

FILED
11-13-2017
CIRCUIT COURT
DANE COUNTY, WI
2010CV001576

EXHIBIT 23

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

<p>In re: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i>, Debtors.¹</p>	<p>PROMESA Title III No. 17 BK 3283-LTS (Jointly Administered)</p>
<p>In re: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of PUERTO RICO HIGHWAYS & TRANSPORTATION AUTHORITY, Debtor.</p>	<p>PROMESA Title III No. 17 BK 3567-LTS</p>

Caption Continued on Following Page

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686).

AMBAC ASSURANCE CORPORATION,
Plaintiff,

Adv. Proc. No. 17-00159-LTS

v.

COMMONWEALTH OF PUERTO RICO, FINANCIAL
OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO
RICO, PUERTO RICO FISCAL AGENCY AND FINANCIAL
ADVISORY AUTHORITY, PUERTO RICO HIGHWAYS
AND TRANSPORTATION AUTHORITY, HON. RICARDO
ROSSELLÓ NEVARES, RAÚL MALDONADO GAUTIER,
JOSÉ IVÁN MARRERO ROSADO, GERARDO JOSÉ
PORTELA FRANCO, JOSÉ B. CARRIÓN III, ANDREW G.
BIGGS, CARLOS M. GARCÍA, ARTHUR J. GONZALEZ,
JOSÉ R. GONZÁLEZ, ANA J. MATOSANTOS, DAVID A.
SKEEL, JR., ELÍAS SÁNCHEZ, and JOHN DOES 1-12,
Defendants.

**PLAINTIFF AMBAC ASSURANCE CORPORATION'S OPPOSITION
TO MOTION TO DISMISS PLAINTIFF'S COMPLAINT
PURSUANT TO FED. R. CIV. P. 12(b)(1) and (b)(6)**

FERRAIUOLI LLC

221 Ponce de León Avenue 5th Floor
San Juan, Puerto Rico 00917
Telephone: (787) 766-7000
Facsimile: (787) 766-7001

MILBANK, TWEED, HADLEY & McCLOY LLP

28 Liberty Street
New York, NY 10005
Telephone: (212) 530-5000
Facsimile: (212) 822-5219

Attorneys for Ambac Assurance Corporation

In moving to dismiss, Defendants argue that legal regime governing clawback is no longer relevant—an unusual position given that the ability to claw back HTA’s funds derives from the very same legal structure. Defendants contend that a new regime is in place—the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”)—and that as a consequence the Court not only can but must short-circuit its adjudication of the factual issues presented. Defendants take this position despite PROMESA’s mandate that the Fiscal Plan at the heart of this lawsuit “shall . . . respect lawful priorities or lawful liens . . . in the constitution, other laws, or agreements of” the Commonwealth. 48 U.S.C. § 2141(b)(1)(N).

Consistent with that framing, the Motion advances a number of high-level themes in support of dismissal, each of which is fundamentally misguided and must be dispelled before the flaws in the Motion’s various legal challenges are addressed.

First, Defendants state in various sections of their Motion that the none of the acts challenged in the Complaint—the moratorium legislation and executive orders, the Fiscal Plan, and the Fiscal Plan Compliance Law (the “Compliance Law”)—has caused harm to Ambac because “[o]nly a future Title III plan of adjustment may impair contractual obligations or take collateral.” (Mot. at 2.) This argument is belied by the fact that the Commonwealth has *already* taken, and continues to take, HTA bondholders’ collateral in amounts totaling hundreds of millions of dollars.³ It also ignores that, under PROMESA, the Commonwealth’s budgets (including the budget in effect today) and any plan of adjustment must comply with the Fiscal Plan, including its apparent dictate that *no money* will be available to pay HTA’s bonds.

Second, Defendants claim that Ambac is seeking to disrupt these Title III proceedings merely by objecting to the use of the Fiscal Plan as the fulcrum of the proceedings. While Ambac

³ Indeed, the Commonwealth admits as much in the Fiscal Plan. (See Ex. A (Fiscal Plan) at 28 (“cash flow available for debt service incorporates . . . benefit of clawback revenues”))