratory relief on the following claims: (1) Preemption: that the Recovery Act in its entirety is preempted by the federal Bankruptcy Code and violates the Bankruptcy Clause of the United States Constitution; (2) Contract Clauses: that the Recovery Act impairs the contractual obligations imposed by the Authority Act and the Trust Agreement and therefore violates the contract clauses of the United States and Puerto Rico constitutions; and (3) Stay of Federal Court Proceedings: that sections 205 and 304 of the Recovery Act unconstitutionally authorize a stay of federal court proceedings when a public corporation files for debt relief pursuant to the Recovery Act. (Civil No. 14-1569, Docket No. 20 at ¶ 83.)

D. Consolidation Order

On August 20, 2014, the Court consolidated Civil Case Nos. 14-1518 and 14-1569. In so doing, the Court aligned the briefing schedules for both cases but did not merge the suits into a single cause of action or change the rights of the parties. (Civil No. 14-1518, Docket No. 92; Civil No. 14-1569, Docket No. 26.)

The two cases contain overlapping claims but are distinct in three salient ways. First, the Franklin and Oppenheimer Rochester plaintiffs bring suit against Commonwealth defendants and PREPA (in Civil No. 14-1518), whereas BlueMountain names only Commonwealth defendants (in Civil No. 14-1569). Second, only the Franklin and

Oppenheimer Rochester plaintiffs raise a Takings Clause claim. Third, only BlueMountain brings a Puerto Rico Constitution Contract Clause claim.

E. Commonwealth and PREPA Motions to Dismiss

On September 12, 2014, the Commonwealth defendants[3] moved to dismiss the Franklin and Oppenheimer Rochester plaintiffs' second amended complaint and BlueMountain's amended complaint, and opposed the Franklin and Oppenheimer Rochester plaintiffs' cross-motion for summary judgment. (Civil No. 14-1518, Docket No. 95, mem. at Docket No. 95-1; Civil No. 14-1569, Docket No. 29, mem. at Docket No. 29-1.)[4] The Commonwealth defendants argue that plaintiffs' claims are unripe and fail on the merits as a matter of law.

PREPA joined the Commonwealth defendants' motion to dismiss the Franklin and Oppenheimer Rochester plaintiffs' second amended complaint and opposition to the cross-motion for summary judgment. (Civil No. 14-1518, Docket No. 97 at p. 1.) PREPA also filed its own motion to dismiss, arguing that the Franklin and Oppenheimer

[3] The following parties are collectively referred to as the "Commonwealth defendants": the Commonwealth of Puerto Rico, Alejandro Garcia-Padilla (in his official capacity as Governor of Puerto Rico), Cesar R. Miranda Rodriguez (in his official capacity as Attorney General of Puerto Rico), Melba Acosta (in her official capacity as a GDB agent), and John Doe (in his official capacity as a GDB agent).

[4] These two memoranda are identical. Compare Civil No. 14-1518, Docket No. 95-1, with Civil No. 14-1569, Docket No. 29-1. That is, the Commonwealth defendants raised identical arguments in moving to dismiss the Franklin and Oppenheimer Rochester plaintiffs' second amended complaint and BlueMountain's amended complaint.

Rochester plaintiffs lack standing and that their claims are unripe. (Civil No. 14-1518, Docket No. 97.)

The Franklin and Oppenheimer Rochester plaintiffs opposed the Commonwealth defendants' motion and PREPA's motion, (Civil No. 14-1518, Docket No. 102), and BlueMountain opposed the Commonwealth defendants' motion, (Civil No. 14-1569, Docket No. 41). The Commonwealth defendants replied, (Civil No. 14-1518, Docket No. 108; Civil No. 14-1569, Docket No. 44),[5] as did PREPA (Civil No. 14-1518, Docket No. 109).

III. SUBJECT MATTER JURISDICTION

Defendants challenge the Court's subject matter jurisdiction and seek dismissal pursuant to Federal Rule of Civil Procedure 12(b)(1) ("Rule 12(b)(1)"). Defendants argue that plaintiffs' claims are unripe because PREPA has not sought to restructure its debt pursuant to the Recovery Act. Therefore, defendants argue, plaintiffs have no basis to claim that the Recovery Act injured plaintiffs in their capacity as PREPA bondholders. (Civil No. 14-1518, Docket No. 95-1 at pp. 8-13; Civil No. 14-1569, Docket No. 29-1 at pp. 8-13.) In addition to this ripeness argument, defendant PREPA argues separately that the Franklin and Oppenheimer Rochester plaintiffs lack standing. (Civil No. 14-1569, Docket No. 97 at pp. 5-14.)

[5] These two memoranda are identical. Compare Civil No. 14-1518, Docket No. 108, with Civil No. 14-1569, Docket No. 44.

A. Rule 12(b)(1) Motion to Dismiss Standard

Pursuant to Rule 12(b)(1), a defendant may seek dismissal of claims by asserting that the Court lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). The plaintiffs bear "the burden of clearly alleging definite facts to demonstrate that jurisdiction is proper." Nulankeyutmonen Nkihtaqmikon v. Impson, 503 F.3d 18, 25 (1st Cir. 2007). The Court accepts as true the well-pled factual allegations in the plaintiffs' complaints and makes all reasonable inferences in the plaintiffs' favor. Downing/Salt Pond Partners, L.P. v. Rhode Island & Providence Plantations, 643 F.3d 16, 17 (1st Cir. 2011). On a Rule 12(b)(1) motion, the Court may consider materials outside the pleadings to determine jurisdiction. Gonzalez v. United States, 284 F.3d 281, 288 (1st Cir. 2002).

B. Ripeness

The ripeness doctrine "has roots in both the Article III case or controversy requirement and in prudential considerations." Mangual v. Rotger-Sabat, 317 F.3d 45, 59 (1st Cir. 2003). "The 'basic rationale' of the ripeness inquiry is 'to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.'" Roman Catholic Bishop of Springfield v. City of Springfield, 724 F.3d 78, 89 (1st Cir. 2013) (quoting Abbott Labs. v. Gardner, 387 U.S. 136, 148 (1967)). The ripeness test has two prongs: "'the fitness of the

issues for judicial decision' and 'the hardship to the parties of withholding court consideration.'" Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n, 461 U.S. 190, 201 (1983) (quoting Abbott Labs., 387 U.S. at 149). Both the fitness and hardship prongs of this test "must be satisfied, although a strong showing on one may compensate for a weak one on the other." McInnis-Misenor v. Maine Med. Ctr., 319 F.3d 63, 70 (1st Cir. 2003).

The First Circuit Court of Appeals has repeatedly cautioned that ripeness inquiries are "highly fact-dependent, such that the 'various integers that enter into the ripeness equation play out quite differently from case to case.'" Verizon New England, Inc. v. Int'l Bhd. of Elec. Workers, Local No. 2322, 651 F.3d 176, 188 (1st Cir. 2011) (quoting Doe v. Bush, 323 F.3d 133, 138 (1st Cir. 2003) (quoting Ernst & Young v. Depositors Econ. Prot. Corp., 45 F.3d 530, 535 (1st Cir. 1995))).

1. Plaintiffs' Preemption and Contract Clauses Claims Are Ripe

As discussed below, the Court concludes that plaintiffs' preemption and contract clauses claims are fit for review, and that withholding judgment on these claims will impose hardship.

a) Fitness

"The fitness prong of the ripeness test has both constitutional and prudential components." Roman Catholic Bishop of Springfield, 724 F.3d at 89. The constitutional component is

"grounded in the prohibition against advisory opinions" and "concerns whether there is a sufficiently live case or controversy, at the time of the proceedings, to create jurisdiction in the federal courts." Id. (internal quotation marks and citations omitted). A sound way to determine constitutional fitness is to "evaluate the nature of the relief requested; [t]he controversy must be such that it admits of 'specific relief through a decree of conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.'" Rhode Island v. Narragansett Indian Tribe, 19 F.3d 685, 693 (1st Cir. 1994) (quoting Aetna Life Ins. Co. of Hartford, Conn. v. Haworth, 300 U.S. 227, 241 (1937)).

Texas v. United States, 523 U.S. 296 (1998), provides a prime example of an unfit case where the plaintiff seeks an opinion advising what the law would be in a hypothetical scenario. In that case, the Texas Education Code permitted the imposition of ten possible sanctions if a school district failed the state's accreditation criteria. Texas, 523 U.S. at 298. The State of Texas sought a declaratory judgment that the Voting Rights Act "under no circumstances" would apply to the imposition of two of these sanctions. Id. at 301. The sanctions, however, were never imposed. Id. at 298. Thus, the circumstances under which the sanctions could be imposed were entirely hypothetical and speculative. As to the fitness inquiry, the United States Supreme

Court concluded that it would not employ its "powers of imagination" and that the operation of the sanction provisions would be "better grasped when viewed in light of a particular application." Id. at 301; see Int'l Longshoremen's & Warehousemen's Union, Local 37 v. Boyd, 347 U.S. 222, 224 (1954) ("Determination of the scope . . . of legislation in advance of its immediate adverse effect in the context of a concrete case involves too remote and abstract an inquiry for the proper exercise of the judicial function.").

Here, plaintiffs' preemption and contract clauses claims rely on the *enactment* of the Recovery Act, not on its *application*. Plaintiffs do not seek a declaration that the Recovery Act *would be preempted* if enforced in a hypothetical way. Nor do plaintiffs seek a declaration that the Recovery Act *would impair contractual obligations* if applied in a hypothetical scenario. Rather, the relief plaintiffs seek - a declaration that the Recovery Act is unconstitutional because federal law preempts it and because the Contracts Clause prohibits it - is conclusive in character, not dependant on hypothetical facts, and completely unlike the advisory opinion sought in Texas.

The prudential component of the fitness prong considers "the extent to which resolution of the challenge depends upon facts that may not yet be sufficiently developed." Ernst & Young, 45 F.3d at 535. Accordingly, cases "intrinsically legal

nature" are likely to be found fit. Riva v. Massachusetts, 61 F.3d 1003, 1010 (1st Cir. 1995); see Thomas v. Union Carbide Agr. Products Co., 473 U.S. 568, 581 (1985) (claim that a law violated Article III of the Constitution was fit for review because it was "purely legal, and [would] not be clarified by further factual development"). Courts are also likely to find cases fit when "all of the acts that are alleged to create liability have already occurred." Verizon New England, 651 F.3d at 189 (quotation marks and citation omitted); see Roman Catholic Bishop of Springfield, 724 F.3d at 91-93 (dismissing claims that rely on a potential future application of an ordinance as unfit for review, but holding that the claims that "rest solely on the existence of the Ordinance" are fit for review because "no further factual development is necessary"); Pustell v. Lynn Pub. Sch., 18 F.3d 50, 52 (1st Cir. 1994) (finding constitutional challenge fit where "[n]o further factual development [was] necessary for [the court] to resolve the question at issue").

The issues presented in plaintiffs' preemption claims are purely legal: the Court need not consider any fact to determine whether the Recovery Act, on its face, is preempted by federal law. Plaintiffs' contract clauses claims involve two limited factual inquiries: (1) whether the enactment of the Recovery Act substantially impaired the contractual relationships created in the Authority Act and the Trust Agreement, and (2)

whether the enactment of the Recovery Act was "reasonable and necessary to serve an important public purpose." See infra Part V. Both of these inquiries involve solely acts that occurred and facts that existed at or before the Recovery Act's enactment in June 2014. Thus, plaintiffs' contract clauses claims do not require further factual development.

The Court therefore finds that plaintiffs' preemption and contract clauses claims are fit for review.

b) Hardship

The hardship prong of the ripeness test evaluates whether "the impact" of the challenged law upon the plaintiffs is "sufficiently direct and immediate as to render the issue appropriate for judicial review." Abbott Labs., 387 U.S. at 152. This inquiry should also "focus on the judgment's usefulness" and consider "whether granting relief would serve a useful purpose, or, put another way, whether the sought-after declaration would be of practical assistance in setting the underlying controversy to rest." Rhode Island, 19 F.3d at 693; accord Verizon New England, 651 F.3d at 188.

Plaintiffs allege that the enactment of the Recovery Act totally eliminated several remedial and security rights promised to them in the Authority Act and in the Trust Agreement. First, in the Authority Act, the Commonwealth expressly pledged that it would not alter PREPA's rights until all bonds are fully

satisfied and discharged. P.R. Laws Ann. tit. 22 § 215.[6] Plaintiffs allege that the Recovery Act eliminates this guarantee by giving PREPA the right to participate in a new legal regime to restructure its debts. Second, section 17 of the Authority Act grants bondholders the right to seek appointment of a receiver if PREPA defaults. P.R. Laws Ann. tit. 22 § 207. This right is incorporated into section 804 of the Trust Agreement, which guarantees that bondholders have the right to seek "the appointment of a receiver as authorized by the Authority Act" if PREPA defaults. Trust Agreement § 804. Plaintiffs allege that the Recovery Act expressly eliminates the right to seek the appointment of a receiver. See Recovery Act § 108(b).[7] Third, the Trust Agreement includes a guarantee that PREPA will not create a lien equal to or senior to the lien on PREPA's revenues that secures plaintiffs' bonds. Trust Agreement § 712. Plaintiffs allege that the Recovery Act eliminates this guarantee by permitting PREPA to obtain credit secured by a lien that is senior to plaintiffs' lien.

[6] The Authority Act provides as follows:

> The Commonwealth Government does hereby pledge to, and agree with, any person, firm or corporation, or any federal, Commonwealth or state agency, subscribing to or acquiring bonds of [PREPA] to finance in whole or in part any undertaking or any part thereof, that it will not limit or alter the rights or powers hereby vested in [PREPA] until all such bonds at any time issued, together with the interest thereon, are fully met and discharged.

P.R. Laws Ann. tit. 22 § 215.

[7] "This Act supersedes and annuls any insolvency or custodial provision included in the enabling or other act of any public corporation, including Section 17 of [the Authority Act]." Recovery Act § 108(b).

See Recovery Act §§ 129(d), 206(a), 322(c).[8] Fourth, in the event of default, the Trust Agreement gives PREPA bondholders the right to accelerate payments. Trust Agreement § 803. Plaintiffs allege that the Recovery Act destroys their right to this remedy both during the suspension and stay provisions, Recovery Act §§ 205, 304, and after the special court approves a plan pursuant to

[8] Section 322(c) of the Recovery Act permits the special court to authorize public corporations that seek debt relief pursuant to Chapter 3 to obtain credit "secured by a senior or equal lien on the petitioner's property that is subject to a lien only if - (1) the petitioner is unable to obtain such credit otherwise; and (2) either (A) the proceeds are needed to perform public functions and satisfy the requirements of section 128 of this Act; or (B) there is adequate protection of the interest of the holder of the lien on the property of the petitioner on which such senior or equal lien is proposed to be granted." Recovery Act § 322(c). This right extends to corporations seeking debt relief pursuant to Chapter 2 of the Recovery Act. See id. § 206(a) ("After the commencement of the suspension period, an eligible obligor may obtain credit in the same manner and on the same terms as a petitioner pursuant to section 322 of this Act.") Section 129(d) of the Recovery Act disposes of the "adequate protection" requirement in section 322(c)(2)(B) when "police power" justifies it. Id. § 129(d).

Chapter 2 or 3, id. §§ 115(b)(2), 115(c)(3).[9] Fifth, the Trust Agreement contains an *ipso facto* clause that provides that PREPA is deemed in default if PREPA institutes a proceeding "for the purpose of effecting a composition between [PREPA] and its creditors or for the purpose of adjusting the claims of such creditors." Trust Agreement § 802(g). Plaintiffs allege that the Recovery Act explicitly renders this *ipso facto* clause unenforceable in a

[9] Section 205 prohibits bondholders from exercising remedies during Chapter 2's suspension period. Recovery Act § 205 ("Notwithstanding any contractual provision or applicable law to the contrary, during the suspension period, no entity asserting claims or other rights, . . . in respect of affected debt instruments . . . may exercise or continue to exercise any remedy under a contract or applicable law . . . that is conditioned upon the financial condition of, or the commencement of a restructuring, insolvency, bankruptcy, or other proceedings (or a similar or analogous process) by, the eligible obligor concerned, including a default or an event of default thereunder."). Section 304 stays "any act to collect, assess, or recover on a claim against the petitioner" during Chapter 3's automatic stay period. Id. § 304.

Section 115 prohibits bondholders from exercising remedies after the special court approves a plan pursuant to Chapter 2 or 3. Id. § 115(b)(2) ("Upon entry of an approval order . . . under chapter 2 of this Act . . . no entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments of such eligible obligor . . . shall bring any action or proceeding of any kind or character for the enforcement of such claim or remedies in respect of such affected debt instruments, except with the permission of the [special court] and then only to recover and enforce the rights permitted under the amendments, modifications, waivers, or exchanges, and the approval order."); id. § 115(c)(3) ("[U]pon entry of a confirmation order, . . . all creditors affected by the plan . . . shall be enjoined from, directly or indirectly, taking any action inconsistent with the purpose of this Act, including bringing any action or proceeding of any kind or character for the enforcement of such claim or remedies in respect of affected debt, except as each has been affected pursuant to the plan under chapter 3.").

section titled "Unenforceable Ipso Facto Clauses." See Recovery Act § 325(a); see also id. § 205(c).[10]

The Commonwealth's nullification of this series of statutory and contractual security rights and remedial provisions, through its enactment of the Recovery Act, is a "direct and immediate" injury to the plaintiff bondholders. See Abbott Labs., 387 U.S. at 152. Plaintiffs should not be forced to live with such substantially impaired contractual rights - rights that they bargained for when they purchased the nearly two billion dollars worth of PREPA bonds that they hold collectively.

This hardship is certainly more immediate and concrete than the "threat to federalism" hardship that the plaintiff alleged in Texas, which the Supreme Court viewed as an "abstraction" that was "inadequate to support suit unless the [plaintiff's] primary conduct is affected." 523 U.S. at 302. Here, not having the guarantee of remedial provisions that they

[10] Section 325 of the Recovery Act provides as follows in its first subsection:

> Notwithstanding any contractual provision or applicable law to the contrary, a contract of a petitioner may not be terminated or modified, and any right or obligation under such contract may not be terminated or modified, at any time after the filing of a petition under chapter 3 of this Act solely because of a provision in such contract conditioned on -
> (1) the insolvency or financial condition of the petitioner at any time before the closing of the case;
> (2) the filing of a petition pursuant to section 301 of this Act and all other relief requested under this Act; or
> (3) a default under a separate contract that is due to, triggered by, or as a result of the occurrence of the events or matters in subsections (a)(1) [the petitioner's insolvency] or (a)(2) [the filing of a Chapter 3 petition] of this section.

Recovery Act § 325(a). Section 205(c) of the Recovery Act has nearly identical language and renders *ipso facto* clauses unenforceable during the suspension period of a Chapter 2 proceeding. Id. § 205(c).

were promised affects plaintiffs' day-to-day business as PREPA bondholders, particularly when negotiating with PREPA over remedies and potential restructuring. Indeed, the threat of PREPA's invocation of the Recovery Act hangs over plaintiffs and diminishes their bargaining power as bondholders. See Metro. Wash. Airports Auth. v. Citizens for Abatement of Aircraft Noise, Inc., 501 U.S. 252, 265 n.13 (1991) (concluding that constitutional challenge to "veto power" of administrative board was ripe "even if the veto power has not been exercised to respondents' detriment" because the "threat of the veto hangs over the [decisionmakers subject to the veto] like the sword over Damocles, creating a 'here-and-now subservience'" to the administrative board).

In addition, plaintiffs' sought-after declaration that the Recovery Act is unconstitutional would "be of practical assistance in setting the underlying controversy to rest" because it would completely restore plaintiffs' contractual rights. See Rhode Island, 19 F.3d at 693. In this sense, the hardship here is unlike the hardship in Ernst & Young, 45 F.3d 530. In that case, the plaintiff alleged that a Rhode Island law limiting nonsettling tortfeasors' right of contribution against joint tortfeasors caused two hardships: increased pressure to settle a negligence suit and an inability to evaluate its exposure therein. 45 F.3d at 532-33, 539. The First Circuit Court of Appeals, in holding the claim unripe, reasoned that resolving the challenge to the Rhode Island

law would be of "limited utility" to the plaintiff because (1) the plaintiff would still be faced with the negligence suit, and (2) the right to contribution was only one of many factors involved in the plaintiff's settlement calculations. Id. at 540 (explaining that "the usefulness that may satisfy the hardship prong . . . is not met by a party showing that it has the opportunity to move from a position of utter confusion to one of mere befuddlement"). Here, the declaration that plaintiffs seek on their preemption and contract clauses claims - that the Recovery Act in its entirety is unconstitutional - would be of great utility to plaintiffs because it would completely restore their rights guaranteed in the Authority Act and the Trust Agreement.

In sum, delaying adjudication on the merits of plaintiffs' constitutional claims until PREPA invokes the Recovery Act - the event that the Commonwealth defendants concede would render plaintiffs' challenges ripe, (Civil No. 14-1518, Docket No. 95-1 at pp. 1, 12-13) - would continue to inflict hardship on plaintiffs with no identifiable corresponding gain. Thus, having satisfied the fitness and hardship prongs of the ripeness test, the Court concludes that plaintiffs' preemption and contract clauses claims are ripe for review.

2. Plaintiffs' Stay of Federal Court Proceedings Claims Are Not Ripe

Plaintiffs seek a declaratory judgment that the Recovery Act violates the United States Constitution to the extent that

section 304 of the Act authorizes a stay of federal court proceedings when a public corporation files for debt relief. (Civil No. 14-1518, Docket No. 85 at ¶¶ 55, 69; Civil No. 14-1569, Docket No. 20 at ¶¶ 76, 83(d).) Plaintiff BlueMountain additionally claims that section 205 of the Recovery Act unconstitutionally authorizes a suspension of federal court proceedings. (Civil No. 14-1569, Docket No. 20 at ¶¶ 76, 83(d).) Plaintiffs do not identify a specific provision of the Constitution that these provisions violate, but rather rely on the United States Supreme Court holding in Donovan v. City of Dallas, 377 U.S. 408, 413 (1964), that "state courts are completely without power to restrain federal-court proceedings in in personam actions."

First, as to the claims' fitness, the Court evaluates whether plaintiffs are requesting "specific relief through a decree of conclusive character" as opposed to "an opinion advising what the law would be upon a hypothetical state of facts." Rhode Island, 19 F.3d at 693 (quoting Aetna Life Ins. Co., 300 U.S. at 241). The following language in plaintiffs' complaint reveals that they seek the latter:

> To the extent any provision of the [Recovery Act] enjoins, stays, suspends or precludes [plaintiffs] from exercising their rights in federal court, including their right to challenge the constitutionality of the Recovery Act itself in federal court, those provisions also violate the Constitution.

(Civil No. 14-1518, Docket No. 85 at ¶ 57; Civil No. 14-1569, Docket No. 20 at ¶ 77.) Plaintiffs essentially seek an opinion that *certain applications* of the suspension and stay provisions of the Recovery Act would be unconstitutional. The Court finds that this request is akin to the relief sought in Texas, and that the operation of sections 304 and 205 of the Recovery Act would be "better grasped when viewed in light of a particular application." Texas, 523 U.S. at 301.

Second, as to the prudential component of the fitness prong, the "remoteness and abstraction" of plaintiffs' pre-enforcement injury is "increased by that fact that [the suspension and stay provisions have] yet to be interpreted by the [Puerto Rico] courts." See Texas, 523 U.S. at 301. Thus, "'[p]ostponing consideration of the questions presented, until a more concrete controversy arises, also has the advantage of permitting the state courts further opportunity to construe' the provisions," and indeed to construe them in a constitutional way. See id. (quoting Renne v. Geary, 501 U.S. 312, 323 (1991)).

Finally, concerning the hardship prong, the Court examines whether withholding judgment on the stay of federal court proceedings claims would create a "direct and immediate dilemma for the parties." See Stern v. U.S. Dist. Court for Dist. of Mass., 214 F.3d 4, 10 (1st Cir. 2000). Because PREPA has not filed for debt relief pursuant to the Recovery Act, the suspension period and

automatic stay in sections 205 and 304 of the Recovery Act have not been triggered. Thus, plaintiffs do not allege that any actual application of the suspension or stay provisions has injured them. The Court therefore turns to whether the enactment of these provisions causes a direct injury. Enactment of the suspension and stay provisions appears to impair plaintiffs' contractual right to sue to enforce the terms of the Trust Agreement, see Trust Agreement § 804, which does impose hardship on plaintiffs. But this showing of hardship is weak - much weaker than the hardship created by the nullification of the series of rights that supported jurisdiction of plaintiffs' preemption and contract clauses claim.

Thus, plaintiffs' stay of federal court proceedings claims fail the fitness prong and has a weak showing on the hardship prong of the ripeness test. The Court therefore concludes that these claims are unripe and **GRANTS** the Commonwealth defendants' motions to dismiss, (Civil No. 14-1518, Docket No. 95; Civil No. 14-1569, Docket No. 29), as to the stay of federal court proceedings claims.

C. Standing

The doctrines of ripeness and standing overlap in many ways. McInnis-Misenor, 319 F.3d at 71. Standing, like ripeness, has roots in Article III's case or controversy requirement. See U.S. Const. Art. III, § 2. To establish constitutional standing, a plaintiff must satisfy three elements: "a concrete and

particularized injury in fact, a causal connection that permits tracing the claimed injury to the defendant's actions, and a likelihood that prevailing in the action will afford some redress for the injury." Weaver's Cove Energy, LLC v. R.I. Coastal Res. Mgmt. Council, 589 F.3d 458, 467 (1st Cir. 2009) (internal quotation marks and citations omitted).

Plaintiffs meet these three elements as to their preemption and contract clauses claims against the Commonwealth defendants. First, as discussed above, the Recovery Act's nullification of several statutory and contractual security rights is a direct injury to the plaintiff bondholders.[11] Second, this injury was caused by the Commonwealth's enactment of the Recovery Act. Third, plaintiffs' desired declaratory judgment that the Recovery Act is unconstitutional will afford plaintiffs redress for the injury because it will nullify the Recovery Act, restoring plaintiffs' statutory and contractual rights.

As to the Franklin and Oppenheimer Rochester plaintiffs' claims against PREPA, however, the second element of the standing test is not met: the elimination of plaintiffs' security rights is traceable only to the Commonwealth's enactment of the Recovery Act and not to any action by PREPA. If PREPA's filing for debt relief pursuant to the Recovery Act were imminent, this could be a sufficient injury traceable to PREPA. See Katz v. Pershing, LLC,

[11] See supra Part III.B.1.b.

672 F.3d 64, 71 (1st Cir. 2012) (explaining that an "imminent injury" can satisfy the standing injury-in-fact requirement if the harm is "sufficiently threatening," but that "it is not enough that the harm might occur at some future time"). To support their allegation that PREPA will file for relief pursuant to the Recovery Act imminently, plaintiffs point to (1) the Recovery Act's Statement of Motives, which identifies PREPA as the "most dramatic example" of a Commonwealth public corporation that faces significant financial challenges, and (2) market watchers' predications from July 2014 that it is highly likely that PREPA will seek relief pursuant to the Recovery Act in the near future. (Civil No. 14-1518, Docket No. 85 at ¶¶ 18-19.) Without more, these two factual allegations merely support speculation that PREPA will file for relief at some future time; they do not support the conclusion that the filing is imminent.

Accordingly, because the Franklin and Oppenheimer Rochester plaintiffs have not sufficiently alleged any injury traceable to an action by PREPA, they lack standing to assert their claims against PREPA. The Court therefore **GRANTS** PREPA's motion to dismiss, (Civil No. 14-1518, Docket No. 97), as to all claims to the extent that they are asserted against PREPA, and **DISMISSES** PREPA from Civil Case No. 14-1518.

The Court proceeds to the merits of plaintiffs' preemption and contract clauses claims. The Court will then address the ripeness

and merits of the Franklin and Oppenheimer Rochester plaintiffs' Takings Clause claim.

IV. PREEMPTION

Plaintiffs seek a declaratory judgment that the Recovery Act in its entirety is preempted by the federal Bankruptcy Code and violates the Bankruptcy Clause of the United States Constitution. (Civil No. 14-1518, Docket No. 85 at ¶ 59; Civil No. 14-1569, Docket No. 20 at ¶ 83(a).) The Commonwealth defendants move to dismiss, (Civil No. 14-1518, Docket No. 95; Civil No. 14-1569, Docket No. 29), and the Franklin and Oppenheimer Rochester plaintiffs cross-move for summary judgment, (Civil No. 14-1518, Docket No. 78). The Court first addresses the appropriate standard of review and then discusses the merits of plaintiffs' preemption claims.

A. Rule 12(b)(6) Motion to Dismiss and Rule 56(a) Motion for Summary Judgment Standards

The Commonwealth defendants' motions to dismiss are governed by Federal Rule of Civil Procedure 12(b)(6) ("Rule 12(b)(6)"). See Fed. R. Civ. P. 12(b)(6). Pursuant to Rule 12(b)(6), the Court construes the well-pleaded facts in the plaintiffs' complaints in the light most favorable to the plaintiffs and will dismiss the complaints if they fail to state a plausible legal claim upon which relief can be granted. Ocasio-Hernandez v. Fortuño-Burset, 640 F.3d 1, 7, 12-13 (1st Cir. 2011).

The Franklin and Oppenheimer Rochester plaintiffs' motion for summary judgment is governed by Federal Rule of Civil Procedure 56. See Fed. R. Civ. P. 56. The Court will grant summary judgment if plaintiffs show "that there is no genuine dispute as to any material fact" and that they are "entitled to judgment as a matter of law." Id.

The parties agree that the preemption claim is purely legal and involves no disputed issues of material fact. (Civil No. 14-1518, Docket Nos. 79 at p. 7 & 95-2 at pp. 1-2.) The Court therefore resolves the preemption issues presented in the parties' motions as ones of law.

B. Preemption Principles

The Supremacy Clause of the United States Constitution mandates that federal law "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. Pursuant to this mandate, "Congress has the power to preempt state law," Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 372 (2000), and a "state law that contravenes a federal law is null and void," Tobin v. Fed. Exp. Corp., No. 14-1567, 2014 WL 7388805, at *4 (1st Cir. Dec. 30, 2014). "For preemption purposes, the laws of Puerto Rico are the functional equivalent of state laws." Antilles Cement Corp. v. Fortuño, 670 F.3d 310, 323 (1st Cir. 2012).

A federal statute can preempt a state law in three ways: express preemption, conflict preemption, and field preemption. Arizona v. United States, 132 S. Ct. 2492, 2500-01 (2012). Here, plaintiffs raise arguments pursuant to all three.

C. Express Preemption by Section 903(1) of the Federal Bankruptcy Code

"Express preemption occurs when congressional intent to preempt state law is made explicit in the language of a federal statute." Tobin, 2014 WL 7388805, at *4. Here, Chapter 9 of the federal Bankruptcy Code contains an express preemption clause in section 903(1). Section 903, in its entirely, provides as follows:

> This chapter does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality, including expenditures for such exercise, but–
>
> (1) *a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition*; and
>
> (2) a judgment entered under such a law may not bind a creditor that does not consent to such composition.

11 U.S.C. § 903 (emphasis added). Thus, by enacting section 903(1), Congress expressly preempted state laws that prescribe a method of composition of municipal indebtedness that binds nonconsenting creditors.

The existence of this express preemption clause "does not immediately end the inquiry," however, because the Court must still ascertain "the substance and scope of Congress' displacement of state law." See Altria Grp., Inc. v. Good, 555 U.S. 70, 76 (2008). "Congressional intent is the principal resource to be used in defining the scope and extent of an express preemption clause," and courts look to the clause's "text and context" as well as its "purpose and history" in this endeavor. Brown v. United Airlines, Inc., 720 F.3d 60, 63 (1st Cir. 2013).

Accordingly, to determine whether section 903(1) preempts the Recovery Act, the Court first examines the clause's text and then considers its history, purpose, and context.

1. Section 903(1) Textual Analysis

(a) "A State law"

By its terms, section 903(1) applies to "State" laws. 11 U.S.C. § 903(1). Thus, an initial inquiry is whether Congress intended for section 903(1) to apply to Puerto Rico laws. The federal Bankruptcy Code provides in section 101(52) that "[t]he term 'State' includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title." Id. § 101(52). Therefore, Puerto Rico is a "State" within the meaning of section 903(1) unless section 903(1) fits into the narrow exception of "defining who may be a debtor under chapter 9." See id. Section 903(1) prohibits state

composition laws that bind nonconsenting creditors; it says nothing of who may be a Chapter 9 debtor. Id. § 903(1).[12] Thus, it is clear from the text that Puerto Rico is a "State" within the meaning of section 903(1).

To refute this very plain conclusion, the Commonwealth defendants argue that "the [Bankruptcy] Code specifically excludes Puerto Rico (as well as the District of Columbia) from the definition of 'State' for purposes of Chapter 9." See Civil No. 14-1518, Docket No. 95-1 at p. 16. If Congress intended to exclude Puerto Rico from the definition of "State" for purposes of all Chapter 9 provisions, then section 101(52) would likely read as follows: "The term 'State' includes the District of Columbia and Puerto Rico, except under chapter 9 of this title." But Congress included ten more words in section 101(52) that the Commonwealth defendants attempt to, but cannot, ignore: "The term 'State' includes the District of Columbia and Puerto Rico, except *for the purpose of defining who may be a debtor* under chapter 9 of

[12] Section 109 of the federal Bankruptcy Code, titled "Who may be a debtor," contains a subsection defining who may be a Chapter 9 debtor. 11 U.S.C. § 109(c) ("An entity may be a debtor under chapter 9 of this title if and only if such entity-- (1) is a municipality; (2) is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter; (3) is insolvent; (4) desires to effect a plan to adjust such debts; and (5) (A) has obtained the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter; (B) has negotiated in good faith with creditors and has failed to obtain the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter; (C) is unable to negotiate with creditors because such negotiation is impracticable; or (D) reasonably believes that a creditor may attempt to obtain a transfer that is avoidable under section 547 of this title.").

this title." See 11 U.S.C. § 101(52) (emphasis added). In other words, Congress expressly defined "State" as including Puerto Rico and then enumerated a single, specific exception where the term "State" does not include Puerto Rico. To infer that Congress intended an additional or broader exception - *i.e.*, that Congress intended to exclude Puerto Rico from the definition of "State" for purposes of section 903(1) or for all of Chapter 9 - would violate the canon of *expressio unius est exclusio alterius*. See TRW Inc. v. Andrews, 534 U.S. 19, 28 (2001) (explaining that where Congress explicitly enumerates a single exception, additional exceptions are not to be implied absent evidence of contrary legislative intent). The Commonwealth defendants' textual argument on this point thus holds no water.

(b) "Prescribing a method of composition of indebtedness"

Section 903(1) applies to state laws that "prescrib[e] a method of composition of indebtedness." 11 U.S.C. § 903(1). A "composition" is an "agreement between a debtor and two or more creditors for the adjustment or discharge of an obligation for some lesser amount." Black's Law Dictionary 346 (10th ed. 2014).

Chapter 2 of the Recovery Act permits an eligible public corporation to "seek debt relief from its creditors," Recovery Act § 201(b), through "any combination of amendments, modifications, waivers, or exchanges," which may include "interest

rate adjustments, maturity extensions, debt relief, or other revisions to affected debt instruments," id. Stmt. of Motives, § E; see id. § 202(a). Chapter 3 of the Recovery Act permits an eligible public corporation "to defer debt repayment and to decrease interest and principal" owed to creditors. Id. Stmt. of Motives, § E; see id. §§ 301, 307-308, 310, 315.

Thus, both Chapters 2 and 3 of the Recovery Act create procedures for indebted public corporations to adjust or discharge their obligations to creditors. Therefore, the Recovery Act prescribes a method of composition of indebtedness, which is exactly what section 903(1) prohibits.

(c) "Of such municipality"

Section 903(1) applies to state laws addressing the indebtedness of a state "municipality." 11 U.S.C. § 903(1). A "municipality" is a "political subdivision or public agency or instrumentality of a State." Id. § 101(40).

The Recovery Act applies to debts of "any public sector obligor." Recovery Act § 104. A "public sector obligor" is defined as a "Commonwealth Entity," subject to three exclusions.

Id. § 102(50).[13] A "Commonwealth Entity" includes "a department, agency, district, municipality, or instrumentality (including a public corporation) of the Commonwealth." Id. § 102(13).

Thus, the Recovery Act applies to the debts of Commonwealth "instrumentalities," which are "municipalities" for purposes of section 903(1).

(d) "May not bind any creditor that does not consent to such composition"

Finally, section 903(1) applies to state laws that bind nonconsenting creditors. 11 U.S.C. § 903(1).

Pursuant to Chapter 2 of the Recovery Act, if creditors representing at least fifty percent of the debt in a given class vote on whether to accept the proposed debt amendments, and at least seventy-five percent of participating voters approve, then the court order approving the debt relief transaction binds the entire class. Recovery Act §§ 115(b), 202(d), 204. Pursuant to Chapter 3 of the Recovery Act, if "at least one class of affected debt has voted to accept the plan by a majority of all votes cast in such class and two-thirds of the aggregate amount of

[13] A "public sector obligor" is a "Commonwealth Entity, but excluding: (a) the Commonwealth; (b) the seventy-eight (78) municipalities of the Commonwealth; and (c) the Children's Trust; the Employees Retirement System of the Government of the Commonwealth of Puerto Rico and its Instrumentalities; GDB and its subsidiaries, affiliates, and entities ascribed to GDB; the Judiciary Retirement System; the Municipal Finance Agency; the Municipal Finance Corporation; the Puerto Rico Public Finance Corporation; the Puerto Rico Industrial Development Company, the Puerto Rico Industrial, Tourist, Educational, Medical and Environmental Control Facilities Financing Authority; the Puerto Rico Infrastructure Financing Authority; the Puerto Rico Sales Tax Financing Corporation (COFINA); the Puerto Rico System of Annuities and Pensions for Teachers; and the University of Puerto Rico." Recovery Act § 102(50).

affected debt in such class that is voted," then the court order confirming the debt enforcement plan binds all of the public corporation's creditors, regardless of their class. Id. §§ 115(c), 315(e).

Thus, because they do not require unanimous creditor consent, the compositions prescribed in Chapter 2 and 3 of the Recovery Act may bind nonconsenting creditors.

2. Section 903(1) History, Purpose, and Context

The legislative history of section 903(1) and of its predecessor, section 83(i) of the Bankruptcy Act of 1937 ("section 83(i)"), further supports the conclusion that Congress intended to preempt Puerto Rico laws that create municipal debt restructuring procedures that bind nonconsenting creditors. In 1946, Congress added the following language, which is nearly identical to the language in section 903(1), to section 83(i): "[N]o State law prescribing a method of composition of indebtedness of such agencies shall be binding upon any creditor who does not consent to such composition." Pub. L. No. 481, § 83(i), 60 Stat. 409, 415 (1946). Congress explained why it added this prohibitory language to section 83(i) in a House Report:

> [A] bankruptcy law under which bondholders of a municipality are required to surrender or cancel their obligations should be uniform throughout the 48 States, as the bonds of almost every municipality are widely held. Only under a Federal law should a creditor be forced to accept such an adjustment without his consent.

H.R. Rep. No. 79-2246, at 4 (1946).[14] Congress reaffirmed this intent when it enacted section 903(1) three decades later:

> The proviso in section 83, prohibiting State composition procedures for municipalities, is retained. Deletion of the provision would "permit all States to enact their own versions of Chapter IX", . . . which would frustrate the constitutional mandate of uniform bankruptcy laws.

S. Rep. No. 95-989, at 110 (1978).

It is evident from this legislative history that, because municipal bonds are widely held across the United States, Congress enacted section 903(1) to ensure that only a uniform federal law could force nonconsenting municipal bondholders to surrender or cancel part of their investments. Nothing in its legislative history indicates that Congress intended to exempt Puerto Rico from section 903(1)'s expressly universal preemption purview.

The Commonwealth defendants nonetheless argue that section 903(1) does not apply to Puerto Rico laws. They do not attempt to rebut the provision's clear legislative history, however, and instead present arguments based on logic and context. First, the Commonwealth defendants contend that it would be "anomalous" to read the federal Bankruptcy Code as both precluding

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[14] See also Hearings on H.R. 4307 Before the Special Subcomm. on Bankr. & Reorg. of the H. Comm. on the Judiciary, 79th Cong. 10 (1946) (statement of Millard Parkhurst, Att'y at Law, Dallas, Tex.) ("Bonds of a municipality are usually distributed throughout the 48 States. Certainly any law which would have the effect of requiring the holders of such bonds to surrender or cancel a part of their investments should be uniform Federal law and not a local law.").

Puerto Rico municipalities[15] from participating in Chapter 9 proceedings *and* preempting Puerto Rico laws that govern debt restructuring for Puerto Rico municipalities. (Civil No. 14-1518, Docket No. 95-1 at p. 17.) But Puerto Rico municipalities are not unique in their inability to restructure their debts. This is because Chapter 9 is available to a municipality only if it receives specific authorization from its state, 11 U.S.C. § 109(c)(2), and many states have not enacted authorizing legislation.[16] Congress's decision not to permit Puerto Rico municipalities to be Chapter 9 debtors, see 11 U.S.C. 101(52),[17] reflects its considered judgment to retain control over any restructuring of municipal debt in Puerto Rico. Congress, of course, has the power to treat Puerto Rico differently than it treats the fifty states. See 48 U.S.C. § 734 (providing that federal laws "shall have the same force and effect in Puerto Rico as in the United States" "except as . . . otherwise provided");

[15] "Municipality," as used in this discussion, includes a "public agency or instrumentality." See 11 U.S.C. § 101(40).

[16] See James E. Spiotto, et al., Chapman & Cutler LLP, Municipalities in Distress? How States and Investors Deal with Local Government Financial Emergencies 51-52 (2012) (identifying twelve states with statutes that specifically authorize municipalities to file a Chapter 9 petition, twelve states that conditionally authorize it, three states that grant limited authorization, two states that prohibit filing (although one has an exception to the prohibition), and twenty-one states that are either unclear or have not enacted specific authorization).

[17] Congress enacted section 101(52) as part of the 1984 amendments to the federal Bankruptcy Code. Prior to those amendments, the Bankruptcy Code contained no definition of the term "State." Compare Pub. L. No. 95-598, 92 Stat. 2549, 2549-54 (Nov. 6, 1978) (no definition of "State"), with Pub. L. No. 98-353, 98 Stat. 333, 368-69 (July 10, 1984) (adding definition of "State").

Antilles Cement Corp., 670 F.3d at 323 ("Congress is permitted to treat Puerto Rico differently despite its state-like status.").

Next, the Commonwealth defendants contend that section 903 does not apply to Puerto Rico because that section "addresses the impact of '[t]his chapter' - *i.e.*, Chapter 9 - on States' authority to regulate the debt restructuring of their own [municipalities]." (Civil No. 14-1518, Docket No. 95-1 at pp. 19-20.) They reason that because Puerto Rico municipalities are not eligible to participate in Chapter 9 bankruptcy proceedings, "it follows that [s]ection 903 does not apply." Id. The Commonwealth defendants misread section 903, which first clarifies that Chapter 9 "does not limit or impair the power of a State to control" the political or governmental powers of its municipalities, 11 U.S.C. § 903, and then qualifies that statement by prohibiting state laws that bind nonconsenting creditors to a composition of indebtedness of a municipality, and prohibiting judgments entered pursuant to those laws that bind nonconsenting creditors, id. § 903(1)-(2). Nothing in the text, context, or legislative history of section 903 remotely supports the Commonwealth defendants' inferential leap that Congress intended the prohibition in section 903(1) to apply

only to states whose municipalities are eligible to file for Chapter 9 bankruptcy.[18]

Finally, the Commonwealth defendants argue that section 903 "by its terms is limited to the relationship between an 'indebted[]' municipality and its 'creditors' in Chapter 9 cases," and that "[u]nless a municipality can qualify as a 'debtor' under Chapter 9, it obviously cannot be an 'indebted[]' municipality with a 'creditor' under Chapter 9." (Civil No. 14-1518, Docket No. 95-1 at p. 20.) The Commonwealth defendants rely on the Bankruptcy Code's definition of "creditor" to support their strained reading, but nothing in that definition indicates that the term "creditor" is limited to entities eligible to bring claims pursuant to Chapter 9. See 11 U.S.C. § 101(10) (defining "creditor" as (1) an "entity that has a claim against the debtor," (2) an "entity that has a claim against the estate," or (3) "an entity that has a community

[18] The Commonwealth defendants cite to an journal article by Thomas Moers Mayer for support. (Civil No. 14-1518, Docket No. 108 at p. 10.) The article states as follows in a tangential footnote: "Section 903(1) . . . appears as an exception to [section] 903's respect for state law in [C]hapter 9 and thus appears to apply only in a [C]hapter 9 bankruptcy. It is not clear how it would apply if no [C]hapter 9 case was commenced." Thomas Moers Mayer, State Sovereignty, State Bankruptcy, and a Reconsideration of Chapter 9, 85 Am. Bankr. L.J. 363, 386 n.84 (2011). But reading section 903(1) as applying only when a Chapter 9 bankruptcy has commenced would deprive section 903(1) of any practical effect: a municipal debtor that has already invoked federal bankruptcy law has no need to employ state bankruptcy laws. More significantly, this reading is contrary to the legislative history of section 903(1) and its predecessor, which unequivocally indicates that Congress's intent in enacting the provision was to ensure that a "bankruptcy law under which bondholders of a municipality are required to surrender or cancel their obligations [is] uniform throughout the [United] States" because "[o]nly under a Federal law should a creditor be forced to accept such an adjustment without his consent." H.R. Rep. No. 79-2246, at 4 (1946). The Commonwealth defendants' reliance on Mr. Mayer's conjectural observation is therefore unavailing.

claim"); id. § 101(5) (defining "claim" as a "right to payment"). Thus, the Commonwealth defendants' attempt to read a "Chapter 9 eligibility" requisite into the scope of section 903(1) is wholly without textual support, and the legislative history of that section supports a contrary, universal reading of the prohibition.[19]

3. Express Preemption Conclusion

The Court recognizes that federal preemption of a state law "is strong medicine" and "will not lie absent evidence of clear and manifest congressional purpose." Mass. Ass'n of Health Maint. Orgs. v. Ruthardt, 194 F.3d 176, 178-79 (1st Cir. 1999). Despite this high bar, this is not a close case. Section 903(1)'s text and legislative history provide direct evidence of Congress's clear and manifest purpose to preempt state laws that prescribe a method of composition of municipal indebtedness that binds nonconsenting creditors, see 11 U.S.C. § 903(1), and to include Puerto Rico laws in this preempted arena, see id. § 101(52). The Recovery Act is

[19] The Commonwealth defendants rely on another academic article for support. (Civil No. 14-1518, Docket No. 108 at p. 10.) The article, by Stephen J. Lubben, looks to the statutory definitions of "creditor" as an "entity that has a claim against the debtor," 11 U.S.C. § 101(10)(A), and of "debtor" as a "person or municipality concerning which a case under this title has been commenced," id. § 101(13), to conclude that "section 903 was only intended to apply to debtors who might actually file under [C]hapter 9." Stephen J. Lubben, Puerto Rico and the Bankruptcy Clause, 88 Am. Bankr. L.J. 553, 576 (2014). This narrow construction of section 903(1) flies in the face of section 903(1)'s legislative history, which Mr. Lubben and the Commonwealth defendants totally ignore. The Senate Report accompanying section 903(1)'s enactment indicates that Congress sought to avoid states "enact[ing] their own versions of Chapter [9], . . . which would frustrate the constitutional mandate of uniform bankruptcy laws." S. Rep. No. 95-989, at 110 (1978).

such a law and is therefore unconstitutional pursuant to the Supremacy Clause of the United States Constitution.

D. Conflict and Field Preemption

Unlike their Franklin and Oppenheimer Rochester counterparts, who plead that section 903(1) is an express preemption clause, plaintiff BlueMountain raises many of the same section 903(1) arguments but frames them as "conflict preemption" and "field preemption." (Civil No. 14-1569, Docket No. 20 at pp. 13-18.)

Conflict preemption occurs "when federal law is in 'irreconcilable conflict' with state law." Telecomm. Regulatory Bd. of P.R. v. CTIA-Wireless Ass'n, 752 F.3d 60, 64 (1st Cir. 2014) (quoting Barnett Bank of Marion Cnty., N.A. v. Nelson, 517 U.S. 25, 31 (1996)). As explained above, section 903(1) of the federal Bankruptcy Code prohibits state laws that create composition procedures for indebted municipalities that bind nonconsenting creditors, and the Recovery Act is such a law.[20] Section 903(1) of the federal Bankruptcy Code and the Recovery Act are thus in "irreconcilable conflict."

Conflict preemption also occurs "when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Telecomm. Regulatory Bd. of P.R., 752 F.3d at 64 (internal quotation marks and citation omitted). Again, as previously discussed, the text and legislative

[20] See supra Part IV.C.

history of section 903(1) indicate that Congress intended to ensure that only pursuant to a uniform federal law would nonconsenting creditors be forced to accept municipal compositions.[21] The Recovery Act stands as an obstacle to achieving this purpose because it prescribes municipal composition procedures that are outside of the federal Bankruptcy Code and are available only to Puerto Rico "municipalities."

Field preemption occurs when states "regulat[e] conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance." Arizona, 132 S. Ct. at 2501. Congressional intent to preempt state law in an entire field "can be inferred from a framework of regulation 'so pervasive . . . that Congress left no room for the States to supplement it' or where there is a 'federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.'" Id. (quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947)). Here, however, the Court need not resort to these modes of inference because Congress enacted an express preemption clause that delineates the parameters of the field it intended to preempt. Thus, the Court goes no further than finding that, by enacting section 903(1), Congress expressly preempted the field of municipal

[21] See supra Part III.C.

composition procedures that bind nonconsenting creditors. See 11 U.S.C. § 903(1).

E. “Dormant Bankruptcy Clause” Preemption

“Wholly apart” from their section 903(1) express preemption claim, the Franklin Oppenheimer and Rochester plaintiffs raise a somewhat novel argument that the Bankruptcy Clause of the United States Constitution, by itself, preempts the Recovery Act. (Civil No. 14-1518, Docket No. 79 at pp. 21-23.) The plaintiffs contend that the United States Supreme Court has long held that the Bankruptcy Clause grants the power to authorize a discharge to the federal government alone, and that states therefore are prohibited from enacting bankruptcy discharge laws. Id. at p. 21. The Supreme Court cases that plaintiffs cite, however, indicate that the constitutional prohibition on state bankruptcy discharge laws arises not from the Bankruptcy Clause, but from the Contract Clause. See Sturges v. Crowninshield, 17 U.S. 122, 199 (1819) (“The constitution does not grant to the states the power of passing bankrupt laws, . . . [but restrains states’ power] as to *prohibit the passage of any law impairing the obligation of contracts*. Although, then, the states may, until that power shall be exercised by congress, pass laws concerning bankrupts; yet they cannot constitutionally introduce into such laws a clause which discharges the obligations the bankrupt has entered into.” (emphasis added)); Ry. Labor Execs.’ Ass’n v. Gibbons, 455 U.S.

457, 472 n.14 (1982) ("Apart from and independently of the Supremacy Clause, the Contract Clause prohibits the States from enacting debtor relief laws which discharge the debtor from his obligations."). The Court therefore rejects the Franklin Oppenheimer and Rochester plaintiffs' "dormant Bankruptcy Clause" preemption argument and will address the Contract Clause issues in Part V of this opinion.

F. Preemption Conclusion

Section 903(1) of the federal Bankruptcy Code preempts the Recovery Act. The Recovery Act is therefore unconstitutional pursuant to the Supremacy Clause of the United States Constitution. Accordingly, the Court **DENIES** the Commonwealth defendants' motions to dismiss plaintiffs' preemption claims, (Civil No. 14-1518, Docket No. 95; Civil No. 14-1569, Docket No. 29), and **GRANTS** the Franklin and Oppenheimer Rochester plaintiffs' cross-motion for summary judgment on their preemption claim, (Civil No. 14-1518, Docket No. 78).

V. CONTRACT CLAUSES

Plaintiffs seek a declaratory judgment that the Recovery Act violates the Contract Clause of the United States Constitution by impairing the contractual obligations imposed by the Authority Act and the Trust Agreement. (Civil No. 14-1518, Docket No. 85 at ¶ 66; Civil No. 14-1569, Docket No. 20 at ¶ 83(b).) Plaintiff BlueMountain seeks an additional declaratory judgment that the

Recovery Act violates the Contract Clause of the Puerto Rico Constitution for the same reason. (Civil No. 14-1569, Docket No. 20 at ¶ 83(c).) The Commonwealth defendants move to dismiss.[22] (Civil No. 14-1518, Docket No. 95; Civil No. 14-1569, Docket No. 29.)

The Commonwealth defendants' motions to dismiss are again governed by Rule 12(b)(6), and the Court will dismiss the complaints if they fail to state a plausible legal claim upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6); Ocasio-Hernandez, 640 F.3d at 12-13. The Court "must assume the truth of all well-pleaded facts and give the plaintiff[s] the benefit of all reasonable inferences therefrom." United Auto., Aerospace, Agric. Implement Workers of Am. Int'l Union v. Fortuño, 633 F.3d 37, 39 (1st Cir. 2011) [hereinafter UAW] (quoting Thomas

[22] In their motions to dismiss, the Commonwealth defendants contend that the plaintiffs "are mounting a facial challenge" to the Recovery Act and that therefore the plaintiffs "must show that the [Recovery Act] cannot constitutionally be applied not only to their contracts, but to any contracts [*sic*]." (Civil No. 14-1518, Docket No. 95-1 at p. 23.) Plaintiffs, however, specifically challenge the Recovery Act as it applies to the contractual relationships between plaintiffs, PREPA, and the Commonwealth created in the Authority Act and the Trust Agreement. See Civil No. 14-1518, Docket No. 85 at ¶ 71(ii) (seeking declaration that the Recovery Act violates the Contract Clause "insofar as it permits the retroactive impairment of Plaintiffs' rights under the contracts governing the PREPA bonds"); Civil No. 14-1518, Docket No. 20 at ¶ 83(b) (same). Accordingly, the Court interprets plaintiffs' contract clause claims as "as-applied" challenges. Cf. John Doe No. 1 v. Reed, 561 U.S. 186, 194 (2010) (noting that when "the relief that would follow" from a claim "reach[es] beyond the particular circumstances of the[] plaintiffs," plaintiffs must satisfy the standards for a facial challenge); Asociacion de Suscripcion Conjunta del Seguro de Responsabilidad Obligatorio v. Juarbe-Jimenez, 659 F.3d 42, 48 (1st Cir. 2011)(where plaintiffs request a declaration that a regulation is unconstitutional, rather than a declaration that a particular interpretation or application of the regulation is unconstitutional, plaintiffs mount a facial challenge).

v. Rhode Island, 542 F.3d 944, 948 (1st Cir. 2008)). The Court considers "only facts and documents that are part of or incorporated into the complaint[s]." Id. (quoting Trans-Spec Truck Serv., Inc. v. Caterpillar Inc., 524 F.3d 315, 321 (1st Cir. 2008)). The Court accordingly examines both the factual allegations in plaintiffs' complaints and the Trust Agreement, which plaintiffs incorporated by reference into their complaints. See Civil No. 14-1518, Docket No. 85 at ¶ 3; Civil No. 14-1569, Docket No. 20 at ¶ 14.

The Contract Clause of the Puerto Rico Constitution, P.R. Const. art. II, § 7, is analogous to the Contract Clause of the United States Constitution, U.S. Const. art. I, § 10, cl. 1, and provides at least the same level of protection against the impairment of the obligation of contracts. Bayron Toro v. Serra, 119 P.R. Offic. Trans. 646, 661-62 (P.R. 1987). The parties do not dispute this. See Civil No. 14-1569, Docket Nos. 20 at ¶ 74 & 29-1 at p. 22 n.1. Plaintiff BlueMountain's invocation of the Puerto Rico Contract Clause therefore adds nothing to the Court's analysis.

A. Contract Clause Principles

The Contract Clause of the United States Constitution provides that "No State shall . . . pass any . . . Law impairing the

Obligation of Contracts . . . ." U.S. Const. art. I, § 10, cl. 1.[23] "Despite its unequivocal language, this constitutional provision does not make unlawful every state law that conflicts with any contract." UAW, 633 F.3d at 41 (internal quotation marks and citation omitted). Rather, courts must "reconcile the strictures of the Contract Clause" with the state's sovereign power to safeguard the welfare of its citizens. Id. (internal quotation marks and citation omitted).

Accordingly, Contract Clause claims are analyzed pursuant to a two-pronged test. Id. The first question is whether the state law "operate[s] as a substantial impairment of a contractual relationship." Id. (quoting Energy Reserves Grp., Inc. v. Kansas Power & Light Co., 459 U.S. 400, 411 (1983)). If the contractual relationship is substantially impaired, then the second question is whether that impairment is "reasonable and necessary to serve an important public purpose." Id. (quoting U.S. Trust Co. of N.Y. v. New Jersey, 431 U.S. 1, 25 (1977)).

B. Substantial Impairment of a Contractual Relationship

The question of whether a state law operates as a substantial impairment of a contractual relationship includes three components: "whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the

[23] The Commonwealth defendants do not contest that the Contract Clause applies to Puerto Rico, even though it is not a state. (Civil No. 14-1518, Docket No. 95-1 at p. 22 n.1.)

impairment is substantial." Gen. Motors Corp. v. Romein, 503 U.S. 181, 186 (1992).

1. Contractual Relationship

Plaintiffs claim that the Recovery Act impairs the contractual relationships created by the Trust Agreement and the Authority Act. The Commonwealth defendants do not contest the plaintiffs' allegations that the Trust Agreement creates a contractual relationship between PREPA and PREPA bondholders, and that bondholders relied on PREPA's promises in the Trust Agreement when they acquired PREPA bonds. See Civil No. 14-1518, Docket No. 85 at ¶ 42; Civil No. 14-1569, Docket No. 20 at ¶¶ 14-17.

The Commonwealth defendants also do not deny that the Authority Act creates a contractual relationship between the Commonwealth and PREPA bondholders. The Authority Act's statutory language makes clear the intent to form a contract. See P.R. Laws Ann. tit. 22 § 215 ("The Commonwealth Government does hereby pledge to, and agree with, any person, firm or corporation . . . subscribing to or acquiring bonds of [PREPA] . . . ."); cf. U.S. Trust Co., 431 U.S. at 18 (finding that New York and New Jersey's intent to make a contract with bondholders is clear from the following statutory language: "The 2 States covenant and agree with each other and with the holders of any affected bonds . . ."). Even absent this statutory language, the Trust Agreement is assumed to incorporate the terms of the Authority Act because the Authority

Act was in place when PREPA and the bondholders agreed to the Trust Agreement. See U.S. Trust Co., 431 U.S. at 19 ("The obligations of a contract long have been regarded as including not only the express terms but also the contemporaneous state law pertaining to interpretation and enforcement. . . . This principle presumes that contracting parties adopt the terms of their bargain in reliance on the law in effect at the time the agreement is reached."); Ionics, Inc. v. Elmwood Sensors, Inc., 110 F.3d 184, 188 (1st Cir. 1997) ("Every contract is assumed to incorporate the existing legal norms that are in place.").

2. Impairment

Plaintiffs allege that the Recovery Act impairs the contractual relationships and obligations created in the Authority Act and the Trust Agreement in the following specific ways:[24]

(a) In the Authority Act, the Commonwealth guaranteed PREPA bondholders that it would not "limit or alter the rights or powers . . . vested in [PREPA] until all such bonds at any time issued, together with any interest thereon, are fully met and discharged." P.R. Laws Ann. tit. 22 § 215. PREPA similarly guaranteed in the Trust Agreement that "no contract or contracts will be entered into or

[24] See Civil No. 14-1518, Docket No. 85 at ¶¶ 42-48; Civil No. 14-1569, Docket No. 20 at ¶ 56.

any action taken by which the rights of the Trustee or of the bondholders might be impaired or diminished." Trust Agreement § 709. PREPA also promised to pay principal and interest on the bonds when they are due. Id. § 701. Finally, the Trust Agreement prohibits both the extension of the maturity date of principal or interest due on the PREPA bonds and the reduction of the principal or interest rate of PREPA bonds. Id. § 1102. The Recovery Act impairs all of these obligations and guarantees by permitting PREPA to modify its debts without creditor consent. Recovery Act §§ 115, 202, 206, 304, 312, 315, 322.

(b) In the Trust Agreement, PREPA promised that it would not create liens on PREPA revenues that would take priority over the bondholders' lien. Trust Agreement §§ 712, 1102. The Recovery Act impairs this promise by allowing PREPA to encumber collateral with liens senior to the bondholders' lien. Recovery Act § 322.

(c) The Trust Agreement prohibits PREPA from selling any part of its electrical-power system. The Recovery Act impairs this contractual prohibition by permitting the special court to authorize the

sale of PREPA assets free and clear of liens. Recovery Act § 307.

(d) The Trust Agreement contains an *ipso facto* clause providing that PREPA is deemed in default if (1) it institutes a proceeding effectuating a composition of debt with its creditors, or (2) an order or decree is entered effectuating a composition of debt between PREPA and its creditors or for the purpose of adjusting claims that are payable from PREPA revenues. Trust Agreement § 802(f)-(g). The Recovery Act renders this *ipso facto* clause unenforceable by providing that "[n]otwithstanding any contractual provision . . . to the contrary, a contract of a petitioner may not be terminated or modified, and any right or obligation under such contract may not be terminated or modified . . . solely because of a provision in such contract conditioned on" a default due to the corporation's insolvency or the filing of a petition under section 301 of the Recovery Act. Recovery Act § 325.

(e) The Trust Agreement provides that holders of at least 10 percent of PREPA bonds are entitled to request that the Trustee bring an action to compel

PREPA to set and collect rates sufficient to maintain its promises both to pay current expenses and to maintain at least 120 percent of upcoming principal and interest payments in its general fund. Trust Agreement § 502. The Trust Agreement also entitles bondholders to accelerate payments if PREPA defaults, id. § 803, and to sue in equity or at law to enforce the remedies of the Trust Agreement if PREPA defaults, id. § 804. The Recovery Act impairs bondholders' rights to these remedies both during the suspension and stay provisions, Recovery Act §§ 205, 304, and after the special court approves a plan pursuant to Chapter 2 or 3, id. §§ 115(b)(2), 115(c)(3).

(f) Section 17 of the Authority Act grants bondholders the right to seek appointment of a receiver if PREPA defaults. P.R. Laws Ann. tit. 22 § 207. This right is incorporated into section 804 of the Trust Agreement, which guarantees that bondholders have the right to seek "the appointment of a receiver as authorized by the Authority Act" if PREPA defaults. Trust Agreement § 804. The Recovery Act expressly eliminates the right to seek the appointment of a receiver. Recovery Act §

> 108(b) ("This Act supersedes and annuls any insolvency or custodial provision included in the enabling or other act of any public corporation, including Section 17 of [the Authority Act].").

The United States Supreme Court has long held that the Contract Clause prohibits states from passing laws, like the Recovery Act, that authorize the discharge of debtors from their obligations. See Ry. Labor Execs.' Ass'n, 455 U.S. at 472 n.14 ("[T]he Contract Clause prohibits the States from enacting debtor relief laws which discharge the debtor from his obligations."); Stellwagen v. Clum, 245 U.S. 605, 615 (1918) ("It is settled that a state may not pass an insolvency law which provides for a discharge of the debtor from his obligations."); Sturges, 17 U.S. at 199 (Contract Clause prohibits states from introducing into bankruptcy laws "a clause which discharges the obligations the bankrupt has entered into.").

The Commonwealth Legislative Assembly cites Faitoute Iron & Steel Co. v. City of Asbury Park, New Jersey, 316 U.S. 502 (1942), as support for the Recovery Act's "constitutional basis." Recovery Act, Stmt. of Motives, § C. In Faitoute, the Supreme Court sustained a state insolvency law for municipalities in the face of a Contract Clause challenge. 316 U.S. at 516. The state law was narrowly tailored in three important ways: (1) it explicitly barred any reduction of the principal amount of any

outstanding obligation; (2) it affected only *unsecured* municipal bonds that had no real remedy; and (3) it provided only for an extension to the maturity date and a decrease of the interest rates on the bonds. Id. at 504-07. The Supreme Court was careful to state: "We do not go beyond the case before us. Different considerations may come into play in different situations. Thus we are not here concerned with legislative changes touching secured claims." Id. at 516. Unlike the state law in Faitoute, the Recovery Act (1) permits the reduction of principal owed on PREPA bonds, (2) affects *secured* bonds that have meaningful remedies, including the appointment of a receiver, and (3) permits modifications to debt obligations beyond the extension of maturity dates and adjustment of interest rates. Thus, Faitoute is factually distinguishable and provides no support for the Recovery Act's constitutionality.

The Commonwealth defendants raise only one argument as to why the Recovery Act does not impair a contractual relationship. They insist that there is "no way to know whether a contract will be impaired . . . unless and until the [Recovery Act] is invoked and the debts covered by the contract are restructured in a way that gives creditors less value than they could reasonably expect to receive without the [Recovery Act]." (Civil No. 14-1518, Docket No. 95-1 at p. 23.) This argument is unpersuasive. When a state law authorizes a party to do something that a contract prohibits it

from doing, or when a state law prohibits a party from doing something that a contract authorizes it to do, the state law "impairs" a contractual relationship, independent of whether or how the party acts pursuant to the state law. See, e.g., U.S. Trust Co., 431 U.S. at 19-21 (where statutory covenant prohibited Port Authority from spending revenues securing bonds, state law that repealed the covenant - authorizing Port Authority to spend revenue securing bonds - impaired the contractual relationship between the state and bondholders, regardless of whether Port Authority spent the revenues).

3. Substantial Impairment

To determine whether a state law's impairment of a contractual relationship is sufficiently "substantial" to trigger the Contract Clause, courts look to whether the impaired rights were the seller's "central undertaking" in the contract and whether the rights "substantially induced" the buyer to enter into the contract. City of El Paso v. Simmons, 379 U.S. 497, 514 (1965). Courts also look to how the contract right was impaired - whether it was "totally eliminated" or "merely modified or replaced by an arguably comparable" provision. U.S. Trust Co., 431 U.S. at 19, accord Richmond Mortgage & Loan Corp. v. Wachovia Bank & Trust Co., 300 U.S. 124, 128-29 (1937) ("The Legislature may modify, limit, or alter the remedy for enforcement of a contract without impairing its obligation, but in so doing, it may not deny all remedy or so

circumscribe the existing remedy with conditions and restrictions as seriously to impair the value of the right. The particular remedy existing at the date of the contract may be altogether abrogated if another equally effective for the enforcement of the obligation remains or is substituted for the one taken away.”)

Here, PREPA’s obligation to pay principal and interest on the bonds when due was its central undertaking in the Trust Agreement. See Trust Agreement § 701. This promise also substantially induced the bondholders to purchase the bonds from PREPA: if there were no promise that they would receive a return on their investment, they likely would not have invested. The Recovery Act does not make a single or modest impairment to PREPA’s obligation. For example, it does not permit PREPA merely to extend the maturity dates or to lower interest rates on its bonds. Cf. Faitoute, 316 U.S. at 507 (state law providing for an extension of the maturity dates and a decrease in the interest rates found not to violate Contract Clause). Rather, the Recovery Act permits PREPA to modify its debts in a variety of ways, including discharge of principal and interest owed, without creditor consent.

The promise of numerous remedies - including (1) the right to a senior lien on revenues, (2) the prohibition on PREPA selling its electrical-power system, (3) an *ipso facto* clause triggering default remedies, (4) the right to bring an action to compel PREPA to set and collect rates, (5) the right to accelerate

payments, (6) the right to sue to enforce the remedies, and (7) the right to seek the appointment of a receiver - likely substantially induced the bondholders to purchase bonds from PREPA because these are valuable security provisions that encourage investment. See W.B. Worthen Co. v. Kavanaugh, 295 U.S. 56, 62 (1935) (finding state law modifications to several bondholder remedies, when "viewed in combination" are "an oppressive and unnecessary destruction of nearly all the incidents that give attractiveness and value to collateral security"). U.S. Trust Co., 431 U.S. at 19 (finding state repeal of covenant that assured bondholders that the revenues and reserves securing their bonds would not be used for purposes other than those specifically delineated in the covenant impaired the obligation of the state's contract because it "totally eliminated an important security provision"). The Recovery Act does not merely modify these remedies or replace them with comparable security provisions, it completely extinguishes all of them.

The Commonwealth defendants argue for the first time in their replies to the plaintiffs' oppositions to the motions to dismiss that any impairment of plaintiffs' contractual rights is not substantial because the impaired rights were not central to the parties' undertaking. (Civil No. 14-1518, Docket No. 108 at p. 16.) The Commonwealth defendants rely on City of Charleston v. Public Service Commission of West Virginia, 57 F.3d 385 (4th Cir.

1995), for this contention, but even that case supports the opposite conclusion. In City of Charleston, the Fourth Circuit Court of Appeals concluded that the modification of the bond contracts such that "one remedy - the right to impose liens - was removed as to one relatively small group" was not substantial. 57 F.3d at 394. Here, plaintiffs enumerate not one, but at least seven remedies that the Recovery Act eliminated. Even more, the Recovery Act nullified PREPA's promise to pay full principal and interest and the Commonwealth's promise to not alter the rights vested in PREPA until the bonds and interest are fully paid and discharged.

Thus, because the Recovery Act totally extinguishes significant and numerous obligations, rights, and remedies, the Court easily concludes that the impairment caused by the Recovery Act is substantial.

C. Reasonable and Necessary to Serve an Important Government Purpose

The second prong of the Contract Clause test is whether the impairment is "reasonable and necessary to serve an important government purpose." UAW, 633 F.3d at 41 (quoting U.S. Trust Co., 431 U.S. at 25). "[T]he reasonableness inquiry asks whether the law is reasonable in light of the surrounding circumstances, and the necessity inquiry focuses on whether [the state] imposed a drastic impairment when an evident and more moderate course would serve its purposes equally well." Id. at 45-46 (internal quotation

marks and citations omitted). The First Circuit Court of Appeals places the burden of establishing a lack of reasonableness and necessity on the plaintiff and explains as follows regarding how the plaintiff can carry that burden:

> [A] plaintiff with reason to believe that a state action was unreasonable or unnecessary can, in the complaint, list the state's articulated motive(s), and then plead facts that undermine the credibility of the those stated motives or plead facts that question the reasonableness or necessity of the action in advancing the stated goals. For example, if a state purports to impair a contract to address a budgetary crisis, a plaintiff could allege facts showing that the impairment did not save the state much money, the budget issues were not as severe as alleged by the state, or that other cost-cutting or revenue-increasing measures were reasonable alternatives to the contractual impairment at issue.

Id. at 45.

Here, the Commonwealth Legislative Assembly indicates in the Recovery Act’s Statement of Motives that the Recovery Act addresses the “current state of fiscal emergency” in Puerto Rico. Recovery Act, Stmt. of Motives, § A. It avers that the downgrade to non-investment grade of Puerto Rico’s general obligation bonds “places the economic and fiscal health of the people of Puerto Rico at risk, and improperly compromises the credit of the Central Government and its public corporations.” Id. The Commonwealth Legislative Assembly further explains that Puerto Rico’s three main public corporations have a combined debt adding up to $20 billion,

and if "public corporations were to default on their obligations in a manner that permits creditors to exercise their remedies in a piecemeal way, the lack of an effective and orderly process to manage the interests of creditors and consumers[] would threaten the ability of the Commonwealth's government to safeguard the interests of the public to continue receiving essential public services and promote the general welfare of the people of Puerto Rico." Id.

Because the Commonwealth is alleged to have impaired a public contract, "where the impairment operates for the state's benefit," the Court gives limited deference to the Commonwealth's determination of reasonableness and necessity. See Parella v. Ret. Bd. of R.I. Employees' Ret. Sys., 173 F.3d 46, 59 (1st Cir. 1999) (internal quotation marks and citations omitted); accord McGrath v. R.I. Ret. Bd., 88 F.3d 12, 16 (1st Cir. 1996) ("[A] state must do more than mouth the vocabulary of the public weal in order to reach safe harbor; . . . [an] objective . . . that reasonably may be attained without substantially impairing the contract rights of private parties[] will not serve to avoid the full impact of the Contracts Clause.").

The plaintiffs plead the following facts, which the Court accepts as true at this stage in the litigation, to demonstrate that other cost-cutting and revenue-increasing measures are

reasonable alternatives to the Recovery Act’s drastic impairment of contract rights:[25]

1. PREPA could modestly raise its rates. It has not increased its basic charges since 1989.

2. PREPA could collect the $640.83 million currently owed to it by the Commonwealth.

3. PREPA could reduce the amount of funds currently diverted to municipalities and subsidies. PREPA is exempt from taxation but is required to set aside 11 percent of its gross revenues each year to pay “contributions in lieu of taxes” to municipalities and other subsidies. These contributions are expected to total almost $1 billion from 2014 to 2018.

4. PREPA could cut costs and correct inefficiencies in its management. PREPA has been reported to have (1) a highly overstaffed human resources and labor department compared to peer corporations, (2) high costs for customer service, (3) under-competitive bidding procedures for its equipment, (4) surplus equipment and other inventory above that needed for storm preparedness, (5) high overtime charges from employees and lenient timekeeping standards, and (6) weak accounting controls.

[25] See Civil No. 14-1518, Docket No. 85 at ¶¶ 50-54; Civil No. 14-1569, Docket No. 20 at ¶¶ 57-64.

5. PREPA could improve its standing in the global capital markets and take other measures to improve relationships with creditors. PREPA has not been reported to have hired a capital markets investment banker since its 2013A bonds were issued, it has not presented publicly to investors since May 2013, and it has not publicly disclosed any intention to apply for a federal guarantee under the "Advanced Fossil Energy Projects" solicitation issued by the United States Department of Energy in December 2013.

6. PREPA could negotiate with creditors to restructure its debts on a voluntary basis. The Recovery Act was passed before any meaningful attempt to engage in such negotiations.

The Court has no reason to doubt that the Commonwealth enacted the Recovery Act to address Puerto Rico's current state of fiscal emergency. But even when acting to serve an important government purpose, the Commonwealth can impair contractual relationships only through reasonable and necessary measures. The Court infers from plaintiffs well-pled and numerous factual allegations that the Recovery Act imposes a "drastic impairment" when several other "moderate course[s]" are available to address Puerto Rico's financial crisis. See U.S. Trust Co., 431 U.S. at 31 ("[A] State

is not free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well.”)

D. Contract Clauses Conclusion

For the foregoing reasons, the plaintiffs state a plausible claim pursuant to the contract clauses of the United States and Puerto Rico constitutions. The Court accordingly **DENIES** the Commonwealth defendants’ motions to dismiss, (Civil No. 14-1518, Docket No. 95; Civil No. 14-1569, Docket No. 29), as to plaintiffs’ contract clauses claims.

VI. TAKINGS CLAUSE

The Franklin and Oppenheimer Rochester plaintiffs seek a declaratory judgment that the Recovery Act violates the Takings Clause of the United States Constitution by taking without just compensation (1) plaintiffs’ contractual right to seek the appointment of a receiver, and (2) plaintiffs’ liens on PREPA revenues. (Civil No. 14-1518, Docket No. 85 at ¶¶ 32-39, 62-63.) The Commonwealth defendants move to dismiss on ripeness grounds pursuant to Rule 12(b)(1) and for failure to state a claim pursuant to Rule 12(b)(6). (Civil No. 14-1518, Docket No. 95.)

A. Plaintiffs State a Plausible Claim for Relief Based on the Taking of Their Contractual Right to Seek the Appointment of a Receiver

Plaintiffs first seek a declaratory judgment that section 108(b) of the Recovery Act effectuates a taking without just compensation of plaintiffs’ right to seek the appointment of a

receiver in violation of the Takings Clause. (Civil No. 14-1518, Docket No. 85 at ¶ 63.) Section 17 of the Authority Act grants bondholders the right to seek appointment of a receiver if PREPA defaults. P.R. Laws Ann. tit. 22 § 207. This right is incorporated into section 804 of the Trust Agreement, which guarantees that bondholders have the right to seek "the appointment of a receiver as authorized by the Authority Act" if PREPA defaults. Trust Agreement § 804. Section 108(b) of the Recovery Act eliminated this statutory and contractual right: "This Act supersedes and annuls any insolvency or custodial provision included in the enabling or other act of any public corporation, including Section 17 of [the Authority Act]." Recovery Act § 108(b).[26] The Recovery Act does not provide for any means of compensation for taking this contractual right.

Plaintiffs' claim falls squarely within the United States Supreme Court's definition of a facial takings challenge: "a claim that the mere enactment of a statute constitutes a taking," as opposed to an as-applied claim "that the particular impact of government action on a specific piece of property requires the payment of just compensation." Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470, 494 (1987). Accordingly, plaintiffs' facial takings claim became ripe the moment the Recovery Act was

[26] Because plaintiffs' contractual right to seek the appointment is nothing more than the incorporation of plaintiffs' statutory right, section 108(b)'s annulment of the statutory right consequently eliminated the contractual right.

passed. See Suitum v. Tahoe Reg'l Planning Agency, 520 U.S. 725, 736 n.10 (1997) (facial takings challenges "are generally ripe the moment the challenged regulation or ordinance is passed"); Asociacion de Suscripcion Conjunta del Seguro de Responsabilidad Obligatorio v. Juarbe-Jimenez, 659 F.3d 42, 50-51 (1st Cir. 2011) (facial takings challenge becomes ripe "at the time the offending statute or regulation is enacted or becomes effective"); accord Pharm. Care Mgmt. Ass'n v. Rowe, 429 F.3d 294, 307 (1st Cir. 2005).

Having concluded that jurisdiction is proper, the Court turns to the Commonwealth defendants' motion to dismiss pursuant to Rule 12(b)(6). "The sole inquiry under Rule 12(b)(6) is whether, construing the well-pleaded facts of the complaint in the light most favorable to the plaintiffs, the complaint states a claim for which relief can be granted." Ocasio-Hernandez, 640 F.3d at 7.

The Takings Clause of the Fifth Amendment provides that "private property [shall not] be taken for public use, without just compensation." U.S. Const. amend. V. The Takings Clause applies to the Commonwealth of Puerto Rico through the Fourteenth Amendment. Fideicomiso De La Tierra Del Caño Martin Peña v. Fortuño, 604 F.3d 7, 12 (1st Cir. 2010). The purpose of the Takings Clause regime is to bar the government "from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 537 (2005) (quoting Armstrong v.

United States, 364 U.S. 40, 49 (1960)). The United States Supreme Court identifies two categories of takings that require just compensation: (1) a direct taking, which includes either a "direct government appropriation or physical invasion of private property," and (2) a regulatory taking, which is when a "government regulation of private property . . . [is] so onerous that its effect is tantamount to a direct appropriation or ouster." Id.

Contracts are a form of property for purposes of the Takings Clause. U.S. Trust Co., 431 U.S. at 19 n.16 ("Contract rights are a form of property and as such may be taken for a public purpose provided that just compensation is paid."); Lynch v. United States, 292 U.S. 571, 579 (1934) ("Valid contracts are property" for purposes of the Takings Clause, "whether the obligor be a private individual, a municipality, a state, or the United States."); Adams v. United States, 391 F.3d 1212, 1221-22 (Fed. Cir. 2004) ("When the Government and private parties contract . . . the private party usually acquires an intangible property interest within the meaning of the Takings Clause in the contract. The express rights under this contract are just as concrete as the inherent rights arising from ownership of real property, personal property, or an actual sum of money.").

The Commonwealth defendants contend, without citing authority for support, that "there can be no 'taking' of a right that has never been triggered." (Civil No. 14-1518, Docket No. 108 at p.

18.) They then reason that plaintiffs' Takings Clause claim fails because plaintiffs' contractual right to seek the appointment of a receiver is triggered only upon default and PREPA has not defaulted. Id. The Commonwealth defendants' argument is unpersuasive and misunderstands the basics of contracts law. A contract may have a condition, which is an event that must occur before performance pursuant to the contract becomes due. Restatement (Second) of Contracts § 224 (1981). Here, PREPA defaulting is a condition on plaintiffs' contractual right to seek the appointment of a receiver. See P.R. Laws Ann. tit. 22 § 207; Trust Agreement § 804. Accordingly, plaintiffs may not seek the appointment of a receiver until PREPA defaults (*i.e.*, they may not seek performance of the contract until the condition is met). This condition does not affect the existence of plaintiffs' contractual right to seek the appointment of a receiver. This contractual right is a promise they bargained for and relied upon when purchasing PREPA bonds pursuant to the Authority Act and the Trust Agreement.

The Commonwealth defendants next attempt to apply the regulatory takings analysis to plaintiffs' claim. (Civil No. 14-1518, Docket No. 95-1 at p. 27.) "A regulatory taking transpires when some significant restriction is placed upon an owner's use of his property for which 'justice and fairness' require that compensation be given." Philip Morris, Inc. v.

Reilly, 312 F.3d 24, 33 (1st Cir. 2002) (citing Goldblatt v. Town of Hempstead, N.Y., 369 U.S. 590, 594 (1962)). Here, there is no regulation or "restriction" placed on plaintiffs' contractual right to seek the appointment of a receiver. Rather, section 108(b) of the Recovery Act totally eliminated the contract provision that gave plaintiffs the right. Thus, by enacting section 108(b) of the Recovery Act, the Commonwealth appropriated plaintiffs' contractual right to seek the appointment of a receiver. This is a direct taking. The Court therefore declines to engage in a regulatory takings analysis and concludes that plaintiffs plausibly state a claim for declaratory relief that section 108(b) of the Recovery Act effects a taking without just compensation of plaintiffs' property in violation of the Takings Clause.

B. Plaintiffs' Takings Clause Claim Based on Their Liens on PREPA Revenues Fails to State a Claim as a Facial Challenge and is Unripe as an As-Applied Challenge

Plaintiffs next seek a declaratory judgment that sections 129(d) and 322(c) of the Recovery Act effectuate a taking without just compensation of their lien on PREPA revenues in violation of the Takings Clause. (Civil No. 14-1518, Docket No. 85 at ¶ 62.) Plaintiffs allege that their PREPA bonds are secured by a pledge of all or substantially all of the present and future net revenues of PREPA. Id. at ¶ 3. If PREPA files for debt relief pursuant to Chapter 3 of the Recovery Act, the special court may authorize PREPA to obtain credit "secured by a senior or equal lien on

[PREPA's] property that is subject to a lien" if, among other things, "the proceeds are needed to perform public functions" or "there is adequate protection of the interest of the holder of the [previous] lien." Recovery Act § 322(c). Section 129(d) of the Recovery Act disposes of the "adequate protection" requirement when the "police power" justifies it. Id. § 129(d).

The relief plaintiffs seek indicates that they are bringing a facial takings challenge: they request a declaration that sections 129(d) and 322(c) of the Recovery Act "effectuate a taking of the[ir] lien." (Civil No. 14-1518, Docket No. 85 at ¶ 62.) In other words, they claim that the "mere enactment" of sections 129(d) and 322(c) constitutes a taking. See Keystone Bituminous, 480 U.S. at 494 (defining facial takings challenge). But plaintiffs' allegations to not support this claim. Rather, plaintiffs allege that the Recovery Act authorizes the special court to authorize PREPA to prime plaintiffs' lien. See Civil No. 14-1518, Docket No. 85 at ¶ 33; Recovery Act § 322(c). They have not alleged that their lien has been primed. That is to say, plaintiffs still today have a senior lien on PREPA revenues. This is unlike their contractual right to seek the appointment of a receiver, which plaintiffs do not have today because section 108(b) of the Recovery Act expressly eliminated that right. See supra Part VI.A. Thus, when analyzed as a facial takings challenge, plaintiffs fail to state a claim upon which their sought-after

declaratory relief (that sections 129(d) and 322(c) of the Recovery Act effectuate a taking without just compensation) can be granted because they fail to allege an actual taking.

Characterizing plaintiffs' claim as an as-applied challenge, however, leads to a different conclusion. An as-applied facial takings challenge is a claim "that the particular impact of government action on a specific piece of property requires the payment of just compensation." Keystone Bituminous, 480 U.S. at 494. This definition fits plaintiffs' factual allegations: plaintiffs allege that if PREPA files pursuant to Chapter 3 of the Recovery Act and the special court authorizes PREPA to grant a lien on PREPA revenues senior to plaintiffs' lien, that action by the special court will amount of a taking of plaintiffs' lien and will require the payment of just compensation. While facial takings challenges are ripe the moment the challenged law is passed, Suitum, 520 U.S. at 736 n.10; Asociacion de Suscripcion Conjunta, 659 F.3d at 50-51; Pharm. Care Mgmt. Ass'n, 429 F.3d at 307, as-applied takings challenges must pass a higher ripeness hurdle. In Williamson County, the Supreme Court held that plaintiffs raising as-applied takings challenges must meet two special ripeness requirements: (1) that the relevant government entity "has reached a final decision regarding the application of the regulations to the property at issue," and (2) that the plaintiffs pursued any "adequate procedure for seeking just compensation."

Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 186, 195 (1985); accord Downing/Salt Pond Partners, L.P., 643 F.3d at 20-21. Here, the special court is the government entity tasked with deciding whether PREPA may prime plaintiffs' lien. See Recovery Act § 322(c) ("The [special c]ourt, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on the petitioner's property that is subject to a lien . . . ."). Plaintiffs have not alleged that the special court made a final decision regarding the priming of their lien. Thus, when analyzed as an as-applied takings challenge, plaintiffs' claim fails the first Williamson County ripeness requirement and is therefore unripe.[27]

C. Takings Clause Conclusion

For the foregoing reasons, the Court **DENIES** the Commonwealth defendants' motion to dismiss, (Civil No. 14-1518, Docket No. 95), as to the Franklin and Oppenheimer Rochester plaintiffs' Takings Clause claim based on their contractual right to seek the appointment of a receiver, and **GRANTS** the Commonwealth defendants' motion to dismiss, (Civil No. 14-1518, Docket No. 95), as to

[27] This result is not affected by the fact that plaintiffs seek declaratory relief, as opposed to money damages. See Garcia-Rubiera v. Calderon, 570 F.3d 443, 451-54 (1st Cir. 2009) (applying both Williamson County ripeness prongs to takings claim for declaratory and injunctive relief); Golemis v. Kirby, 632 F. Supp. 159, 164 (D.R.I. 1985) ("[The Williamson County] ripeness analysis would be completely neutered if its holding were applied to damage claims alone.").

plaintiffs' Takings Clause claim based on their lien on PREPA revenues.

VII. CONCLUSION

In Civil Case No. 14-1518, the Court orders as follows:

1. The Commonwealth defendants' motion to dismiss, (Docket No. 95), is **DENIED** as to the Franklin and Oppenheimer Rochester plaintiffs' preemption and Contract Clause claims.

2. The Commonwealth defendants' motion to dismiss, (Docket No. 95), is **GRANTED** as to plaintiffs' stay of federal court proceedings claim. The stay of federal court proceedings claim is unripe and is therefore **DISMISSED WITHOUT PREJUDICE**.

3. The Commonwealth defendants' motion to dismiss, (Docket No. 95), is **DENIED** as to plaintiffs' Takings Clause claim based on their contractual right to seek the appointment of a receiver, and **GRANTED** as to plaintiffs' Takings Clause claim based on their lien on PREPA revenues. The Takings Clause claim based on plaintiffs' lien on PREPA revenues is **DISMISSED WITHOUT PREJUDICE**.

4. PREPA's motion to dismiss, (Docket No. 97), is **GRANTED** as to all claims to the extent that they are asserted against PREPA. PREPA is **DISMISSED** from this case because plaintiffs lack standing against it.

5. Plaintiffs' motion for summary judgment, (Docket No. 78), is **GRANTED** as to plaintiffs' preemption claim and **DENIED** as to plaintiffs' stay of federal court proceedings claim.

In Civil Case No. 14-1569, the Commonwealth defendants' motion to dismiss, (Docket No. 29), is **DENIED** as to plaintiff BlueMountain's preemption and contract clauses claims, and **GRANTED** as to BlueMountain's stay of federal court proceedings claim. The stay of federal court proceedings claim is unripe and is therefore **DISMISSED WITHOUT PREJUDICE.**

The Recovery Act is preempted by the federal Bankruptcy Code and is therefore void pursuant to the Supremacy Clause of the United States Constitution. The Commonwealth defendants, and their successors in office, are permanently enjoined from enforcing the Recovery Act.

IT IS SO ORDERED.

San Juan, Puerto Rico, February 6, 2015.

s/ Francisco A. Besosa
FRANCISCO A. BESOSA
UNITED STATES DISTRICT JUDGE

Sección 340.–Cierre de Caso.

(a) Luego de que un plan sea confirmado y sea efectivo, y todas las reclamaciones en disputa hayan sido resueltas, la Sala Especializada cerrará el caso.

(b) Un caso puede reabrirse en la Sala Especializada en el cual el caso se cerró para hacer valer el plan, acordar un alivio para el peticionario o por alguna otra razón.

Sección 341.–Reglas *Escheat* o de Reversión de Propiedad.

Cualquier depósito, dinero u otra propiedad que permanezca sin reclamar una vez expire el periodo permitido en un caso bajo el Capítulo 3 de esta Ley para la presentación de un depósito o para llevar a cabo cualquier otra acción como condición para la participación en la distribución bajo cualquier plan confirmado bajo el Capítulo 3 de esta Ley, o que permanezca sin reclamar tras la expiración del tiempo límite para reclamar dicha declaración final de distribución o dicho plan, según sea el caso, se convertirá en propiedad del peticionario o de la entidad que adquiera los activos del peticionario bajo el plan, según sea el caso.

Capítulo 4: Vigencia

Sección 401.–Efectividad de la Ley.

Esta Ley entrará en vigor inmediatamente después de su aprobación.

Parte II – English Version of the Puerto Rico Public Corporation Debt Enforcement and Recovery Act,"

To create the "Puerto Rico Public Corporation Debt Enforcement and Recovery Act," in order to establish a debt enforcement, recovery, and restructuring regime for the public corporations and other instrumentalities of the Commonwealth of Puerto Rico during an economic emergency; to create chapter 1 of the Act, titled General Provisions, chapter 2, titled Consensual Debt Relief, chapter 3, titled Debt Enforcement, and chapter 4, titled Effectiveness of the Act; to establish the definitions, interpretation and evidentiary standards applicable to the Act; to establish provisions regarding jurisdiction and procedure, including the creation of the Public Corporation Debt Enforcement and Recovery Act Courtroom of the Court of First Instance, San Juan Part, the powers and responsibilities of said court, the parameters that will govern eligibility for processes under chapter 2 and chapter 3 of the Act and to establish provisions on service of process, applicability of the rules of civil procedure, objections and appeals, among others; to establish provisions regarding creditor protection and governance, including limitations on avoidance actions, recovery on avoidance actions and the appointment of an emergency manager, among others; to establish the rules that will govern chapter 2, Consensual Debt Relief, including the objectives of a consensual debt relief transaction, the creation an oversight committee to monitor the public corporation's compliance with the recovery program, the court approval of the consensual debt relief transaction, the suspension of remedies during the suspension period and the financing of the public corporation during said period, among others; to establish the rules that will govern chapter 3, Debt Enforcement, including the petition for relief, the automatic stay, the eligibility hearing, the enforcement of claims by foreclosure transfer, the confirmation requirements, the

creation of the creditors' committees and various additional provisions relating to the assets, liabilities, contracts and powers of the petitioner, among others; and to other ends.

STATEMENT OF MOTIVES

A. Current State of Fiscal Emergency

The fiscal situation of the Government of the Commonwealth of Puerto Rico for the last six years has been the most critical the country has undergone in its history. In January 2013, the General Fund deficit for fiscal year 2012-2013 was projected to surpass $2.2 billion. By means of various measures implemented by this Administration, said deficit was reduced to approximately $1.29 billion as of June 30, 2013. For the current fiscal year 2013-2014, this Legislative Assembly approved various measures of fiscal discipline that permitted a reduction, with legislative approval, of appropriations in an amount of $170 million below budgeted amounts. Notwithstanding, and as informed by the Treasury Department, at June 10, 2014, the projected collections for the current fiscal year were $320 million below the projected amount, for which measures have been implemented in order to close the gap and achieve the goal of closing the current fiscal year with a deficit of $650 million.

The situation at the public corporations in January 2013 was no different, as the combined deficit of the country's three main public corporations (the Electric Power Authority (hereinafter "PREPA"), the Aqueduct and Sewer Authority (hereinafter "PRASA") and the Highways and Transportation Authority (hereinafter "PRHTA")) for fiscal year 2012-2013 was approximately $800 million, all of them with a combined debt adding up to $20 billion. This Administration implemented various measures in order to improve the finances of these public corporations in order to assist them in again becoming financially self-sufficient.

For example, on February 27, 2013, this Administration completed the transaction that involved the lease of the Luis Muñoz Marín International Airport by means of a public-private partnership, which strengthened the fiscal position of the Ports Authority and reduced the financial difficulties of said public corporation and Government Development Bank for Puerto Rico (hereinafter "GDB") by repaying in excess of $490 million owed to, or guaranteed by, GDB; on June 25, 2013, acts 30-2013 and 31-2013 were approved increasing the revenues of the PRHTA by approximately $270 million and allowing such public corporations to begin amortizing all of the lines of credit owed to GDB, currently in an amount of approximately $1.8 billion, and cover operational expenses; in July 2013, the Governing Board of PRASA implemented an average increase of 60% in water rates, approved by the prior administration, to cover operational expenses and improve its debt service coverage, which has allowed that public corporation to stop depending on General Fund subsidies to cover its operational deficits; and, notwithstanding the predictions, in August 2013, PREPA was able to place a bond issue of $673 million that allowed it to partially finance its capital improvement program.

Notwithstanding all of the foregoing, the measures taken with the General Fund, as well as with the public corporations, have not been enough to address the economic and fiscal problems of Puerto Rico. As the public is aware, for the first time in our constitutional

history, the credit of the Commonwealth has been compromised as a result of the downgrade to non-investment grade of its general obligation bonds by the principal rating agencies, notwithstanding all of the previously mentioned governmental measures. The three principal rating agencies downgraded below investment grade the Commonwealth's general obligation bonds, and the bonds of the majority of its instrumentalities and public corporations, including GDB, PREPA, PRASA, PRHTA, and the Public Buildings Authority. The public debt's loss of its investment grade rating places the economic and fiscal health of the people of Puerto Rico at risk, and improperly compromises the credit of the Central Government and its public corporations.

Also, during fiscal year 2013-2014, the liquidity of the government and GDB was adversely affected by various factors that significantly limited the available resources and financial flexibility of the government to cover its governmental operations. These factors include a significant increase in the interest rates and yields of both Commonwealth obligations and those of its instrumentalities and public corporations, limited access by these entities to the United States capital markets and a marked reduction in the island's capital markets. In addition, this crisis limited GDB's ability to provide interim financing to public corporations and other entities. In light of this, local and international private financial institutions, which in the past had served as a source of interim liquidity for the Central Government and the public corporations, have significantly reduced and continue to reduce the credit extended to the Commonwealth and its public corporations, and no longer are a viable alternative for obtaining interim financing. The reduction in capital market access and in the credit provided by private financial institutions, has also limited the volume of debt that can be issued and, as a result, makes it impossible for the government to depend on financings to cover the cost of its governmental operations.

GDB, which has the statutory role of serving as financial adviser and fiscal agent to the Government of the Commonwealth, its instrumentalities, municipalities, and public corporations, and has also served as a source of interim financing for all parts of the governmental apparatus, has seen its liquidity affected precisely by its financing of the operational deficits of various public corporations. In GDB's financial statements for the fiscal year ended June 30, 2013, the auditors emphasize that GDB has $6.9 billion in loans to the Commonwealth and its public corporations, which constitutes 48% of GDB's total assets. On the other hand, loans to municipalities totaled $2.212 billion, or 15% of GDB's total assets. Therefore, the liquidity and financial condition of GDB significantly depends upon the ability of the Commonwealth and its public corporations to repay their debt, which, as stated before, has been severely affected.

Based on this situation, the present Administration took various measures to improve GDB's liquidity. For example, in March 2014, the Commonwealth made a historic bond issue of its general obligation bonds in the amount of $3.5 billion, the net proceeds of which were mainly used to repay the Commonwealth's obligations with GDB. Also, Act No. 24-2014 was approved so that GDB, among others, could require certain governmental entities to transfer the balance of cash accounts maintained at private sector institutions to GDB. Also, said Act prohibits GDB from approving loans to public corporations that are unable to show that they have the sources of revenue sufficient to cover the debt service of the new financing. As a result, that law has the effect of imposing fiscal discipline on public entities and

preserves the liquidity and financial situation of GDB. Although these measures, together with other efforts, have increased GDB's liquidity, it still lacks sufficient financial strength, on its own, to satisfy the current financing needs of the Government of the Commonwealth and, in particular, of its public corporations, especially with the limited market access of these entities.

As a result of this liquidity situation which has exacerbated the difficult fiscal and financial outlook of the country, this Administration has proposed the approval of a balanced budget for the Commonwealth, without the financing of operational deficits nor debt refinancing for fiscal year 2014-2015. In addition, various expense reduction and operational reorganization measures have been taken at the agency and public corporation level, including the enactment of the Special Law for the Fiscal and Operational Sustainability of the Government of the Commonwealth of Puerto Rico, Act 66-2014, so that the Central Government as well as the public corporations may be able to cover their operational expenses with revenues collected by such entities and not by means of non-recurring funds, such as loans and debt refinancing. Act 66-2014 declared a fiscal emergency for the country for:

> the fiscal and economic recovery after the downgrade of Puerto Rico's credit and the reduction of collections that affects the liquidity of the State, safeguarding the constitutional mandate for the payment of interest and amortization of the public debt, it is hereby adopted a plan for the management of the consequences of the same and to establish a structured administration that will permit the country to meet its obligations. Similarly, the continuity of the public function is assured in essential areas of health, safety, education, social work and development, among others, as well as the rendering of those services necessary and indispensable for the populace. This law will have as its public policy the restoration of the public credit of the commonwealth of Puerto Rico through the elimination, in the short term, of the General Fund deficit and the improvement in the fiscal condition of the public corporation, without resorting to the dismissal of regular or career public employees, nor affecting the essential functions of the government agencies that provide security, education, health or social work. This structured plan is indispensable to protect the availability of cash to the Commonwealth of Puerto Rico in such a manner so that the provision of indispensable services the populace receives is not affected. This plan considers the challenges that Puerto Rico confronts to restore the public credit and address the uncertainty surrounding the duration, scope and cost of access to the capital markets in the absence of an investment grade rating.

Although the implementation of Act 66-2014 will result in approximately $230 million in combined savings for all public corporations, such fiscal control measures will not be sufficient to address the immediate fiscal situation of many public corporations of the country. Public corporations of the Commonwealth of Puerto Rico that provide essential public services, PREPA being the most dramatic example, today face significant operational, fiscal, and financial challenges. During the past years, these public corporations have issued bonds in the capital markets or obtained loans, guarantees, or other financial support from the

Government Development Bank for Puerto Rico ("GDB") or private financial institutions to cover recurring budget deficits as result of the prolonged weakness in the Commonwealth's macroeconomic conditions, their inefficiencies, and their high operating costs. These fiscal and financial conditions have also been exacerbated by the needs of these public corporations to invest substantial amounts in their capital improvement plans, in many instances required by applicable federal regulation. As a result of this, some of these public corporations are also burdened with a heavy debt load as compared to the resources available to cover the corresponding debt service.

At present, as previously discussed, these public corporations have limited access to the capital markets and their ability to repay outstanding financings is severely compromised. At the same time and contrary to past improper practices, the Government of Puerto Rico has implemented responsible public policies pursuant to which GDB will no longer provide financing to cover operating deficits of the public corporations, and neither will the Department of the Treasury of the Commonwealth because these are not financially sound practices, and GDB and the Central Government are not in a position to cover such deficits. As previously indicated, under this Administration, the public corporations have been taking the measures necessary to achieve economic self-sufficiency, because reaching such self-sufficiency is fundamental for the new policy of responsibility required by the people of Puerto Rico. That being said, the lack of access to financing and deficit funding may culminate in some public corporations becoming unable to pay their debts when due, honor their other contractual obligations, and continue to perform important public functions such as providing required maintenance and improvements to existing critical infrastructure or making new investments necessary to the continuation of these vital services and compliance with regulatory requirements.

As recognized by this Legislative Assembly upon the enactment of Act Nos. 30 and 31 of 2013, which, as previously indicated, assigned new revenues to PRHTA, that public corporation has been facing a precarious situation for some years now due to the general reduction of its revenues exacerbated by the increases in the costs of its operations. Based on that public corporation's audited financial statement for fiscal years 2010 through 2013, PRHTA had accumulated operational losses (before depreciation) of $349 million. These deficiencies were covered by GDB during the past years in order for that public corporation to continue operating and making payments to its principal creditors. During the past four years from 2009-2012, PRHTA's fiscal outlook worsened due to a severe pattern of covering its operational mismatches with GDB lines of credit, that, during such period, added up to $2.113 billion without having identified resources for the repayment of such obligations.

In a separate matter, this Legislative Assembly has also recognized, through the Puerto Rico Transformation and Energy RELEIF Act, Act 57-2014, that high energy costs, which reached their highest levels at the end of 2012 at $0.31 per kilowatt hour, have crippled our economic development and that these high costs are a result of PREPA's dependence on oil for purposes of generating electricity and its highly leveraged structure, which for several years has created difficulties in its ability to implement necessary capital improvements to the power generation, transmission, and distribution systems. PRHTA and PREPA exemplify the nature and scope of the crisis that certain of our public corporations currently face that may lead to an unprecedented failure in the ability of some public corporations to safeguard the

public and promote the general welfare of the people by continuing to provide essential government services while at the same time honoring their debt and other obligations.

As previously mentioned the financial challenges facing some of the public corporations have been further exacerbated by the Central Government's own fiscal and economic challenges. The budget deficits incurred over decades, prolonged economic recession (since 2006), a high rate of unemployment that reached 16% in 2010, population decline, and high levels of debt and pension obligations, have contributed to the financial problems of the public corporations. All of these factors have led to widening of credit spreads for public sector debt and the ratings downgrades, all as previously discussed. This, in turn, has further strained the liquidity of the Commonwealth and its public corporations and adversely affected their access to the capital markets and private sources of financing, as well as their borrowing costs.

This Legislative Assembly has time and again demonstrated its willingness to act to address the financial and economic challenges of the Commonwealth and its public corporations. This Legislative Assembly has enacted comprehensive reforms of the Employees Retirement System through Act No. 3-2013, as amended, the Teachers Retirement System through Act No. 160-2013, and the Judiciary Retirement System through Act No. 162-2013 in order to ensure retirees will continue to receive their pensions while addressing the Commonwealth's cash flow needs. This Legislative Assembly also enacted comprehensive energy reform legislation, Act 57-2014, in order to promote the economic development and wellbeing of the people of the Commonwealth.

In light of the financial situation of the Commonwealth and the Administration's goal to balance the Commonwealth's General Fund, Governor Alejandro Garcia Padilla recently announced that the Commonwealth's public corporations would be required to achieve financial self-sufficiency in the near future. This self-sufficiency, however, may not be achieved through increases in basic rates, which are already excessively high, hinder and depress economic activity and development. Given that public corporations no longer can rely on GDB loans, Commonwealth subsidies, or rate increases to cover their operating deficits, they may be unable to pay their debts as they come due and honor their other contractual obligations, while at the same time trying to meet their obligations to provide services to our populace. If the public corporations were to default on their obligations in a manner that permits creditors to exercise their remedies in a piecemeal way, the lack of an effective and orderly process to manage the interests of creditors and consumers, would threaten the ability of the Commonwealth's government to safeguard the interests of the public to continue receiving essential public services and promote the general welfare of the people of Puerto Rico.

The challenges described herein are not issues that can be addressed in the future in a gradual and measured manner over an extended period of time. We have inherited them and they are with us today, constituting a real and palpable threat to the government's ability to protect and promote the general welfare of the people of Puerto Rico now, and therefore establish a current state of fiscal emergency.

B. Insufficiency of Current Commonwealth Laws and Inapplicability of Federal Law

At present, there is no Commonwealth statute providing an orderly recovery regime for public corporations that may become insolvent. The enabling acts of PREPA and PRASA, for example, contain provisions that contemplate the appointment by a court of a receiver in the context of a default that, under the direction of a court, would take over the operations of the public corporation and apply its operating revenues in the manner ordered by the court. The receiver would remain in place until such time as all defaults of the public corporation are cured. These general provisions are inadequate to address the complexities involved in a recovery process in the event of an insolvency. They lack the rules and procedures necessary to properly and equitably manage the recovery process of a public corporation for the benefit and protection of all stakeholders.

At the same time, the provisions of the federal laws applicable to corporations in state of insolvency are inapplicable to the Commonwealth's public corporations.

This Act addresses the existing statutory gap, consistent with Commonwealth and federal constitutional requirements, and enables the Commonwealth's public corporations to address their particular fiscal and financial emergencies in a manner that maximizes value to creditors while protecting public functions important for the public health, safety and welfare, and positioning the Commonwealth to grow its economy for the benefit of all stakeholders collectively. This legislation acknowledges the complexity of these types of proceedings and provides special procedures by which the Chief Justice of the Puerto Rico Supreme Court may designate particular judges to oversee these types of proceedings who may, in turn, designate special commissioners with the required expertise to assist in their resolution. This is not a bankruptcy act, but an orderly debt enforcement act for the eligible public corporations.

C. Constitutional Basis

This legislation is consistent with guidance provided by the United States Supreme Court (the "U.S. Supreme Court") with respect to the proper rules and procedures for carrying out the financial recovery of entities ineligible for relief under the applicable federal laws.

As discussed below, the Commonwealth has the power to enact a statute that allows a public corporation to modify the terms of its debt with the consent of a substantial number of affected creditors or through a court-supervised proceeding because the U.S. Supreme Court has acknowledged the power of states to enact their own laws for entities Congress has not rendered eligible under applicable federal law. In addition, Puerto Rico has the police power to enact orderly debt enforcement and recovery statutes when facing an economic emergency, since Congress enacted legislation in 1950 and 1952 granting the Commonwealth the power to govern under its own constitution.

These being the circumstances, states have the power to enact their own laws to provide a process for adjusting debts. States have also enacted laws permitting insurance companies and banks ineligible under provisions like chapters 9 and 11 of title 11 of the United States Code to adjust their debts.

States are also able to enact their own enforcement and adjustment statute under their police power. In Faitoute Iron & Steel Co. v. City of Asbury Park, 316 U.S. 502 (1942), the U.S. Supreme Court explained the state retains police power with respect to the financial wellbeing of the state: "If a State retains police power with respect to building and loan

associations . . . because of their relation to the financial well-being of the State, and if it may authorize the reorganization of an insolvent bank upon the approval of a state superintendent of banks and a court, . . . a State should certainly not be denied a like power for the maintenance of its political subdivisions and for the protection not only of their credit but of all the creditors . . . ." Faitoute Iron & Steel Co., 315 U.S. at pages 313–14. This police power extends not only to the enactment of an adjustment statute where Congress has failed to act, but also to the use of the police power during periods of emergency.

The Commonwealth has sovereign authority to enact its own laws, as long as the statute does not conflict with our own Constitution, the Constitution of the United States or applicable federal law. With the passage of Public Law 600, Congress authorized the Commonwealth to draft its own constitution. The legislation was offered in the "nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption." In approving the proposed constitution, Congress noted: "Within this framework, the people of Puerto Rico will exercise self-government. As regards local matters, the sphere of action and the methods of government bear a resemblance to that of any State of the Union."

Courts have recognized this sovereign authority of the Commonwealth. The U.S. Supreme Court has held that the Commonwealth is "sovereign over matters not ruled by the Constitution." The Court has reiterated this holding on two occasions. Specifically, in Examining Board of Engineers v. Flores de Otero, 426 U.S. 572, 594 (1976), the Court stated that "The purpose of Congress in the 1950 and 1952 legislation was to accord to Puerto Rico the degree of autonomy and independence normally associated with a state of the union." In Rodriguez v. Popular Democratic Party, 457 U.S. 1, 8 (1982), the Court further explained: ". . . Puerto Rico . . . is an autonomous political entity, sovereign over matters not ruled by the Constitution." Moreover, in Cordova & Simonpietri Insurance Agency, Inc. v. Chase Manhattan Bank, 649 F.2d 36, 41 (1st Cir. 1981) , a case that was cited positively by the U.S. Supreme Court in U.S. v. Lara, 541 U.S. 193, 204 (2004), the United States Court of Appeals for the First Circuit concluded that:

> In sum, Puerto Rico's status changed from that of a mere territory to the unique status of Commonwealth. And the federal government's relations with Puerto Rico changed from being bounded merely by the territorial clause, and the rights of the people of Puerto Rico as United States citizens, to being bounded by the United States and Puerto Rico Constitutions, Public Law 600, the Puerto Rican Federal Relations Act and the rights of the people of Puerto Rico as United States citizens.

The Commonwealth Constitution expressly recognizes the Commonwealth's police power. Under Article II, Section 18, citizens of the Commonwealth are given the right to organize and bargain collectively. That right, however, does not impair the state's police power: "Nothing herein contained shall impair the authority of the Legislative Assembly to enact laws to deal with grave emergencies that clearly imperil the public health or safety or essential public services." In addition, Article II, Section 19 more explicitly recognizes the police power of the Commonwealth: "The power of the Legislative Assembly to enact laws for the protection of the life, health and general welfare of the people shall likewise not be construed restrictively."

Similarly, the Legislative Assembly was given the power to create the Commonwealth courts by Congress in 1950 and 1952 when Congress enacted legislation granting Puerto Rico Commonwealth status and the power to govern under its own constitution. Section 2 of Article V of the Commonwealth Constitution grants the Legislative Assembly the authority to create the Commonwealth court. Therefore, the Legislative Assembly has the power to enact, and a Puerto Rico court has the power to enforce, an orderly debt enforcement statute.

D. Purpose and Objectives of the Act

This Legislative Assembly finds that the current fiscal emergency situation requires legislation that allows public corporations, among other things, (i) to adjust their debts in the interest of all creditors affected thereby, (ii) provides procedures for the orderly enforcement and, if necessary, the restructuring of debt in a manner consistent with the Commonwealth Constitution and the U.S. Constitution, and (iii) maximizes returns to all stakeholders by providing them going concern value based on each obligor's capacity to pay. It further believes that the public corporations can be restored to a position of solvency and creditworthiness by postponing or reducing debt service with the consent of a supermajority of the creditors as part of a recovery program, as contemplated by chapter 2 of this Act.

This Legislative Assembly recognizes that if the public corporations fail to use the revenues that have been pledged to the payment of debt service to maintain basic public services that are necessary to preserve the public health, safety, and welfare of our citizens, they will likely be unable to honor their debt. This Act also recognizes that if an orderly debt enforcement and recovery process is not in place, there will likely be outcomes that do not balance fairly the interests of all the stakeholders. To address these challenges in a manner that treats debt holders fairly and balances the best interests of creditors with the interest of the Commonwealth to protect its citizens and to grow and thrive for the benefit of its residents, this Legislative Assembly has decided to enact a law that is consistent with the precepts espoused by the courts of the Commonwealth and the United States.

E. Summary of the Act

The Act contemplates two types of procedures to address a public corporation's debt burden. The first is a consensual debt modification procedure that would culminate in a recovery program (chapter 2 of this Act) and the second is a court-supervised procedure that would culminate in an orderly debt enforcement plan (chapter 3 of this Act). A public corporation can seek relief under either chapter 2 or chapter 3 at the same time or sequentially. This Act is designed in many respects to mirror certain key provisions of title 11 of the United States Code, and courts and stakeholders are encouraged to review and consider existing precedent under title 11 of the United States Code, where applicable, when interpreting and applying this Act.

Eligibility

The following entities are not eligible to seek relief under this Act: the Commonwealth (for the avoidance of doubt, neither the general obligation debt of the Commonwealth, nor any debt guaranteed by the Commonwealth shall be subject to the Act); the seventy-eight municipalities of the Commonwealth; GDB and its subsidiaries, affiliates, and ascribed entities; the Children's Trust; the Employees Retirement System; the Judiciary

Requirement System; the Municipal Finance Agency; the Municipal Finance Corporation; the Puerto Rico Industrial Development Company; the Puerto Rico Industrial, Tourist, Educational, Medical and Environmental Control Facilities Financing Authority; the Puerto Rico Infrastructure Financing Authority; the Puerto Rico Sales Tax Financing Corporation; the Teachers Retirement System; and the University of Puerto Rico.

Summary of Chapter 1 of the Act

Chapter 1 of the Act establishes the general provisions of the law and includes three subchapters, the first entitled "Title, Purposes, Nomenclature, and Interpretation," the second "Jurisdiction and Procedure," and the third "Creditors' Protections and Governance." Subchapter I includes provisions related to, among other things, definitions, standards of interpretation and evidence, a savings clause, and inapplicability of other laws. Subchapter II establishes the norms regarding jurisdiction, the powers and responsibilities of the Court, eligibility, service of process, and appeals, among others. Subchapter III contains provisions concerning constitutional safeguards for creditors, the role of GDB in proceedings conducted under the Act, the power of the Governor to appoint an Emergency Manager, and the basic tools available to an eligible public corporation availing itself of the Act, such as continued operations and limited recovery of setoffs and actual fraudulent transfers.

Summary of Chapter 2 of the Act

General. Chapter 2 provides a mechanism for a public corporation to adopt a recovery program and seek a market-led solution for debt relief, based on the recovery program, that binds all debt holders with the consent of a supermajority of debt holders. The recovery program contemplated by chapter 2 will have as its objectives: to enable an eligible obligor to become financially self-sufficient; to allocate equitably among all stakeholders the burdens of the recovery program; and to provide the same treatment to all creditors unless a creditor agrees to a less favorable treatment.

Chapter 2 was designed based on jurisprudence that has determined that no violation of the constitutional prohibition on the impairment of contracts exists upon the enactment of a debt adjustment regime that complies with the following principal characteristics: the existence of a fiscal emergency that necessitates the enactment of this legislation; a supermajority vote in order to bind the minority; the creation of an impartial oversight board to supervise compliance with the recovery program; ratable distributions; and court approval.

Commencement and Eligibility. The chapter 2 process begins when the governing body of a public corporation and GDB, or GDB upon the Governor's request, as the case may be, authorize the public corporation to seek consensual debt relief from holders of specified debt instruments (which chapter 2 identifies as the affected debt instruments). Any government entity, other than those specifically excluded (see above), is eligible to commence a recovery process under chapter 2 of this Act.

Scope of Relief. The relief available under chapter 2 consists of any combination of amendments, modifications, waivers, or exchanges (collectively referred to as amendments) to the affected debt instruments, so long as the amendments are coupled with the public corporation's commitment to be bound by the recovery program. Amendments may include

various features such as interest rate adjustments, maturity extensions, debt relief, or other revisions to affected debt instruments.

Suspension of Remedies. After a public announcement of the suspension period is made, all remedies otherwise granted to holders of, parties with a beneficial interest in, and trustees and indenture trustees and similar representatives related to the affected debt instruments are temporarily suspended for a sufficient period of time to allow the public corporation to engage in discussions with stakeholders, seek the required consent from holders, and obtain court approval of the amendments. The public corporation shall have the power through court process to enforce the temporary suspension of remedies.

Recovery Program. A public corporation seeking approval of a consensual debt relief transaction must commit to and formulate a recovery program. The recovery program must allow the public corporation to become financially self-sufficient based on financial and operational adjustments as may be necessary or appropriate to allocate the burdens of such consensual debt relief equitably among all stakeholders. The recovery program, which may include interim milestones and performance targets, will necessarily require burden sharing by affected stakeholders and may also include measures designed to improve operating margins; increase operating revenues; reduce operating expenses; transfer or otherwise dispose of existing operating assets; acquire new operating assets; and close down or restructure existing operations or functions.

Required Consent of Debt Holders. Proposed amendments to the affected debt instruments must be submitted to the holders of such debt instruments for consent or approval. If holders of at least half of the amount of debt entitled to vote or consent in a particular class participate in the vote or consent process and holders of at least three-quarters of the aggregate amount of debt that participate in the vote or consent solicitation approve the amendments, the public corporation may then seek court approval of the amendments for the purpose of binding all holders of such affected debt instruments to the amendments.

Court Approval. The court process is designed to be efficient and expedient in light of the consensual nature of the transaction. The designated courtroom within the Court of First Instance, San Juan Part, established by this Act will have original jurisdiction to resolve any disputes relating to any provision under chapter 2, including a consensual debt relief transaction. Upon an application by the public corporation for approval of the amendments, the court will be required to determine whether (i) the amendments proposed in such transaction are consistent with the objectives of chapter 2, and (ii) that the voting procedure was conducted in a manner consistent with chapter 2. If the court is satisfied that these requirements have been satisfied, the court must order that the proposed amendments shall become effective immediately, and that all holders of such instruments shall be bound by the new terms of the instrument. The amendments shall be binding on the public corporation and any entity asserting claims or other rights, including anyone with a beneficial interest, in respect of affected debt instruments.

Oversight Commission. In order to monitor the public corporation's compliance with the recovery program, chapter 2 establishes an oversight commission comprised of three independent experts appointed by the Governor. The commission is also charged with the responsibility of providing periodic compliance updates to stakeholders and the public. If the

public corporation fails to achieve its interim performance targets, for example, the commission may issue non-compliance findings and make recommendations for curing such non-compliance.

Summary of Chapter 3 of the Act

General. Chapter 3 addresses the debt problem of the Commonwealth's public corporations through a judicial solution requiring the same consent required in, for example, chapters 9 and 11 of title 11 of the United States Code. Chapter 3 enables each qualifying public corporation to defer debt repayment and to decrease interest and principal to the extent necessary to enable each entity to continue to fulfill its vital public functions. Collective bargaining agreements may be modified or rejected under certain circumstances and trade debt can be reduced when necessary. In designing chapter 3, this Legislative Assembly has adopted a model similar to that of chapter 9 of title 11 of the United States Code in order to provide all stakeholders with much needed familiarity in a process wrought with uncertainty. As a result, this Legislative Assembly clearly expresses its intent that jurisprudence interpreting the provisions of chapter 9 of title 11 of the United States Code be used, to the extent applicable, for purposes of interpreting the provisions of chapter 3 of this Act.

Constitutional Basis. Notwithstanding the common concepts that this legislation shares with analogous federal law, as stated before, this legislation is not a bankruptcy statute. This legislation provides for a regime to guarantee the orderly enforcement of debts, to the extent of each such public corporation's ability to do so. To address the U.S. Supreme Court's concern about a municipality legislating the terms on which its own instrumentalities' debts can be handled, chapter 3 adopts even more stringent economic standards than Congress adopted for chapters 9 and 11 of title 11 of the United States Code. Accordingly, the underlying premise of chapter 3 is that it must serve as an orderly debt enforcement mechanism that makes creditors better off than they would be if they all simultaneously enforced their claims immediately. Primarily, chapter 3 accomplishes this task by requiring that each creditor receive (i) at least the value it would receive if all creditors were allowed simultaneously to enforce their respective claims against the public corporation, and, wherever possible, the higher going concern value of the public corporation, plus (ii) a note providing additional value based on the amount by which the public corporation's future financial results yield positive cash flow. This note serves as a protection against paying creditors less than the available value and as a proxy for the amount each creditor could receive in the future in the absence of chapter 3.

Chapter 3 was designed based on the desire of the Commonwealth's public corporations to satisfy their contractual obligations to the maximum extent possible. Wherever practicable, chapter 3 opts to maximize distributions to creditors consistent with the execution of vital public functions, without which all creditors would be worse off. For example, in some circumstances, if pledged revenues are turned over to creditors and not used to sustain a public corporation, there may be fewer revenues in the future to pay the creditors. Assets backing employee retirement or post-employment benefit plans remain inviolable under chapter 3. Obligations for employee wages and salaries, payment for the provision of goods and services under a certain threshold (not to be lower than $1 million), and debts owing to the United States of America will be paid in full.

Commencement and Eligibility; Stay of Actions. A case under chapter 3 is commenced when a petition for relief is filed, as such concept is defined in chapter 3. To be eligible for chapter 3, a petitioner must be (i) currently unable or at serious risk of being unable to pay valid debts as they mature while performing its public functions without additional legislative or financial assistance, (ii) ineligible for relief under chapter 11 of title 11 of the United States Code and (iii) authorized to file a petition by its governing body and GDB or by GDB at the Governor's request on behalf the public corporation. The petition must contain information about the types and amounts of claims the petitioner intends to affect under its debt enforcement plan. Any actions for payment of such claims are stayed as of the date the petition is filed, channeling their adjudication into a single forum—the designated courtroom within the Court of First Instance, San Juan Part, established by this Act. Prompt notice of the petition, the claims to be affected, and the automatic stay must be furnished to creditors, along with notice of the opportunity to volunteer to serve on a general creditors' committee to be appointed by the Court. The notice shall also include a date set by the Court for a hearing to determine whether the petitioner is eligible for relief under chapter 3 and the deadlines for filing any objections to eligibility. The eligibility hearing must take place no more than 30 days after the petition is filed.

Pendency of Case. During its chapter 3 case, the petitioner remains in possession and in control of its assets and operations. After the petition is filed, any expense the petitioner incurs in exchange for new value is an administrative expense, to be paid in full in the ordinary course, and unaffected by the petitioner's plan. The petitioner may obtain unsecured credit or incur debt in the ordinary course as an administrative expense; if the petitioner is unable to obtain credit or incur debt on those terms, chapter 3 provides the Court with the power to authorize significant further protections for lenders willing to extend credit to the petitioner.

Rejection of Contracts. The petitioner also has the power to assign or reject contracts to which it is party if the Court finds it is in the petitioner's best interests. Counterparties to rejected contracts will be left with claims for breach of contract, to be treated under the petitioner's plan. Collective bargaining agreements are subject to rejection or modification, but only where the Court determines that absent rejection or modification the petitioner would likely become unable to perform public functions, which determination is to be made only, based on U.S. Supreme Court precedent, after the data underlying the request for rejection have been shared with union representatives and reasonable efforts to negotiate a voluntary modification have failed.

Debt Enforcement Plan. Only the petitioner or GDB, upon the Governor's request, may propose a debt enforcement plan under chapter 3. Creditors must be separated into different classes (based upon different collateral security, priorities, or rational bases for classifying similar claims separately) for treatment under the plan. Plan treatment must be such that every affected creditor receives payments and/or property having a present value of at least the amount the claims in the class would have received if all creditors holding claims against the petitioner had been allowed to enforce them on the date the petition was filed and the distributions are maximized under the circumstances. Under the plan, every affected creditor also must receive a note that provides for 50% of the petitioner's positive free cash flow for ten years following the plan effective date. No plan can be confirmed unless at least

one class of affected debt votes to accept the plan, but all other classes can have their claims treated as described above regardless of whether they accept the plan. This protects the public corporations from entering into debt repayment plans they cannot afford.

F. Desire for a Single Court

This Act creates the Public Sector Debt Enforcement and Recovery Act Courtroom of the Court of First Instance, San Juan Part, which will have exclusive competence and jurisdiction over all matters arising under or related to this Act. Accordingly, it is this Legislative Assembly's desire that all disputes arising under or related to this Act (or to any debt that is affected by it), wherever filed, be directed to and resolved by the Court established by this Act (or to the federal court located in the Commonwealth, if applicable) and that courts in States (and federal courts located outside the Commonwealth) decline to adjudicate such disputes in the same manner that this Legislative Assembly would expect Commonwealth courts to abstain from hearing disputes against States and their instrumentalities facing a similar financial crisis.

G. Conclusion

As previously demonstrated, this Legislative Assembly has the power to enact legislation that allows a public corporation to modify the terms of its debt with the consent of supermajority of its affected creditors or through a court supervised proceeding. Certain public corporations are operating under fiscal and financial conditions such that, if emergency action is not taken to prevent their insolvency, they will have to submit themselves to a debt adjustment process, because with their current revenue structures they will be unable to pay their debts as they become due and honor their contractual obligations, while continuing to provide services to the people. This Act provides the necessary regime to establish an orderly process that will allow those public corporations that so require to satisfy their debts and other contractual obligations to the best of their ability, while guaranteeing the continuity of the governmental functions in providing essential public services.

In light of the foregoing, this Legislative Assembly, relying on the state of fiscal emergency declared in Act 66-2014, confirms that the approval of this Act is of utmost importance to ensure that the public corporations of the Commonwealth satisfy their debts in an orderly fashion so that indispensable services to the people of Puerto Rico may continue uninterrupted.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Chapter 1: General Provisions

Subchapter I: Title, Purpose, Nomenclature, and Construction

Section 101. —Short Title and Fiscal Emergency.—

(a) This Act shall be known and may be cited as the "Puerto Rico Public Corporation Debt Enforcement and Recovery Act."

(b) Pursuant to Act No. 66-2014, the Legislative Assembly has declared a state of fiscal emergency for the Commonwealth and its instrumentalities.

(c) The Legislative Assembly, in the exercise of its police power, is empowered to adopt measures aimed at protecting the public health, safety and welfare in a structured manner, while addressing the current fiscal situation of the Commonwealth and, in particular, of its public corporations. To that end, the Legislative Assembly may adopt legislation in response to social and economic interests, as well as in emergencies. Section 19 of the Bill of Rights of the Commonwealth Constitution provides that the enumeration of rights contained in Article II shall not be construed as to restrict "[t]he power of the Legislative Assembly to enact laws for the protection of the life, health and general welfare of the people". Similarly, Section 18 of the Bill of Rights of the Commonwealth Constitution gives this Legislative Assembly authority to enact laws to address grave emergencies that imperil the public health, safety or essential public services."

(d) This Act is adopted in the exercise of the Commonwealth's police power, as well as under the Legislative Assembly's power to adopt laws for the protection of the life, health and welfare of the people, such as in emergencies where the health, public safety and essential government services are clearly endangered. For these reasons, this Act shall prevail over any other law.

(e) The public policy of this Act shall be to restore the credit of the public corporations of the Commonwealth by improving the fiscal condition of the public corporations without affecting the essential functions of such entities.

Section 102. —Definitions.—

The following words and terms, when used and referred to in this Act, shall have the meaning stated below:

(1) "Act" means this Puerto Rico Public Corporation Debt Enforcement and Recovery Act.

(2) "administrative expense" means an expense of a petitioner, incurred or accrued from and after the date its petition is filed up through the date a plan is confirmed in its case, in respect of new value provided or new obligations incurred, including any expenses necessary to fulfill the petitioner's public functions.

(3) "affected creditor" means a creditor holding affected debt.

(4) "affected debt" means the debt scheduled pursuant to section 302(a)(2) of this Act.

(5) "affected debt instrument" means each debt instrument related to an obligation identified in a suspension period notice, provided that no debt instrument evidencing an obligation incurred pursuant to section 206 or section 322 of this Act shall qualify as an affected debt instrument.

(6) "affiliate" means, with respect to an entity, another entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the entity first specified.

(7) "approval order" means an order of the Court under chapter 2 of this Act finding that:

(a) the amendments, modifications, waivers, or exchanges, as the case may be, proposed in a consensual debt relief transaction are consistent with the requirements of chapter 2 of this Act, including the objectives stated in section 201(a) of this Act and the requirements of sections 202(d)(1) through 202(d)(3) of this Act; and

(b) the voting procedure followed in connection with the consensual debt relief transaction was carried out in a manner consistent with the requirements of chapter 2 of this Act.

(8) "case" means a case commenced under chapter 3 of this Act.

(9) "cash collateral" means a petitioner's cash and cash equivalents to the extent encumbered by valid liens or security interests.

(10) "claim" means:

(a) a right to present or future payment, whether matured, unmatured, contingent, noncontingent, disputed, undisputed, liquidated, or unliquidated; or

(b) a right to an equitable remedy for which money damages are a remedy under applicable law.

(11) "Commonwealth" means the Commonwealth of Puerto Rico.

(12) "Commonwealth Constitution" means the Constitution of the Commonwealth of Puerto Rico, as amended.

(13) "Commonwealth Entity" means the Commonwealth and a department, agency, district, municipality, or instrumentality (including a public corporation) of the Commonwealth, including any successor entity or additional entity created or to be created to perform any function of such Commonwealth Entity.

(14) "Commonwealth law" means any law of the Commonwealth, or rule or regulation of any Commonwealth Entity.

(15) "consensual debt relief transaction" has the meaning given to that term in section 201(b) of this Act.

(16) "contract" means any contract or agreement, including any debt instrument or unexpired lease, any collective bargaining agreement, any retirement or post-employment benefit plan, and any other agreement or instrument providing for amounts or benefits due by the petitioner to any retiree or employee.

(17) "control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

(18) "Court" means the Public Sector Debt Enforcement and Recovery Act Courtroom of the Court of First Instance, San Juan Part, described in section 109 of this Act.

(19) "Court of Appeals" means the Court of Appeals of the Commonwealth of Puerto Rico.

(20) "Court of First Instance" means the Court of First Instance of the Commonwealth of Puerto Rico.

(21) "creditor" means a holder of a claim against, either or both:

(a) a public sector obligor seeking a consensual debt relief transaction under chapter 2 of this Act; and

(b) a petitioner under chapter 3 of this Act.

(22) "creditors' committee" means a committee appointed by the Court pursuant to section 318 of this Act.

(23) "critical vendor debt" means special trade debt owed to an entity that agrees to deliver, during the pendency of a case under chapter 3 of this Act and through the effective date, ongoing provision of goods and services to the petitioner—

(a) on the same or better terms for the petitioner than those in place during the one hundred and eighty (180) days preceding the filing of a petition under chapter 3 of this Act; and

(b) that the petitioner has designated as critical to its ability to perform public functions.

(24) "custodian" means:

(a) a receiver or trustee of any of the property of an entity;

(b) an assignee under a general assignment for the benefit of an entity's creditors; or

(c) a trustee, a receiver, a conservator, or an agent under any applicable law, common law right, or under any contract, that is appointed or authorized to take charge of property of an entity for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of some or all of the entity's creditors.

(25) "debt" means liability on a claim.

(26) "debt instrument" includes any document or statement for, used in connection with, or related to:

(a) any obligation to pay the principal of, premium of, if any, interest on, penalties, reimbursement or indemnification amounts, fees, expenses, or other amounts relating to any indebtedness, and any other liability, contingent or otherwise,

(i) for borrowed money,

(ii) evidenced by bonds, debentures, indentures, notes, resolutions, credit agreements, trade finance agreements, trade finance facility agreements, securities, or similar instruments, or

(iii) for any letter of credit or performance bond;

(b) any liability of, or related to, the kind described in the preceding clause (a), which has been guaranteed or insured;

(c) any obligation in respect of bankers' acceptances;

(d) any obligation in respect of a swap agreement, derivative contract or related agreement, hedge agreement, securities contract, forward contract, repurchase agreement, option, warrant, commodities contract, or similar document;

(e) any and all deferrals, renewals, extensions, and refunding of, or amendments, modifications, or supplements to, any liability of the kind described in any of the preceding clauses (a) through (d);

(f) any liability arising out of any judgment relating to any liability of the kind described in any of the preceding clauses (a) through (e); or

(g) any liability arising from an obligation of insurance relating to any liability of a kind described in this section.

(27) "effective date" of a plan has the meaning given to that term in section 315(l) of this Act.

(28) "eligible obligor" means a public sector obligor satisfying the eligibility criteria in section 113(a) of this Act, rendering it eligible to seek relief under chapter 2 of this Act.

(29) "emergency manager" means a natural person appointed as emergency manager pursuant to section 135 of this Act.

(30) "employee claims against a successor employer" means any liability or obligation relating to the petitioner's employees' rights pursuant to any contract or applicable law not expressly assumed in a transfer pursuant to section 307 of this Act.

(31) "entity" includes an individual, a person, an estate, a trust, a Commonwealth Entity, a governmental unit that is not a Commonwealth Entity, a corporation, a partnership, and a limited liability company.

(32) "enumerated entity" means the eligible obligor and the petitioner, as applicable, and each of their successors or assigns to all or part of their business; the Commonwealth; GDB; any governing body of any of the foregoing; any emergency manager; any official of an employee benefit plan to which any of the foregoing in the past contributed or now contributes and any trustee or other official of any pension fund or retirement or post-employment benefit plan for the benefit of any past or present employee of any of the foregoing; the oversight commission appointed pursuant to section 203 of this Act; any member of such oversight commission; any creditors' committee; any member of a creditors' committee or its representative on the creditors' committee; any elected official; any entity appointed by an elected official or any other public official; any professional retained by any of the foregoing; any past or present advisor, agent, consultant, controlling person (if any), director, employee, manager, member, officer, partner, or stockholder of any of the foregoing; and any successor, assign, and personal representative of any of the foregoing.

(33) "essential supplier contract" means a contract, or type of contract, for the provision of goods or services to a public sector obligor seeking relief under this Act, which contract or type of contract is necessary for such public sector obligor to continue performing public functions, and as identified—

(a) with respect to an eligible obligor, on a schedule published on the website on the date the suspension period notice is published; and

(b) with respect to a petitioner, on the schedule specified in section [302(a)(2)] of this Act.

(34) "financially self-sufficient" means, in respect of any public sector obligor, able to meet its projected operating expenses, capital expenditure requirements, working capital requirements, and financing costs out of its projected revenues within the period of time specified in the recovery program without the need for subsequent relief under this Act or financial support from any Commonwealth Entity.

(35) "GDB" means the Government Development Bank for Puerto Rico, including any successor entity or additional entity created or to be created to perform any function of the Government Development Bank for Puerto Rico.

(36) "general committee" means the committee formed pursuant to section 318(a) of this Act.

(37) "governing body" means:

(a) the board of directors of a public corporation; and

(b) any deliberative body by means of which an instrumentality exercises its authority, as provided in the particular instrumentality's enabling act.

(38) "Governor" means the person serving as the Governor of the Commonwealth pursuant to Article IV of the Commonwealth Constitution.

(39) "insolvent" means:

(a) currently unable to pay valid debts as they mature while continuing to perform public functions; or

(b) will be unable or at serious risk of being unable, without further legislative acts or without financial assistance from the Commonwealth or GDB, to pay valid debts as they mature while continuing to perform public functions

(40) "instrumentality" means an entity created by Commonwealth law as an entity authorized to perform public functions for the Commonwealth.

(41) "noticing agent" means the agent that an eligible obligor, a petitioner, or GDB (acting on behalf of the eligible obligor or petitioner) may retain at the expense of such eligible obligor or petitioner pursuant to section 121 of this Act.

(42) "oversight commission" means a body composed of three (3) independent experts appointed by the Governor under chapter 2 of this Act, not more than one (1) of whom may be a resident of the Commonwealth at the time of appointment.

(43) "party in interest" includes a public sector obligor that seeks relief under chapter 2 of this Act or that files a petition under chapter 3 of this Act, the Governor, GDB, a creditor of such public sector obligor, a creditors' committee, an indenture trustee (or entity performing comparable functions) acting in the interest of one or more of such public sector

obligor's creditors, and a party to a contract scheduled pursuant to section 302(a)(2) of this Act.

(44) "performing public functions" or other similar phrase including "fulfilling public functions" and "serving public functions" means serving an important government purpose—including providing goods or services important or necessary for the protection of public health, safety, or welfare (which include the promotion of the economic activity of the Commonwealth)—whether such public functions are performed directly, or indirectly by facilitating or assisting another Commonwealth Entity to serve such a purpose.

(45) "petition" means the document filed by a petitioner to commence a case under chapter 3 of this Act pursuant to section 301 of this Act.

(46) "petitioner" means a public sector obligor that files a petition—or on whose behalf GDB, upon the Governor's request, files a petition—pursuant to section 301 of this Act.

(47) "plan" means a debt enforcement plan proposed under chapter 3 of this Act.

(48) "pleading" means any document, including any motion, filed with the Court in any proceeding under chapter 2 or chapter 3 of this Act.

(49) "public corporation" means an entity created by Commonwealth law as a public corporation.

(50) "public sector obligor" means a Commonwealth Entity, but excluding:

(a) the Commonwealth;

(b) the seventy-eight (78) municipalities of the Commonwealth; and

(c) the Children's Trust; the Employees Retirement System of the Government of the Commonwealth of Puerto Rico and its Instrumentalities; GDB and its subsidiaries, affiliates, and entities ascribed to GDB; the Judiciary Retirement System; the Municipal Finance Agency; the Municipal Finance Corporation; the Puerto Rico Public Finance Corporation; the Puerto Rico Industrial Development Company, the Puerto Rico Industrial, Tourist, Educational, Medical and Environmental Control Facilities Financing Authority; the Puerto Rico Infrastructure Financing Authority; the Puerto Rico Sales Tax Financing Corporation (COFINA); the Puerto Rico System of Annuities and Pensions for Teachers; and the University of Puerto Rico.

(51) "recovery program" means, consistent with section 202 of this Act, for an eligible obligor, a financial and operational adjustment program.

(52) "special trade debt" means any claim for the provision of goods or services that

(a) is scheduled pursuant to section 302(a)(2) of this Act, and

(b) exceeds a threshold to be determined by the petitioner in its reasonable discretion, but not to be less than $1 million;

(53) "statement of allocation," "amended statement of allocation," and "final statement of allocation" have the meanings given to those terms in section 308 of this Act.

(54) "Supreme Court" means the Supreme Court of the Commonwealth of Puerto Rico.

(55) "suspension period" means the period of time commencing on the date that the suspension period notice is published, and ending on the earlier of:

(a) the date that the approval order has become a final and unappealable order; and

(b) the date on which either of the conditions specified in section 205(e) of this Act has occurred.

(56) "suspension period notice" means the notice published pursuant to section 201(d) of this Act.

(57) "transfer order" means the order approving a transfer pursuant to section 307 of this Act.

(58) "United States" means the United States of America.

(59) "U.S. Constitution" means the Constitution of the United States, as amended.

Section 103. —Interpretation.—

(a) The terms of this Act shall be liberally construed in favor of furthering the legislative objectives of this Act.

(b) The singular includes the plural.

(c) Any neuter personal pronoun shall be considered to mean the corresponding masculine or feminine personal pronoun, as the context requires.

(d) The phrase "after notice and a hearing," or other similar phrase means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances, provided, however, an act may be authorized without a hearing if notice is given properly under the circumstances and if—

(1) a hearing is not timely requested by a party in interest; or

(2) there is insufficient time for a hearing to be commenced before such act must be done, and the Court authorizes such act.

(e) The phrase "at any time" means at any time and from time to time.

(f) A "claim against the petitioner" includes any claim against property of the petitioner.

(g) The words "includes" and "including" are not limiting.

(h) The phrase "may not" is prohibitive, and not discretionary.

(i) The word "or" is not exclusive.

(j) The phrase "applicable law" includes applicable laws, rules, and regulations, including this Act.

(k) A definition contained in a section of this Act that refers to another section of this Act does not, for the purpose of such reference, affect the meaning of a term used in such other section.

(l) The phrase "counterparty" means:

(1) with respect to a collective bargaining agreement, the union that is a bargaining unit under such contract, and not any individual member of such union;

(2) with respect to a pension fund, the administrator of such pension fund, and not any beneficiary of such fund; and

(3) with respect to a retirement or post-employment benefit plan, the administrator of such retirement or post-employment benefit plan, and not any beneficiary of such plan.

(m) The phrase "final and unappealable" shall mean a final and unappealable order, resolution, judgment, or other ruling that is no longer subject to appeal or certiorari proceeding.

(n) The phrase "use or transfer" includes a lease and a sale and lease back transaction.

(o) Any reference to "website" with respect to an eligible obligor or a petitioner means either the website of such eligible obligor or petitioner, or the website specified in section 121 of this Act.

(p) For purposes of interpreting this Act, the Court shall consider to the extent applicable jurisprudence interpreting title 11 of the United States Code.

(q) The phrases "goods" or "services" do not include money loaned or other financial debt incurred.

Section 104. —Applicability of Act.—

This Act is applicable as to all debts—as they exist, prior to, on, and after the effective date of this Act—of any public sector obligor that requests relief under chapter 2 of this Act or that files a petition under chapter 3 of this Act; provided, however, that some of a public sector obligor's debt may remain unaffected by this Act as provided herein.

Section 105. —Evidentiary Standard.—

Unless expressly otherwise provided, the requisite standard of proof in any proceeding under this Act is proof by a preponderance of the evidence.

Section 106. —Savings and Severability Clause.—

This Act shall be interpreted in a manner to render it valid to the extent practicable in accordance with the Commonwealth Constitution and the U.S. Constitution. If any clause, paragraph, subparagraph, article, provision, section, subsection, or part of this Act, were to be declared unconstitutional by a competent court, the order to such effect issued by such court will neither affect nor invalidate the remainder of this Act. The effect of such an order shall

be limited to the clause, paragraph, subparagraph, article, provision, section, subsection, or part of this Act declared unconstitutional.

Section 107. —Language Conflict.—

This Act shall be adopted both in English and Spanish. If in the interpretation or application of this Act any conflict arises as between the English and Spanish texts thereof, the English text shall govern. It is recognized that certain terms and phrases used in this Act are terms and phrases used in English in the context of Title 11 of the U.S. Code.

Section 108. —Inapplicability of Other Laws.—

(a) Any other Commonwealth law or any certificate of incorporation, bylaw, or other governing instrument of any Commonwealth Entity is superseded to the extent inconsistent with this Act. Any and all procedural rules herein shall supersede any other conflicting Commonwealth law to the extent inconsistent with this Act. For the avoidance of doubt, the Commerce Code of 1932, as amended, and Act No. 60 of April 27, 1931, as amended, do not apply to any public sector obligor under this Act.

(b) This Act supersedes and annuls any insolvency or custodian provision included in the enabling or other act of any public corporation, including Section 17 of Act No. 83 of May 2, 1941, as amended, and Section 13 of Act No. 40 of May 1, 1945, as amended.

(c) Any contradiction between the enabling or other act of any public corporation or otherwise applicable Commonwealth law and this Act shall be resolved as if this Act supercedes. For purposes of Section 27 of Act No. 83 of May 21, 1941 and Section 21 of Act No. 74 of June 23, 1965, this Act shall be interpreted as specifically amending such Act No. 83 and Act No. 74, respectively. Nothing contained in the aforementioned Act No. 83, as amended, nor in the enabling legislation of any other Commonwealth Entity shall be construed as limiting in any way the application of the provisions of this Act.

Subchapter II: Jurisdiction and Procedure

Section 109. —The Court.—

(a) The Public Sector Debt Enforcement and Recovery Act Courteoom is created herein, which shall be located in and be part of the Court of First Instance, San Juan Part. The Chief Justice of the Supreme Court may designate a judge of the Puerto Rico judicial system.

(b) A judge appointed pursuant to subsection (a) of this section may appoint a special commissioner in accordance with Rule 41 of the Puerto Rico Rules of Civil Procedure. The special commissioner must be a person of recognized expertise in financial matters, including insolvency proceedings. The special commissioner is empowered to oversee multiple proceedings under either or both chapter 2 and chapter 3 of this Act, either simultaneously or sequentially.

(c) An eligible obligor or a petitioner, as applicable, shall reimburse the appropriate entity within the Judiciary Branch for the costs of administering any proceeding under this Act, including the reasonable and documented costs and expenses of the special commissioner, if any, and, if multiple eligible obligors and/or petitioners exist, the incremental costs shall be allocated among them.

Section 110. —Responsibilities and Powers of the Court.—

(a) In keeping with the prescribed time periods in other sections of this Act, the Court shall endeavor to conduct any proceeding under chapter 2 of this Act or to resolve a case under chapter 3 of this Act with all deliberate speed and efficiency consistent with due process, and taking into account that continuing uncertainty about the resolution of the proceeding is harmful to creditors, to the viability of the public sector obligor, to the credit of the Commonwealth Entities, and to the well-being of the residents and businesses in the Commonwealth.

(b) The Court may issue any order and conduct any processes necessary or appropriate to carry out the provisions of this Act. No provision of chapter 2 or chapter 3 of this Act providing for the raising of an issue by a party in interest shall be construed to preclude the Court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement Court orders or rules, or to prevent an abuse of process.

(c) Notwithstanding any other Commonwealth law, or any contract that is binding on any Commonwealth Entity or to which any of its property is subject, no court established by the Commonwealth shall appoint a custodian with respect to the public sector obligor during the suspension period under chapter 2 of this Act or in or during its case under chapter 3 of this Act under any applicable law or contract.

Section 111. —Subject Matter, Personal, and In Rem Jurisdiction.—

(a) Unless otherwise provided for in this Act, the Court shall have original jurisdiction and exclusive jurisdiction, except in relation to a federal court exercising federal jurisdiction, to consider and adjudicate all disputes arising out of or related to this Act, including the following—

(1) all disputes arising out of or related to affected debt instruments during the suspension period;

(2) all disputes, whether prior to or after entry of an approval order, arising under or related to chapter 2 of this Act, arising in any proceeding under chapter 2 of this Act, or related to a consensual debt relief transaction proposed under chapter 2 of this Act, including any dispute as to who votes or consents under this Act;

(3) all disputes arising under chapter 3 of this Act or arising in or related to a case under or related to chapter 3 of this Act, including those related to affected debt; and

(4) all proceedings or matters related to the preceding clauses (1) through (3), including proceedings to interpret or enforce an approval order, a confirmed plan, a transfer order, a final statement of allocation, or any part of this Act.

(b) The Court shall have personal jurisdiction over all entities to the fullest extent permitted by the Commonwealth Constitution and the U.S. Constitution. The Court shall have in rem jurisdiction over the property of each public sector obligor.

(c) The Court shall retain subject matter and in rem jurisdiction to interpret and enforce:

(1) a consensual debt relief transaction as to which it has entered an approval order under chapter 2 of this Act; and

(2) a transfer order, a final statement of allocation, and a plan confirmed under chapter 3 of this Act.

Section 112. —Interaction of Chapter 2 and Chapter 3.—

A public sector obligor with the approval of GDB (or, upon the Governor's request, GDB on the public sector obligor's behalf) may seek relief under either chapter 2 or chapter 3 of this Act, or both simultaneously or sequentially, subject to section 113 of this Act, and may withdraw, in its discretion, a suspension period notice or any obligation identified in a suspension period notice, a proposal for a consensual debt relief transaction, or an application for entry of an approval order under chapter 2 of this Act, prior to entry of an approval order that has become a final and unappealable order. The petitioner, with the approval of GDB (or, upon the Governor's request, GDB on the petitioner's behalf), may withdraw a petition under chapter 3 of this Act.

Section 113. —Eligibility.—

(a) A public sector obligor is eligible for chapter 2 of this Act, if it is authorized to commence a consensual debt relief transaction pursuant to section 201(b)(1) or 201(b)(2) of this Act.

(b) A petitioner is eligible for chapter 3 of this Act, if it—

(1) is insolvent;

(2) is authorized to file a petition under chapter 3 of this Act by its governing body and GDB, or a petition is filed on its behalf by GDB, upon the Governor's request; and

(3) is ineligible for relief under title 11 of the United States Code, because, among other reasons:

(A) it is not a "municipality" having permission of a "state" to file a chapter 9 petition, each as defined in title 11 of the United States Code; and

(B) it is a "governmental unit," as defined in title 11 of the United States Code, that may not seek relief under chapter 11 of title 11 of the United States Code.

Section 114. —Binding Nature of Court Determinations.—

Any determination of the Court shall be binding on the eligible obligor or the petitioner, any entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments or affected debt of such eligible obligor or such petitioner, any trustee, any collateral agent, any indenture trustee, any fiscal agent, any bank that receives or holds funds from such eligible obligor or such petitioner related to the affected debt instruments or affected debt, and any other entity specifically identified in such determination by the Court or the order memorializing such determination.

Section 115. —Effect of Approval, Transfer, and Confirmation Orders.—

(a) An approval order in respect of a consensual debt relief transaction under chapter 2 of this Act and a confirmation order in respect of a plan or transfer order or final statement of allocation under chapter 3 of this Act shall each be treated as a judgment for the purposes of Commonwealth law, subject only to appeal as provided in section 127 of this Act.

(b) Upon entry of an approval order in respect of a consensual debt relief transaction under chapter 2 of this Act—

(1) the amendments, modifications, waivers, or exchanges contained therein automatically shall take effect and shall be binding on the eligible obligor that is party to the affected debt instrument, any entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments of such eligible obligor, any trustee, any collateral agent, any indenture trustee, any fiscal agent, and any bank that receives or holds funds from such eligible obligor related to the affected debt instruments; and

(2) the Court shall retain jurisdiction, and thereafter no entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments of such eligible obligor, no trustee, no collateral agent, no idenure trustee, no fiscal agent, and no bank that receives or holds funds from such eligible obligor related to the affected debt instruments shall bring any action or proceeding of any kind or character for the enforcement of such claim or remedies in respect of such affected debt instruments, except with the permission of the Court and then only to recover and enforce the rights permitted under the amendments, modifications, waivers, or exchanges, and the approval order.

c) Except as otherwise provided in a plan, in the order confirming such plan, in a transfer order, or in a final statement of allocation, each under chapter 3 of this Act, upon entry of a confirmation order, a transfer order, or a final statement of allocation:

(1) the provisions of the confirmed plan and order confirming such plan bind the petitioner and all creditors whose rights are affected by the plan;

(2) the transfer order and final statement of allocation bind the petitioner and all creditors whose rights are affected by such transfer order or final statement of allocation; and

(3) all creditors affected by the plan or the final statement of allocation shall be enjoined from, directly or indirectly, taking any action inconsistent with the purpose of this Act, including bringing any action or proceeding of any kind or character for the enforcement of such claim or remedies in respect of affected debt, except as each has been affected pursuant to the plan under chapter 3 of this Act or the final statement of allocation.

(d) Except as expressly otherwise provided in an approval order under chapter 2 of this Act, or a plan, an order confirming a plan, a transfer order, or a final statement of allocation under chapter 3 of this Act, upon entry of any such order or final statement of allocation, the eligible obligor or the petitioner is authorized to perform all acts set forth in the debt relief transaction, the approval order, the plan, the order confirming such plan, the

transfer order, or the final statement of allocation, without any further authorization from any Commonwealth Entity or the Court.

(e) The Court may direct the eligible obligor, the petitioner, and any other necessary party to execute, to deliver, or to join in the execution or delivery of any contract required to effect a transfer of property dealt with by an approved consensual debt relief transaction under chapter 2 of this Act, or a final statement of allocation or a confirmed plan under chapter 3 of this Act, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the consensual debt relief transaction, the final statement of allocation, or the plan.

Section 116. —Service of Process.—

Except as otherwise ordered by the Court, service of process may be made by any of the means described in subsections (a), (b), or (c) below:

(a) Subject to section 337 of this Act, service of process may be made by the entities and in the manner prescribed by Rules 4.3 and 4.4 of the Puerto Rico Rules of Civil Procedure, or by notice by mail to the last known address of the individual or entity to be served.

(b) Notice by mail or direct transmission may be made in accordance with sections 204(c)(2) and 338 of this Act or as the Court otherwise orders.

(c) Notice by Publication.

(1) The Court may order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice by mail.

(2) Pursuant to Rule 4.6 of the Puerto Rico Rules of Civil Procedure, or as further detailed below, notice by publication, published at least three (3) times at least fourteen (14) days prior to a specified hearing, in both a newspaper of national circulation in the United States, and a newspaper of general circulation in the Commonwealth, shall be required to supplement notice of:

(A) the approval hearing pursuant to section 204(b) of this Act with regard to a consensual debt relief transaction under chapter 2 of this Act;

(B) the eligibility hearing pursuant to section 306 of this Act;

(C) the hearing on a transfer of all or substantially all assets of the petitioner pursuant to section 307 of this Act; and

(D) the confirmation hearing pursuant to section 314 of this Act.

(3) Notice by publication, published at least three (3) times during the fourteen (14) days after each event specified in subsections (c)(3)(A) and (c)(3)(B) of this section, in both a newspaper of national circulation in the United States, and a newspaper of general circulation in the Commonwealth, shall be required to supplement notice of:

(A) the filing of an application pursuant to section 204(a) of this Act; and

(B) the filing of a petition pursuant to section 301 of this Act.

Section 117. —Application of the Puerto Rico Rules of Civil Procedure.—

To the extent not inconsistent with this Act, the Puerto Rico Rules of Civil Procedure shall apply to any proceedings under chapter 2 and chapter 3 of this Act.

Section 118. —Language.—

(a) All pleadings, requests, and motions under this Act shall be filed in accordance with Rule 8.7 of the Puerto Rico Rules of Civil Procedure; provided, however, that all pleadings, requests, and motions filed in Spanish shall be accompanied by an English translation.

(b) All hearings, opinions, and orders shall be in the language designated by the presiding judge and in accordance with Act No. 1 of January 28, 1993.

(c) Each public sector obligor seeking relief under this Act shall post on its website copies in Spanish and English of each consensual debt transaction proposed under chapter 2 of this Act and each plan proposed in a case under chapter 3 of this Act.

Section 119. —Notice of Appearance and Pleading Requirements.

(a) To the extent applicable under this Act, any party in interest may file a notice of appearance with the Court requesting all notices and pleadings be transmitted to such party or its attorney at the email addresses specified in its notice of appearance, or, if an email address is not available, at the mailing address specified in its notice of appearance.

(b) Every pleading filed in a proceeding or case under this Act shall include the mailing address and email address, if available, of the entity or entities on behalf of which the pleading is filed.

(c) Any entity filing a pleading, inclusive of a notice of appearance, with the Court shall email an identical copy of the document filed to the noticing agent, eligible obligor, or petitioner maintaining the website contemporaneously with filing the document with the Court or sending it to the Court for filing. Any entity not having the ability to send such a document by email shall mail it by certified mail to the noticing agent, eligible obligor, or petitioner maintaining the website contemporaneously with filing it with the Court or mailing it to the Court for filing.

(d) Each eligible obligor and petitioner shall include on each of its pleadings in bold, 12-point font the following statement: "Every entity filing a document with the Court under the Puerto Rico Public Corporation Debt Enforcement and Recovery Act shall email an identical copy of the document filed to the entity maintaining the website required by section 121 hereof to the following email address [insert email address here], or if unable to transmit emails shall mail the copy to the following address [insert mailing address here].

(e) All petititions and documents filed under this Act shall be filed electronically. An electronic judicial file shall be kept for corresponding cases pursuant to the provisions of Rule 67.6 of the Rules of Civil Procedure and Act 148-2013."

Section 120. —Objections.—

Whenever an entity objects to or challenges the relief requested under chapter 2 or chapter 3 of this Act, such entity shall provide, within five (5) business days of an eligible

obligor's or a petitioner's written request, all documents in its possession, custody, or control supporting, and all documents in its possession, custody, or control opposing, the objecting party's claim and objection. This production shall be in addition to responses to any additional valid discovery requested by the eligible obligor or petitioner. Any such objection shall—

(a) be in writing and filed with the Court, no later than seven (7) business days prior to the relevant hearing unless the Court orders otherwise or as otherwise specified in this Act;

(b) articulate clearly the basis for the objection; and

(c) be accompanied by a statement, sworn under oath, that includes—

(1) the name of each objecting entity that holds or controls the beneficial interest in an affected debt instrument of the eligible obligor seeking relief under chapter 2 of this Act or an affected debt of a petitioner in a case under chapter 3 of this Act;

(2) a description of the beneficial interest that is held or controlled by such objecting entity or any of its controlled affiliates (naming such affiliates) in any of the following:

(A) the affected debt instrument or any affected debt, including the amount of any claim;

(B) any interest, pledge, lien, option, participation, derivative instrument, or any other right or derivative right granting any of the foregoing entities or affiliates an economic interest that is affected by the value, acquisition, or disposition of the affected debt instrument or affected debt; and

(C) any credit default swap of any insurance company that insures any obligation of any Commonwealth Entity;

(3) a statement whether each interest disclosed pursuant to sections 120(c)(2)(A) through 120(c)(2)(C) of this Act was acquired before or after the commencement of the suspension period under chapter 2 of this Act or before or after the date the petition was filed under chapter 3 of this Act; and

(4) a statement whether each interest disclosed pursuant to sections 120(c)(2)(A) through 120(c)(2)(C) of this Act may appreciate in value if any debt issued by any Commonwealth Entity declines in value.

Section 121. —Noticing Agent.—

(a) Each the eligible obligor, the petitioner, or GDB (acting on behalf of the eligible obligor or the petitioner), shall carry out the disclosure mechanisms and noticing requirements provided in this section, and, to that end, may retain and employ an entity to serve as noticing agent to:

(1) create and maintain a website, accessible free of charge, containing all pleadings, orders, opinions, and notices properly filed under chapter 2 or chapter 3 of this Act, and a calendar showing all deadlines and hearings; and

(2) provide notices of all hearings and deadlines, and perform related functions, including those of a claims agent where applicable.

(b) The noticing agent shall maintain on the website a list of all parties in interest who file notices of appearance pursuant to section 119 of this Act, together with the email addresses or mailing addresses to which each party in interest requested that notices and pleadings be sent.

(c) The noticing agent shall be compensated at rates based on its normal charges for such services to other debtors in collective proceedings to enforce claims, such as cases under chapter 9 or chapter 11 of title 11 of the United States Code.

Section 122. —Confidentiality of Certain Filings.—

(a) The Court, for cause, may protect an individual with respect to the following types of information to the extent the Court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property:

(1) any means of identification (as defined in 18 U.S.C. § 1028(d)) contained in a paper filed, or to be filed, in a proceeding or case under this Act; and

(2) other information contained in a paper described in subsection (a)(1) of this section.

(b) Upon ex parte or noticed application demonstrating cause, the Court shall provide access to information protected pursuant to subsection (a) of this section to an entity acting pursuant to the police or regulatory power of a Commonwealth Entity.

Section 123. —Confidential Deliberations.—

Notwithstanding any otherwise applicable Commonwealth law, including Act No. 159-2013, as amended, all deliberations regarding whether to seek relief under this Act, what plan or relief to propose, or other matters relating to this Act, shall not be made public, but adequate records of such deliberations shall be maintained. Such deliberations shall be privileged under Commonwealth law and shall neither be subject to discovery in any civil proceeding nor subject to disclosure, except as required by Commonwealth law or applicable U.S. law in connection with raising money or otherwise selling or buying securities.

Section 124. —No Implied Private Right of Action.—

There is no implied private right of action under this Act.

Section 125. —Special Counsel, Professional Disclosure, and Retainers.—

(a) To the extent, if any, that two public sector obligors seeking relief under this Act and represented by the same legal professionals have one or more disputes between such public sector obligors, or a public sector obligor seeking relief under this Act and GDB represented by the same legal counsel have one or more disputes between them, in each case, the disputes shall be handled by special counsel for each of the parties to the dispute.

(b) Each professional firm retained, respectively, by or for the public sector obligor(s) seeking relief under this Act or by one or more creditors' committees shall file with

the Court no later than fourteen (14) days after its retention a written disclosure of its then current representation of entities in related or unrelated matters, which entities, to the best of the professional's actual knowledge, are (1) a Commonwealth Entity or (2) based on a reasonable review of the books and records of the eligible obligor or petitioner, hold claims against or other economic interests in respect of such eligible obligor or petitioner. Each professional shall promptly update its disclosures contemplated by this subsection (b) as it obtains additional information or as facts change.

(c) Notwithstanding any other Commonwealth law, a retainer may be advanced to any financial and legal advisors of the eligible obligor, the petitioner, and GDB.

(d) In the event that the rules regarding conflicts of interests set forth in Canon 21 of the Canons of Professional Ethics and its interpretative jurisprudence make it impractical for a public sector obligor to obtain legal representation of the highest level of competency to represent such public sector obligor in a proceeding under chapter 2 or chapter 3 of this Act involving more than one hundred (100) creditors (including beneficial owners of publicly traded debt) that does not have a conflict or potential conflict, such public sector obligor may file a petition with the Supreme Court for a waiver of the rules regarding conflicts of interests set forth in Canon 21 of the Canons of Professional Ethics or for the approval of a special rule, setting forth the reasons supporting the request. In considering the merits of any such petition, the Supreme Court may take into consideration the special rules and accompanying jurisprudence regarding conflicts of interest set forth in section 327 of title 11 of the United States Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure, including, but not limited to, those permitting the designation of one or more conflict counsel who would represent the public sector obligor in those matters that could represent a conflict for the attorneys representing the public sector obligor in a proceeding under chapter 2 or chapter 3 of this Act.

Section 126. —Bond Requirement.—

In the discretion of the Court or the Supreme Court, any entity may be ordered to post a bond in the amount determined by the Court or the Supreme Court when—

(a) seeking to enjoin compliance with or proceedings pursuant to all or a portion of this Act; or

(b) appealing from a decision of the Court and requesting a stay of such decision under this Act.

Section 127. —Appeals.—

(a) Any appeal of an approval order, a transfer order, a final statement of allocation, or a confirmation order shall be filed with the Supreme Court no later than fourteen (14) days after the filing in the record of a copy of the notice of the approval order, the transfer order, the final statement of allocation, or the confirmation order, respectively.

(b) All other appeals shall be taken as provided by the law of the Commonwealth, and subject to subsection (a) of this section, nothing in this Act shall limit an appellate court's review of matters decided by the Court.

Subchapter III: Creditors' Protections and Governance

Section 128. —Compliance with Commonwealth Constitution and U.S. Constitution.—

If a party to a contract with an eligible obligor or a petitioner demonstrates that its treatment under this Act substantially or severely impairs its rights under such contract for purposes of the Commonwealth Constitution or the U.S. Constitution without providing an adequate remedy therefor, the substantial or severe impairment shall be allowed only if the eligible obligor, the petitioner, or GDB, each as applicable, carries the burdens imposed on it by the Commonwealth Constitution and the U.S. Constitution with respect to demonstrating its use of reasonable and necessary means to advance a legitimate government interest, and the aggrieved entity fails to carry the burden of persuasion to the contrary.

Section 129. —Adequate Protection and Police Power.—

(a) When an entity's interest in property is entitled to adequate protection under this Act, it may be provided by any reasonable means, including—

(1) cash payment or periodic cash payments;

(2) a replacement lien or liens (on future revenues or otherwise); or

(3) in connection with a case under chapter 3, administrative claims, in each case, solely to the extent that the suspension period, the automatic stay, the use or transfer of property subject to a lien, or the granting of a lien under this Act results in a decrease in value of such entity's interest in property subject to the lien as of commencement of the suspension period or a chapter 3 case.

(b) Without limiting subsection (a) of this section, adequate protection of an entity's interest in cash collateral, including revenues, of the eligible obligor or the petitioner, as applicable, may take the form of a pledge to such entity of future revenues (net of any current expenses, operational expenses or other expenses incurred by the eligible obligor or the petitioner under this Act) of such eligible obligor or petitioner if—

(1) the then-current enforcement of such entity's interest would substantially impair the ability of such eligible obligor or petitioner to perform its public functions;

(2) there is no practicable alternative available to fulfill such public functions in light of the circumstances; and

(3) the generation of future net revenues to repay such entity's secured claims is dependent on the then-current continued performance of such public functions and the future net revenues will be enhanced by the then-current use of cash collateral or revenues to avoid then-current impairment of public functions.

(c) Without limiting subsections (a) and (b) of this section, an eligible obligor or petitioner may recover from or use property securing an interest of an entity the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to such entity, including payment of expenses incurred by such eligible obligor or petitioner pursuant to or in furtherance of this Act.

(d) Notwithstanding any section of this Act conditioning the eligible obligor's or the petitioner's use or transfer of its property on adequate protection of an entity's interest in the property, if and when the police power justifies and authorizes the temporary or permanent use or transfer of property without adequate protection, the Court may approve such use or transfer without adequate protection.

Section 130. —Reserved. —

Section 131. —Limitations on Avoidance Actions.—

No preference action by or on behalf of creditors of any eligible obligor or petitioner shall be prosecuted. No fraudulent transfer action by or on behalf of creditors of any eligible obligor or petitioner shall be prosecuted except such actions for a transfer, or an incurrence of an obligation, that was made with actual intent to hinder, delay, or defraud creditors. Any and all such actions shall be controlled and prosecuted solely by the Commonwealth, in the discretion of its Attorney General, for the benefit of the creditors entitled to bring the action outside of this Act.

Section 132. —Recovery on Avoidance Actions.—

(a) Except as otherwise provided in this section, to the extent that a transfer is avoided pursuant to section 131 of this Act, an eligible obligor or petitioner may recover the property transferred, or, if the Court so orders, the value of such property, from—

(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or

(2) any immediate or mediate transferee of such initial transferee.

(b) An eligible obligor or petitioner may not recover pursuant to subsection (a)(2) of this section from—

(1) a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

(2) any immediate or mediate good faith transferee of such transferee.

(c) A good faith transferee from whom an eligible obligor or petitioner may recover pursuant to subsection (a) of this section has a lien on the property recovered to secure the lesser of—

(1) the cost, to such transferee, of any improvement made after the transfer, less the amount of any profit realized by or accruing to such transferee from such property; and

(2) any increase in the value of such property as a result of such improvement of the property transferred.

(d) The eligible obligor or petitioner is entitled to only a single satisfaction pursuant to subsection (a) of this section.

(e) In this section, the term "improvement" includes—

(1) physical additions or changes to the property transferred;

(2) repairs to such property;

(3) payment of any tax on such property;

(4) payment of any debt secured by a lien on such property that is superior or equal to the rights of the eligible obligor or petitioner; and

(5) preservation of such property.

Section 133. —Right of GDB to Coordinate and Control Debt Enforcement and Recovery Procedures.—

(a) GDB shall have, on its own behalf and on behalf of the public sector obligor, at all stages of proceedings including appeals and certiorari proceedings, standing to raise, appear on, be heard on, prosecute, and defend against any and all issues and requests for relief in a consensual debt relief transaction under chapter 2 of this Act or in a case under chapter 3 of this Act. The eligible obligor or the petitioner shall reimburse GDB for all its costs and expenses therefor.

(b) All rights of a public sector obligor to take action in seeking and leading its consensual debt relief transaction under chapter 2 of this Act or in commencing and prosecuting its case under chapter 3 of this Act shall extend to GDB on behalf of the public sector obligor, in which instances GDB may act through its own attorneys, or the public sector obligor's attorneys shall take instructions from GDB. Each action taken by GDB shall be binding on the public sector obligor.

Section 134. —GDB Reimbursement.—

(a) The eligible obligor or the petitioner, as applicable, shall reimburse or pay GDB, in full, for GDB's costs and expenses for amounts paid or agreed to be paid, in preparation for seeking relief under this Act, including for the payment of financial and legal advisors of the eligible obligor, the petitioner, and GDB (including any retainer advanced to such advisors), before the commencement of a suspension period under chapter 2 of this Act or of a case under chapter 3 of this Act, or in connection with this Act.

(b) In addition to its reimbursement obligations set forth in subsection (a) of this section, the eligible obligor or the petitioner, as applicable, shall reimburse GDB, in full, for GDB's—

(1) costs and expenses (including payments to financial and legal advisors) for services provided by GDB to the eligible obligor or the petitioner, each before and after the commencement of the suspension period under chapter 2 of this Act or of a case under chapter 3 of this Act, or in connection with the prosecution of the rights of the eligible obligor or petitioner under this Act when GDB has acted through its own attorneys pursuant to section 133(b) of this Act; and

(2) outlays incurred each before and after the commencement of the suspension period under chapter 2 of this Act or the filing of a petition under chapter 3 of this Act, in each case, on behalf of the eligible obligor or petitioner for the provision of goods and services paid by GDB and delivered to the eligible obligor or petitioner,

and any funds GDB may have provided or provides to the eligible obligor or petitioner, as applicable, that GDB believes are necessary to the performance by the eligible obligor or petitioner of its public functions.

(c) Notwithstanding any other provision of this Act, the eligible obligor or the petitioner, as applicable, shall reimburse or pay GDB, in full, pursuant to subsections (a) and (b) of this section promptly, but no later than ten (10) business days after GDB's written request. Amounts owing to GDB as described in this section may not be adjusted as an affected debt instrument under chapter 2 of this Act or be affected debt under chapter 3 of this Act and shall be formalized and incurred in accordance with laws regulating government contracting, except as provided in this Act. The provisions of Act 66-2014 shall not be applicable to contracts related to services provided in connection with this Act.

Section 135. —Appointment of Emergency Manager.—

The Governor may, at any time during the suspension period under chapter 2 of this Act or during the pendency of a case under chapter 3 of this Act, appoint an emergency manager for the eligible obligor or petitioner, as applicable. The Governor may choose any individual to serve as emergency manager, including, without limitation, a current or former officer of the eligible obligor or petitioner. The Governor may empower the emergency manager to oversee multiple eligible obligors or petitioners simultaneously or sequentially. The emergency manager shall subject to the applicable provisions and obligations entered into pursuant to Act 66-2014:

(a) exclusively possess and exercise all powers of the governing body and the principal executive officer of the eligible obligor or petitioner, as applicable, and the powers of the existing governing body of the eligible obligor or petitioner shall be suspended during the emergency manager's tenure;

(b) report periodically to such governing body regarding the operations of the eligible obligor or petitioner, as applicable, the progress of the restructuring process under chapter 2 of this Act or prosecution of the petitioner's plan under chapter 3 of this Act, and the governing body may provide advice to the emergency manager;

(c) report to the Governor, the Legislative Assembly and GDB upon request;

(d) serve:

(1) during the suspension period and may continue serving for a period of up to three (3) months after entry of the approval order, which period may be extended for three (3) additional months by the Governor or as otherwise provided for in the recovery program;

(2) during the chapter 3 case, unless and until replaced by the Governor, and shall continue serving for a period of three (3) months after the effective date of the plan, which period may be extended for three (3) additional months by the Governor; or

(3) until the Governor, in his absolute discretion, determines; provided, however, that the periods set forth in items (d)(1) and (d)(2) above shall not be exceeded; and

(e) be compensated by the eligible obligor or petitioner, as applicable, according to terms of employment approved by the Governor with advice of GDB.

Section 136. —Ongoing Operations.—

(a) During the suspension period under chapter 2 of this Act or the pendency of a case under chapter 3 of this Act, an eligible obligor or petitioner, as applicable, shall (i) operate the enterprise and make all personnel and other business determinations during the suspension period or the pendency of a case under chapter 3 of this Act, in each case in accordance with applicable law, (ii) remain in possession and control of its assets and, (iii) subject to sections 307 and 323 of this Act, shall be authorized to use and transfer such assets without Court approval.

(b) The Governor may at any time, on an interim basis during the suspension period or during the pendency of a case under chapter 3 of this Act, appoint new members of the governing body of any eligible obligor or petitioner, as applicable, with the advice and consent of the Senate, to substitute for some or all of those existing members of the governing body who had been appointed by the Governor.

(c) The Governor may exercise either, both, or neither of the powers granted by subsection (b) of this section and section 135 of this Act, sequentially or simultaneously, as the case may be.

Section 137. —Quasi-immunity of the Eligible Obligor and the Petitioner, Creditors' Committee Personnel, and Government Officials.—

(a) Except to the extent proven by final and unappealable judgment, to have engaged in willful misconduct for personal gain or gross negligence comprising reckless disregard of and failure to perform applicable duties, the enumerated entities shall not have any liability to any entity for, and without further notice or order shall be exonerated from, actions taken or not taken in their capacity, and within their authority in connection with, related to, or arising under, or as permitted under this Act.

(b) No action shall be brought against any enumerated entity concerning its acts or omissions in connection with, related to, or arising under this Act, except in the Court. No civil cause of action may arise against and no civil liability may be imposed on such enumerated entities absent clear and convincing proof of willful misconduct for personal gain or gross negligence comprising reckless disregard of and failure to perform applicable duties. Any action brought for gross negligence shall be dismissed with prejudice if a defendant, as an officer, director, official, committee member, professional, or other enumerated entity, produces documents showing such defendant was advised of relevant facts, participated in person or by phone, and deliberated in good faith or received and relied on the advice of experts in respect of whatever acts or omissions form the basis of the complaint.

Chapter 2: Consensual Debt Relief

Section 201. —Consensual Debt Relief Transactions.—

(a) The objectives of chapter 2 of this Act are the following:

(1) to enable an eligible obligor to become financially self-sufficient;

(2) to allocate equitably among all stakeholders the burdens of the recovery program; and

(3) to provide the same treatment to all creditors within a class of affected debt instruments unless a creditor agrees to a less favorable treatment.

(b) An eligible obligor may seek debt relief from its creditors pursuant to one or more transactions in accordance with chapter 2 of this Act (each a "consensual debt relief transaction") if so authorized by either—

(1) its governing body, with the approval of GDB; or

(2) GDB, at the Governor's request, and on behalf of the eligible obligor, if the eligible obligor has not authorized such action and the Governor, with the advice of GDB, determines that it is in the best interest of the eligible obligor and the Commonwealth.

(c) To enable GDB to coordinate the relief requested in instances where the Governor and GDB authorize the consensual debt relief transaction, GDB shall be entitled to select and retain on behalf of the eligible obligor and at the eligible obligor's expense, such professionals as GDB believes are necessary to seek relief under chapter 2 of this Act.

(d) After the eligible obligor obtains authorization pursuant to subsection (b) of this section, the eligible obligor shall publish on its website a notice that—

(1) the suspension period has commenced on the date of such notice; and

(2) identifies which obligations are subject to the suspension period.

(e) The suspension period notice may be amended to add or eliminate obligations, but the suspension period shall commence only from the time the suspension period notice is first published pursuant to subsection (d) of this section.

Section 202. —Relief and Commitment.—

(a) In a consensual debt relief transaction undertaken pursuant to section 201 of this Act, an eligible obligor may seek approval of any amendment, modification, waiver, or exchange to or of the affected debt instruments from the holders of such instruments.

(b) In connection with a consensual debt relief transaction, an eligible obligor must prepare and commit itself by an act of its governing body (if authorized by it, pursuant to section 201(b)(1) of this Act) or by GDB, upon the Governor's request (if authorized by it pursuant to section 201(b)(2) of this Act) on behalf of the eligible obligor to a recovery program that—

(1) allows the eligible obligor to become financially self-sufficient based on such financial and operational adjustments as may be necessary or appropriate to allocate the burdens of such consensual debt relief equitably among all stakeholders; and

(2) GDB has approved in writing.

(3) The recovery program may include interim milestones, performance targets, and other measures to—

(1) improve operating margins;

(2) increase operating revenues;

(3) reduce operating expenses;

(4) transfer or otherwise dispose of or transfer existing operating assets;

(5) acquire new operating assets; and

(6) close down or restructure existing operations or functions.

(d) In respect of any consensual debt relief transaction, and notwithstanding anything to the contrary contained in an affected debt instrument or otherwise applicable law, the amendments, modifications, waivers, or exchanges proposed in such transaction shall become effective and binding for each affected debt instrument on any entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments, any trustee, any collateral agent, any indenture trustee, any fiscal agent, and any bank that receives or holds funds from such eligible obligor related to the affected debt instruments, within a class specified in the consensual debt relief transaction, if—

(1) GDB has approved the consensual debt relief transaction in writing;

(2) creditors of at least—

(A) fifty percent (50%) of the amount of debt of such class participates in a vote or consent solicitation with respect to such amendments, modifications, waivers, or exchanges; and

(B) seventy-five percent (75%) of the amount of debt that participates or votes in such class approves the proposed amendments, modifications, waivers, or exchanges;

(3) each class contains claims that are substantially similar to other claims in such class, provided that the term "substantially similar" does not require classification based on similar maturity dates; and

(4) the Court enters an approval order in respect of such consensual debt relief transaction pursuant to section 204 of this Act.

(e) For purposes of calculating the voting percentage set forth in this section, any affected debt instruments held or controlled by any Commonwealth Entity, shall not be counted in such vote.

Section 203. —Oversight Commission.—

(a) An oversight commission shall be established for each eligible obligor that is subject to a recovery program no later than ten (10) days after entry of the approval order. The identity and affiliation(s) of the persons who will serve on the oversight commission shall be disclosed publicly prior to the commencement of the approval hearing. Such oversight commission shall be responsible for monitoring compliance with the recovery program. The eligible obligor subject to the recovery program shall provide the oversight commission with regular updates, not less frequently than once every four (4) months, of its compliance with terms of the recovery program.

(b) If the oversight commission, by majority vote, finds that an eligible obligor has failed to meet an interim performance target or other milestone contained in the recovery program and such failure has continued for at least ninety (90) days thereafter, the oversight commission shall issue a non-compliance finding to the eligible obligor, the Governor and to the Legislative Assembly, with a copy to be made available publicly, explaining the reasons for such non-compliance and making recommendations for curing such non-compliance. Such recommendations may include the replacement of some or all of the management or the governing body of the eligible obligor.

Section 204. —Court Approval of Consensual Debt Relief Transactions.—

(a) Any eligible obligor seeking entry of an approval order shall file an application with the Court requesting such approval not later than thirty (30) days after obtaining the requisite consent of holders of an affected debt instrument set forth in section 202(d)(2).

(b) The Court shall conduct a hearing to consider entry of the approval order not later than twenty-one (21) days after the filing of the application.

(c) Notwithstanding any contractual provision or applicable law to the contrary, notice of the hearing described in section 204(b) shall be proper and reasonable if—

(1) publication notice of such hearing is made in accordance with section 116(c)(2) of this Act; and

(2) notice of such hearing is transmitted to the holders of the affected debt instruments at least fourteen (14) days prior to such hearing, including through The Depository Trust Company or similar depository, or as the Court otherwise orders.

(d) Subject to the terms and conditions of the affected debt instrument (including any limitations on suits prescribed therein), any holder of an affected debt instrument may object to the relief sought in subsection (a) of this section by filing an objection in accordance with section 120 of this Act, provided, however, that no entity may object if it is not adversely impacted by the actions taken in connection with this Act.

(e) In determining whether an approval order shall be entered, the Court shall consider only whether the amendments, modifications, waivers, or exchanges, as the case may be, proposed in such transaction, are consistent with the requirements of chapter 2 of this Act and the objectives set forth in section 201(a) of this Act, and whether the voting procedure followed in connection with the consensual debt relief transaction, which shall include a reasonable notice and period of time to vote or consent as the circumstances require, was carried out in a manner consistent with chapter 2 of this Act. If the Court determines that each of these requirements has been satisfied, it shall enter the approval order.

Section 205. —Suspension of Remedies.—

(a) Notwithstanding any contractual provision or applicable law to the contrary, during the suspension period, no entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments, no trustee, no collateral agent, no indenture trustee, no fiscal agent, no bank that receives or holds funds from such eligible obligor related to the affected debt instruments, may exercise or continue to exercise any remedy under a contract or applicable law—

(1) for the non-payment of principal or interest;

(2) for the breach of any condition or covenant; or

(3) that is conditioned upon the financial condition of, or the commencement of a restructuring, insolvency, bankruptcy, or other proceedings (or a similar or analogous process) by, the eligible obligor concerned, including a default or an event of default thereunder.

(b) The term "remedy" as used in subsection (a) of this section shall be interpreted broadly, and shall include any right existing in law or contract, and any right to—

(1) setoff;

(2) apply or appropriate funds;

(3) seek the appointment of a custodian;

(4) seek to raise rates; and

(5) exercise control over property of the eligible obligor

(c) Notwithstanding any contractual provision or applicable law to the contrary, a contract to which the eligible obligor is a party may not be terminated or modified, and any right or obligation under such contract may not be terminated or modified, at any time during the suspension period solely because of a provision in such contract conditioned on—

(1) the insolvency or financial condition of the eligible obligor at any time before the commencement of the suspension period;

(2) the commencement of the suspension period or a restructuring process under chapter 2 of this Act; or

(3) a default under a separate contract that is due to, triggered by, or as the result of the occurrence of the events or matters in subsections (a)(1) or (a)(2) of this section.

(d) Notwithstanding any contractual provision to the contrary, a counterparty to a contract with the eligible obligor for the provision of goods or services shall, unless the eligible obligor advises to the contrary in writing, continue to perform all obligations under, and comply with all terms of, such contract during the suspension period, provided that the eligible obligor is not in default under such contract other than—

(1) as a result of a condition specified in subsection (c) of this section; or

(2) with respect to an essential supplier contract, as a result of a failure to pay any amounts arising prior to the commencement of the suspension period.

(e) The suspension period shall terminate automatically without further action if—

(1) an approval order for such consensual debt relief transaction is denied, and is not remedied within sixty (60) days after such denial unless otherwise provided for in an order denying the application for an approval order; or

(1) no approval application has been filed with the Court within two hundred and seventy (270) days after the commencement of the suspension period, provided that the suspension period may be extended for one additional period of

ninety (90) days if the eligible obligor and the holders of at least twenty (20) percent of the aggregate amount of the affected debt instruments in at least one class of affected debt instruments consent to such extension.

(f) The Court shall have the power to enforce the suspension period, and any entity found to violate this section shall be liable to the eligible obligor concerned for damages, costs, and attorneys' fees incurred by such eligible obligor in defending against action taken in violation of this section, and punitive damages for intentional or knowing violations. Upon determining that there has been a violation of the suspension period, the Court may order additional appropriate remedies, including that the act comprising such violation be declared void or annulled.

Section 206. —Obtaining Credit.—

(a) After the commencement of the suspension period, an eligible obligor may obtain credit in the same manner and on the same terms as a petitioner pursuant to section 322 of this Act.

(b) Prior to or after the filing of an application for an approval order pursuant to section 204 of this Act, the eligible obligor may, to the extent required by any entity seeking to extend credit pursuant to subsection (a), seek from the Court, after notice and a hearing, an order approving and authorizing it to obtain such credit.

(c) Credit obtained pursuant subsection (a) of this section may not be treated as an affected debt instrument under chapter 2 or as affected debt under chapter 3 or avoided as a fraudulent transfer.

(d) If the eligible obligor subsequently seeks relief under chapter 3, the credit extended pursuant to this section shall be entitled to same priority and security as if such credit had been extended in a case under chapter 3.

(e) Section 322(e) shall apply to any order entered pursuant to subsection (b) of this section.

Section 207. —Adequate Protection for Use of Property Subject to Lien or Pledge.—

(a) To continue performing its public functions and to obtain an approval order or consummate a consensual debt relief transaction, the eligible obligor may use property, including cash collateral, subject to a lien, pledge, or other interest of or for the benefit of an entity, provided that the entity shall be entitled to a hearing, upon notice, to consider a request for adequate protection of its lien, pledge, or other interest as promptly as the Court's calendar permits, at which hearing the Court may condition the use of the collateral on such terms, if any, as it determines necessary to adequately protect such interest.

(b) Notwithstanding anything to the contrary in this Act, if revenues of an eligible obligor are subject to a pledge under which current expenses or operating expenses may be paid prior to the payment of principal, interest or other amounts owed to a creditor, the eligible obligor shall not be required to provide adequate protection pursuant to this section, to the extent that sufficient revenues are unavailable for payment of such principal, interest or other amounts after full payment of such current expenses or operating expenses.

(c) If the entity holding a lien, pledge, or interest in the collateral consents to its use, then the entity shall be deemed adequately protected on the terms, if any, in the consent and no further adequate protection shall be required.

Chapter 3: Debt Enforcement

Subchapter I: Petition and Schedules

Section 301. —The Petition.—

(a) A case is commenced under chapter 3 of this Act by the filing of a petition with the Court, either:

(1) by a petitioner upon the decision of its governing body and approval of GDB; or

(2) by GDB, upon the Governor's request, on behalf of a petitioner, if the petitioner's governing body has not authorized the petition and GDB determines that the petition is in the best interests of the petitioner and the Commonwealth.

(b) To enable GDB to coordinate the relief requested in all cases filed under chapter 3 of this Act, GDB shall be entitled to select and retain financial and legal professionals to prosecute each chapter 3 case on behalf of the petitioner and at the petitioner's expense, subject to sections 125 and 134 of this Act.

(c) A case may not be commenced under chapter 3 of this Act by any involuntary petition of creditors or other entities.

(d) The petition shall set forth:

(1) the amounts and types of claims against the petitioner that the petitioner, subject to amendment, contemplates being affected under the plan, sufficient to enable the Court to form a general committee pursuant to section 318(a) of this Act; provided that if the schedule in section 302(a)(2) of this Act is filed with the petition, such schedule will satisfy the requirement in this subsection (1); and

(2) the assessment of the entity filing the petition pursuant to subsection (a)(1) or (a)(2) of this section that the petitioner meets the eligibility requirements provided in section 113(b) of this Act.

Section 302. —Petition Filing Requirements.—

(a) A petitioner shall file with the petition for relief under chapter 3 of this Act, or as soon as practicable thereafter, or if the petition is filed pursuant to section 301(a)(2) of this Act, no more than sixty (60) days after the date the petition is filed—

(1) a list of creditors the petitioner or GDB intends to be affected creditors and for whom the petitioner has readily accessible internal electronic records of names and mailing addresses or email addresses; and

(2) a schedule of all the claims against the petitioner, which existed on the date the petition was filed, intended to be affected under the plan, showing:

(A) the amounts outstanding as of the date the petition is filed;

(B) any seniorities or priorities among such claims;

(C) the collateral security, including pledges of revenues, for each claim;

(D) which of such claims the petitioner acknowledges as allowed and which claims the petitioner disputes or contends are contingent or unliquidated; and

(E) the essential supplier contracts.

(b) A petitioner may amend its list of affected creditors and schedule of claims at any time (1) up to five (5) days before the deadline to object to a transfer of all or substantially all of the petitioner's assets or (2) before the voting record date established by the Court, and shall provide notice of such amendments to all creditors affected by such amendments.

Section 303. —Notice of Commencement.—

(a) Promptly after the filing of the petition and obtaining a date from the Court for the hearing specified in subsection (a)(2) of this section, a petitioner shall send to all the petitioner's affected creditors and contract counterparties for whom it has readily accessible internal electronic records of mailing addresses or email addresses and to all entities who file notices of appearance pursuant to section 119 of this Act notice of:

(1) the filing of the petition and the automatic stay;

(2) the date and time of the hearing on the eligibility of the petitioner for relief under chapter 3 of this Act pursuant to section 306 of this Act;

(3) the date that objections, if any, to the petitioner's eligibility must be filed;

(4) the schedule specified in section 302(a)(2) of this Act, or, if not available, the schedule specified in section 301(d)(1) of this Act;

(5) the right of each affected creditor to advise the Court of its willingness to serve on the general committee to be appointed pursuant to section 318(a) of this Act, which advice shall be in the form of a notice filed with the Court prominently labeled as a "Notice of Willingness to Serve on General Committee," and shall clearly provide a disclosure of their economic interests as set forth in sections 318(d)(1) and 318(d)(2) of this Act; and

(6) the threshold for the special trade debt.

(b) A petitioner also shall provide supplemental notice of the information required by section 303(a) of this Act by publication as specified in section 116(c)(2) of this Act, and by posting on the website for its case under chapter 3 of this Act.

Subchapter II: Automatic Stay

Section 304. —The Automatic Stay.—

(a) Upon the filing of the petition, the following actions by all entities, regardless of where located, automatically shall be stayed with respect to affected debt:

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, arbitrative, administrative, or other action or proceeding against

the petitioner or (insofar as relating to or arising from claims against the petitioner or the filing of the petition) against any enumerated entity that:

(A) was or could have been commenced before the filing of a petition under chapter 3 of this Act (including the request for a custodian); or

(B) is to recover on a claim against the petitioner or (insofar as relating to or arising from claims against the petitioner or the filing of the petition) against any enumerated entity, by mandamus or otherwise, which claim arose before the filing of a petition under chapter 3 of this Act;

(2) the enforcement against the petitioner or (insofar as relating to or arising from claims against the petitioner or the filing of the petition) against any enumerated entity of a judgment obtained before the filing of a petition under chapter 3 of this Act;

(3) any act to create, perfect, or enforce any lien against the petitioner's property;

(4) any act to collect, assess, or recover on a claim against the petitioner that arose before the filing of a petition under chapter 3 of this Act, including any act to obtain possession or control of property belonging to the petitioner; and

(5) the setoff of any debt owing to the petitioner that arose before the filing of a petition under chapter 3 of this Act against any claim against the petitioner.

(b) The stay in this section shall extend automatically to all affected debt added to the schedule described in section 302(a)(2) of this Act upon each amendment of such schedule.

(c) The petition shall not operate as a stay against the lawful exercise of police power by any Commonwealth Entity, the United States, or a state. Such exercise of police power shall not include the collection of interest or principal on any debt owed to the Commonwealth or GDB.

(d) The stay shall terminate with respect to property of the petitioner when the petitioner no longer has a legal or beneficial interest in the property.

(e) Unless terminated or modified by the Court pursuant to subsection (g) of this section, the stay of any act under this section shall continue until the earlier of:

(1) the effective date of the plan; or

(2) the time the case is dismissed and the dismissal is final and unappealable.

(f) Upon request of the petitioner, the Court may issue an order regarding the applicability and scope of the stay under subsection (a) of this section, and may issue an order enforcing the stay.

(g) The Court shall grant an entity relief from the stay, whether by terminating, annulling, modifying, or conditioning such stay, to the extent that—

(1) the entity's interest in property of the petitioner is not adequately protected against violations of the Commonwealth Constitution or the U.S. Constitution; or

(2) if—

(A) the petitioner does not have equity in such property; and

(B) no part of such property is used or intended to be used to perform public functions or otherwise foster jobs, commerce, or education.

(h) Upon objection to a motion seeking relief from the automatic stay, which objection shall be filed within fourteen (14) days of the filing of such motion, the Court shall commence a hearing no later than thirty (30) days after the motion for relief from the stay was filed unless a later date is otherwise agreed to by the petitioner and the affected creditor seeking relief from the stay. The affected creditor seeking relief from the stay shall have the burden to prove it lacks adequate protection, and the petitioner's lack of equity in the property. The petitioner has the burden to prove the facts relevant to relief pursuant to section 304(g)(2)(B) of this Act.

Section 305. —Remedies for Violating the Automatic Stay.—

Any entity found to violate section 304 of this Act shall be liable to the petitioner, and any other entity protected by the automatic stay, for compensatory damages, including any costs and expenses and attorneys' fees incurred by the petitioner in defending against action taken in violation of that section, and for punitive damages for intentional and knowing violations. Further, upon determining there has been a violation of the stay imposed by section [304] of this Act, the Court may order additional appropriate remedies, including that the acts comprising such violation be declared void or annulled.

Subchapter III: Eligibility Hearing

Section 306. —Eligibility Hearing.—

(a) No later than thirty (30) days after the petition is filed, the Court shall hold a hearing, on notice in accordance with section 338 of this Act, to determine whether the petitioner is eligible for relief under chapter 3 of this Act.

(b) No later than forty-five (45) days after the petition is filed, the Court shall enter an order determining that the petitioner is or is not eligible for relief under chapter 3 of this Act upon a finding that the petitioner satisfies, or does not satisfy, as the case may be, the eligibility requirements in section 113(b) of this Act.

Subchapter IV: Enforcement of Claims by Foreclosure Transfer

Section 307. —Power to Transfer.—

(a) Subject to the remaining provisions of this section 307 and notwithstanding any contrary contractual provision rendered unenforceable by this Act, the petitioner, with the approval of GDB (or GDB at the request of the Governor on the petitioner's behalf), subject to Court approval after notice and a hearing, may transfer all or part of the petitioner's encumbered assets (which transfer may also include unencumbered assets) free and clear of any lien, claim, interest, and employee claims against a successor employer, for good and valuable consideration consisting of any and all of cash, securities, notes, revenue pledges, and partial interests in the transferred assets or enterprise.

(b) A petitioner shall not effect a transfer of assets to an entity that is not a Commonwealth Entity, including a transfer of all or substantially all of the assets of such petitioner, unless all the following requirements are met—

(1) applicable law (other than this Act) permits such transfer;

(2) the Court orders that the liens, claims, and interests shall attach to the proceeds of transfer in their order of priority, with each dispute over priorities to be resolved, in the Court's discretion, before or after the closing of the transfer; provided, however, that, in the event of a transfer of all or substantially all of the petitioner's assets, the petitioner may recover the reasonable and necessary administrative expenses incurred in its chapter 3 case in preserving or disposing of such assets that are transferred pursuant to this subsection;

(3) the Court shall have determined that the transferee shall have undertaken to perform the same public functions with the property acquired (either alone or together with other property and/or entity) as the petitioner had been performing, unless the Court determines that any public functions not to be performed by the transferee will be performed by another entity or no longer are necessary;

(4) the Court finds that a transfer to an entity that is not a Commonwealth Entity is the product of

(A) adequate marketing and arms-length bargaining designed to procure a price that is at least the reasonably equivalent value of the assets proposed to be transferred, or

(B) a fair auction process;

(5) to the extent, if any, that the gross or net revenue of the petitioner to be transferred was pledged to secure any affected debt, such pledges shall have first priority against all portions of the proceeds of transfer other than portions allocable to other assets to be transferred free of liens or security interests securing allowed claims; and

(6) in the event of a transfer of all or substantially all of the petitioner's assets, all claims not scheduled pursuant to section 302(a)(2) of this Act shall be paid in full.

(c) For the avoidance of doubt, subsection (b) of this section does not confer any power on a petitioner to sell assets to a non-Commonwealth Entity that such petitioner does not currently posses under applicable law.

(d) A petitioner may effect a transfer of assets to a Commonwealth Entity, including a transfer of all or substantially all of the assets of such petitioner, notwithstanding any other applicable law to the contrary, only if—

(1) the Court orders that the liens, claims, and interests shall attach to the proceeds of transfer in their order of priority, with each dispute over priorities to be resolved, in the Court's discretion, before or after the closing of the transfer; provided, however, that, in the event of a transfer of all or substantially all of the petitioner's assets, the petitioner may recover the reasonable and necessary administrative

expenses incurred in its chapter 3 case in preserving or disposing of such assets that are transferred pursuant to this subsection;

(2) the Court shall have determined that the transferee shall have undertaken to perform the same public functions with the property acquired (either alone or together with other property and/or entity) as the petitioner had been performing, unless the Court determines that any public functions not to be performed by the transferee will be performed by another entity or no longer are necessary;

(3) the transfer to an entity that is a Commonwealth Entity is for a price that is at least the reasonably equivalent value of the assets proposed to be transferred, taking into account the requirement that they be used to perform the public functions the petitioner had been performing, unless the Court determines that any public functions not to be performed by the transferee will be performed by another entity or no longer are necessary;

(4) to the extent, if any, that the gross or net revenue of the petitioner to be transferred was pledged to secure any affected debt, such pledges shall have first priority against all portions of the proceeds of transfer other than portions allocable to other assets to be transferred free of liens or security interests securing allowed claims; and

(5) in the event of a transfer of all or substantially all of the petitioner's assets, all claims not scheduled pursuant to section [302(a)(2)] of this Act shall be paid in full.

(e) The petitioner (or GDB at the Governor's request on the petitioner's behalf) may transfer part, but not all or substantially all, of the petitioner's assets not subject to a lien or pledge without Court approval if such transfer is independent of any and all transfers of encumbered assets.

(f) All transfers of unencumbered property or encumbered property or both shall be free and clear of successor liability imposed by otherwise applicable law.

(g) No transfer shall be approved unless the petitioner, or GDB on behalf of the petitioner, shall have included in its request for approval the reasons why such proposed transfer is reasonably likely to maximize value for creditors, in the aggregate, consistent with enabling the continued carrying out of the petitioner's public functions and the Court shall have found such reasons plausible.

Section 308. —Distribution of Proceeds of Transfer of Substantially All Assets.—

(a) In the event of a transfer of all or substantially all of the petitioner's assets pursuant to section 307 of this Act, after the closing of the transfer, the petitioner, with the approval of GDB (or GDB, at the Governor's request, on behalf of the petitioner), shall file a statement of allocation setting forth how the proceeds of transfer shall be allocated among each affected creditor or classes of affected creditors, and each affected creditor shall be entitled to object to the allocation by filing an objection no later than thirty (30) days after the statement of allocation is filed. When the transfer proceeds include forms of consideration other than cash and cash equivalents, the statement of allocation shall provide which forms of

consideration shall be distributed to which classes of claims, or whether the non-cash forms of consideration shall first be sold for cash and then distributed.

(b) The Court shall hold a hearing to determine each objection. When all objections are resolved, the petitioner shall file an amended statement of allocation of the proceeds of transfer consistent with the Court's rulings on the objections. Affected creditors shall have fourteen (14) days to file objections to the petitioner's amended statement of allocation—provided, however, that such objections, if any, will be limited only to arguments that the amended statement of allocation does not accurately reflect the Court determination—after which the Court shall hold a hearing to resolve the objections and shall issue a final statement of allocation binding on the petitioner and all creditors. If there is no objection timely filed to the petitioner's amended statement of allocation, the Court shall order that the net proceeds of transfer shall be allocated in accordance with the petitioner's amended statement of allocation without further notice or hearing.

(c) If substantially all of the petitioner's assets are transferred pursuant to section 307 of this Act, a plan distributing the value of the assets not subject to such transfer shall not be required, but may be filed at the discretion of the petitioner, or by GDB on its behalf. If no such plan is filed, the final statement of allocation shall allocate the value of the assets that have not been transferred by means of such forms of consideration as are feasible and practicable under the circumstances.

Section 309. —Protection for Good Faith Acquirer.—

The reversal or modification on appeal of a transfer order shall not affect the validity of the transfer under such authorization to an entity that acquired such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such transfer were stayed pending appeal.

Subchapter V: Confirmation Requirements

Section 310. —Petitioner Exclusivity.—

A petitioner may file a proposed plan (and any amendment) or proposed transfer of all or substantially all the petitioner's assets if first approved by GDB, or GDB may file a proposed plan (and any amendment) or proposed transfer of all or substantially all the petitioner's assets on behalf of the petitioner with approval of the Governor. No other entity may file a proposed plan or file a proposed transfer of any of the petitioner's assets.

Section 311. —Plan Disclosure.—

The Court shall not confirm any plan unless the creditors' committee(s) and all affected creditors receive at least forty-five (45) days before the hearing on confirmation of the plan, a written disclosure statement, approved by the Court, containing:

(a) the material facts demonstrating the petitioner's reasons for contending the plan fairly uses the value of the petitioner's assets or operating revenues to maximize repayment of claims consistent with the performance of public functions or otherwise fostering a growing economy that will generate increasing revenues and enable greater claim repayment. Confidential or proprietary information may be redacted from any disclosure made;

(b) the treatment of each class of the petitioner's affected creditors under the plan and any material financial information reasonably necessary for such creditors to understand their future recoveries, if any, under the plan; and

(c) other information, if any, necessary to provide adequate information of a kind, and in sufficient detail, as far as reasonably practicable in light of the nature and history of the petitioner and the condition of the petitioner's books and records, that would enable a hypothetical creditor in the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan.

Section 312. —Affected Debt Entitled to Vote.—

Subject to the petitioner's right to deem a class to reject a plan, a class of claims of the petitioner is affected for purposes of voting under a plan unless, with respect to each claim of such class, the plan—

(a) leaves unaffected the legal, equitable, and contractual rights to which such claim entitles the holder of such claim;

(b) pays such claim in full in cash; or

(c) notwithstanding any contractual provision or applicable law that entitles the holder of such claim to demand or receive accelerated payment of such claim after the occurrence of a default—

(1) cures any such default that occurred before or after the filing of a petition under chapter 3 of this Act, other than a default of a kind that is not required to be cured or is unenforceable under this Act or a default creating no money damages;

(2) reinstates the maturity of such claim as such maturity existed before such default;

(3) compensates the holder of such claim for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law;

(4) if such claim arises from any failure to perform a nonmonetary obligation, compensates the holder of such claim for any actual pecuniary loss incurred by such holder as a result of such failure; and

(5) does not otherwise affect the legal, equitable, or contractual rights to which such claim entitles the holder of such claim.

Section 313. —Plan Amendments.—

The petitioner or GDB may amend the plan at any time before confirmation, but may not amend the plan so that the plan as amended fails to meet the requirements of chapter 3 of this Act. After the petitioner files an amendment, the plan as amended becomes the plan. Material modifications adverse to affected creditors shall require resolicitation and approval pursuant to section 315(e) of this Act prior to the confirmation hearing.

Section 314. —Confirmation Hearing.—

(a) After notice specified in section 338 of this Act, the Court shall hold a hearing on confirmation of the plan.

(b) Any creditors' committee may object to the treatment of its constituency's claims under the plan and any affected creditor may object to the treatment of its claims under the plan and each may be heard in opposition of or in support of the plan, by filing an objection or a pleading supporting the plan, in writing, no later than fourteen (14) days prior to commencement of the hearing on the plan.

Section 315. —Standards for Plan Confirmation.—

The Court shall confirm a plan only if all the following requirements are met:

(a) the plan substantially complies with all applicable provisions of chapter 3 of this Act;

(b) the plan separates affected debt into classes based on:

(1) differences in the claims' collateral security or priorities; or

(2) rational business justifications for classifying similar claims separately, provided that different maturities shall not render claims dissimilar;

(c) the plan provides the same treatment for each claim of a particular class, unless the holder of a particular claim agrees to a less favorable treatment of such claim;

(d) the plan provides for every affected creditor in each class of affected debt to receive payments and/or property having a present value of at least the amount the affected debt in the class would have received if all creditors holding claims against the petitioner had been allowed to enforce them on the date the petition was filed;

(e) at least one class of affected debt has voted to accept the plan by a majority of all votes cast in such class and two-thirds of the aggregate amount of affected debt in such class that is voted;

(f) the plan does not contain any provision causing a violation of an entity's rights under the Commonwealth Constitution or the U.S. Constitution that is not remedied or otherwise justified pursuant to section 128 of this Act;

(g) the petitioner shall be able to—

(1) make all mandatory payments provided by the plan and

(2) perform public functions;

(h) confirmation of the plan is not likely to be followed by the need for further financial reorganization of the petitioner, unless such reorganization is proposed by the plan, and all other provisions of the plan must be feasible;

(i) the plan has been proposed in good faith and not by any means forbidden by law, subject to section 108 of this Act;

(j) all administrative expenses accruing prior to the effective date of the plan shall be paid in full according to their terms or on the effective date of the plan, and all

noncontingent, undisputed, and matured claims unaffected by the plan in accordance with section 327 of this Act shall be paid in full according to their terms; provided, however, that disputed or contingent claims shall be resolved in the ordinary course and paid as the parties agree or as the plan otherwise provides;

(k) each class of claims of affected debt that will not be satisfied in full under the plan absent the additional consideration provided in this subsection shall be entitled to receive annually in arrears its pro rata share of 50% of the petitioner's positive free cash flow, if any, at the end of any fiscal year, after payment of: (1) operating expenses; (2) capital expenditures (including capitalized expenses); (3) taxes, if any; (4) principal, interest, and other payments made in respect of financial indebtedness; (5) reserves; (6) changes in working capital; (7) cash payments of other liabilities; and (8) extraordinary items; in each case, incurred, expensed, and recorded in such fiscal year; such contingent payments to be made by the petitioner, but only to the extent necessary to pay each claim in full, including interest and any fees contractually required, for each of the first ten (10) full fiscal years ending after the first anniversary of the effective date of the plan, provided that once any claim is paid in full, its share of future contingent payments shall be ratably distributed to other affected creditors not yet paid in full;

(l) the effective date of the plan shall be the first date after confirmation of the plan that the confirmation order is not stayed and the petitioner or GDB files a notice with the Court that it is prepared to begin implementing the plan;

(m) with respect to affected secured claims (representing the amount by which a claim for principal, interest, and fees is secured by the value of the collateral security):

(1) both:

(A) the plan provides that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the petitioner or transferred to another entity, to the extent of the allowed amount of such claims; and

(B) each holder of such a claim receives on account of such claim immediate or deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the petitioner's interest in such property, with value being determined by the Court based on the plan's proposed disposition or use of the property, including its expected net revenues or net transfer proceeds if contemplated by the plan; or

(2) the plan provides for the transfer of any property that is subject to the liens securing such claims, free and clear of liens, and such liens attach to the net proceeds of such transfer;

(n) with respect to unsecured claims for affected debt (including deficiency claims, subject to section 331(d) of this Act, for secured affected debt that are based on a deficiency arising from liens against property having a value of less than the full amounts of the affected debt held by the affected creditor owning such liens), the plan shall be in the best interests of such creditors and shall maximize the amounts distributable to such creditors to the extent practicable, subject to the petitioner's obligations to fulfill its public functions;

(o) the petitioner shall have proved to the Court that it undertook—before or after the petition was filed—a reasonable program of cost reductions and income enhancements to try to maximize its repayment of affected debt under the plan, subject to the constraints that the petitioner must fulfill its public functions, and that some cost reductions or revenue enhancements may be counterproductive if they cause individuals or businesses to leave the Commonwealth, to reduce spending in the Commonwealth, or to reduce the consumption of services provided by the petitioner; and

(p) except to the extent agreed to by an affected creditor, the plan does not provide for a materially different and adverse treatment for such claim as compared to the treatment of claims in different classes under the plan having the same priority, unless the petitioner demonstrates a rational basis to permit such disparate treatment.

Section 316. —Compliance with Final Statement of Allocation and Confirmation Order.—

Notwithstanding any otherwise applicable law, the petitioner and any entity organized or to be organized for the purpose of carrying out a final statement of allocation issued pursuant to section 308 of this Act or a plan shall carry out the final statement of allocation or the plan and shall comply with all orders of the Court.

Subchapter VI: Case Management

Section 317. —Power of the Court.—

The Court, on its own motion or on the request of a party in interest—

(a) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case;

(b) unless inconsistent with another provision of chapter 3 of this Act, may issue an order, notwithstanding the rules of civil procedure, prescribing such limitations and conditions as the Court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

(1) sets the date by which the petitioner shall file a disclosure statement and plan or a proposed transfer of all or substantially all the petitioner's property; or

(2) sets deadlines for pleadings, responses, replies, and other matters;

(3) may issue an order fixing the timing, scope, and format of any notice required under this Act.

Subchapter VII: Creditors' Committees

Section 318. —Formation of Creditors' Committees.—

(a) As soon as practicable after the petition is filed, but not later than fourteen (14) days prior to the first scheduled date of the eligibility hearing pursuant to section 306 of this Act, the Court shall appoint a general committee comprised of entities, based on the received Notices of Willingness to Serve on General Committee, holding the largest amount of secured claims and largest amount of unsecured claims identified in the schedule of affected debt filed pursuant to section 301(d)(1) or 302(a)(2) of this Act. The general committee shall be

comprised of at least five (5) and no more than thirteen (13) members, and, to the extent reasonably practicable, shall be representative of the categories of claims to be affected by the plan.

(b) The Court may appoint as the general committee a committee of creditors formed to negotiate with the petitioner prior to the filing of the petition; provided that the members of the prepetition committee are representative of the categories of claims to be affected by the plan.

(c) At the petitioner's or GDB's request, the Court shall appoint one or more additional committees, comprised of holders of affected debt held by particular creditor constituencies and identified by the petitioner in a written certification that the petitioner or GDB believes formation of such committee(s) would facilitate efforts to obtain a transfer pursuant to section 307 of this Act or confirmation of a plan. Such additional committee shall be comprised of at least three (3) and no more than seven (7) members. If and when an additional committee is disbanded or the petitioner or GDB certifies in a writing filed with the Court that it no longer believes an additional committee previously appointed will further facilitate a transfer pursuant to section 307 of this Act or confirmation of a plan or that the additional committee's costs outweigh its benefits, the additional committee no longer shall be eligible for reimbursement of its member expenses and its professionals' fees and disbursements.

(d) Each creditors' committee member shall file with the Court, within twenty-one (21) days after its appointment to a creditors' committee, a verified statement declaring, as of the date of its appointment to the creditors' committee, that:

(1) the creditors' committee member, the entity to be acting on its behalf on the creditors' committee, and any affiliate of the foregoing that employed or is employed by such member, held or controlled, to the extent set forth in such statement, a beneficial interest in:

(A) any affected debt, specifying the face amount of each security or other claim;

(B) any interest, pledge, lien, option, participation, derivative instrument, or any other right or derivative right granting any of the foregoing an economic interest that is affected by the value, acquisition, or disposition of the affected debt, specifying each type of right;

(C) each other economic interest relating to any Commonwealth Entity, specifying each interest; and

(D) any credit default swap of any insurance company that insures any obligation of any Commonwealth Entity, specifying each type of interest; and

(2) no interest that the creditors' committee member, such entity to be acting on its behalf, or any such affiliate holds or controls and that should have been set forth pursuant to sections 318(d)(1)(A) through 318(d)(1)(D) of this Act may increase in value if any debt issued by any Commonwealth Entity declines in value.

(e) The holding or controlling at any time of any interest that should be set forth pursuant to section 318(d)(2) of this Act by the creditors' committee member, such entity that acts on its behalf, or any such affiliate shall disqualify such creditor from serving as a member of any creditors' committee. For the avoidance of doubt, the acquisition of such an interest by a creditors' committee member, such entity acting on its behalf, or any such affiliate, automatically shall divest the creditor of committee membership.

(f) Each creditors' committee member shall update its disclosure contemplated by subsection (d) of this section in writing filed with the Court within three (3) business days of each change in its previously disclosed holdings.

(g) Requests by the petitioner, GDB, or any affected creditor for changes or additions to creditors' committee membership shall be granted or denied in the Court's discretion. The Court's determinations of creditors' committee(s) membership shall not be appealable.

(h) Creditors' committee(s) members shall not be entitled to compensation for their time and service as creditors' committee members or to reimbursement of their expenses for retaining professionals to represent them individually, but the creditors' committee(s) shall be entitled from the petitioner to payment of fees to the extent permitted in section 333 of this Act, and creditors' committee(s) members shall be entitled to reimbursement of their actual, reasonable, and documented out-of-pocket expenses for travel and lodging arising from their function as creditors' committee members.

Section 319. —Powers and Duties of Appointed Committees.—

(a) At a scheduled meeting of a creditors' committee, at which a majority of the members of such creditors' committee is present in person or by phone, the creditors' committee may select and authorize the employment of up to two (2) law firms, one of which must be resident in the Commonwealth, and one financial advisor, to perform services for such creditors' committee to be paid as administrative expenses in accordance with section 333 of this Act; provided, however, upon seven (7) days' notice to the petitioner and subject to the petitioner's right to object, the general committee may retain one or more additional professionals, including law firms, when and if reasonably necessary to represent different constituencies of the general committee in respect of material issues. If the petitioner objects to the general committee's proposed retention of any additional professional, the petitioner shall not be obligated to compensate such professional unless the Court rules its retention should be permitted.

(b) A creditors' committee may only:

(1) appear and be heard on any issue—

(A) relating to the eligibility hearing pursuant to section 306 of this Act;

(B) relating to adequate protection;

(C) involving new borrowing by the petitioner;

(D) concerning a transfer pursuant to section 307 of this Act or the allocation of proceeds of transfer pursuant to section 308 of this Act; and

(E) in connection with the plan, but solely as to matters regarding how the plan affects the creditors' committee's constituents;

(2) conduct a reasonable investigation into the petitioner's legal and financial ability to increase distributions under the plan for the creditors' committee's constituents; and

(3) negotiate with the petitioner over the treatment of its constituents in the plan.

(c) A creditors' committee appointed pursuant to section 318 of this Act or its authorized agent shall receive copies of notices concerning motions and actions taken by the petitioner (and any objections thereto) pursuant to sections 307 and 308 of this Act, and sections 310 through 316 of this Act.

(d) A creditors' committee may request discovery in accordance with the Puerto Rico Rules of Civil Procedure, but only with respect to the matters enumerated in subsections (b)(1)(A) through (b)(1)(E) of this section.

(e) Subject to redaction of confidential or proprietary information, affected creditors who are not committee members may obtain the same discovery produced to the creditors' committee and may obtain other discovery only, in each case, upon order of the Court for good cause shown.

(f) The committee shall not be a juridical entity capable of suing and being sued.

Section 320. —Limitations on Committees.—

(a) A creditors' committee appointed under chapter 3 of this Act shall not have standing to commence an action either directly on its own behalf or derivatively on behalf of the petitioner or on behalf of the petitioner's creditors, and may not be heard on any matter except as expressly provided in this Act.

(b) Each creditors' committee may make recommendations to its constituents with respect to the plan but cannot bind its constituencies or any member thereof to accept, reject, support, or object to any plan, and may not consent to a plan on behalf of any creditor.

(c) No member of a creditors' committee appointed pursuant to section 318 of this Act shall trade in claims against or securities issued by any Commonwealth Entity, unless the member:

(1) has established and enforces sufficient compliance procedures to prevent such member's representative on the creditors' committee from sharing information obtained as the member's representative with any entity within or retained by the member in connection with the trading of claims against or securities issued by any Commonwealth Entity;

(2) filed with the Court a notice of its intention to trade, which notice sets forth the details of the member's compliance procedures referenced in subsection (c)(1) of this section;

(3) obtained approval of its compliance procedures from the petitioner , which approval, in the petitioner's discretion, may be based on the recommendation of an

entity knowledgeable in the securities industry and retained by or for the petitioner; and

(4) does not share information obtained from its service on the creditors' committee with any entity within or retained by the member in connection with the trading of claims against or securities issued by any Commonwealth Entity.

Section 321. —Disbanding Committees.—

All creditors' committees automatically shall be disbanded on the earlier of the date the Court issues the final statement of allocation pursuant to section 308 of this Act or confirms a plan for the petitioner, unless the final statement of allocation or plan provides otherwise or the Court orders otherwise. The petitioner may disband any additional committee appointed pursuant to section 318(c) of this Act by seven (7) days' written notice to such additional committee and the Court.

Subchapter VIII: Assets, Liabilities, Contracts, and Powers of the Petitioner

Section 322. —Obtaining Credit.—

(a) A petitioner may obtain unsecured credit and incur unsecured debt allowable under chapter 3 of this Act as an administrative expense.

(b) If the petitioner is unable to obtain unsecured credit allowable as an administrative expense, the Court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

(1) with priority over any or all administrative expenses of the kind specified in section 333 of this Act;

(2) secured by a lien on property of the petitioner that is not otherwise subject to a lien;

(3) secured by a junior lien on property of the petitioner that is subject to a lien; or

(4) any combination of the preceding clauses (1), (2), and (3), in addition to allowance as an administrative expense.

(c) The Court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on the petitioner's property that is subject to a lien only if—

(1) the petitioner is unable to obtain such credit otherwise; and

(2) either

(A) the proceeds are needed to perform public functions and satisfy the requirements of section 128 of this Act; or

(B) there is adequate protection of the interest of the holder of the lien on the property of the petitioner on which such senior or equal lien is proposed to be granted.

(d) In any hearing pursuant to this section, the petitioner has the burden of proof.

(e) The reversal or modification on appeal of an authorization pursuant to this section to obtain credit or incur debt, or of a grant pursuant to this section of a priority or a

lien, shall not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, was stayed pending appeal.

Section 323. —Use or Lease of Property not Subject to Court Approval.—

Unless the Court orders otherwise, without notice or a hearing, the petitioner may, in its sole discretion:

(a) pay on a current basis—

(1) its expenses accruing postpetition (exclusive of amounts related to prepetition indebtedness except as set forth in subsection (a)(2) of this section) and the costs and expenses incurred in connection with the case (including the reasonable fees and expenses of the professionals retained by or for the petitioner or GDB and any creditors' committee(s) formed under chapter 3 of this Act, subject to sections 318, 319 and 333 of this Act); and

(2) its prepetition debt not scheduled to be affected under the plan or that is necessary to pay to safeguard the petitioner's ability to perform its public functions;

(b) enter into transactions, including the lease of property, and use its property in its operations, including the use of revenues; and

(c) use cash and other resources as necessary to perform public functions, subject to section 324(a) of this Act.

Section 324. —Adequate Protection for Use of Property Subject to Lien or Pledge.—

(a) To continue performing its public functions and to obtain confirmation of a plan or approval of a statement of allocation, the petitioner may use property, including cash collateral, subject to a lien, pledge, or other interest of or for the benefit of an entity, provided that the entity shall be entitled to a hearing, upon notice, to consider a request for adequate protection of its lien, pledge, or other interest as promptly as the Court's calendar permits, at which hearing the Court may condition the use of the collateral on such terms, if any, as it determines necessary to adequately protect such interest.

(b) Notwithstanding anything to the contrary in this Act, if revenues of a petitioner are subject to a pledge under which current expenses or operating expenses may be paid prior to the payment of principal, interest or other amounts owed to a creditor, the petitioner shall not be required to provide adequate protection to such creditor pursuant to this section, to the extent that sufficient revenues are unavailable for payment of such principal, interest or other amounts after full payment of such current expenses or operating expenses.

(c) If the entity holding a lien, pledge, or interest in the collateral consents to its use, then the entity shall be deemed adequately protected on the terms, if any, in the consent and no further adequate protection shall be required.

Section 325. —Unenforceable Ipso Facto Clauses; Assignment of Contracts.—

(a) Notwithstanding any contractual provision or applicable law to the contrary, a contract of a petitioner may not be terminated or modified, and any right or obligation under

such contract may not be terminated or modified, at any time after the filing of a petition under chapter 3 of this Act solely because of a provision in such contract conditioned on—

(1) the insolvency or financial condition of the petitioner at any time before the closing of the case;

(2) the filing of a petition pursuant to section 301 of this Act and all other relief requested under this Act; or

(3) a default under a separate contract that is due to, triggered by, or as the result of the occurrence of the events or matters in subsections (a)(1) or (a)(2) of this section.

(b) Notwithstanding any contractual provision to the contrary, a counterparty to a contract with the petitioner for the provision of goods or services shall, unless the petitioner advises to the contrary in writing, continue to perform all obligations under, and comply with all terms of, such contract, provided that the petitioner is not in default under such contract other than—

(1) as a result of a condition specified in subsection (a) of this section; or

(2) with respect to an essential supplier contract, as a result of a failure to pay any amounts arising prior to the date when the petition is filed.

(c) All claims against the petitioner arising from performance by a contract counterparty pursuant to subsection (b) of this section, after the date when the petition is filed, shall have the status of an administrative expense. Failure by such contract counterparty to satisfy the requirement of subsection (b) of this section shall result in compensatory damages to the petitioner, in an amount determined by the Court.

(d) Notwithstanding any contractual provision to the contrary, except as set forth in subsection (e) of this section, on notice to the counterparty under the contract and upon Court approval, a petitioner can assign any contract, if the petitioner cures—or provides adequate assurance it promptly will cure—any default under such contract, other than a default that is a breach of an unenforceable provision under applicable law. Defaults on nonmonetary obligations that cannot reasonably be cured by nonmonetary actions may be cured as best as practicable with money damages.

(e) A petitioner shall not assign a contract of the petitioner, whether or not such contract prohibits or restricts assignment of rights or delegation of duties, if—

(1) applicable law excuses a party, other than the petitioner, to such contract from accepting performance from or rendering performance to the petitioner or to an assignee of such contract, and such party does not consent to such assumption or assignment; or

(2) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the petitioner, or to issue a security or other instrument of the petitioner.

(f) Only a party to a contract that a petitioner seeks to assign and having the right under such contract to enforce such contract, or such party's authorized representative, shall have standing to object to and be heard on the petitioner's requests pursuant to this section.

Section 326. —Contract Rejection, Impairment, and Modification.—

(a) Subject to subsection (d) of this section and Court approval, after notice and a hearing, and notwithstanding any contractual provision to the contrary, a petitioner may reject any contract if the rejection is in the petitioner's best interests; provided, however, that a petitioner may not reject a contract (except for collective bargaining agreements and retirement or post-employment benefit plans) where rejection of such contract would produce damages that would not exceed the threshold for special trade debt, as defined in section 102(52) of this Act.

(b) Any counterparty to a contract the petitioner seeks to reject shall file with the Court its calculation of rejection damages at least five (5) days prior to the hearing on rejection. A counterparty opposing rejection shall file such calculation with its objection at least seven (7) days prior to the hearing on rejection. The petitioner may object to such proposed damages at any time before confirmation. Disputes concerning rejection damages shall be resolved by the Court.

(c) Rejection of a contract pursuant to subsection (a) of this section shall be treated as a material breach of such contract.

(d) The Court shall not approve the rejection of a collective bargaining agreement or retirement or post-employment benefit plan unless the petitioner has demonstrated that:

(1) the equities balance in favor of the rejection of such agreement or plan. In making such determination, the Court shall take into consideration the impact of the provisions of Law 66-2014, including any agreements made by employees and the petitioner pursuant to negotiations provided thereunder, on such agreement or plan;

(2) absent rejection, the petitioner will likely become unable to perform public functions; and

(3) the petitioner shared with the representative(s) for employees and retirees, as applicable, the data underlying its request to reject the agreement or plan and conferred, at reasonable times, in good faith with the representative(s) to reach voluntary modifications to such agreements or plans, and such efforts did not succeed;

(e) During a period when a collective bargaining agreement continues in effect, if essential to the continuation of the petitioner's public functions, or in order to avoid irreparable damage to the petitioner, the Court, after notice and a hearing, may authorize the petitioner to implement interim changes in the terms, conditions, wages, benefits, or work rules provided by such collective bargaining agreement. Any hearing pursuant to this subsection shall be scheduled in accordance with the needs of the petitioner. The implementation of such interim changes shall not render the application for rejection moot.

(f) Nothing in this Act impairs the right, if any, of the petitioner under a collective bargaining agreement, retirement or post-employment benefit plan, or applicable law to terminate, modify, amend, or otherwise enforce any of the provisions of such collective bargaining agreement or retirement or post-employment benefit plan without obtaining the relief in subsection (d) of this section.

(g) Only a party to a contract a petitioner seeks to reject hereunder and having the right under such contract to enforce such contract, or such entity's authorized representative, shall have standing to object to and be heard on the petitioner's request pursuant to this section.

(h) Subject to subsection (b) of this section and section 327 of this Act, any damages arising from the rejection of a prepetition contract shall be treated as prepetition claims for affected debt that are neither priority claims nor administrative claims.

Section 327. —Unaffected Debt.—

The following expenses and claims arising prior to filing of a petition under chapter 3 of this Act shall not constitute affected debt under the plan and shall be paid to the maximum extent practicable, without acceleration or other remedy arising from a default occurring prior to the effective date of a chapter 3 plan, according to the terms of the contracts pursuant to which the unaffected debt was incurred, and subject to applicable law:

(a) allowed unsecured claims of individuals for wages, salaries, or commissions, vacation, severance, and sick leave pay, or other similar employee benefits, earned by an individual prior to the petition date in accordance with a petitioner's employment policies or by applicable law, except to the extent that such claims arise out of a transaction that is avoidable under applicable law, including section 131 of this Act;

(b) except as provided in subsection (c) of this section, claims for the provision of goods or services other than claims arising under a rejected contract or special trade debt, provided, however, that any and all claims for provision of goods or services may be affected debt if the treatment of such claims as unaffected debt is a direct cause of other debt being substantially or severely impaired for purposes of the Commonwealth Constitution or the U.S. Constitution and such substantial or severe impairment is not remedied or otherwise justified pursuant to section 128 of this Act;

(c) notwithstanding subsection (b) of this section, critical vendor debt as determined by the petitioner;

(d) notwithstanding subsection (a) of this section, claims arising under a collective bargaining agreement or retirement or post-employment benefit plan, unless and until the claims arising under such collective bargaining agreement or retirement or post-employment benefit plan are scheduled as affected debt pursuant to section 302(a)(2) of this Act or such collective bargaining agreement or retirement or post-employment benefit plan is rejected;

(e) claims owed to another public corporation (but only to the extent such claims are for goods or services provided by such public corporation to the petitioner), or to the United States;

(f) claims of a Commonwealth Entity for money loaned, or other financial support, to the petitioner during the sixty (60) days before the filing of the petition under chapter 3 of this Act, or claims of GDB for reimbursement pursuant to section 134 of this Act; and

(g) any credit incurred or debt issued by a public sector obligor between the commencement of the suspension period and the filing of a petition under chapter 3 of this

Act, but only if such petition under chapter 3 of this Act is filed no more than six (6) months after the suspension period shall have elapsed.

Section 328. —Goods and Services Delivered within Thirty Days before the Petition is Filed.—

All valid amounts payable for goods received by or services rendered to the petitioner within thirty (30) days before the filing of a petition under chapter 3 of this Act shall have the status of an administrative expense and shall be paid in full, and according to the terms of the contracts pursuant to which the goods were provided or services were rendered to the maximum extent practicable. To the extent there is any dispute as to the validity of such amounts payable, it shall be resolved pursuant to section 331(a) of this Act.

Section 329. —Assets Backing Retirement or Post-Employment Benefit Plans.—

All assets backing any pension plan, any retirement or post-employment benefit plan, and any other similar funded retiree or employee benefit shall be inviolable and shall not be considered in the calculation of the petitioner's value to be distributed pursuant to a plan under chapter 3 of this Act or final allocation statement pursuant to section 308 of this Act.

Section 330. —Subordination.—

(a) A subordination agreement is enforceable in a case under chapter 3 of this Act to the same extent that such agreement is enforceable under other applicable law.

(b) For the purpose of distribution under chapter 3 of this Act, a claim arising from rescission of a purchase or sale of a security or note of the petitioner or of an affiliate of the petitioner, for damages arising from the purchase or sale of such a security or note, or for reimbursement or contribution allowed on account of such a claim, shall be subordinated to all claims senior to or equal to the claim represented by such security or note.

Section 331. —Allowed Claims.—

(a) No creditor (affected or unaffected) needs to file a proof of claim to be entitled to payments on its claims. To the extent there are disputes between the petitioner and creditors as to the amounts of their claims, such disputes shall be resolved using the same procedures applicable if there were no case under chapter 3 of this Act; provided, however, that claim objections pursuant to sections 330, 332 and 333 of this Act and rejection damage claims shall be determined only by the Court, subject to its power to abstain when the determination is not required prior to deciding whether a plan should be confirmed.

(b) A claim shall be an allowed claim if valid under applicable law to the extent—

(1) it does not include unmatured interest as of the petition date, and

(2) is not disallowed under another provision of this Act.

(c) The assertion of a claim in a chapter 3 case shall not constitute a legal proceeding subject to the disclosure requirement for government vendors and contractors pursuant to any applicable law. The existence of a claim under chapter 3 of this Act shall not constitute the basis for disqualification from any procurement process or for not entering into a contract with the petitioner.

(d) Nothing in this Act shall grant recourse status to non-recourse claims.

Section 332. —Claims for Reimbursement, Contribution, Indemnification, and Subrogation.—

(a) Claims for reimbursement, contribution, or indemnification shall not be allowed to the extent their allowance causes a petitioner to have liability to pay the same underlying debt more than once. To the extent such claims relate to debts in existence prior to the filing of a petition under chapter 3 of this Act, such claims shall not be deemed administrative claims.

(b) The Court shall subordinate to the claim of an affected creditor and for the benefit of such creditor an allowed subrogation claim of an entity that is liable with the petitioner on, or that has secured, such creditor's claim, until such creditor's claim is paid in full, either through payments under chapter 3 of this Act or otherwise.

Section 333. —Payment of Administrative Expenses Pending Plan Confirmation.—

(a) A petitioner timely shall pay in full and in cash all administrative expenses incurred in connection with its operations and its case, including wages, salaries, commissions for services, trade debt, and monthly requests for reasonable fees and reimbursement of expenses incurred by the professionals retained by the petitioner (or retained by GDB on behalf of the petitioner, as provided by section 301(b) of this Act) and the creditors' committee(s), and the noticing agent.

(b) To the extent that a petitioner or GDB believes fees and expenses of a retained professional are unreasonable, it shall advise the applicant of its objection and the petitioner shall pay the undisputed portion. If the petitioner or GDB, as applicable, and the applicant are unable to reach an agreement about the disputed portion, either party may request the Court to rule on the reasonableness of such disputed fees and expenses. The petitioner or GDB, as applicable, may object to any applicant's fees as unreasonable for any legitimate reason.

(c) A petitioner or GDB may, in its sole discretion, retain an entity to serve as a fee examiner to review all fees and disbursements of all professionals for the petitioner and the creditors' committee(s). To the extent any professional requests payments in excess of those recommended by the fee examiner, the professional must procure a Court order allowing such additional amounts.

Section 334. —Custodian.—

(a) A custodian with knowledge of the filing of a petition under chapter 3 of this Act concerning the petitioner may not make any disbursement from, or take any action in the administration of, property of the petitioner, proceeds, product, offspring, rents, or profits of such property, or property of the petitioner, in the possession, custody, or control of such custodian, except such action as is necessary to preserve such property.

(b) A custodian shall—

(1) deliver to the petitioner any property of the petitioner held by or transferred to such custodian, or proceeds, product, offspring, rents, or profits of such property, that is in such custodian's possession, custody, or control on the date that such custodian acquires knowledge of the filing of the petition; and

(2) file an accounting of any property of the petitioner, or proceeds, product, offspring, rents, or profits of such property that, at any time, came into the possession, custody, or control of such custodian.

(c) The Court, after notice and a hearing, shall—

(1) protect all entities to which a custodian has become obligated with respect to such property or proceeds, product, offspring, rents, or profits of such property;

(2) provide for the payment of reasonable compensation for services rendered and costs and expenses incurred by such custodian; and

(3) surcharge such custodian for any improper or excessive disbursement, other than a disbursement that has been made in accordance with any applicable law, or that has been approved, after notice and a hearing, by a court of competent jurisdiction before the filing of the petition.

Section 335. —Turnover.—

(a) Except for collateral secured and perfected by possession, and except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the petitioner may use or transfer pursuant to sections 307 and 323 of this Act, shall deliver to the petitioner, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the petitioner.

(b) Except as provided in this section, an entity that owes a debt to the petitioner that is matured, payable on demand, or payable on order, shall pay such debt to, or on the order of, the petitioner, except to the extent that such debt may be offset against a claim against the petitioner.

(c) Except as provided in section 304(a)(5) of this Act, an entity that has neither actual notice nor actual knowledge of the filing of the petition concerning the petitioner, may transfer property of the petitioner, or pay a debt owing to the petitioner, to an entity other than the petitioner, with the same effect as to the entity making such transfer or payment as if the case under chapter 3 of this Act concerning the petitioner had not been commenced.

(d) Subject to any applicable privilege, after notice and a hearing, the Court may order an attorney, accountant, or other entity that holds recorded information, including books, documents, records, and papers, relating to the petitioner's property or financial affairs, to turn over or disclose such recorded information to the petitioner.

Section 336. —Surrender of Securities.—

If a plan requires presentment or surrender of a security or the performance of any other act as a condition to participation in distribution under the plan, such action shall be taken not later than five (5) years after the date of the entry of the confirmation order or as otherwise provided under the plan. Any entity that has not within such time presented or surrendered such entity's security or taken any such other action that the plan requires may not participate in any distribution under the plan.

Section 337. —Notice of Pleadings.—

(a) Service of any and all pleadings in a case under chapter 3 of this Act, arising in a case under chapter 3 of this Act, or related to a case under chapter 3 of this Act shall be sufficient if provided—

(1) by mail to the last known address or attorney of the affected creditor or other party in interest;

(2) by email to the email address provided by the affected creditor or other party in interest in any of such cases; or

(3) through The Depository Trust Company or similar depository.

(b) Service may be made within the Commonwealth and the United States and by first class mail postage prepaid or email as follows:

(1) notices required to be mailed to an affected creditor or indenture trustee (or entity performing comparable functions) shall be addressed as such entity or an authorized agent has directed in its last notice of appearance filed in the particular case;

(2) if an affected creditor or indenture trustee (or entity performing comparable functions) has not filed a notice of appearance designating a mailing address or email address, the notices shall be mailed to the entity's address, if any, shown on the list of affected creditors filed by the petitioner;

(3) if a list of affected creditors filed by the petitioner includes the name and address of a legal representative of a minor or incompetent person, and an entity other than that representative files a notice of appearance designating a name and mailing address that differs from the name and address of the representative included in the list of affected creditors, unless the Court orders otherwise, notices shall be mailed to the representative included in the list or schedules and to the name and address designated in the notice of appearance;

(4) an entity and the noticing agent may agree that the noticing agent shall give the notice to the entity in the manner agreed to and at the address or addresses the entity supplies to the noticing agent. That address is conclusively presumed to be a proper address for the notice. The noticing agent's failure to use the supplied address does not invalidate any notice that is otherwise effective under applicable law;

(5) an affected creditor may treat a notice as not having been brought to the affected creditor's attention only if, prior to issuance of the notice, the affected creditor has filed a statement with the Court that designates the name and address of the entity or organizational subdivision of the affected creditor responsible for receiving notices under chapter 3 of this Act, and that describes the procedures established by the affected creditor to cause such notices to be delivered to the designated entity or subdivision and the notice does not conform to such designation; and

(6) if the papers in the case disclose a claim of the United States other than for taxes, copies of notices required to be mailed to all affected creditors under this Act shall be mailed to the United States Attorney for the District of Puerto Rico and to

the department, agency, or instrumentality of the United States through which the petitioner became indebted.

(c) If, at the request of the petitioner, a party in interest with standing to be heard on a matter hereunder, or on its own initiative, the Court finds that a notice mailed within the time prescribed by these rules would not be sufficient to give an affected creditor with an address outside the Commonwealth and the United States to which notices under this Act are mailed reasonable notice under the circumstances, the Court may order that the notice be supplemented with notice by other means or that the time prescribed for the notice by mail be enlarged. Unless the Court for cause orders otherwise, the mailing address of an affected creditor with such foreign address shall be determined pursuant to subsections (b)(1) and (b)(2) of this section.

(d) The Court may, in its discretion, order specific noticing requirements for specific deadlines, hearings, and motions in the case, which orders shall supersede the noticing requirements in chapter 3 of this Act to the extent inconsistent.

Section 338. —Special Notices.—

(a) In addition to all other notices required hereunder, a petitioner shall provide special notices of (1) the filing of a petition, (2) the hearing on a petitioner's request for entry of an order determining the petitioner is eligible for relief under chapter 3 of this Act, (3) the hearing on a transfer pursuant to section 307 of this Act, and (4) the hearing on confirmation of the proposed plan. Such notice shall be posted on the website for its case under chapter 3 of this Act and published in accordance with section 116(c)(2) of this Act.

(b) Notice shall be transmitted to

(1) all parties in interest (except for holders of claims not scheduled pursuant to section 302(a)(2) of this Act) for whom a petitioner has readily accessible internal electronic records of mailing addresses or email addresses,

(2) all entities that file notices of appearance, and

(3) in accordance with subsection (c) below, holders of claims not scheduled pursuant to section 302(a)(2) of this Act.

(c) Notwithstanding any contractual provision or applicable law to the contrary, notice of the events set forth in subsection (a) of this section to holders of claims not scheduled pursuant to section 302(a)(2) of this Act shall be proper and reasonable if publication notice thereof is made in accordance with section 116(c)(2) of this Act.

Section 339. —Dismissal of Case.—

(a) After notice and a hearing, the Court may dismiss a case under chapter 3 of th1a) a legislative determination that the state of fiscal emergency underlying the need for chapter 3 of this Act has ended; or

(1) a determination by the Court, or by a federal court whose judgment is final and unappealable, that the petitioner is eligible to prosecute a case under title 11 of the United States Code.

(b) The Court shall dismiss a case under chapter 3 of this Act, and may condition such dismissal on such terms as are just, if the petition is withdrawn pursuant to section 112 of this Act.

Section 340. —Closing of Case.—

(a) After a plan is confirmed and effective, and all disputed claims are resolved, the Court shall close the case.

(b) A case may be reopened in the Court in which such case was closed to enforce the plan, to accord relief to the petitioner, or for other cause.

Section 341. —Escheat Rules.—

Any security, money, or other property remaining unclaimed at the expiration of the time allowed in a case under chapter 3 of this Act for the presentation of a security or the performance of any other act as a condition to participation in the distribution under any final statement of allocation or any plan confirmed under chapter 3 of this Act, or remaining unclaimed after the expiration of a time limit for claiming distribution under such final statement of allocation or such plan, as the case may be, becomes the property of the petitioner or of the entity acquiring the assets of the petitioner under the plan, as the case may be.

Chapter 4: Effectiveness of the Act

Section 401.-Effective Date.

This Act will be effective immediately upon its approval.

DEPARTAMENTO DE ESTADO
Certificaciones, Reglamentos, Registro
de Notarios y Venta de Leyes
Certifico que es copia fiel y exacta del original
Fecha: 30 de junio de 2014

Firma: _____
Francisco J. Rodríguez Bernier
Secretario Auxiliar de Servicios