

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

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,
et al.,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO HIGHWAYS &
TRANSPORTATION AUTHORITY,

Debtor.

PROMESA
Title III

No. 17 BK 3567-LTS
(Joint Administration
Requested)

PEAJE INVESTMENTS LLC,

Plaintiff,

-v-

PUERTO RICO HIGHWAYS &
TRANSPORTATION AUTHORITY, et al.,

Defendants.

Adv. Proc. No. 17-151-LTS in
17 BK 3567-LTS

Adv. Proc. No. 17-152-LTS in
17 BK 3283-LTS

¹ The Debtors in these Title III cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations 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); and (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474).

ASSURED GUARANTY CORP, et al.,

Plaintiffs,

-v-

COMMONWEALTH OF PUERTO RICO, et al.,

Defendants.

Adv. Proc. No. 17-155-LTS in
17 BK 3283

Adv. Proc. No. 17-156-LTS in
17 BK 3567

AMBAC ASSURANCE CORPORATION,

Plaintiff,

-v-

COMMONWEALTH OF PUERTO RICO, et al.,

Defendants.

Adv. Proc. No. 17-159-LTS
in 17 BK 3283

**PRELIMINARY PRE-TRIAL STATEMENT IN
*AMBAC ASSURANCE CORPORATION V. COMMONWEALTH OF PUERTO
RICO, ET AL., NO. 17-159-LTS; ASSURED GUARANTY CORP., ET AL.
V. COMMONWEALTH OF PUERTO RICO, ET AL., NOS. 17-155-LTS,
17-156-LTS; AND PEAJE INVESTMENTS LLC V. PUERTO RICO HIGHWAYS
& TRANSPORTATION AUTHORITY, ET AL., NOS. 17-151-LTS, 17-152-LTS***

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Pursuant to Section IV of the Initial Pre-Trial Conference Order, issued on June 16, 2017 (Dkt. No. 13), and Rule 26(f) of the Federal Rules of Civil Procedure (“Federal Rules”), applicable to this adversary proceeding under Rule 7026 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), plaintiff Ambac Assurance Corporation (“Ambac”); plaintiffs Assured Guaranty Corp. and Assured Guaranty Municipal Corp. (together, “Assured”), Financial Guaranty Insurance Company (“FGIC”), and National Public Finance Guarantee Corporation (“National”); plaintiff Peaje Investments LLC (“Peaje”) (each a “Plaintiff”); defendant Financial Oversight and Management Board for Puerto Rico (“Oversight Board”), as representative, pursuant to Section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”), of defendants Commonwealth of Puerto Rico (“Commonwealth”) and Puerto Rico Highways and Transportation Authority (“HTA”), and defendant Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) (collectively with individual defendants acting in their official capacities, Ricardo Antonio Rosselló Nevares, Raúl Maldonado Gautier, José Iván Marrero Rosado, Gerardo Portela Franco, Carlos Contreras Aponte, José B. Carrión III, Andrew G. Biggs, Carlos M. García, Arthur J. Gonzalez, José R. González, Ana J. Matosantos, David A. Skeel, Jr., and Elías Sánchez, “Defendants”) have prepared and respectfully submit this preliminary pre-trial statement (“Preliminary Pre-Trial Statement”) in *Ambac Assurance Corp. v. Commonwealth of Puerto Rico, et al.*, Adv. Proc. No. 17-159-LTS (the “Ambac Adversary Proceeding”), *Assured Guaranty Corp., et al. v. Commonwealth of Puerto Rico, et al.*, Adv. Proc. Nos. 17-155-LTS, 17-156-LTS (the “Assured Adversary Proceedings”), and *Peaje Investments LLC v. Puerto Rico Highways & Transportation Authority, et al.*, Adv. Proc. Nos. 17-151-LTS, 17-152-LTS (the “Peaje Adversary Proceedings”).

Plaintiffs and Defendants each expressly reserve all of their respective rights to supplement and amend this Preliminary Pre-Trial Statement. In submitting this Preliminary Pre-

Trial Statement, Plaintiffs and Defendants have not knowingly or intentionally waived any applicable claim or defense. Plaintiffs and Defendants each reserve all of their respective rights to assert and rely on such other applicable claims or defenses that may become available or apparent based upon further investigation or discovery.

Pursuant to Section IV of the Initial Pre-Trial Conference Order, an initial conference between counsel for the parties to the Ambac Adversary Proceeding was held on June 18, 2017; an initial conference between counsel for the parties to the Assured Adversary Proceedings was held on June 17, 2017; and an initial conference between counsel for the parties to the Peaje Adversary Proceedings was held on June 18, 2017.

A. A concise statement of the nature of each action.²

1. Ambac Adversary Proceeding:

This is an adversary proceeding seeking declaratory and injunctive relief in connection with alleged violations of Ambac’s purported constitutional and statutory rights as owner and/or insurer of certain bonds issued by HTA (the “HTA Bonds”). Ambac alleges that its claims arise from Defendants’ diversion and/or “clawback” of purported special revenues pledged to the

² Assured, National and FGIC filed two identical adversary proceedings, Adv. Proc. Nos. 17-155-LTS and 17-156-LTS (*i.e.*, the Assured Adversary Proceedings) because they are alleging claims against the Commonwealth and HTA and a motion to jointly administer the Title III cases of the Commonwealth and HTA is pending. Further, the Court’s Order regarding Joint Administration of Title III Cases provides that to the extent a party files a Court Filing “applicable to fewer than all of the jointly administered Debtors . . . the pleading shall be filed in both the lead Case No. 17 BK 3283-LTS and the applicable title III case(s).” No. 17 BK 3283-LTS, Dkt. No. 242 at 3. Assured, National and FGIC do not object to the consolidation of these two adversary proceedings.

Defendants do not agree to consolidation for all purposes at this time, but there are common issues of law the resolution of which will impact each of the adversary proceedings (*e.g.*, whether the bonds at issue in this case are secured by an enforceable lien and whether PROMESA Section 305 deprives the Court of authority to grant the request by Assured, National and FGIC for affirmative and injunctive relief).

repayment the HTA Bonds through the (i) enactment, issuance, and implementation of moratorium legislation and related executive orders suspending repayment of HTA Bonds and (ii) certification of the fiscal plan (the “Fiscal Plan”), and subsequent passage of the Fiscal Plan Compliance Act.

Specifically, Ambac has alleged six causes of actions seeking, among other relief: (i) a declaration that Defendants’ alleged diversion of special revenues pledged to the repayment of HTA Bonds is violative of Ambac’s asserted rights under the Contracts, Takings, and Due Process Clauses of the U.S. Constitution; (ii) a declaration that the moratorium executive orders deprived Ambac of access to Article III courts; (iii) a declaration that Defendants’ actions are preempted by section 303 of PROMESA and are therefore unlawful, invalid, null, and void; (iv) a declaration that Defendants’ actions violated section 407 of PROMESA; (v) a declaration that asserted special revenues allegedly pledged to the repayment of HTA Bonds are “special revenues,” as that term is defined under the Bankruptcy Code and section 301 of PROMESA; and (vi) related injunctive relief.

Defendants deny that Plaintiff is entitled to such relief, deny that a claim for relief has been stated, and assert other defenses to Plaintiff’s allegations, including but not limited to those described herein.

2. Assured Adversary Proceedings:

This is an adversary proceeding seeking declaratory and injunctive relief in connection with alleged violations of Sections 922 and 928 of the Bankruptcy Code by Defendants. Assured, National and FGIC allege that their claims arise from Defendants’ diversion of special revenues pledged to the repayment of bonds issued by HTA and insured by Plaintiffs (the “HTA Bonds”). Assured, National and FGIC request a declaration that the filing of a Title III petition by HTA does not stay the application of pledged special revenues to the payment of the HTA

Bonds and a declaration that the failure to remit the pledged special revenues for application to debt service during the Title III proceeding violates Sections 922 and 928 of the Bankruptcy Code (the “First Claim for Relief”). Additionally, Assured, National and FGIC request an injunction prohibiting Defendants from taking or causing to be taken any action that would further violate Sections 922 and 928 of the Bankruptcy Code (the “Second Claim for Relief”) and an injunction requiring Defendants to remit pledged special revenues in accordance with Sections 922 and 928 of the Bankruptcy Code (the “Third Claim for Relief”).

Defendants deny that Assured, National and FGIC are entitled to such relief, deny that a claim for relief has been stated, and assert other defenses to the allegations of Assured, National and FGIC, including but not limited to those described herein.

3. Peaje Adversary Proceedings:

Peaje:

Peaje contends that, in this adversary proceeding, it seeks declaratory, injunctive, and other relief related to its ownership of certain bonds issued by HTA (the “Bonds”). Peaje claims that the Bonds are secured by a valid, enforceable, first-priority lien on certain toll revenues that HTA collects in its operations (the “Toll Revenues”). Peaje further claims that HTA and its Executive Director are required by applicable law to deposit the Toll Revenues into a collateral account maintained with a fiscal agent, currently Bank of New York Mellon (the “Fiscal Agent”), for purposes of paying the Bonds, but that, for more than a year, HTA and its Executive Director have continuously diverted the Toll Revenues for other uses. Peaje seeks a preliminary and permanent injunction and a judgment and order, among other things, declaring its rights with respect to the Toll Revenues under Sections 922 and 928 of the Bankruptcy Code; determining that the automatic stays applicable in this case do not apply with respect to Peaje’s exercise of its rights under Section 922, or, alternatively, granting relief from stay unless Peaje is adequately

protected; requiring HTA and its Executive Director to resume depositing the Toll Revenues with the Fiscal Agent in accordance with applicable law; and preventing the Commonwealth, AAFAF, and certain of their respective officials from interfering with the obligation of HTA and its Executive Director to deposit the Toll Revenues with the Fiscal Agent. Contrary to Defendants' assertion immediately below, Peaje contends that it has not waived its right to seek termination of the automatic stays pending the Court's adjudication of Peaje's motion for preliminary injunction scheduled for hearing on August 8, 2017. Peaje also otherwise disputes Defendants' recharacterization immediately below of Peaje's concise statement of the nature of Peaje's claims.

Defendants deny that Peaje is entitled to such relief, deny that a claim for relief has been stated, and assert other defenses to Peaje's allegations, including but not limited to those described herein.

Defendants:

In this adversary proceeding, Peaje seeks declaratory, injunctive, and other relief related to its alleged ownership of certain bonds issued by HTA (the "Bonds")³. Peaje claims that the Bonds are secured by a valid, enforceable, statutory lien on toll revenues that have been collected by HTA for three highways (PR-20, PR-52, and PR-53), but not deposited by HTA into a trust account for which Bank of New York Mellon is fiscal agent, and future toll revenues on those highways (the "Toll Revenues"). Peaje further claims that HTA and its Executive Director are required by applicable law to deposit the Toll Revenues into the account maintained with Bank of New York Mellon as fiscal agent (the "Fiscal Agent") for purposes of paying the Bonds, but that, for more than a year, HTA and its Executive Director have continuously diverted the Toll

³ The definitions provided in Defendants' Section A apply to Defendants' submissions throughout this document.

Revenues for other uses. Peaje seeks a declaratory judgment and injunctive relief with respect to the Toll Revenues. As set forth in the Court's June 7, 2017 Order Scheduling Hearing, Peaje also seeks termination of the automatic stay pursuant to section 362(e), but has waived its right to seek such termination pending the Court's adjudication of Peaje's motion for preliminary injunction (the "Motion for Preliminary Injunction") scheduled for hearing on August 8, 2017.

Defendants deny that Peaje is entitled to such relief, deny that a claim for relief has been stated, and assert other defenses to Peaje's allegations, including but not limited to those described herein. Defendants specifically deny that Peaje has accurately characterized their Verified Complaint and Motion for Preliminary Injunction.

B. Whether there are any other pending related actions.

1. Ambac Adversary Proceeding:

In addition to the above-captioned adversary proceedings, the following pending actions involve issues similar to the adversary proceeding commenced by Ambac (Adv. Proc. No. 17-159-LTS) (the "Ambac Adversary Proceeding"):

- *Assured Guaranty Corp., et al. v. Garcia-Padilla, et al.*, No. 16-01037-FAB (D.P.R. Jan. 7, 2016);
- *Financial Guaranty Insurance Company v. Garcia-Padilla, et al.*, No. 16-01095-FAB (D.P.R. Jan. 19, 2016);
- *Ambac Assurance Corp. v. Puerto Rico Highways and Transportation Authority, et al.*, No. 16-cv-01893 (D.P.R.);
- *National Public Finance Guarantee Corp. v. Garcia Padilla, et al.*, No. 16-02101-FAB (D.P.R. June 15, 2016);
- *Peaje Investments LLC v. Garcia-Padilla, et al.*, No. 16-cv-02365 (D.P.R.); and
- *Assured Guaranty Corp. et al. v. Commonwealth of Puerto Rico, et al.*, No. 16-cv-02384 (D.P.R.).

The above-listed actions were either stayed or dismissed without prejudice.

2. Assured Adversary Proceedings:

Assured, National and FGIC each separately commenced the actions listed below that they allege pertain to certain monies. Assured, National and FGIC allege that the legal issues in these previous actions are different from the Assured Adversary Proceedings given that, in the view of Assured, National and FGIC, the Special Revenue Provisions (as defined below) in the Bankruptcy Code did not apply in 2016 because HTA and the Commonwealth had not filed their Title III cases. Such actions were either stayed or dismissed by the Court without prejudice:

- *Assured Guar. Corp. v. García-Padilla*, No. 16-01037-FAB (D.P.R. Jan. 7, 2016);
- *Finacial Guar. Ins. Co. v. García-Padilla*, No. 16-01095-FAB (D.P.R. Jan. 19, 2016);
- *Nat'l Pub. Fin. Guar. Corp. v. García-Padilla*, No. 16-02101-FAB (D.P.R. June 15, 2016); and
- *Assured Guar. Corp. v. Commonwealth*, No. 16-02384-FAB (D.P.R. July 21, 2016).

Peaje and Ambac⁴ commenced the following adversary proceedings that involve issues similar to the Assured Adversary Proceedings:

- *Peaje Invs. LLC v. P.R. Highways & Transp. Auth.*, Adv. Proc. Nos. 17-151-LTS, 17-152-LTS (the "Peaje Adversaries"); and
- *Ambac Assurance Corp. v. Commonwealth*, Adv. Proc. No. 17-159-LTS (the "Ambac Adversary").

3. Peaje Adversary Proceedings:

On May 9, 2017, prior to the filing of HTA's petition under Title III of PROMESA, Peaje filed a complaint in the District Court for the District of Puerto Rico against HTA and its

⁴ Additionally, Peaje and Ambac also commenced the following actions before the Commonwealth and HTA filed their Title III cases: *Peaje Invs. LLC v. García-Padilla*, No. 16-02365-FAB (D.P.R. July 18, 2016), *Ambac Assurance Corp. v. Commonwealth*, No. 17-1567 (D.P.R. May 1, 2017), and *Ambac Assurance Corp. v. Commonwealth*, No. 17-1568 (D.P.R. May 2, 2017).

Executive Director seeking declaratory and injunctive relief in connection with the Bonds. *See Peaje Investments LLC v. Puerto Rico Highways & Transportation Authority*, 3:17-cv-01612-FAB (D.P.R.). Peaje also filed a motion for a temporary restraining order and a preliminary injunction to require HTA and its Executive Director to resume depositing the Toll Revenues with the Fiscal Agent. On May 23, 2017, one day after HTA filed its Title III petition, Judge Besosa entered an order staying the case until further court order.

In addition, the following adversary proceedings pending before this Court involve issues similar to Peaje's adversary proceeding, but are not necessarily related actions:

- *Assured Guaranty Corp., et.al. v. Commonwealth of Puerto Rico, et al.*, Adv. Proc. Nos. 17-156-LTS & 17-155-LTS in Case Nos. 17 BK 3567-LTS (D.P.R.) & 17 BK 3283-LTS (D.P.R.); and
- *Ambac Assurance Corporation v. Commonwealth of Puerto Rico, et al.*, Adv. Proc. No. 17-159-LTS in Case No. 17 BK 3567-LTS (D.P.R.).⁵

C. A concise statement of all material uncontested or admitted facts.

1. Ambac Adversary Proceeding

HTA and the HTA Bonds

1. Act No. 74-1965 (the "Enabling Act") has been codified as 9 L.P.R.A. §§ 2001-2021.

⁵ Assured, National, FGIC and Ambac commenced the following other cases before the Commonwealth and HTA filed their Title III cases: *Ambac Assurance Corp. v. Commonwealth of Puerto Rico*, No. 17-1567 (D.P.R.); *Ambac Assurance Corp. v. Commonwealth of Puerto Rico*, No. 17-1568 (D.P.R.); *Assured Guaranty Corp., et al. v. Garcia-Padilla, et al.*, No. 16-01037-FAB (D.P.R.); *Financial Guaranty Insurance Company v. Garcia-Padilla, et al.*, No. 16-01095-FAB (D.P.R.); *National Public Finance Guarantee Corp. v. Garcia Padilla, et al.*, No. 16-02101-FAB (D.P.R.); *Assured Guaranty Corp., et al. v. Commonwealth of Puerto Rico, et al.*, No. 16-02384-FAB (D.P.R.).

2. Resolution No. 68-18 (the “1968 Resolution”) and Resolution No. 98-06 (the “1998 Resolution”) and, together with the 1968 Resolution, the “HTA Resolutions”) exist and HTA has issued several series of bonds pursuant to the HTA Resolutions.

3. Official Statements related to the issuance of HTA’s bonds exist.

The Puerto Rico Constitution and Clawback

4. The Constitution of the Commonwealth of Puerto Rico (the “Puerto Rico Constitution”) contains several provisions dealing with appropriations and the payment of debt and expenses.

The 2015 Clawback Executive Orders

5. On November 30, 2015, the Governor issued Administrative Bulletin OE-2015-046 (the “First Clawback Order”).

6. On December 8, 2015, the Governor issued Administrative Bulletin OE-2015-49 (the “Second Clawback Order”).

The Moratorium Act and Moratorium Executive Orders

7. On April 6, 2016, the Commonwealth enacted the Puerto Rico Emergency Moratorium and Financial Rehabilitation Act, Act No. 21-2016 (the “Moratorium Act”).

8. Beginning in May 2016 and continuing through June of that year, then-Governor García Padilla issued a series of executive orders (the “Moratorium Orders”) under the Moratorium Act. On May 17, 2016, then-Governor García Padilla signed Administrative Bulletin No. OE-2016-018 (the “May 2016 Executive Order”).

9. On June 30, 2016, then-Governor García Padilla issued two additional executive orders: (a) Administrative Bulletin No. EO-2016-30 (the “First June 2016 Executive Order”); and (b) Administrative Bulletin No. EO-2016-31 (the “Second June 2016 Executive Order,” and together with the First June 2016 Executive Order, the “June 2016 Executive Orders”).

The Amended Moratorium Act

10. On January 29, 2017, the Governor signed into law the Puerto Rico Financial Emergency and Fiscal Responsibility Act (the “Amended Moratorium Act”; and together with the Moratorium Act, the “Moratorium Legislation”).

The Fiscal Plans and Fiscal Plan Compliance Law

11. On June 30, 2016, President Barack Obama signed PROMESA into law. *See* Puerto Rico Oversight, Management, and Economic Stability Act, 48 U.S.C. § 2101, *et. seq.* (2016).

12. On March 13, 2017 the Financial Oversight and Management Board for Puerto Rico certified the Commonwealth’s Fiscal Plan subject to two amendments, which amended plan was subsequently corrected on April 18, 2017.

13. On April 28, 2017, the Financial Oversight and Management Board for Puerto Rico certified the HTA Fiscal Plan.

14. On April 29, 2017, the Commonwealth enacted Act No. 26-2017 entitled the “Fiscal Plan Compliance Law.” *See* Act No. 26-2017.

15. On May 3, 2017, the Oversight Board commenced a case on behalf of the Commonwealth under Title III of PROMESA.

16. On May 21, 2017, the Oversight Board commenced a case on behalf of HTA under Title III of PROMESA.

17. Under the HTA Resolutions, there is currently approximately \$4.2 billion in principal amount outstanding.

2. Assured Adversary Proceedings:

The following material facts are uncontested:

1. HTA Act No. 74-1965 (the “Enabling Act”) has been codified as 9 L.P.R.A. §§ 2001–2021.

2. Resolution No. 68-18 (the “1968 Resolution”) and Resolution No. 98-06 (the “1998 Resolution” and, together with the 1968 Resolution, the “HTA Resolutions”) exist and HTA has issued several series of bonds pursuant to the HTA Resolutions.

3. Official Statements related to the issuance of HTA’s bonds exist.

4. The Constitution of the Commonwealth of Puerto Rico (the “Puerto Rico Constitution”) contains several provisions dealing with appropriations and the payment of debt and expenses.

5. On November 30, 2015, the Governor issued Administrative Bulletin OE-2015-046 (the “First Clawback Order”).

6. On December 8, 2015, the Governor issued Administrative Bulletin OE-2015-49 (the “Second Clawback Order”).

7. On April 6, 2016, the Commonwealth enacted the Puerto Rico Emergency Moratorium and Financial Rehabilitation Act, Act No. 21-2016 (the “Moratorium Act”).

8. Beginning in May 2016 and continuing through June of that year, then-Governor García Padilla issued a series of executive orders (the “Moratorium Order”) under the Moratorium Act. On May 17, 2016, then-Governor García Padilla signed Administrative Bulletin No. OE-2016-018 (the “May 2016 Executive Order”).

9. On June 30, 2016, then-Governor García Padilla issued two additional executive orders: (a) Administrative Bulletin No. EO-2016-30 (the “First June 2016 Executive Order”); and (b) Administrative Bulletin No. EO-2016-31 (the “Second June 2016 Executive Order,” and together with the First June 2016 Executive Order, the “June 2016 Executive Orders”).

10. On January 29, 2017, the Governor signed into law the Puerto Rico Financial Emergency and Fiscal Responsibility Act (the “Amended Moratorium Act”; and together with the Moratorium Act, the “Moratorium Legislation”).

11. On June 30, 2016, President Barack Obama signed PROMESA into law. *See* Puerto Rico Oversight, Management, and Economic Stability Act, 48 U.S.C. §§ 2101-2241 (2016).

12. Pursuant to PROMESA, a Financial Oversight and Management Board (the “Oversight Board” or “FOMB”) was established for Puerto Rico.

13. On March 13, 2017, the Oversight Board certified the Commonwealth’s fiscal plan subject to two amendments, which amended fiscal plan was subsequently corrected on April 18, 2017 (the “Commonwealth Fiscal Plan”).

14. On April 28, 2017, the Oversight Board certified HTA’s fiscal plan (the “HTA Fiscal Plan”).

15. On April 29, 2017, the Commonwealth enacted Act No. 26-2017 entitled the “Fiscal Plan Compliance Law” (“Fiscal Plan Act”).

16. On May 3, 2017, the Oversight Board commenced a case on behalf of the Commonwealth under Title III of PROMESA.

17. On May 21, 2017, the Oversight Board commenced a case on behalf of HTA under Title III of PROMESA.

18. Under the HTA Resolutions, there is currently approximately \$4.2 billion in principal amount outstanding.

19. The HTA Bonds are non-recourse bonds payable solely from certain pledged revenues and taxes. 9 L.P.R.A. § 2015.

20. Assured, FGIC, and National insure scheduled payments of principal and interest on certain HTA Bonds under certain insurance agreements and policies.

21. HTA collects receipts from toll plazas on Puerto Rico's toll highways, including PR-52, PR-53, PR-20, and PR-66 (the "Toll Highways").

3. Peaje Adversary Proceedings:

The following material facts are uncontested:

1. HTA was created under Act No. 74-1965 (the "Enabling Act"), which has been codified as 9 L.P.R.A. § 2001 – 2021.

2. On June 13, 1968, the Secretary of Transportation and Public Works of the Commonwealth of Puerto Rico adopted Resolution 68-18 (the "1968 Resolution").

3. HTA has issued several series of bonds under the 1968 Resolution (the "1968 Bonds").

4. Resolution No. 98-06 (the "1998 Resolution") was adopted by the Secretary of Transportation and Public Works of the Commonwealth of Puerto Rico on February 26, 1998.

5. On April 6, 2016, the Commonwealth enacted the Puerto Rico Emergency Moratorium and Financial Rehabilitation Act, Act No. 21-2016 (the "Moratorium Act").

6. On May 17, 2016, then-Governor García Padilla signed Administrative Bulletin No. OE-2016-018 (the "May 2016 Executive Order").

7. On June 30, 2016, then-Governor García Padilla issued two additional executive orders: (a) Administrative Bulletin No. EO-2016-30 (the "First June 2016 Executive Order"); and (b) Administrative Bulletin No. EO-2016-31 (the "Second June 2016 Executive Order" and with the First June 2016 Executive Order, the "June 2016 Executive Orders").

8. PROMESA was enacted on June 30, 2016.

9. Pursuant to PROMESA, a Financial Oversight and Management Board (the “Oversight Board” or “FOMB”) was established for Puerto Rico.

10. On March 13, 2017, the FOMB certified the Commonwealth’s fiscal plan subject to two amendments, which amended fiscal plan was subsequently amended on April 18, 2017 (the “Commonwealth Fiscal Plan”).

11. On April 28, 2017, the FOMB certified HTA’s fiscal plan (the “HTA Fiscal Plan”).

12. On April 29, 2017, the Commonwealth enacted Act No. 26-2017 entitled the “Fiscal Plan Compliance Law” (“Fiscal Plan Act”).

13. On May 3, 2017, the Oversight Board filed a petition for relief on behalf of the Commonwealth under Title III of PROMESA.

14. On May 21, 2017, the Oversight Board filed a petition for relief on behalf of HTA under Title III of PROMESA

D. A concise statement of all uncontested legal issues.

1. Ambac Adversary Proceeding:

1. **Ambac:** This Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the U.S. Constitution and federal statutes.

Defendants: Contested to the extent PROMESA Sections 106(e) and 305 apply.

2. **Ambac:** This Court also has subject matter jurisdiction under 28 U.S.C. § 1332, as the parties are of diverse citizenship and the amount in controversy exceeds \$75,000.

Defendants: Contested to the extent PROMESA Sections 106(e) and 305 apply. Further contested because Plaintiff has not alleged facts to enable Defendants to determine whether diverse citizenship exists. Further contested because the Commonwealth, as well as its officials and agencies, are not “citizens” for purposes of 28 U.S.C. § 1332. *See, e.g., CBR Holdings, L.P.*

v. Hotel Development Corp., 203 F. Supp. 2d 131 (D.P.R. 2002) (holding diversity jurisdiction does not extend to Puerto Rico, or to Hotel Development Corporation, which was considered an arm of the Commonwealth of Puerto Rico); *Llewellyn-Waters v. University of Puerto Rico*, 56 F. Supp. 2d 159, 162 (D.P.R. 1999) (“UPR must also be dismissed from the case because Llewellyn-Waters founded the Court’s jurisdiction upon diversity of the parties. UPR is an instrumentality of the Commonwealth of Puerto Rico, and as such, is insusceptible to diversity jurisdiction.”) (collecting cases); *see also* 28 U.S.C. § 1332(e) (defining “State” to include the Commonwealth of Puerto Rico).

3. **Ambac:** Section 306 of PROMESA, 48 U.S.C. § 2166, provides an additional basis for the Court’s subject matter jurisdiction because the controversy between the parties arises under Title III of PROMESA, or at a minimum, arises in, or is related to, a case under Title III. *Id.* at 13.

Defendants: Contested to the extent PROMESA Sections 106(e) and 305 apply.

4. **Ambac:** This Court has personal jurisdiction over all of the Defendants pursuant to Section 306(c) of PROMESA. 48 U.S.C. § 2166(c). *Id.* at 6.

Defendants: Not contested.

5. **Ambac:** An actual and justiciable controversy has arisen and exists between the parties with respect to the issues and claims alleged herein.

Defendants: Contested to the extent Plaintiff’s claims are not ripe.

6. **Ambac:** Venue is proper in this District under 28 U.S.C. § 1391 because all or a substantial part of the events giving rise to these claims occurred in this District. Venue is also proper under 48 U.S.C. § 2167 because this adversary proceeding is brought in a Title III proceeding.

Defendants: Not contested.

7. **Defendants:** The claims of Plaintiff are dependent on the existence of an enforceable lien.

Ambac: Contested.

8. **Defendants:** Plaintiff bears the burden of proof on the existence of an enforceable lien.

Ambac: Contested.

2. Assured Adversary Proceedings:

1. **Assured/National/FGIC:** This Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the U.S. Constitution and federal statutes.

Defendants: Contested to the extent PROMESA Sections 106(e) and 305 apply.

2. **Assured/National/FGIC:** This Court also has subject matter jurisdiction under 28 U.S.C. § 1332, as the parties are of diverse citizenship and the amount in controversy exceeds \$75,000.

Defendants: Contested to the extent PROMESA Sections 106(e) and 305 apply. Further contested because Plaintiff has not alleged facts to enable Defendants to determine whether diverse citizenship exists. Further contested because the Commonwealth, as well as its officials and agencies, are not “citizens” for purposes of 28 U.S.C. § 1332. *See, e.g., CBR Holdings, L.P. v. Hotel Development Corp.*, 203 F. Supp. 2d 131 (D.P.R. 2002) (holding diversity jurisdiction does not extend to Puerto Rico, or to Hotel Development Corporation, which was considered an arm of the Commonwealth of Puerto Rico); *Llewellyn-Waters v. University of Puerto Rico*, 56 F. Supp. 2d 159, 162 (D.P.R. 1999) (“UPR must also be dismissed from the case because Llewellyn-Waters founded the Court’s jurisdiction upon diversity of the parties. UPR is an instrumentality of the Commonwealth of Puerto Rico, and as such, is insusceptible to diversity

jurisdiction.”) (collecting cases); *see also* 28 U.S.C. § 1332(e) (defining “State” to include the Commonwealth of Puerto Rico).

3. **Assured/National/FGIC:** Section 306 of PROMESA, 48 U.S.C. § 2166, provides an additional basis for the Court’s subject matter jurisdiction because the controversy between the parties arises under Title III of PROMESA, or at a minimum, arises in, or is related to, a case under Title III.

Defendants: Contested to the extent PROMESA Sections 106(e) and 305 apply.

4. **Assured/National/FGIC:** This Court has personal jurisdiction over all of the Defendants pursuant to Section 306(c) of PROMESA. 48 U.S.C. § 2166(c).

Defendants: Not contested.

5. **Assured/National/FGIC:** An actual and justiciable controversy has arisen and exists between the parties with respect to the issues and claims alleged herein.

Defendants: Contested to the extent Plaintiff’s claims are not ripe.

6. **Assured/National/FGIC:** Venue is proper in this District under 28 U.S.C. § 1391 because all or a substantial part of the events giving rise to these claims occurred in this District. Venue is also proper under 48 U.S.C. § 2167 because this adversary proceeding is brought in a Title III proceeding.

Defendants: Not contested.

7. **Defendants:** The claims of Plaintiffs are dependent on the existence of an enforceable lien.

Assured/National/FGIC: Plaintiffs have enforceable liens on pledged revenues. Specifically, the HTA Enabling Act and HTA Resolutions provide that the HTA Bonds are secured by a gross lien on: (1) HTA toll revenues from the Toll Highways (the “Pledged Toll Revenues”); (2) gasoline, diesel, crude oil, and other special excise taxes levied by the

Commonwealth (the “Pledged Tax Revenues”); and (3) motor vehicle license fees (the “Vehicle Fees,” and together with the Pledged Tax Revenues, the “Pledged Special Excise Taxes.” Together, the Pledged Special Excise Taxes and Pledged Toll Revenues are referred to as the “Pledged Revenues”.

8. **Defendants:** Plaintiff bears the burden of proof on the existence of an enforceable lien.

Assured/National/FGIC: Contested. Plaintiffs bear the burden of showing as a matter of law or by a preponderance of the evidence their claims for relief.

9. **Defendants:** Defendants dispute each of the legal issues identified by Assured, National and FGIC in Section E.

10. **Assured/National/FGIC:** Contested.

3. Peaje Adversary Proceedings:

The following legal issues are uncontested:

Venue is proper in this Court pursuant to 48 U.S.C. § 2167 [PROMESA § 307].

E. A concise statement of all legal issues to be decided by the Court.

1. Ambac Adversary Proceeding:

Ambac:

Given that this adversary proceeding has just commenced and Defendants have not yet filed any responsive pleadings, Ambac is unable at this time to identify all legal issues to be decided by the Court. Ambac reserve all rights to amend, modify, add to, or otherwise identify additional legal issues in response to Defendants’ pleadings or in the event Defendants amend their pleadings or otherwise change their legal theory as alleged in their pleadings. At this preliminary stage of the case, Ambac identifies the following known legal issues:

1. Whether Defendants have substantially impaired Ambac’s contract rights in violation of Article I, Section 10, Clause 1 (the “Contracts Clause”) of the U.S. Constitution through the Moratorium Legislation, Moratorium Orders, Fiscal Plan, and Fiscal Plan Compliance Act.

2. Whether Defendants have taken Ambac’s property without just compensation or due process of law in violation of the Takings Clause (the “Takings Clause”) of the Fifth Amendment to the U.S. Constitution and Due Process Clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution (the “Due Process Clauses”) through the Moratorium Legislation, Moratorium Orders, Fiscal Plan, and Fiscal Plan Compliance Act.

3. Whether the Moratorium Legislation, Moratorium Orders, Fiscal Plan, and Fiscal Plan Compliance Act are preempted under the Supremacy Clause of the U.S. Constitution and various conflicting federal laws in addition to Section 922(d) of the Bankruptcy Code—particularly, Section 903(1) of the Bankruptcy Code, Sections 4, 303(1), 303(3), and 204(c)(3)(A) of PROMESA, and the Bankruptcy Clause of the U.S. Constitution.

4. Whether Defendants have unconstitutionally limited Ambac’s and others’ access to Article III courts through the Moratorium Legislation, Moratorium Orders, Fiscal Plan, and Fiscal Plan Compliance Act.

5. Whether the HTA Bonds are secured by liens on the Pledged Special Excise Taxes and Pledged Toll Revenues (together, the “Pledged Revenues”) that are “special revenues” pursuant to Sections 902 and 928(a) of the Bankruptcy Code.

6. Whether the post-petition Pledged Revenues remain subject to liens resulting from security agreements entered into by HTA.

7. Whether the filing of Title III by HTA does operate as a stay of application of the Pledged Revenues to the payment of the HTA Bonds pursuant to section 922(d) of the Bankruptcy Code.

8. Whether Defendants' failure to remit the Pledged Revenues for application to debt service and using such revenues to pay for other expenses during these Title III cases violates sections 922(d) and 928(a) of the Bankruptcy Code.

9. Whether section 928(b) of the Bankruptcy Code applies to the Pledged Revenues.

10. Whether Ambac is entitled to permanent injunctive relief prohibiting the Defendants from taking or causing to be taken any action that would further violate Sections 922(d) and 928(a) of the Bankruptcy Code as made applicable to these Title III proceedings by Section 301 of PROMESA.

11. Whether Ambac is entitled to permanent injunctive relief requiring Defendants to remit revenues securing the HTA Bonds in accordance with Sections 922(d) and 928(a) of the Bankruptcy Code as made applicable to these Title III proceedings by Section 301 of PROMESA.

12. To the extent the stays under Sections 362 and 922 apply, whether HTA should be directed to provide Ambac with adequate protection pursuant to Section 361 of the Bankruptcy Code in the form of HTA depositing a sufficient amount of Pledged Toll Revenues with the Fiscal Agent to ensure the timely payment of principal and interest on Ambac's bonds, or failing that, lifting the bankruptcy stays to allow Ambac to enforce its rights and remedies with respect to its bonds.

13. Whether the 1968 Bondholders' lien which results from both the Enabling Act that created HTA and the binding municipal resolution governing Plaintiff's lien is a "statutory lien" within the meaning of Section 101(53) of the Bankruptcy Code, 11 U.S.C. § 101(53).

14. Whether Section 552(a) or Section 928(b) of the Bankruptcy Code applies to Plaintiff's bonds because, among other things, those bonds are secured by a statutory lien on the Toll Revenues.

Defendants:

Given that this adversary proceeding has just commenced and Defendants have not yet filed their responsive pleadings, the Defendants are unable at this time to identify all legal issues to be decided by the Court. Defendants reserve all of their rights to amend, modify, add to, or otherwise identify additional legal issues in the event Ambac amends its pleadings or otherwise changes its legal theory as alleged in its pleadings. Defendants dispute as without merit each of the legal issues identified by Ambac in Section E. At this preliminary stage of the case, Defendants identify the following legal issues:

1. Whether Plaintiff lacks standing to bring some or all of its claims.
2. Whether Plaintiff has stated claims upon which relief can be granted.
3. Whether PROMESA Section 106(e) deprives the Court of subject matter jurisdiction to adjudicate some or all of Plaintiff's claims.
4. Whether PROMESA Section 305 deprives the Court of authority to grant Plaintiff's requested affirmative and injunctive relief.
5. Whether the bonds at issue in this case are secured by an enforceable statutory lien on highway toll revenues, motor vehicle license taxes, and/or certain gas/petroleum taxes when they are collected by HTA.
6. Whether the bonds at issue in this case are secured by an enforceable contractual lien.
7. Whether the bonds at issue in this case are secured by any other form of enforceable lien.

8. Assuming, *arguendo*, that the bonds in this case are secured by an enforceable lien, whether that lien applies to funds currently held by HTA, or whether it also applies to future toll revenues, motor vehicle license taxes, and/or certain gas/petroleum taxes to be received by HTA.

9. Whether Bankruptcy Code Section 928 is constitutional, in light of the fact that the creditors were highly sophisticated, HTA and Puerto Rico were subject to the bankruptcy laws until 1982, and changes to bankruptcy regimes have been applied to preexisting debt in other circumstances.

10. Assuming, *arguendo*, that the bonds at issue in this case are secured by an enforceable lien on special revenues under Bankruptcy Code Section 928(a), which expenses of the project and system may be deducted from the toll revenues, motor vehicle license taxes, and certain gas/petroleum taxes to support Puerto Rico's transportation system under Bankruptcy Code Section 928(b).

11. Assuming, *arguendo*, that the bonds at issue in this case are secured by an enforceable lien, whether Bankruptcy Code Section 552(a) bars that lien from attaching to post-petition moneys received by HTA, or to which HTA is allegedly entitled.

12. Whether the bonds at issue in this case are "special revenue" bonds under Bankruptcy Code Section 928.

13. Whether the Commonwealth's clawback rights preclude Plaintiff's pursuit of tax revenues or other funds at issue in this case.

14. To the extent Plaintiff requests adequate protection, whether Plaintiff established the prerequisite that the bonds at issue in this case are secured by an enforceable lien.

15. To the extent Plaintiff requests adequate protection, whether Plaintiff is adequately protected or the value of the collateral at the time of HTA's Title III filing, as well as

whether Plaintiff's interest in future toll revenues, motor vehicle license taxes, and certain gas/petroleum taxes can constitute adequate protection.

16. Whether the challenged actions are a proper exercise of the Commonwealth's police power.

17. Whether Plaintiff has stated a claim for violation of the Contract Clause of the U.S. Constitution.

18. Whether Plaintiff's claimed contractual rights are being "impaired" if rights have already been lost and/or if Plaintiff's alleged recovery would be worse under their alleged path than under the challenged action.

19. Whether Defendants' actions constitute violations of the Takings Clause of the U.S. Constitution.

20. Whether Defendants' actions constitute violations of the Due Process Clause of the U.S. Constitution.

21. Whether Defendants' actions constitute violations of Article III of the U.S. Constitution.

22. Whether any of the alleged violations in the preceding five paragraphs give rise to general prepetition claims or postpetition, administrative claims.

23. Whether any or all the constitutional violations Plaintiff alleges are not constitutional violations if the relief Plaintiffs request diminishes the value of Plaintiffs' rights and overall recovery by rendering a turnaround of the Commonwealth's negative economic growth more difficult or impossible.

24. Whether Plaintiff's rights against HTA can have value in the context of a fiscal emergency impacting the Commonwealth and all its instrumentalities formerly receiving funding from the Commonwealth.

25. Whether Defendants' laws, orders, or other actions were unenforceable or preempted by PROMESA Section 303.

26. Whether Defendants' actions caused transfers for which any Defendants are liable under PROMESA Sections 105 and 407.

27. Whether Defendants' actions "violated" PROMESA Section 301 and Bankruptcy Code Sections 922 and 928.

28. Whether Defendants' actions implicated any of the provisions of Bankruptcy Code Sections 922 and 928, as applicable to HTA's title III case by PROMESA Section 301.

2. Assured Adversary Proceedings:

Assured/National/FGIC:

Given that this adversary proceeding has just commenced and Defendants have not yet filed any responsive pleadings, Plaintiffs Assured, National and FGIC are unable at this time to identify all legal issues to be decided by the Court. Plaintiffs Assured, National and FGIC reserve all of their rights to amend, modify, add to, or otherwise identify additional legal issues in response to Defendants' pleadings or in the event Defendants amend their pleadings or otherwise change their legal theory as alleged in their pleadings. Plaintiffs Assured, National and FGIC dispute as without merit each of the legal issues identified by Defendants in Section E. At this preliminary stage of the case, Plaintiffs Assured, National and FGIC identify the following legal issues:

1. As to the First Claim for Relief, whether (i) the HTA Bonds are secured by liens on the Pledged Revenues and (ii) the Pledged Revenues constitute "special revenues" pursuant to Sections 902 and 928(a) of the Bankruptcy Code.

2. As to the First Claim for Relief, whether the post-petition Pledged Revenues remain subject to liens resulting from HTA security agreements.

3. As to the First Claim for Relief, whether the filing of Title III by HTA does not operate as a stay of application of the Pledged Revenues to the payment of the HTA Bonds pursuant to Section 922(d) of the Bankruptcy Code.

4. As to the First Claim for Relief, whether Defendants' failure to remit the Pledged Revenues for application to debt service and using such revenues to pay for other expenses during these Title III cases violates Sections 922(d) and 928(a) of the Bankruptcy Code.

5. As to the First Claim for Relief, whether Section 928(b) of the Bankruptcy Code applies to the Pledged Revenues.

6. Whether the 1968 Bondholders' lien which results from both the Enabling Act that created HTA, the Commonwealth laws that assign and pledge the excise taxes to bondholders, and the binding municipal resolution governing the lien of Assured, National and FGIC is a "statutory lien" within the meaning of Section 101(53) of the Bankruptcy Code, 11 U.S.C. § 101(53).

7. Whether Section 552(a) or Section 928(b) of the Bankruptcy Code applies to the HTA Bonds.

8. Whether the Commonwealth and HTA are collaterally or judicially estopped from denying the existence of a lien on the Toll Revenues in favor of the HTA bondholders.

9. As to the Second Claim for Relief, whether Assured, National and FGIC are entitled to permanent injunctive relief prohibiting the Defendants from taking or causing to be taken any action that would further violate Sections 922(d) and 928(a) of the Bankruptcy Code.

10. As to the Third Claim for Relief, whether Assured, National and FGIC are entitled to permanent injunctive relief requiring Defendants to remit revenues securing the HTA Bonds in accordance with Sections 922(d) and 928(a) of the Bankruptcy Code.

Defendants:

Given that this adversary proceeding has just commenced and Defendants have not yet filed their responsive pleadings, the Defendants are unable at this time to identify all legal issues to be decided by the Court. Defendants reserve all of their rights to amend, modify, add to, or otherwise identify additional legal issues in the event Assured/National/FGIC amend their pleadings or otherwise change their legal theory as alleged in their pleadings. Defendants dispute as without merit each of the legal issues identified by Assured/National/FGIC in Section E. At this preliminary stage of the case, Defendants identify the following legal issues:

1. Whether Assured, National and FGIC lack standing to bring some or all of their claims.⁶
2. Whether Assured, National and FGIC have stated claims upon which relief can be granted.
3. Whether PROMESA Section 106(e) deprives the Court of subject matter jurisdiction to adjudicate some or all of Assured's, National's and FGIC's claims.
4. Whether PROMESA Section 305 deprives the Court of authority to grant Assured's, National's and FGIC's requested affirmative and injunctive relief.

⁶ While Assured, National and FGIC state, in footnote 1 of the Adversary Complaint, that “[t]his action solely seeks to enforce the special revenue provision in the Bankruptcy Code and does not seek any relief as to the Illegal Fiscal Plans and the Fiscal Plan Act,” Plaintiffs go on to state that they “reserve their right” to challenge, among other things, “any other law or executive order,” and “to seek adequate protection. Further, Plaintiffs’ allegations go well beyond the “enforce[ment] of the special revenue provision,” including but not limited to various U.S. Constitution-based allegations that are incorporated into every purported claim for relief. *See, e.g.,* Adv. Proc. No. 17-155-LTS, Dkt. No. 1 (Compl.) ¶ 90; Adv. Proc. No. 17-156-LTS, Dkt. No. 1 (Compl.) ¶ 90. Accordingly, Defendants similarly reserve their right to bring to the Court’s attention certain legal matters that dispose of those allegations as a matter of law.

5. Whether the bonds at issue in this case are secured by an enforceable statutory lien on highway toll revenues, motor vehicle license taxes, and/or certain gas/petroleum taxes when they are collected by HTA.

6. Whether the bonds at issue in this case are secured by an enforceable contractual lien.

7. Whether the bonds at issue in this case are secured by any other form of enforceable lien.

8. Assuming, *arguendo*, that the bonds in this case are secured by an enforceable lien, whether that lien applies to funds currently held by HTA, or whether it also applies to future toll revenues, motor vehicle license taxes, and/or certain gas/petroleum taxes to be received by HTA.

9. Whether Bankruptcy Code Section 928 is constitutional, in light of the fact that the creditors were highly sophisticated, HTA and Puerto Rico were subject to the bankruptcy laws until 1982, and changes to bankruptcy regimes have been applied to preexisting debt in other circumstances.

10. Assuming, *arguendo*, that the bonds at issue in this case are secured by an enforceable lien, whether Bankruptcy Code Section 552(a) bars that lien from attaching to post-petition moneys received by HTA, or to which HTA is allegedly entitled.

11. Whether the bonds at issue in this case are “special revenue” bonds under Bankruptcy Code Section 928.

12. Assuming, *arguendo*, that the bonds at issue in this case are secured by an enforceable lien on special revenues under Bankruptcy Code Section 928(a), which expenses of the project and system may be deducted from the toll revenues, motor vehicle license taxes, and

certain gas/petroleum taxes to support Puerto Rico's transportation system under Bankruptcy Code Section 928(b).

13. Whether the Commonwealth's clawback rights preclude Assured's, National's and FGIC's pursuit of tax revenues or other funds at issue in this case.

14. To the extent Assured, National and FGIC request adequate protection, whether Assured, National and FGIC established the prerequisite that the bonds at issue in this case are secured by an enforceable lien.

15. To the extent Assured, National and FGIC request adequate protection, whether Assured, National and FGIC are adequately protected or the value of the collateral at the time of HTA's Title III filing, as well as whether Assured's, National's and FGIC's interest in future toll revenues, motor vehicle license taxes, and certain gas/petroleum taxes can constitute adequate protection.

16. Whether the challenged actions are proper exercises of the Commonwealth's police power.

17. Whether Assured, National and FGIC have stated a claim for violation of the Contract Clause of the U.S. Constitution.

18. Whether Assured's, National's and FGIC's claimed contractual rights are being "impaired" if rights have already been lost and/or if Assured's, National's and FGIC's alleged recovery would be worse under their alleged path than under the challenged action.

19. Whether Defendants' actions constitute violations of the Takings Clause of the U.S. Constitution.

20. Whether Defendants' actions constitute violations of the Due Process Clause of the U.S. Constitution.

21. Whether Defendants' actions implicated any of the provisions of Bankruptcy Code Sections 922 and 928, as applicable to HTA's title III case by PROMESA Section 301.

22. Whether Assured's, National's, and FGIC's rights against HTA can have value in the context of the fiscal emergency impacting the Commonwealth and all instrumentalities formerly receiving funding from the Commonwealth.

3. Peaje Adversary Proceedings:

Peaje:

Given that this adversary proceeding has just commenced and Defendants have not yet filed any responsive pleadings, the Parties are unable at this time to identify all legal issues to be decided by the Court. Plaintiff reserve all rights to amend, modify, add to, or otherwise identify additional legal issues in response to Defendants' pleadings or in the event Defendants amend their pleadings or otherwise change their legal theory as alleged in their pleadings. At this preliminary stage of the case, Plaintiff identifies the following known legal issues:

1. Whether Plaintiff has a valid, enforceable, first-priority lien on the Toll Revenues as a matter of Puerto Rico law, and whether such lien is a statutory lien or a non-statutory lien for purposes of the Bankruptcy Code.

2. Whether the Commonwealth and HTA are collaterally and/or judicially estopped from denying the existence of a lien on the Toll Revenues in favor of the 1968 Bondholders.

3. Whether the Toll Revenues qualify as "special revenues" under Sections 902(2) and 922(d) of the Bankruptcy Code.

4. Whether the stays provided under Sections 362 and 922(a) of the Bankruptcy Code are inapplicable to Plaintiff's efforts to enforce its rights and remedies with respect to its 1968 Bonds, or if such stays are applicable, whether Plaintiff has demonstrated "cause" for relief from such stays.

5. To the extent the stays under Section 362 and 922 apply, whether cause exists to lift the stays and whether HTA is obligated to provide adequate protection pursuant to Sections 361 and 362 of the Bankruptcy Code and, if so, whether Peaje is receiving adequate protection.

6. Whether Section 922(d) requires HTA and its Executive Director to turn over the Toll Revenues to the Fiscal Agent in the manner provided under the 1968 Resolution.

7. Whether Sections 552(a) and/or Section 928(b) of the Bankruptcy Code are inapplicable to Plaintiff's 1968 Bonds because, among other things, those Bonds are secured by a statutory lien on special revenues.

8. To the extent Section 928(b) applies, whether the expropriation of the lien on the Toll Revenues to pay the "necessary operating expenses" of the project or system violates the Fifth Amendment of the U.S. Constitution.

9. In the alternative, to the extent Section 928(b) applies, whether the lien can only be subordinated to the expenses necessary to preserve the "project or system" that generates the specific collateral securing the bonds, *i.e.*, the toll roads generating the Toll Revenues.

10. Whether the "special revenue" protections of the Bankruptcy Code preempt the Fiscal Plan Implementation, the Executive Orders, and the Fiscal Responsibility Act.

11. Whether Defendants should be preliminarily and permanently enjoined from diverting the Toll Revenues, and otherwise ordered to comply with the terms of the 1968 Resolution.

12. Whether Section 305 of PROMESA prohibits the Court from awarding all or any portion of the relief Plaintiff is seeking in this action and, if so, whether the Court should grant Peaje relief from stay to assert its rights in the related action pending before Judge Besosa; whether the Court should abstain; or whether HTA's bankruptcy case should be dismissed.

13. Whether a bond should be required in conjunction with the grant of a preliminary injunction.

Defendants:

Given that this adversary proceeding has just commenced and Defendants have not yet filed their responsive pleadings, the Defendants are unable at this time to identify all legal issues to be decided by the Court. Defendants reserve all of their rights to amend, modify, add to, or otherwise identify additional legal issues in the event Peaje amends its pleadings or otherwise changes its legal theory as alleged in its pleadings. Defendants dispute as without merit each of the legal issues identified by Peaje in Section E. At this preliminary stage of the case, based on the Verified Complaint and Motion for a Preliminary Injunction, Defendants identify the following legal issues:

1. Whether Peaje has a valid, enforceable statutory lien.
2. Whether Peaje is collaterally and/or judicially estopped from claiming the existence of a statutory lien on the Toll Revenues.
3. Whether the Toll Revenues qualify as “special revenues” under Sections 902(2) and 922(d) of the Bankruptcy Code.
4. Assuming, *arguendo*, that Peaje establishes that it has a statutory lien, whether that lien applies only to toll revenues currently held by the Fiscal Agent, or whether it also applies to Toll Revenues currently held by HTA and/or future Toll Revenues.
5. Assuming, *arguendo*, that Peaje establishes that it has a statutory lien on the Toll Revenues, whether HTA is obligated to provide adequate protection pursuant to Sections 361 and 362 of the Bankruptcy Code.
6. Whether Bankruptcy Code Section 928 is constitutional, in light of the fact that the creditors were highly sophisticated, HTA and Puerto Rico were subject to the bankruptcy

laws until 1982, and changes to bankruptcy regimes have been applied to preexisting debt in other circumstances.

7. Assuming, *arguendo*, that Peaje establishes that it has a statutory lien, the amount of expenses of the project and system that may be netted against the Toll Revenues under Bankruptcy Code Section 928(b) and/or surcharged against the Toll Revenues under Bankruptcy Code 506(c).

8. Whether Peaje has stated claims upon which relief can be granted.

9. Whether PROMESA Section 305 deprives the Court of authority to grant Peaje's requested declaratory and injunctive relief.

10. Whether Peaje has met its burden of proof with respect to each element of its request for injunctive relief, including whether Peaje has established a likelihood of success on the merits, irreparable harm, that the balance of the equities weighs in favor of Peaje, and whether the public interest favors granting an injunction.

11. To the extent Peaje requests adequate protection, whether Peaje established the prerequisite that the Bonds at issue in this case are secured by a statutory lien.

12. To the extent Peaje requests adequate protection, whether Peaje is adequately protected for the value of the collateral at the time of HTA's Title III filing, as well as whether Peaje's purported statutory lien on future Toll Revenues can constitute adequate protection.

13. Whether there is "cause" for stay relief and/or whether the property is necessary for an effective reorganization.

14. To the extent Peaje requests adequate protection, whether Defendants' continued operation of the HTA's highways and transportation system constitutes adequate protection.

15. Whether the Commonwealth Fiscal Plan and the HTA Fiscal Plan are proper exercises of the Commonwealth's police power.

16. Assuming, *arguendo*, that Peaje's request for a preliminary injunction is granted, the amount of the requisite bond that must be posted by Peaje.

17. Whether Peaje's rights against HTA can have value in the context of the fiscal emergency impacting the Commonwealth and all its instrumentalities formerly receiving funding from the Commonwealth.

18. Whether Defendants' actions implicated any of the provisions of Bankruptcy Code Sections 922 and 928, as applicable to HTA's Title III case by PROMESA section 301.

F. Each party's concise statement of material disputed facts.

1. Ambac Adversary Proceeding:

Ambac:

The following disputed facts were initially presented to Defendants, in substantially similar form, as uncontested facts. With few exceptions, Defendants rejected those facts outright. To the extent Defendants have agreed not to contest certain portions of the facts below, that uncontested portion has been included and italicized to provide context to the Court. The portions that appear in bold below were not presented to Defendants as uncontested.

In addition, Ambac notes that it does not know what facts Defendants may attempt to raise in this adversary proceeding because they have not yet answered or otherwise responded to the complaint in the Ambac Adversary Proceeding. Ambac reserves its right to dispute any factual allegations that Defendants raise herein or may raise in the future. Defendants make various factual statements in this document in their various descriptions of their positions, which Ambac disputes. Ambac does not, however, separately indicate each factual contention that they dispute in these descriptions. Ambac simply states that, other than the factual issues specifically identified in Section C as undisputed, Defendants' factual statements in their various descriptions of their positions are their own.

HTA and the HTA Bonds

1. HTA was created by Act No. 74-1965 (the “HTA Enabling Act”) to assume responsibility for the construction of highways and other transportation systems in Puerto Rico. *See* 9 L.P.R.A. § 2002.

2. Under the HTA Enabling Act, HTA has issued HTA Bonds under Resolution No. 68-18 (the “1968 Resolution”) and Resolution No. 98-06 (the “1998 Resolution” and, together with the 1968 Resolution, the “HTA Resolutions”).

3. The HTA Enabling Act authorizes HTA to “make contracts and to execute all instruments necessary or incidental in the exercise of any of its powers” and to “borrow money for any of its corporate purposes, and to issue bonds of the Authority in evidence of such indebtedness and to secure payment of bonds and interest thereon by pledge of, or other lien on, all or any of its properties, revenues or other income” 9 L.P.R.A. § 2004 (h), (l).

4. By entering into the HTA Resolutions, HTA expressly acknowledged that it was issuing HTA Bonds and that such payment was secured “by pledge of, or other lien on, all or any of its properties, revenues, or other income . . . and the proceeds of any tax or other funds which may be made available to the Authority by the Commonwealth.” *See* 1968 Resolution at 2; 1998 Resolution at 1.

5. The HTA Enabling Act and HTA Resolutions provide that the HTA Bonds are secured by a gross lien on: (i) HTA toll revenues from the Toll Highways (the “Pledged Toll Revenues”); (ii) gasoline, diesel, crude oil, and other special excise taxes levied by the Commonwealth (the “Pledged Tax Revenues”); and (iii) motor vehicle license fees (the “Vehicle Fees,” and together with the HTA Pledged Tax Revenues, the “Pledged Special Excise Taxes”).

6. The HTA Bonds are non-recourse bonds payable solely from certain pledged revenues and taxes. 9 L.P.R.A. § 2015.

7. The Pledged Special Excise Taxes and Pledged Toll Revenues that collateralize the bonds issued under the HTA Resolutions are taxes imposed **or receipts derived** by the Commonwealth of Puerto Rico and allocated to HTA to finance transportation and traffic facilities and systems.

8. HTA covenanted that it would promptly pay the principal and interest on the HTA Bonds. *See* 1968 Resolution § 601; 1998 Resolution § 601.

9. Pursuant to the HTA Resolutions, HTA covenanted that it would not incur any indebtedness nor create or cause or suffer to be created any debt, lien, pledge, assignment, encumbrance or any other charge having a priority to or being on a parity with the lien on Revenues created by the HTA Resolutions to secure the HTA Bonds. *See* 1968 Resolution § 602; 1998 Resolution § 602.

10. The Commonwealth's Secretary of Treasury is required to transfer the collected Pledged Special Excise Taxes to HTA every month for the benefit of HTA bondholders. *See* 13 L.P.R.A. § 31751(a)(1); 9 L.P.R.A. § 5681.

11. The Pledged Special Excise Taxes and Pledged Toll Revenues constitute trust funds collected and held by HTA on behalf of HTA bondholders, and the HTA Enabling Act provides that bondholders, including Ambac, are permitted to exercise remedies "by action or suit in equity to require [HTA] to account as if it were the trustee of an express trust." 9 L.P.R.A. § 2013(a)(2). **In addition, under the governing insurance agreement cover the HTA Bonds, Ambac is a third party beneficiary with the right to enforce any remedy conferred under the HTA Resolution.**

12. Under the HTA Resolutions, HTA covenanted that the Pledged Toll Revenues and Pledged Special Excise Taxes would be deposited monthly with the Fiscal Agent. *See* 1968 Resolution § 401; 1998 Resolution § 401.

13. The money held by the Fiscal Agent is held in trust for the benefit of the HTA bondholders and is subject a lien and charge in favor of the holders of the HTA Bonds and for the further security of such holders until paid out or transferred as provided in the HTA Resolutions. *See* 1968 Resolution § 401; 1998 Resolution § 401.

14. Under the HTA Enabling Act, the Commonwealth covenanted to “not limit or restrict the rights or powers hereby vested in the [HTA] until all such bonds at any time issued, together with the interest thereon, are fully met and discharged.” 9 L.P.R.A. § 2019.

15. *Under the HTA Resolutions, there is currently approximately \$4.2 billion in principal amount outstanding.*

16. Ambac insures approximately \$494 million in net par accreted value of HTA Bonds currently outstanding, and directly owns approximately \$16 million in such bonds.

17. Assured, FGIC, and National also insure certain bonds issued by HTA under certain insurance agreements.

HTA Defaults to Date

18. On July 1, 2016, HTA defaulted on a debt service payment of approximately \$4.5 million.

19. On January 1, 2017, HTA defaulted on a debt service payment of approximately \$1 million.

20. As of February 2017, HTA had defaulted on approximately \$6 million in HTA Revenue Bonds. Because of the Commonwealth’s ongoing diversion of the Pledged Special Excise Taxes and Pledged Toll Revenues, HTA has insufficient funds to make its July 1, 2017 payment to bondholders; therefore, another default will occur on July 1, 2017.

The Puerto Rico Constitution and Clawback

21. *The Constitution of the Commonwealth of Puerto Rico (the “Puerto Rico Constitution”) contains several provisions dealing with appropriations and the payment of debt and expenses. When read together, these provisions place clear limitations on when and how clawback may be employed.*

22. First, Article VI, Section 7 (“Section 7”) provides:

The appropriations made for any fiscal year shall not exceed the total revenues, including available surplus, estimated for said fiscal Year unless the imposition of taxes sufficient to cover said appropriations is provided by law.

P.R. Const. art. VI, § 7.

23. Accordingly, if the appropriations for a given fiscal year exceed estimated revenues, then taxes must be raised to cover the shortfall. This provision ensures the Commonwealth maintains a balanced budget each fiscal year by ensuring that revenues for the fiscal year are sufficient to cover operating expenses and general obligation debt (“GO Debt”) service. It also ensures that budget shortfalls cannot be rolled over from one fiscal year to the next.

24. However, Article VI, Section 8 (“Section 8”) then provides:

In case the available resources including surplus for any fiscal year are insufficient to meet the appropriations made for that year, interest on the public debt and amortization thereof shall first be paid, and other disbursements shall thereafter be made in accordance with the order of priorities established by law.

P.R. Const. art. VI, § 8.

25. Thus, if the mandatory tax increases compelled by Section 7 fail to produce sufficient revenues to cover all remaining expenses for the fiscal year, Section 8 requires GO Debt to be paid from those remaining available resources. Thus, the Puerto Rico Constitution makes clear that if there is an actual shortfall for a fiscal year, GO Debt enjoys a first priority to the revenues available to the Commonwealth (the “GO Priority”).

26. Section 8 further requires all other disbursements to be paid “in accordance with the order of priorities established by law.” P.R. Const. art. VI, § 8. Thus, a violation of said order of priorities is also a violation of both the law and the Puerto Rico Constitution. The Commonwealth’s Legislative Assembly (the “Legislative Assembly”) has implemented the priorities established by this provision of the Puerto Rico Constitution in several laws that expressly grant the HTA Bonds and other Revenue Bonds a priority to resources available to the Commonwealth second only to GO Debt.

The 2015 Clawback Executive Orders

27. *On November 30, 2015, the Governor issued Administrative Bulletin OE-2015-046 (the “First Clawback Order”).* The First Clawback Order directed the Puerto Rico Department of Treasury to claw back all funds pledged to the HTA Bonds through June 30, 2016.

28. *On December 8, 2015, the Governor issued Administrative Bulletin OE-2015-49 (the “Second Clawback Order”),* which sought to implement the First Clawback Order. The Second Clawback Order first removed all requirements to make any payments on HTA Bonds, among others, by removing from the statutory payment waterfall “commitments entered into by virtue of legal contracts in force” and “binding obligations to safeguard the credit, reputation and good name of the Government of the Commonwealth of Puerto Rico.” Next, the Second Clawback Order authorized the Commonwealth to include all funds clawed back from the HTA Bonds in the Commonwealth’s fiscal year 2016 budget as revenues available for general Commonwealth expenditures.

29. The Commonwealth has not used the monies clawed back from HTA to make payment on public debt.

30. The Commonwealth continues to retain approximately \$262 million in HTA's Pledged Special Excise Taxes and Pledged Toll Revenues clawed back from the HTA Revenue Bonds.

The Moratorium Act and Moratorium Executive Orders

31. *On April 6, 2016, the Commonwealth enacted the Puerto Rico Emergency Moratorium and Financial Rehabilitation Act, Act No. 21-2016 (the "Moratorium Act").*

32. Beginning in May 2016 and continuing through June of that year, then-Governor García Padilla issued a series of executive orders (the "Moratorium Order") under color of the Moratorium Act that diverted the Pledged Toll Revenues and Pledged Special Excise Taxes away from the HTA bondholders, purportedly to be used for other purposes. Additionally, the Moratorium Act imposed a blanket stay on creditor remedies against the designated entities during the emergency period, including court proceedings and rights of acceleration, termination, modification, and setoff.

33. *On May 17, 2016, then-Governor García Padilla signed Administrative Bulletin No. OE-2016-018 (the "May 2016 Executive Order") declaring HTA in a state of emergency through June 30, 2016, suspending the authority's obligation to deposit the Pledged Toll Revenues with the Fiscal Agent during that period, and stopping the flow of all Pledged Special Excise Taxes to the HTA Bonds. The May 2016 Executive Order also purported to bar court proceedings relating to HTA debt.*

34. *On June 30, 2016, then-Governor García Padilla issued two additional executive orders: (a) Administrative Bulletin No. EO-2016-30 (the "First June 2016 Executive Order"); and (b) Administrative Bulletin No. EO-2016-31 (the "Second June 2016 Executive Order," and together with the First June 2016 Executive Order, the "June 2016 Executive Orders"). The First June 2016 Executive Order suspended "the payment of all debt obligations" of HTA that*

came due during the statute's "covered period," which ran through January 31, 2017. The Second June 2016 Executive Order extended the May 2016 Executive Order before it expired, providing that the May 2016 Executive Order shall "continue in effect" through the same "covered period" as the Second June 2016 Executive Order, which similarly expired on January 31, 2017. Like the May 2016 Executive Order, the June 2016 Executive Orders contained broad prohibitions on creditor litigation.

The Amended Moratorium Act

35. *On January 29, 2017, the Governor signed into law the Puerto Rico Financial Emergency and Fiscal Responsibility Act (the "Amended Moratorium Act"; and together with the Moratorium Act, the "Moratorium Legislation"). Among other things, the Amended Moratorium Act directs the Governor to prioritize essential services over debt obligations, and maintains the moratorium on the transfer of Pledged Toll Revenues and Pledged Special Excise Taxes to, and payment on, the HTA Bonds by continuing the June 2016 Executive Orders in full force in effect.*

The Fiscal Plans and Fiscal Plan Compliance Law

36. *On June 30, 2016, President Barack Obama signed PROMESA into law. See Puerto Rico Oversight, Management, and Economic Stability Act, 48 U.S.C. § 2101, et. seq. (2016).*

37. *On March 13, 2017 the Financial Oversight and Management Board for Puerto Rico approved the Commonwealth's Fiscal Plan, which was subsequently amended on April 18, 2017.*

38. *On April 28, 2017, the Financial Oversight and Management Board for Puerto Rico approved the HTA Fiscal Plan.*

39. Under the HTA Fiscal Plan, HTA Bondholders are expected to cease receiving money for debt repayment by July 2017, when the reserve funds that have been used until now run out.

40. The HTA Fiscal Plan prioritizes “total expenses” of the HTA—which include construction expenses, right of way payments, and expenses related to the Commonwealth’s Statewide Transportation Improvement Program—over debt service.

41. Both the HTA Fiscal Plan and the Commonwealth Fiscal Plan contemplate using the HTA Revenues to fund the Government of Puerto Rico rather than pay debt service under the HTA Resolutions.

42. The HTA Fiscal Plan provides that HTA bondholders will not receive any payments before 2026.

43. *On April 29, 2017, the Commonwealth enacted Act No. 26-2017 entitled the “Fiscal Plan Compliance Law.” See Act No. 26-2017.*

44. *On May 3, 2017, the Oversight Board commenced a case on behalf of the Commonwealth under Title III of PROMESA.*

45. *On May 21, 2017, the Oversight Board commenced a case on behalf of HTA under Title III of PROMESA.*

46. **The Commonwealth has many more reasonable tools at its disposal to address its fiscal and economic challenges that the confiscation and illegal diversion of Pledged Revenues, including raising revenues, improving revenue collections, and reducing costs.**

47. **There is no legitimate reason GO Debt and the HTA Bonds could not be paid—with truly essential services being paid immediately after as the preexisting order of**

priorities required—without significantly impacting high-priority “essential” items such as public health and safety.

Defendants:

Defendants dispute all facts alleged in Plaintiff’s Adversary Complaint and set forth above in this Section F, other than the facts expressly identified in Section C above as being uncontested. Defendants also dispute Plaintiff’s erroneous assertion that Defendants previously “rejected” Plaintiff’s allegedly undisputed facts “outright.” Plaintiff had submitted a contentious set of allegedly “undisputed” facts, lifted directly from its Complaint, which contained Plaintiff’s characterizations, summarizations, and re-statements. Defendants responded with a shorter set of objective facts that they were prepared not to contest, particularly in light of the fact that Defendants have not yet responded to the Complaint. Plaintiff instead chose to reinstate its contentious set of allegedly “undisputed” facts, rather than use Defendants’ proposal. Defendants also reserve their rights to dispute any factual allegations Plaintiff may raise in the future.

2. Assured Adversary Proceedings:

Assured/National/FGIC:

The following material facts in paragraphs 1 through 26 asserted by Plaintiffs Assured, National and FGIC are disputed by Defendants:

1. HTA was created by Act No. 74-1965 (*i.e.*, the HTA Enabling Act) to assume responsibility for the construction of highways and other transportation systems in Puerto Rico. *See* 9 L.P.R.A. § 2002.

2. Under the HTA Enabling Act, HTA has issued HTA Bonds under the 1968 Resolution and the 1998 Resolution.

3. The HTA Enabling Act authorizes HTA to “make contracts and to execute all instruments necessary or incidental in the exercise of any of its powers” and to “borrow money for any of its corporate purposes, and to issue bonds of the Authority in evidence of such indebtedness and to secure payment of bonds and interest thereon by pledge of, or other lien on, all or any of its properties, revenues or other income” 9 L.P.R.A. § 2004 (h), (l).

4. Under the HTA Resolutions, there is currently approximately \$4.2 billion in principal amount of HTA Bonds outstanding.

5. Under their respective insurance agreements and policies, Plaintiffs are deemed to be the sole owner of the HTA Bonds that they insure for purposes of, or otherwise have control rights over, consents and other bondholder actions, including exercising rights and remedies of HTA bondholders.

6. Assured insures approximately \$1.5 billion of HTA Bonds currently outstanding, with the CUSIP numbers listed in Exhibit A.

7. National insures approximately \$706 million of HTA Bonds currently outstanding, with the CUSIP numbers listed in Exhibit B.

8. FGIC insures approximately \$447 million of HTA Bonds currently outstanding, with the CUSIP numbers listed in Exhibit C.

9. Due to defaults on HTA Bonds, to date, Assured has paid approximately \$83,039.34 in claims to insured bondholders and faces further claims for defaults on future payments.

10. Due to defaults on HTA Bonds, to date, National has paid approximately \$4 million in claims to insured bondholders and faces further claims for defaults on future payments.

11. FGIC expects that it will be required to make payments to insured bondholders upon HTA's anticipated July 1, 2017, default in the payment of HTA Bonds and faces further claims for defaults on future payments. To date, however, no claims have yet arisen under FGIC policies.

12. The HTA Enabling Act and HTA Resolutions provide that the HTA Bonds are secured by a gross lien on: (1) HTA toll revenues from the Toll Highways (the "Pledged Toll Revenues"); (2) gasoline, diesel, crude oil, and other special excise taxes levied by the Commonwealth (the "Pledged Tax Revenues"); and (3) motor vehicle license fees (the "Vehicle Fees," and together with the Pledged Tax Revenues, the "Pledged Special Excise Taxes").

13. By adopting the HTA Resolutions, HTA expressly acknowledged that it was issuing HTA Bonds and that payment of such HTA Bonds was secured, among other things, "by pledge of, or other lien on, all or any of its properties, revenues, or other income . . . and the proceeds of any tax or other funds which may be made available to the Authority by the Commonwealth." *See* 1968 Resolution at 2; 1998 Resolution at 1.

14. The Pledged Special Excise Taxes and Pledged Toll Revenues (together, the "Pledged Revenues") are pledged to the payment of the principal of and interest on HTA Bonds. *See* 1968 Resolution at §§ 601-602; 1998 Resolution at §§ 601-602.

15. The Pledged Special Excise Taxes that collateralize the bonds issued under the 1968 Resolution and the 1998 Resolution are taxes imposed by the Commonwealth of Puerto Rico and allocated to HTA to finance transportation and traffic facilities and systems.

16. HTA covenanted that it would promptly pay the principal and interest on the HTA Bonds. *See* 1968 Resolution § 601; 1998 Resolution § 601.

17. Pursuant to the HTA Resolutions, HTA covenanted that it would not incur any indebtedness nor create or cause or suffer to be created any debt, lien, pledge, assignment,

encumbrance or any other charge having a priority to or being on a parity with the lien on Pledged Revenues created by the HTA Resolutions to secure the HTA Bonds. *See* 1968 Resolution § 602; 1998 Resolution § 602.

18. The Commonwealth's Secretary of Treasury is required to transfer the collected Pledged Special Excise Taxes to HTA every month for the benefit of HTA bondholders. *See* 13 L.P.R.A. § 31751(a)(1); 9 L.P.R.A. § 5681.

19. The Pledged Special Excise Taxes and Pledged Toll Revenues constitute trust funds held by HTA in trust on behalf of HTA Bondholders, and the HTA Enabling Act provides that bondholders are permitted to exercise remedies "by action or suit in equity to require [HTA] to account as if it were the trustee of an express trust." 9 L.P.R.A. § 2013(a)(2).

20. Under the HTA Resolutions, HTA covenanted that the Pledged Toll Revenues and Pledged Special Excise Taxes would be deposited monthly with the Fiscal Agent. *See* 1968 Resolution § 401; 1998 Resolution § 401.

21. The money held by the Fiscal Agent is held in trust for the benefit of the HTA bondholders and is subject to a lien and charge in favor of the holders of the HTA Bonds and for the further security of such holders until paid out or transferred as provided in the HTA Resolutions. *See* 1968 Resolution § 401; 1998 Resolution § 401.

22. Under the HTA Enabling Act, the Commonwealth covenanted "not to limit or restrict the rights or powers hereby vested in [HTA] until all such bonds at any time issued, together with the interest thereon, are fully met and discharged." 9 L.P.R.A. § 2019.

23. Under the HTA Fiscal Plan, HTA Bondholders are expected to cease receiving money for debt repayment by July 2017, when the reserve funds that have been used until now run out.

24. The HTA Fiscal Plan prioritizes “total expenses” of HTA – which include construction expenses, right of way payments, capital improvements, and expenses related to the Commonwealth’s Statewide Transportation Improvement Program – over debt service.

25. Both the HTA Fiscal Plan and the Commonwealth Fiscal Plan contemplate using the Pledged Revenues to fund expenses of the Government of Puerto Rico rather than pay debt service under the HTA Resolutions.

26. The HTA Fiscal Plan provides that HTA Bondholders will not receive any payments before 2026.

* * *

Subject to the foregoing, the Commonwealth has many more reasonable tools at its disposal to address its fiscal and economic challenges than the confiscation and diversion of Pledged Revenues, including raising revenues, improving revenue collections, and reducing costs.

There is no legitimate reason that the HTA Bonds could not be paid—with truly essential services being paid immediately after as the legal order of priorities requires—without significantly impacting high-priority “essential” items such as public health and safety.

Plaintiffs Assured, National and FGIC do not know at this time what facts Defendants may attempt to raise in this adversary proceeding because Defendants have not yet answered or otherwise responded to the complaints in the Assured Adversary Proceedings. Plaintiffs Assured, National and FGIC reserve all of their rights to dispute any factual allegations that Defendants raise herein or may raise in the future. Defendants make various factual statements in this document in their various descriptions of their positions, which Plaintiffs Assured, National and FGIC dispute. Plaintiffs Assured, National and FGIC do not, however, separately indicate each factual contention that they dispute in these descriptions. Plaintiffs Assured,

National and FGIC simply state that, other than the factual issues specifically identified in Section C as undisputed, Defendants' factual statements in their various descriptions of their positions are their own and are not accepted.

Defendants:

Defendants dispute all facts alleged in the complaints in the Assured Adversary Proceedings, other than the facts expressly identified in Section C above as being uncontested. Moreover, Defendants have not yet answered or otherwise responded to complaints in the Assured Adversary Proceedings. Accordingly, Defendants reserve their rights to dispute any factual allegations Assured, National and FGIC may raise in the future.

3. Peaje Adversary Proceedings:

Peaje:

The following material facts in paragraphs 1 through 30 asserted by Peaje are disputed by Defendants:

1. HTA was created to assume responsibility for constructing, operating, and maintaining Puerto Rico's highways and other mass transportation systems. *See* 9 L.P.R.A. § 2002.

2. The Enabling Act authorized HTA to issue bonds, including the Bonds that are the subject of this proceeding. *See* 9 L.P.R.A. § 2004 (h), (l).

3. Peaje is the beneficial owner of \$65 million of uninsured 1968 Bonds.

4. The aggregate principal amount of 1968 Bonds issued and outstanding is \$830 million.

5. HTA covenanted in the 1968 Resolution that "it will promptly pay the principal of and the interest on every bond issued under the provisions of this Resolution at the places, on the dates and in the manner provided herein" *See* 1968 Resolution § 601.

6. The Enabling Act authorizes bondholders to bring suit upon the 1968 Bonds. *See* 9 L.P.R.A. § 2013.

7. The Bonds are secured by, among other things, a pledge of and lien on Toll Revenues consisting of certain tolls and other charges derived from HTA's operation of highways PR-20, PR-52, and PR-53 (the "Toll Roads"), along with certain other traffic facilities.

8. The 1968 Resolution provides that there is a "lien on Revenues" in favor of the 1968 Bondholders. *See* 1968 Resolution § 602. *See also* 1968 Resolution §§ 401, 501, 601.

9. Revenues are defined in the 1968 Resolution to include Toll Revenues. *See* 1968 Resolution § 101.

10. In addition, an Offering Statement for an offering of 1968 Bonds owned by Peaje represented that there is a "lien on Revenues of the Bonds issued under the Resolution." *See* Offering Statement for Issuance of Series CC Bonds, dated February 15, 2007, at III-11.

11. Moreover, HTA and the Commonwealth have made judicial admissions that the 1968 Bondholders have a lien on the Toll Revenues (among other collateral). *See, e.g.*, Brief for Respondents-Appellees at *10, *Peaje Investments LLC v. Alejandro García-Padilla*, No. 16-2377 (1st Cir. Dec. 27, 2016), available at: 2016 WL 7438090 ("HTA has issued bonds secured by a pledge of revenues generated by highway tolls, excise taxes on gasoline, vehicle license fees, and investment earnings.").

12. In light of the foregoing, both the United States Court of Appeals for the First Circuit and this Court have concluded that the 1968 Bonds are secured by a lien on the Toll Revenues. *See Peaje Investments LLC v. García-Padilla*, 845 F.3d 505, 510 (1st Cir. 2017) ("The bonds are secured by a lien on toll revenues, among other things."); *Peaje Investments LLC v. Garcia-Padilla*, No. CV 16-2365 (FAB), 2016 WL 6562426, at *6 (D.P.R. Nov. 2, 2016) (finding that "[Peaje] continues to hold a security interest in a stable, recurring source of

income,” and that Peaje’s interest in the Toll Revenues is that of a “continuing lien on a perpetual source of revenue”), *aff’d in part, vacated in part sub nom. Peaje Investments LLC v. García-Padilla*, 845 F.3d 505 (1st Cir. 2017).

13. The 1968 Bonds are “limited recourse” obligations, meaning they are ordinarily payable solely from the pledged revenues. *See* 9 L.P.R.A. § 2015. *See also* 1968 Resolution § 601.

14. The 1968 Resolution requires HTA to deposit Toll Revenues and other pledged revenues on a monthly basis into a collateral account maintained with the Fiscal Agent for the 1968 Bonds for purposes of paying the 1968 Bonds and funding reserve requirements. *See* 1968 Resolution § 401.

15. The 1968 Bondholders have a “gross lien” on the Toll Revenues, meaning that HTA must first meet the debt service and reserve requirements under the 1968 Resolution before HTA can spend any of the pledged revenues for any other purposes.

16. Pursuant to the 1968 Resolution, HTA covenanted that it “will not incur any indebtedness nor create or cause or suffer to be created any debt, lien, pledge, assignment, encumbrance or any other charge having a priority to or being on a parity with the lien on Revenues on the Bonds....” *See* 1968 Resolution § 602.

17. In addition to the 1968 Bonds, HTA has issued several series of bonds (the “1998 Bonds”) under a different resolution executed in 1998 (the “1998 Resolution”).

18. The aggregate principal amount of 1998 Bonds issued and outstanding is \$3.37 billion.

19. The May 2016 Executive Order declared HTA in a state of emergency through June 30, 2016, and purported to suspend the authority’s obligation to deposit the Toll Revenues with the Fiscal Agent during that period.

20. The First June 2016 Executive Order purported to suspend “the payment of all debt obligations” of HTA that came due during the Moratorium Act’s “covered period,” which ran through January 31, 2017.

21. The Second June 2016 Executive Order purported to extend the May 2016 Executive Order through that same “covered period.”

22. The May 2016 Executive Order and the June 2016 Executive Orders expired by their terms on January 31, 2017.

23. The Commonwealth Governor has not issued additional executive orders regarding HTA since the June 2016 Executive Orders.

24. Since the May 2016 Executive Order was issued and continuing to the present, HTA has failed to pay the Toll Revenues to the collateral account maintained with the Fiscal Agent for the benefit of the 1968 Bondholders.

25. The HTA Fiscal Plan states that HTA “has insufficient cash flows to service its debt.”

26. The HTA Fiscal Plan projects that HTA bondholders will “cease to receive money for debt repayments by July 2017, when the reserve funds that have been used until now run out.”

27. The HTA Fiscal Plan projects negative cash flows available for debt service through 2025, with only \$800,000 in cash available for debt service in 2026, resulting in a cumulative shortfall of approximately \$487.3 million over the 10-year projection period.

28. The necessary operating expenses of the Toll Roads are significantly less than the projected Toll Revenues.

29. The HTA has been taking and spending the Toll Revenues without any compensation, must less just compensation, to the 1968 Bondholders.

30. Defendants intend to continue taking the Toll Revenues without just compensation.

* * *

Subject to the foregoing, Peaje does not know at this time what facts Defendants may attempt to raise in this adversary proceeding because they have not yet answered or otherwise responded to the Verified Complaint. Peaje reserves its right to dispute any factual allegations that Defendants raise herein or may raise in the future. Defendants make various factual statements in this document in their various descriptions of their positions, which Peaje disputes. Peaje does not, however, separately indicate each factual contention that it disputes in these descriptions. Peaje simply states that, other than the factual issues specifically identified in Section C as undisputed, the Defendants factual statements in their various descriptions of their positions are their own.

Defendants:

Pursuant to the Court's June 7, 2017 Order Scheduling Hearing, Defendants' time to respond to the Complaint by motion to dismiss, answer or otherwise has been extended to thirty days following the Court's resolution of the Motion for Preliminary Injunction. Pending Defendants' response to the Verified Complaint, Defendants dispute all facts alleged therein, other than the facts expressly identified in Section C above as being uncontested. In many instances, Peaje's "undisputed" facts were not accurate and/or sought to characterize the contents of documents. Accordingly, Defendants reserve their rights to dispute any factual allegations Peaje may raise in the future.

G. A concise statement by each plaintiff and each counterclaimant of the legal basis of each cause of action asserted, including citations to all statutes, other rules and case law intended to be relied upon by such plaintiff or counterclaimant.

1. Ambac Adversary Proceeding:

Ambac:

First Claim for Relief

1. The Moratorium Legislation, Moratorium Orders, Fiscal Plan, and Fiscal Plan Compliance Act are unconstitutional on the grounds that the each violates the Contracts Clause of Article I of the U.S. Constitution.

2. The Contracts Clause provides, in pertinent part, that “[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts. U.S. Const., art. I, § 10, cl. 1. The primary purpose behind the enactment of the Contracts Clause was to prevent States from adopting laws that would permit borrowers (including the States themselves) to abrogate their debts at the expense of creditors. *See, e.g., Home Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 427-28 (1934); *Antoni v. Greenhow*, 107 U.S. 769, 795 (1883).

3. The Moratorium Legislation, Moratorium Orders, Fiscal Plan, and Fiscal Plan Compliance Act constitute neither a reasonable nor necessary means of serving an important public purpose, because many less drastic alternatives existed. As such, each unlawfully interferes with and impedes Ambac’s contractual rights in a manner that violates the Contracts Clause of Article I of the U.S. Constitution.

Second Claim for Relief

4. The Moratorium Legislation, Moratorium Orders, Fiscal Plan, and Fiscal Plan Compliance Act are unconstitutional on the grounds that each violates the Fifth and Fourteenth Amendments of the U.S. Constitution.

5. The Takings Clause 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 States, and the Commonwealth, by virtue of Section 1 of the Fourteenth Amendment to the U.S. Constitution. U.S. Const. amend. XIV, § 1.

6. Furthermore, the Due Process Clauses forbid the Commonwealth from depriving “any person . . . of life, liberty, or property, without due process of law. U.S. Const. amends. V, XIV, § 1.

7. The Moratorium Legislation, Moratorium Orders, Fiscal Plan, and Fiscal Plan Compliance Act violate the Takings and Due Process Clauses by depriving Ambac and the HTA bondholders of their senior secured property interests in the Pledged Revenues without providing Ambac and the HTA bondholders with due process or just compensation. Because there is no legal basis for Defendants to deprive the HTA bondholders of their property interests in the Pledged Revenues, the Moratorium Legislation, Moratorium Orders, Fiscal Plan, and Fiscal Plan Compliance Act constitute an unconstitutional taking and a violation of Ambac’s and the HTA bondholders’ due process rights.

Third Claim for Relief

8. The Moratorium Orders, by their terms, each purport to bar litigants from bringing suit in federal court.

9. The United States Supreme Court has clearly established that neither the States nor the Commonwealth have the power to enjoin proceedings in federal court. *See Donovan v. City of Dallas*, 377 U.S. 408, 411-13 (1964).

10. The Moratorium Orders thus unconstitutionally deny Ambac and the HTA bondholders access to Article III courts.

Fourth Claim for Relief

11. The Moratorium Legislation, Moratorium Orders, Fiscal Plan, and Fiscal Plan Compliance Act are preempted by Section 303 of PROMESA, which prohibits the Commonwealth from enacting “a territory law prescribing a method of composition of indebtedness” that “prohibits the payment of principal or interest by an entity” such as HTA. 48 U.S.C. § 2163(1).

12. The Moratorium Legislation, Moratorium Orders, Fiscal Plan, and Fiscal Plan Compliance Act constitute a *de facto* composition of indebtedness in that they prohibit payment of principal and interest on the HTA Bonds, coopt key aspects of the Bankruptcy Code related to compositions of indebtedness, and allow the use of the Pledged Revenues without regard for the liens held by HTA bondholders or HTA’s continued ability to make debt service payments on its bonds.

Fifth Claim for Relief

13. The Moratorium Legislation, Moratorium Orders, Fiscal Plan, and Fiscal Plan Compliance Act violate Section 407 of PROMESA, entitled “Protection From Inter-Debtor Transfers,” which provides:

(a) Protection of Creditors.—While an Oversight Board for Puerto Rico is in existence, if any property of any territorial instrumentality of Puerto Rico is transferred in violation of applicable law under which any creditor has a valid pledge of, security interest in, or lien on such property, or which deprives any such territorial instrumentality of property in violation of applicable law assuring the transfer of such property to such territorial instrumentality for the benefit of its creditors, then the transferee shall be liable for the value of such property.

48 U.S.C. § 2195(a) (emphasis added).

14. The Moratorium Legislation, Moratorium Orders, Fiscal Plan, and Fiscal Plan Compliance Act violate both of Section 407’s tests because they: (i) transfer the Pledged Revenues belonging to HTA to providers of “essential services,” and/or the Commonwealth and

other Commonwealth instrumentalities; and (ii) deprive HTA of property in violation of the HTA Enabling Act, which assures the transfer of such property to HTA for the benefit of its creditors.

Sixth Claim for Relief

15. The Pledged Revenues are pledged special revenues under sections 922 and 928 of Bankruptcy Code and Section 301 of PROMESA, and are exempted from the automatic stay.

16. Section 928 of the Bankruptcy Code, made applicable to Title III proceedings via Section 301 of PROMESA, states that “special revenues acquired by the debtor after the commencement of the case shall remain subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case. 11 U.S.C. § 928(a); 48 U.S.C. § 2161. Congress’ intent in creating the special revenue protections was “to negate Section 552(a) in the municipal context,” and thus shield all “special revenues” from having their pre-petition liens impaired. *See* S. Rep. No. 100-506, 100th Cong., 2d Sess. at 12-13 (1988).

17. Additionally, Section 922 of the Bankruptcy Code, made applicable to Title III proceedings via Section 301 of PROMESA, prevents the stay from impeding the flow of “pledged special revenues” to their original, pre-petition destinations. 11 U.S.C. § 922(d); 48 U.S.C. § 2161. Thus, Title III debtors cannot impair the flow of Pledged Revenues during Title III proceedings, and the stay cannot preclude creditors from pursuing actions to compel Title III debtors to transfer all Pledged Revenues to the HTA Revenue Bonds. *Id.*

18. The Pledged Revenues are “special revenues” within the meaning of Section 902(2). First, the Toll Revenues are “receipts derived from the ownership, operation, or disposition of projects or system of the debtor that are primarily used or intended to be used to provide transportation” (*id.* § 902(2)(A)) and “other revenues or receipts derived from particular functions of the debtor, whether or not the debtor has other functions” (*id.* § 902(2)(D)). Second,

the Excise Taxes and Vehicle Fees are “special excise taxes imposed on particular activities or transactions,” (*id.* § 902(2)(B)) and “taxes specifically levied to finance one or more projects or systems” (*id.* § 902(2)(E)).

19. The Pledged Revenues are “pledged special revenues” under Section 922(d) of the Bankruptcy Code because, under the HTA Statutes and governing contracts, the HTA Bonds are secured by a pledge of, and a lien on, the Toll Revenues, Excise Taxes, and Vehicle Fees.

20. Thus, this Title III proceeding cannot stay the flow of Pledged Revenues to the HTA Bonds, and Defendants must take any and all actions necessary to allow the Pledged Revenues to flow to the HTA Bonds. Defendants make various legal arguments and characterizations in this document in their various descriptions of their positions, which Ambac disputes. Ambac does not, however, separately indicate each argument and characterization that it disputes in these descriptions. Ambac simply states that, other than the legal issue specifically identified in Section D as undisputed, Defendants’ statements of their legal arguments and characterizations in their various descriptions of their positions are their own.

Defendants:

Defendants have not asserted a counterclaim, and at this time do not intend to assert a counterclaim. For the avoidance of doubt, Defendants dispute the legal basis of each cause of action asserted by Plaintiff. In addition, there has been no finding of fact, determination as a matter of law, or admission establishing any lien in favor of Plaintiff.

2. Assured Adversary Proceedings:

Assured/National/FGIC:

Assured, National and FGIC each insure the HTA Bonds issued by Defendant HTA. Since at least November 2015, Defendants have diverted special excise tax revenues and toll revenues that were pledged to secure bonds issued by HTA and on which HTA bondholders have

a lien (i.e., the Pledged Revenues). The HTA Bonds are non-recourse bonds and are solely payable from the Pledged Revenues.

This Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under PROMESA. In addition, this Court has jurisdiction under Section 106(a) of PROMESA, which grants jurisdiction to this Court over “any action against the Oversight Board, and any action otherwise arising out of [PROMESA], in whole or in part[.]” 48 U.S.C. § 2126(a). This Court also has jurisdiction under Section 306(a)(2) of PROMESA, which grants this Court original and exclusive jurisdiction of all cases under Title III of PROMESA and original jurisdiction of all civil proceedings arising under Title III of PROMESA or arising in or related to cases under Title III of PROMESA. 48 U.S.C. § 2166(a)(2). This Court has personal jurisdiction over all of the Defendants pursuant to Section 306(c) of PROMESA. 48 U.S.C. § 2166(c). With regard to the Individual Defendants, the United States Supreme Court in *Ex Parte Young*, 209 U.S. 123, 159-60 (1908), recognized that federal courts have the power to “enjoin state officials to conform future conduct to the requirements of federal law.” *Town of Barnstable v. O’Connor*, 786 F.3d 130, 138 (1st Cir. 2015) (citations omitted). Thus, claims for prospective injunctive or declaratory relief can proceed against state officials acting in their official capacities. *Asociacion de Subscripcion Conjunta del Seguro de Responsabilidad Obligatorio v. Flores Galarza*, 484 F.3d 1, 24 (1st Cir. 2007).

As alleged in the complaint, all Defendants, including the Individual Defendants acting in their official capacities, have taken actions that have and will continue to cause defaults on the HTA Bonds. The HTA Fiscal Plan and the Commonwealth Fiscal Plan (collectively, the “Fiscal Plans”) and the Fiscal Plan Act authorize the Commonwealth and HTA to use and divert the

Pledged Revenues for general government purposes and for expenses completely unrelated to HTA's Toll Highways that generate a portion of the Pledged Revenues.

As a matter of law, Defendants' diversion of the Pledged Revenues violates Sections 902, 922(d), and 928(a) of the Bankruptcy Code (collectively, "Special Revenue Provisions"), which are applicable in these Title III cases pursuant to Section 301(a) of PROMESA. The Special Revenue Provisions are specifically designed to prevent the exact conduct that Defendants are taking by diverting the Pledged Revenues. The Special Revenue Provisions prevent municipal debtors—like HTA and the Commonwealth—from using pledged revenues from a specific project or system or specific tax levy—like HTA's Pledged Toll Revenues and Pledged Special Excise Taxes—for unauthorized purposes, including paying their governmental expenses. The Special Revenue Provisions protect liens on special revenues—including liens on the Pledged Toll Revenues and Pledged Special Excise Taxes securing the HTA Bonds—from terminating in bankruptcy so that revenue bondholders have unimpaired rights to the project revenues or specific tax levies pledged to them and that such revenues are timely paid to revenue bondholders during a bankruptcy or Title III case.

The Fiscal Plans and Fiscal Plan Act cannot interfere with Defendants' obligations to remit the Pledged Revenues for payment of the HTA Bonds, because the Special Revenue Provisions of the Bankruptcy Code preempt the Fiscal Plans and Fiscal Plan Act. Pursuant to Section 928(a) of the Bankruptcy Code, post-petition special revenues remain subject to liens resulting from security agreements entered into by a municipal debtor. 11 U.S.C. § 928(a). The HTA Bonds are secured by, among other things, both a statutory and a contractual lien on (i) receipts derived from the operation and ownership of a project or system that provides utility or transportation services to the citizens of Puerto Rico, (ii) special excise taxes on particular transactions or activities, (iii) receipts or revenues derived from particular functions of the

debtor, and (iv) taxes that are specifically levied to finance a project or system. 11 U.S.C. §§ 902(2)(A), (B), (D), (E). Because the Pledged Revenues are “special revenues” (as defined in the Bankruptcy Code) and are subject to a lien created by a security agreement (*i.e.*, the Resolutions), all post-petition Pledged Revenues remain subject to the liens securing the HTA Bonds. 11 U.S.C. § 928(a).

Laws enacted by the Commonwealth (i) authorize HTA to issue the HTA Bonds secured by a lien on the Pledged Revenues, (ii) create a lien on such Pledged Revenues, (iii) require the transfer of the Pledged Special Excise Taxes by the Commonwealth’s Secretary of Treasury to HTA for the benefit of HTA’s bondholders, and (iv) establish that the Pledged Revenues are held in trust by HTA for the benefit of its bondholders. *See* 9 L.P.R.A. §§ 2004, 2012, 2013, 2019, 2021, 5681; 13 L.P.R.A. § 31751. The Court has already found that the HTA Bonds are secured by liens on the Pledged Revenues and that such liens are “perpetual.” *Assured Guar. Corp. v. García-Padilla*, 214 F. Supp. 3d 117, 122 (D.P.R. 2016); *Peaje Invs. LLC v. García-Padilla*, 2016 WL 656426, at *6 (D.P.R. Nov. 2, 2016), *aff’d in part, vacated in part, remanded*, 845 F.3d 505 (1st Cir. 2017); *see also Peaje Invs. LLC v. García-Padilla*, 845 F.3d 505, 510 (1st Cir. 2017).

Pursuant to Section 922(d) of the Bankruptcy Code, the filing of a bankruptcy petition “does not operate as a stay of application of pledged special revenues in a manner consistent with section [928] of this title to payment of indebtedness secured by such revenues.” 11 U.S.C. § 922(d). Section 922(d) requires that Pledged Revenues be continually paid over in a manner consistent with the HTA Resolutions. *See In re Jefferson Cty., Ala.*, 474 B.R. 228, 236 (Bankr. N.D. Ala. 2012). Further, Section 922(d) exempts from the automatic stay any efforts by the HTA bondholders to compel the debtors to remit Pledged Revenues to repay the HTA Bonds.

Use of the Pledged Revenues to pay for any Commonwealth governmental expenses or HTA non-Toll Highway operating expenses prior to payment of debt service violates Sections 928(a) and 922(d) of the Bankruptcy Code and is unconstitutional. Section 928(b) of the Bankruptcy Code provides that “[a]ny such lien on special revenues . . . derived from a project or system shall be subject to the necessary operating expenses of such project or system, as the case may be.” 11 U.S.C. § 928(b). Therefore, Section 928(b) only covers for a given period of time the “necessary operating expenses” that are directly related to the project that generates the pledged special revenues, and, as a matter of law, does not cover expenses for other projects or systems, or any expenses that do not qualify as “necessary operating expenses.” *In re Jefferson Cty., Ala.*, 482 B.R. 404, 414 (Bankr. N.D. Ala. 2012).

Moreover, because Section 928(b) did not apply to HTA at the time the HTA Bonds were issued, retroactive application of Section 928(b) to destroy the gross liens securing the HTA Bonds and to convert such liens to net liens would be an impermissible unconstitutional taking that violates the Fifth Amendment of the U.S. Constitution. *See U.S. v. Sec. Indus. Bank*, 459 U.S. 70, 78-79 (1982).

Section 928(b) does not apply to the Pledged Special Excise Taxes because those taxes are not “derived from a project or system.” 11 U.S.C. § 928(b).

Section 8 of Article VI of the Commonwealth Constitution (the “Constitutional Debt Priority Provision”) creates a priority for “public debt” over the Commonwealth’s other expenditures by requiring the “public debt” to be paid “first” in a fiscal year in which the Commonwealth’s budgetary appropriations exceed its available resources. P.R. Const. art. VI, § 8. The statutes governing the HTA Bonds grant HTA bondholders the most senior possible lien on the Pledged Special Excise Taxes consistent with the Constitutional Debt Priority Provision. HTA bondholders’ lien on the Pledged Special Excise Taxes is subject only to the

conditions that, in a fiscal year in which the Constitutional Debt Priority Provision is in effect, the Pledged Special Excise Taxes may (i) be used solely to pay the public debt, but (ii) only if the public debt remains unpaid after a first application of all available resources to the payment of public debt. *See* 13 L.P.R.A. § 31751(a)(1)(C); 9 L.P.R.A. § 5681.

The preconditions to a use of the Pledged Special Excise Taxes to pay the public debt have never been satisfied and are unlikely ever to be satisfied. Absent the satisfaction of these preconditions, the Commonwealth has no authority to interfere with the HTA bondholders' property interest in the Pledged Special Excise Taxes, and the Pledged Special Excise Taxes may only be used for debt service on HTA's Bonds and not for general expenses of the Commonwealth. The Constitutional Debt Priority Provision therefore has no impact on Plaintiffs' liens on the Pledged Special Excises Taxes or on the status of the Pledged Special Excise Taxes as "special revenues" under the Bankruptcy Code.

With regard to the Second and Third Claims for Relief, "[i]n order to issue a permanent injunction, a district court typically must find that (1) the plaintiff has demonstrated actual success on the merits of its claims; (2) the plaintiff would be irreparably injured in the absence of injunctive relief; (3) the harm to the plaintiff from defendant's conduct would exceed the harm to the defendant accruing from the issuance of an injunction; and (4) the public interest would not be adversely affected by an injunction." *Esso Standard Oil Co. v. Freytes*, 467 F. Supp. 2d 156, 159 (D.P.R. 2006) (citation omitted), *aff'd*, 522 F.3d 136 (1st Cir. 2008); *Largess v. Supreme Judicial Court for Massachusetts*, 373 F.3d 219, 224 (1st Cir. 2004).

Defendants make various legal arguments and characterizations in this document in their various descriptions of their positions, which Assured, National and FGIC each dispute. Plaintiffs Assured, National and FGIC do not, however, separately indicate each argument and characterization that they dispute in these descriptions. Plaintiffs Assured, National and FGIC

simply state that, other than the legal issue specifically identified in Section D as undisputed, Defendants' statements of their legal arguments and characterizations in their various descriptions of their positions are their own and are not accepted.

Defendants:

Defendants have not asserted a counterclaim, and at this time do not intend to assert a counterclaim. For the avoidance of doubt, Defendants dispute the legal basis of each cause of action asserted by Assured, National and FGIC. In addition, there has been no finding of fact, determination as a matter of law, or admission establishing any lien in favor of Plaintiffs.

3. Peaje Adversary Proceedings:

Peaje:

Plaintiff provides below a summary of the legal basis for each of its causes of action. A more detailed basis is set forth in Plaintiff's Verified Complaint and Motion for Temporary Restraining Order and Preliminary Injunction. Plaintiff reserves the right to supplement this summary as the case develops.

Count 1: Request for Declaration That the Toll Revenues Qualify as "Pledged Special Revenues" Under Section 922(d) of the Bankruptcy Code and That the Bankruptcy Stays Do Not Apply.

Section 922(d) of the Bankruptcy Code provides that, notwithstanding the bankruptcy stays applicable in a Title III case, "a petition filed under this chapter does not operate as a stay of application of pledged special revenues in a manner consistent with section 928 of this title to payment of indebtedness secured by such revenues. 11 U.S.C. § 922(d). Peaje contends that it has a lien on the Toll Revenues based on, among other things, the Enabling Act and the 1968 Resolution, admissions made by HTA and the Commonwealth, and findings of this Court and the First Circuit Court of Appeals in prior litigation concerning Peaje's Bonds.

The Enabling Act (i) authorized HTA to issue Bonds secured by the Toll Revenues, (ii) created or authorized the creation of a lien on the Toll Revenues in favor of the 1968 Bondholders, and (iii) directed or authorized HTA to hold the Toll Revenues in trust for the benefit of the 1968 Bondholders. *See* 9 L.P.R.A. §§ 2004, 2012, 2013 & 2019. Pursuant to its authority under the Enabling Act, HTA enacted the 1968 Resolution to govern its issuance of the 1968 Bonds. The 1968 Resolution unambiguously provides that the 1968 Bonds are secured by a pledge of and lien on the Toll Revenues (among other collateral). *See* 1968 Resolution §§ 101, 401, 501, 601, 602.

In issuing the particular 1968 Bonds owned by Peaje, HTA represented to potential investors that these Bonds “are payable solely from, and secured by a pledge of, the 1968 Resolution Revenues and all other moneys held for the credit of the 1968 Sinking Fund...,” including, without limitation, the Toll Revenues. *See* Offering Statement for Issuance of Series AA Bonds, dated June 17, 2010, at p. 14; Offering Statement for Issuance of Series CC Bonds, dated February 15, 2007, at p. 28. The Commonwealth and HTA repeated these admissions in briefs submitted to the First Circuit in prior litigation concerning Peaje’s 1968 Bonds. *See, e.g.*, Brief for Respondents-Appellees, at *10, *Peaje Investments LLC v. Alejandro García-Padilla*, No. 16-2377 (1st Cir. Dec. 27, 2016), available at: 2016 WL 7438090.

In that litigation, Judge Besosa of the District Court for the District of Puerto Rico found that “[Peaje] continues to hold a security interest in a stable, recurring source of income,” also referring to Peaje’s interest in the Toll Revenues as a “continuing lien on a perpetual source of revenue.” *See Peaje Investments LLC v. Garcia-Padilla*, No. CV 16-2365 (FAB), 2016 U.S. Dist. LEXIS 153711, at *6 (D.P.R. Nov. 2, 2016), *aff’d in part, vacated in part sub nom. Peaje Investments LLC v. García-Padilla*, 845 F.3d 505 (1st Cir. 2017). The First Circuit similarly found that “[t]he bonds are secured by a lien on toll revenues, among other things. *See Peaje*,

845 F.3d at 510. Accordingly, the Commonwealth and HTA are collaterally and judicially estopped from denying the existence of a lien on the Toll Revenues in favor of the 1968 Bondholders.

Second, Peaje contends that the Toll Revenues securing the payment of Peaje's 1968 Bonds are "special revenues" under the Bankruptcy Code. *See* 11 U.S.C. §§ 902(2), 922(d), 928(a). *See also In re Jefferson County*, 474 B.R. 228, 269 (Bankr. N.D. Ala. 2012); S. Rep. No. 100-506 (1988); H.R. Rep. No. 100-1011 (1988). Accordingly, Peaje's enforcement of its lien and other rights under the Bonds are exempt from stay under Section 922(d) of the Bankruptcy Code.

Count 2: Application for Adequate Protection or, Alternatively, to Lift the Stay for Cause (to the Extent Applicable)

As noted, the bankruptcy stays are not applicable in this matter under the "special revenue" protections of the Bankruptcy Code. Nonetheless, to the extent that such stays are applicable, Peaje seeks relief from the bankruptcy stays, or, in the alternative, for adequate protection of its interest. Peaje contends that "cause" to lift the bankruptcy stays exists because Peaje lacks "adequate protection" of its interest in the Toll Revenues and the other pledged revenues due to the continued diversion of those revenues. *See* 11 U.S.C. §§ 361, 362, 922; 48 U.S.C. § 2161. *See also Peaje Investments LLC v. García-Padilla*, 845 F.3d 505, 510 (1st Cir. 2017); *In re City of Orange*, 179 B.R. 185, 190 (Bankr. C.D. Cal. 1995); S. Rep. No. 100-506 (1988); H.R. Rep. No. 100-1011 (1988). In addition, HTA's taking of the 1968 Bondholders' collateral without just compensation violates the Fifth Amendment to the U.S. Constitution. Such constitutional violation is also cause.

Counts 3: Request for Declaration That Section 922(d) of the Bankruptcy Code Preempts the Fiscal Plan Implementation, the Executive Orders, and Section 208(e) of the Fiscal Responsibility Act

Peaje seeks a declaration that the “special revenue” protections of the Bankruptcy Code preempt and render void the Fiscal Plan Implementation, the Executive Orders (to the extent they have not expired), and Section 208(e) of the Fiscal Responsibility Act. *See* U.S. Const. art. VI, cl. 2; 11 U.S.C. § 922(d); Section 208(e) of the Fiscal Responsibility Act.

Count 4: Request for Declaration That Section 922(d) of the Bankruptcy Code Directs HTA and its Executive Director to Deposit the Toll Revenues With the Fiscal Agent;

Peaje contends that Section 922(d) of the Bankruptcy Code mandates that the debtor turn over “pledged special revenues” to the bondholder during the bankruptcy case. That directive applies to HTA and its Executive Director and the Commonwealth because the Toll Revenues securing the payment of Peaje’s 1968 Bonds qualify as “pledged special revenues. Peaje seeks a judgment and appropriate mandamus relief directing HTA and its Executive Director to deposit sufficient funds from the Toll Revenues with the Fiscal Agent, in advance of the semiannual debt service payment dates under the 1968 Resolution, to ensure the timely payment of all principal and interest on Peaje’s 1968 Bonds. As corollary relief, Peaje requests a determination that the Commonwealth, AAFAF, and their respective Officials are prohibited from interfering with Peaje’s execution of that judgment. *See* 11 U.S.C. §§ 552(a), 902(2), 922(d), 928(a); S. Rep. No. 100-506 (1988); H.R. Rep. No. 100-1011 (1988); 48 U.S.C. §§ 2141, 2165; 1968 Resolution § 401, 501, 601; 9 L.P.R.A. § 2004(l). *See also In re Jefferson County*, 474 B.R. 228, 269 (Bankr. N.D. Ala. 2012); *In re Heffernan Mem’l Hosp. Dist.*, 202 B.R. 147, 148-49 (Bankr. S.D. Cal. 1996); *In re City of Orange*, 179 B.R. 185, 190 (Bankr. C.D. Cal. 1995); *Franklin California Tax-Free Trust v. Puerto Rico*, 805 F.3d 322, 344-45 (1st Cir. 2015); *United States v. Rivera Torres*, 826 F.2d 151, 154 (1st Cir. 1987).

Count 5: Request for Declaration That Neither Section 552 nor Section 928(b) of the Bankruptcy Code Apply to Peaje's Bonds Because Those Bonds Are Secured By a Statutory Lien on the Toll Revenues.

Plaintiff contends that it has a lien on the Toll Revenues. Plaintiff seeks a declaration that Sections 552 and 928(b) do not apply to Plaintiff's 1968 Bonds because its lien is a statutory lien on special revenues. Further, in alternative, Peaje contends that Sections 552 and 928(b) do not apply because Peaje's lien rights predate the enactment of PROMESA and the application of these provisions to Peaje's lien rights, which were not previously subject to these provisions, would constitute a retroactive destruction of Peaje's rights in violation of the Fifth Amendment to the U.S. Constitution. *See* 11 U.S.C. §§ 101(53), 105(53), 552(a), 928(a). *See also Alliance Capital Management L.P. v. County of Orange*, 189 B.R. 499, 502 (C.D. Cal. 1995); *United States v. Sec. Indus. Bank*, 459 U.S. 70, 77 (1982); *Kaiser Aetna v. United States*, 444 U.S. 164, 180 (1979); *Armstrong v. United States*, 364 U.S. 40, 48 (1960); *Kener v. La Grange Mills*, 231 U.S. 215, 218 (1913); *Crowell v. Benson*, 285 U.S. 22, 62 (1932); S. Rep. No. 100-506 (1988); H.R. Rep. No. 100-1011 (1988).

Count 6: Request for Declaration That, to the Extent Section 928(b) of the Bankruptcy Code Applies to Peaje's Bonds, the Expropriation of the 1968 Bondholders' Lien to Pay the "Necessary Operating Expenses" of HTA Would Violate the Takings Clause of the U.S. Constitution.

Peaje contends that expropriating the 1968 Bondholders' lien to pay the "necessary operating expenses" of HTA would effectively convert that lien from a "gross" lien into a "net" lien, thereby drastically changing, and impairing, the security. That would result in a taking of Peaje's property without just compensation, and is thus prohibited under the U.S. Constitution, because the lien was already in place before the relevant legislation was enacted. *See* U.S. Const. amend. V; 11 U.S.C. § 928(b); *United States v. Sec. Indus. Bank*, 459 U.S. 70, 77 (1982); *Kaiser Aetna v. United States*, 444 U.S. 164, 180 (1979); *Armstrong v. United States*, 364 U.S.

40, 48 (1960); *Kener v. La Grange Mills*, 231 U.S. 215, 218 (1913); *Crowell v. Benson*, 285 U.S. 22, 62 (1932). To the extent possible, provisions of the Bankruptcy Code should be construed to avoid having to reach the constitutional question. *See id.* Alternatively, Peaje contends that to the extent Section 928 applies, it only provides that the lien on Toll Revenues can be subordinated to the operating expenses necessary to preserve the project or system that generates the Toll Revenues—*i.e.*, the Toll Roads (and further only applies to the extent that such Toll Revenues were generated during the pendency of the case). *See* 11 U.S.C. § 928(b). *See also* S. Rep. No. 100-506 (1988); H.R. Rep. No. 100-1011 (1988); *Bank of New York Mellon v. Jefferson County*, 482 B.R. 404 (Bankr. N.D. Ala. 2012).

Count 7: Application to Lift the Bankruptcy Stay (to the Extent Applicable) to Allow Plaintiff to Commence and Prosecute an Action Challenging on Constitutional Grounds, Among Other Things, the Unlawful Diversion of the Toll Revenues

Plaintiff seeks an order lifting the stays provided for under Sections 362 and 922 of the Bankruptcy Code (to the extent applicable) to allow Plaintiff to commence and prosecute an action challenging the unlawful diversion of the Toll Revenues. As noted, Peaje contends that “cause” to lift the bankruptcy stays exists because Peaje lacks “adequate protection” of its interest in the Toll Revenues and the other pledged revenues due to the continued diversion of those revenues. Moreover, “cause” exists to lift the bankruptcy stays because the diversion of the Toll Revenues and other pledged funds violates Plaintiff’s constitutional rights.

Counts 8-10: Application for Injunctive Relief; Request for Judgment Ordering HTA and its Executive Director to Resume Depositing Toll Revenues; and Request for Judgment Ordering HTA and Its Executive Director to Ensure the Payment of Principal and Interest on Plaintiff’s Bonds When Due.

Peaje seeks a preliminary injunction requiring HTA and its Executive Director to resume depositing the Toll Revenues with the Fiscal Agent in accordance with the 1968 Resolution. *See*

FED. R. CIV. P. 65; FED. R. BANKR. P. 7065; 48 U.S.C. § 2170; 1968 Resolution. *See also Vaqueria Tres Monjitas, Inc. v. Irizarry*, 587 F.3d 464, 482 (1st Cir. 2009); *TLS Mgmt. & Mktg. Servs. LLC v. Rodriguez-Toledo*, No. 15-cv-2121, 2017 WL 1277641, at *2 (D.P.R. Mar. 30, 2017); *Waldron v. George Weston Bakeries Inc.*, 570 F.3d 5, 9 (1st Cir. 2009); *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 16 (1st Cir. 1996); *Harris v. Wall*, No. 16-cv-80, 2016 WL 6820369, at *7 (D.R.I. Nov. 18, 2016). Additionally, Peaje requests that the preliminary injunction against HTA and its Executive Director be converted into a permanent injunction as soon as Peaje prevails on the merits of its claims. *See Esso Standard Oil Co. v. Freytes*, 467 F. Supp. 2d 156, 159 (D.P.R. 2006), *aff'd sub nom. Esso Standard Oil Co. v. Lopez-Freytes*, 522 F.3d 136 (1st Cir. 2008); *Largess v. Supreme Judicial Court for State of Massachusetts*, 373 F.3d 219, 224 (1st Cir. 2004). As corollary relief, Peaje requests an order enjoining the Commonwealth, AAFAF, and their respective Officials from interfering with the obligation of HTA and its Executive Director to deposit the Toll Revenues with the Fiscal Agent.

Defendants make various legal arguments and characterizations in this document in their various descriptions of their positions, which Peaje disputes. Peaje does not, however, separately indicate each argument and characterization that it disputes in these descriptions. Peaje simply states that, other than the legal issue specifically identified in Section D as undisputed, the Defendants statements of their legal arguments and characterizations in their various descriptions of their positions are their own.

Defendants:

Pursuant to the Court's June 7, 2017 Order Scheduling Hearing, Defendants will move to dismiss and/or otherwise respond to the Complaint after the Court has reached a determination on Peaje's Motion for Preliminary Injunction. Defendants have therefore not asserted a counterclaim, and at this time do not intend to assert a counterclaim. For the avoidance of doubt,

Defendants dispute the legal basis of each cause of action asserted by Peaje. Defendants also specifically state that Peaje's assertion that "the Commonwealth and HTA are collaterally and judicially estopped from denying the existence of a lien on the Toll Revenues in favor of the 1968 Bondholders" is incorrect and wholly unsupported by the record. As set forth below in Section H, Peaje does not have a statutory lien. In addition, there has been no finding of fact, determination as a matter of law, or admission establishing any lien in favor of Peaje.

H. Each party's concise statement of the legal basis of each defense asserted or expected to be asserted by such party, including citations to all statutes, other rules and case law intended to be relied on by such party

1. Ambac Adversary Proceeding:

Ambac:

Defendants have asserted no counterclaims against Ambac. For the avoidance of doubt, Ambac disputes the legal basis of each purported defense asserted by Defendants below.

Defendants:

Because this case is at a most preliminary stage, Defendants currently believe that the preliminary list of legal issues set forth in Section E will need to be decided by the Court.

Defendants also believe that the following legal issues, each of which is potentially dispositive of all or most of the Adversary Complaint, should be decided by the Court as a threshold matter and that the case should otherwise be held in abeyance pending that determination. Defendants reserve the right to supplement this concise statement of the legal basis of each defense, including citations to other statutes, rules, and case law that may be applicable as this matter proceeds.

First, whether Plaintiff has established that the bonds at issue in this case are secured by an enforceable statutory lien.

Plaintiff specifically alleges that its bonds are secured by a statutory lien that Plaintiff contends arises from the Enabling Act and, depending upon the specific bonds, either the 1968 Resolution or 1998 Resolution. Plaintiff's contention is wrong as a matter of law. Pursuant to 11 U.S.C. § 101(53), a statutory lien exists only where a lien arises automatically by force of a statute on specified circumstances or conditions, and is not based on any agreement to give a lien. The Enabling Act does not itself pledge anything or create a lien. The Enabling Act merely creates HTA as a "public corporation and governmental instrumentality" having the authority to resolve to issue bonds that may contain security provisions that would become part of the contract with the bond holders. The 1968 Resolution and the 1998 Resolution do not create a statutory lien because HTA is not part of the Legislature of Puerto Rico and, even if it were, the 1968 Resolution and the 1998 Resolution are not statutes. Moreover, to the extent that the 1968 Resolution or the 1998 Resolution may give rise to certain contractual rights between HTA and Plaintiff, such rights would not be a statutory lien and would not extend to the general revenues at issue in this action. Although the Complaint generally alleges that Plaintiff has a valid lien, Plaintiff has not alleged any facts to attempt to establish a valid, enforceable lien other than a purported statutory lien.

Second, whether Plaintiff has standing to bring some or all of their claims. Plaintiff has not established standing to assert its claims because it does not allege that the allegedly required payments have not been made on any of the bonds it owns or insures. In addition, to the extent that Plaintiff contends that the allegedly improper conduct injured HTA, Plaintiff is not entitled to sue derivatively on HTA's behalf. Such a claim would be an improper attempt to seize control of a claim belonging to HTA and an interference with the political or governmental powers of the Debtor. *See* 11 U.S.C. § 362(a)(3)-(5) (incorporated at PROMESA § 301); PROMESA §305(1).

Third, whether PROMESA Section 106(e) deprives the Court of jurisdiction to adjudicate some or all of Plaintiff's claims. Section 106(e) deprives the court of jurisdiction to adjudicate some or all of Plaintiff's claims to the extent that those claims involve challenges to the FOMB's certification determinations. Congress empowered the FOMB to make certification determinations relating to (among other things) voluntary agreements to restructure Bond Claims, the filing of petitions for adjustment of debts under PROMESA's Title III, plans of adjustment, and a Fiscal Plan. PROMESA §§ 104(i)(1), 104(j)(3), 201(c), 201(e), 206(a), 304(a). Congress committed each of those certification determinations to the FOMB's "sole discretion. *Id.* Section 106(e) states that "[t]here shall be *no jurisdiction in any United States district court* to review challenges to the Oversight Board's certification determinations under this Act. *Id.* § 106(e) [48 U.S.C. § 2126(e)] (emphasis added).

Fourth, whether PROMESA Section 305 deprives the Court of authority or jurisdiction to grant Plaintiff's requested relief because it bars the Court from ordering HTA to treat its property in any particular manner without the FOMB's consent.

The statute states: "Subject to the limitations set forth in titles I and II of this Act, notwithstanding any power of the court, unless the Oversight Board consents or the plan so provides, the court may not, by any stay, order, or decree, in the case or otherwise, interfere with – (1) any of the political or governmental powers of the debtor; (2) any of the property or revenues of the debtor; or (3) the use or enjoyment by the debtor of any income-producing property. 48 U.S.C. § 2165. PROMESA § 305 is modeled on Bankruptcy Code § 904 and employs nearly identical language. Code § 904 prevents a court from "interfer[ing] with a chapter 9 debtor's political or governmental powers, or the use of the debtor's property, without the debtor's consent. *In re N.Y.C. Off-Track Betting Corp.*, 434 B.R. 131, 140 (Bankr. S.D.N.Y. 2010). "As a practical matter, the § 904 restriction functions as an anti-injunction statute – and

more. *In re City of Stockton, Cal.*, 478 B.R. 8, 20 (Bankr. E.D. Cal. 2012) (holding that § 904(2) prohibited court from ordering municipal debtor to continue paying certain retiree health benefits because such relief would interfere with debtor’s “property or revenues”); *In re Valley Health Sys.*, 429 B.R. 692, 714 (Bankr. C.D. Cal. 2010) (because of § 904, debtor “retains title to, possession of, and complete control over its property and its operations, and is not restricted in its ability to sell, use, or lease its property”).

Fifth, assuming, *arguendo*, that the bonds at issue in this case are secured by an enforceable lien, whether Bankruptcy Code Section 552(a) bars any lien from attaching to funds received by HTA during the post-petition period.

Sixth, whether police power provides the Commonwealth with broad authority to regulate in times of fiscal and other emergencies. *E.g.*, *Faitoute Iron & Steel Co. v. City of Asbury Park*, 316 U.S. 502 (1942); *Home Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 231 (1934).

Seventh, whether Plaintiff has established a violation of the Contract Clause of the United States Constitution, and if so, the value of the allegedly impaired contractual obligations. *Id.*

The Contract Clause applies only to legislative action by a state (or the Commonwealth). It therefore does not apply to executive orders or FOMB actions, which are not legislation. *E.g.*, *City of Pontiac Ret. Emps. Ass’n v. Schimmel*, 751 F.3d 427 (6th Cir. 2014). To the extent the Complaint alleges that the FOMB’s actions fall within the Contract Clause because they were authorized by PROMESA, the Clause is inapplicable because PROMESA is a *federal* law, not a law of the Commonwealth, and thus is not subject to the Contract Clause. *E.g.*, *PBGC v. R.A. Gray & Co.*, 467 U.S. 717 (1984). In addition, Plaintiff cannot seek dismissal of the Title III petition under the Contract Clause because (i) the Title III petition was filed pursuant to federal, not Commonwealth, legislation, and (ii) the petition is authorized by federal law.

To the extent Plaintiff claims that its alleged rights arise from a statute, Plaintiff must prove that the statutory right is a contractual right for purposes of the Contract Clause. *See, e.g., Parella v. Ret. Bd. of R.I. Emps.' Ret. Sys.*, 173 F.3d 46, 60 (1st Cir. 1999) (“Where a public contract allegedly arises out of statutory language, rather than out of a contract, the burden of proving that a contractual relationship exists is high, because normally state statutory enactments do not of their own force create a contract with those whom the statute benefits. Indeed, absent some clear indication that the legislature intends to bind itself contractually, the presumption is that a law is not intended to create private contractual or vested rights.”) (internal quotation marks omitted).

Even if Plaintiff has a contract right for constitutional purposes, no violation occurred. Plaintiff cannot demonstrate a substantial impairment of its contracts, as opposed to a mere breach of the obligation to make payments, because the repayment obligation under the bonds has not been discharged at this point. *See, e.g., Redondo Const. Corp. v. Izquierdo*, 662 F.3d 42, 48 (1st Cir. 2011) (“The clause does not bar a state from merely breaching a contract, which the prerogative of any private party, subject to liability for the breach. A contract creates alternative obligations: performance or payment of damages for breach.”). Moreover, because the value of the contractual obligation was small in the context of the fiscal emergency and Plaintiff cannot overcome Defendants’ right to exercise police power in a dire fiscal emergency. Even if a substantial impairment of allegedly contractual rights has occurred, Plaintiff has not met its burden of showing that the impairment was not “reasonable and necessary to serve an important government purpose. *UAW v. Fortuño*, 633 F.3d 37, 41 (1st Cir. 2011). Defendants’ decisions about what is reasonable and necessary are entitled to “meaningful deference,” *id.* at 44, and Plaintiff has not overcome that deference by meeting its burden of pleading and proving *specific*

alternatives that would have accomplished the same purposes with allegedly less destructive impact on contractual rights, *id.* at 42-45.

No contractual rights have been “impaired” if those rights have already been lost and/or if Plaintiff would not be able to recover the value of its rights without the challenged governmental actions. *E.g., Faitoute*, 361 U.S. 502 (1942). Furthermore, even assuming, *arguendo*, that there was an impairment, now that HTA is the subject of a Title III proceeding, the Bankruptcy Power exercised by this Court permits the impairment of contractual obligations. *See, e.g., In re City of Detroit*, 504 B.R. 191, 231032 (E.D. Mich. 2013) (“The Bankruptcy Clause necessarily authorizes Congress to make laws that would impair contracts. It long has been understood that bankruptcy law entails impairment of contracts.”); *In re City of Stockton, Cal.*, 478 B.R. 8, 15-16 (Bankr. E.D. Cal. 2012) (while states cannot impair contract, Congress can, and it does so through the bankruptcy clause).

Eighth, whether Plaintiff has established a violation of the Takings Clause of the Fifth Amendment of the United States Constitution.

The Takings Clause does not apply in a Title III or bankruptcy context.

Plaintiff does not have a property right within the meaning of the Takings Clause, because (i) Plaintiff does not have a statutory lien on the allegedly pledged revenues under the HTA Enabling Act, and the 1968 and 1998 Resolutions did not (and could not) create statutory liens, and/or (ii) even if Plaintiff does have a security interest in existing funds, that interest does not extend to *future* revenue streams that do not yet exist.

Even if Plaintiff does have a property interest in some or all of the allegedly pledged revenues, that interest was not improperly “taken” within the meaning of the Fifth Amendment because the challenged conduct constituted valid exercises of police power. *See, e.g., Keystone*

Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470 (1987); *Buffalo Teachers Fed'n v. Tobe*, 464 F.3d 362 (2d Cir. 2006); *Ropico, Inc. v. City of N.Y.*, 425 F. Supp. 970 (S.D.N.Y. 1976).

Staying enforcement of liens only abridges contractual rights, is not a taking, and is allowed by the bankruptcy power to further reorganization. *Continental Bank v. Rock Island Ry.*, 294 U.S. 648, 680-681 (1935); *Lend Lease v. Briggs Transp. Co. (In re Briggs Transp. Co.)*, 780 F.2d 1339 (8th Cir. 1985). Plaintiffs should not receive any relief from the Court that may worsen the Commonwealth's fiscal emergency until after the Court has ruled on plans of adjustment for the Commonwealth and HTA.

Even if a "taking" occurred, no "just compensation" is owed – and the Takings Clause has therefore not been violated – because Plaintiff and other creditors would have been worse off in the long run without the challenged actions. *See, e.g., Brown v. Legal Found. of Wash.*, 538 U.S. 216 (2003); *A&D Auto Sales, Inc. v. U.S.*, 748 F.3d 1142 (Fed. Cir. 2014).

Ninth, whether Plaintiff has established a violation of the Due Process Clause of the United States Constitution.

No procedural due-process violation exists where, as here, Plaintiff has been provided with notice and an opportunity to be heard.

No substantive due-process violation exists where, as here, an economic regulation is not "arbitrary, discriminatory or demonstrably irrelevant to the policy that the legislature is free to adopt. *Pennell v. San Jose*, 485 U.S. 1, 11 (1988).

Tenth, whether Plaintiff has established a violation of Article III of the United States Constitution.

The challenged conduct was a legitimate exercise of the police power for a limited period in a dire fiscal emergency. *See, e.g., Ropico, Inc. v. City of N.Y.*, 425 F. Supp. 970 (S.D.N.Y. 1976).

Plaintiff has access to this Court, as Title III guarantees. *Cf. Brigade Leveraged Capital Structures Fund Ltd. v. García-Padilla*, 217 F. Supp. 3d 508, 531 (D.P.R. 2016) (“in the event that debt adjustment proceedings become necessary, the provisions of title III may effectively unwind the government’s controversial actions”).

The Moratorium Orders have not actually prevented creditors from suing. For example, Executive Order 2016-018, issued on May 17, 2016) [¶ 95(a)], did not stop Plaintiff itself from suing. *See Ambac Assurance Corp. v. PRHTA*, 2016 WL 2930924 (D.P.R. May 19, 2016).

Other creditors also challenged the Moratorium Act and executive orders issued pursuant to it. *Brigade Leveraged Capital Structures Fund Ltd. v. García-Padilla*, 217 F. Supp. 3d 508 (D.P.R. 2016).

Donovan v. City of Dallas, 377 U.S. 406 (1964), which Plaintiff repeatedly cites, is inapposite. That case holds only that *state courts* cannot enjoin federal *in personam* actions over which the federal court has personal and subject-matter jurisdiction. *Donovan* is about *res judicata* principles in a dual-sovereign system; it is not about state executive orders. And *Donovan* did not involve a state’s exercise of police power.

In any event, the Moratorium Orders have severability provisions, so, even if the bars on judicial proceedings were invalid, they could be severed.

Eleventh, whether Plaintiff has established a violation of PROMESA Section 303.

Section 303 cannot preempt pre-PROMESA conduct.

Section 303(1) applies only to “territory law[s],” so it does not cover the Fiscal Plan, other FOMB actions, or Executive Orders.

Contrary to Plaintiff’s assertion, the challenged laws (and Executive Orders) are not “method[s] of composition of indebtedness” under § 303(a) because they do not discharge or

reduce any debt. *See, e.g., Assured Guar. Corp. v. García-Padilla*, 214 F. Supp. 2d 117, 126-27 (D.P.R. 2016) (construing equivalent Bankruptcy Code § 903).

Section 303(3) preempts only “unlawful executive orders,” but, for the reasons described above, the challenged Executive Orders were not unlawful.

Section 303(3) cannot apply to the certification of the Fiscal Plan or other FOMB certifications in any event, because they are not “executive orders.”

Twelfth, whether Plaintiff has established a violation of PROMESA Section 407.

Section 407(a) creates liability only for those transfers “in violation of applicable law,” but, for the reasons discussed above, applicable law was not violated.

Plaintiff’s claim is improper in any event, because (i) any violation merely makes the transferee liable for the value of the transferred property, not for injunctive relief, and (ii) Section 407(b) says a creditor cannot bring a Section 407(a) claim when “a stay under title III is in effect,” as it is here.

Thirteenth, whether Plaintiff has established a violation of PROMESA Section 301 and Bankruptcy Code Sections 922 and 928.

PROMESA Section 301 provides only that certain Code sections apply, and it therefore cannot be violated.

Section 922 has not been violated, because that provision is simply the section that allegedly allows Plaintiff to sue despite the automatic stay from the Title III case.

No violation of Section 928 can occur because (i) Bankruptcy Code Section 552(a) – incorporated into PROMESA under that statute’s Section 301 – bars any lien from attaching to funds received by HTA after its Title III filing, (ii) some or all of the allegedly pledged revenues are not “special revenues” under the Code and are therefore not protected by Section 928(a), and (iii) Section 928(a) only allows for continued lien attachment.

Even if Plaintiff has a lien on special revenues under Section 928(a), that lien is “subject to the necessary operating expenses of such project or system” pursuant to Section 928(b), and Plaintiff cannot establish that the funds it alleges it has a lien on are not necessary operating expenses of Puerto Rico’s transportation system.

2. Assured Adversary Proceedings:

Assured/National/FGIC:

Defendants have asserted no counterclaims against Assured, National and FGIC. Plaintiffs Assured, National and FGIC reserve all of their rights with respect to any counterclaim, defense, or pleading Defendants may file.

Defendants:

Because this case is at a most preliminary stage, Defendants currently believe that the preliminary list of legal issues set forth in Section E will need to be decided by the Court.

Defendants also believe that the following legal issues, each of which is potentially dispositive of all or most of the Adversary Complaint, should be decided by the Court as a threshold matter and that the case should otherwise be held in abeyance pending that determination. Defendants reserve the right to supplement this concise statement of the legal basis of each defense, including citations to other statutes, rules, and case law that may be applicable as this matter proceeds.

First, whether Assured, National and FGIC have established that the bonds at issue in this case are secured by an enforceable statutory lien.

Assured, National and FGIC specifically allege that their bonds are secured by a statutory lien that Assured, National and FGIC contend arises from the Enabling Act and, depending upon the specific bonds, either the 1968 Resolution or 1998 Resolution. The contentions of Assured, National and FGIC are wrong as a matter of law. Pursuant to 11 U.S.C. § 101(53), a statutory

lien exists only where a lien arises automatically by force of a statute on specified circumstances or conditions, and is not based on any agreement to give a lien. The Enabling Act does not itself pledge anything or create a lien. The Enabling Act merely creates HTA as a “public corporation and governmental instrumentality” having the authority to resolve to issue bonds that may contain security provisions that would become part of the contract with the bond holders. The 1968 Resolution and the 1998 Resolution do not create a statutory lien because HTA is not part of the Legislature of Puerto Rico and, even if it were, the 1968 Resolution and the 1998 Resolution are not statutes. Moreover, to the extent that the 1968 Resolution or the 1998 Resolution may give rise to certain contractual rights between HTA and Assured, National and FGIC, such rights would not be a statutory lien and would not extend to the general revenues at issue in this action. Although the Complaint generally alleges that Assured, National and FGIC have a valid lien, Assured, National and FGIC have not alleged any facts to attempt to establish a valid, enforceable lien other than a purported statutory lien.

Second, whether Assured, National and FGIC have standing to bring some or all of their claims. To the extent that Assured, National and FGIC contend that the allegedly improper conduct injured HTA, Assured, National and FGIC are not entitled to sue derivatively on HTA’s behalf. Such a claim would be an improper attempt to seize control of a claim belonging to HTA and an interference with the political or governmental powers of the Debtor. *See* 11 U.S.C. § 362(a)(3)-(5) (incorporated at PROMESA § 301); PROMESA § 305(1).

Third, whether PROMESA Section 106(e) deprives the Court of authority to adjudicate some or all of Assured’s, National’s and FGIC’s claims.

Section 106(e) deprives the Court of jurisdiction to adjudicate some or all of Assured’s, National’s and FGIC’s claims to the extent that those claims involve challenges to the FOMB’s certification determinations. Congress empowered the FOMB to make certification

determinations relating to (among other things) voluntary agreements to restructure Bond Claims, the filing of petitions for adjustment of debts under PROMESA’s Title III, plans of adjustment, and a Fiscal Plan. PROMESA §§104(i)(1), 104(j)(3), 201(c), 201(e), 206(a), 304(a). Congress committed each of those certification determinations to the FOMB’s “sole discretion. *Id.* Section 106(e) states that “[t]here shall be *no jurisdiction in any United States district court* to review challenges to the Oversight Board’s certification determinations under this Act. *Id.* § 106(e) [48 U.S.C. § 2126(e)] (emphasis added).

Fourth, whether PROMESA Section 305 deprives the Court of authority or jurisdiction to grant the relief requested by Assured, National and FGIC because it bars the Court from ordering HTA to treat its property in any particular manner without the FOMB’s consent.

The statute states: “Subject to the limitations set forth in titles I and II of this Act, notwithstanding any power of the court, unless the Oversight Board consents or the plan so provides, the court may not, by any stay, order, or decree, in the case or otherwise, interfere with – (1) any of the political or governmental powers of the debtor; (2) any of the property or revenues of the debtor; or (3) the use or enjoyment by the debtor of any income-producing property. 48 U.S.C. § 2165. PROMESA § 305 is modeled on Bankruptcy Code § 904 and employs nearly identical language. Code § 904 prevents a court from “interfer[ing] with a chapter 9 debtor’s political or governmental powers, or the use of the debtor’s property, without the debtor’s consent. *In re N.Y.C. Off-Track Betting Corp.*, 434 B.R. 131, 140 (Bankr. S.D.N.Y. 2010). “As a practical matter, the § 904 restriction functions as an anti-injunction statute – and more. *In re City of Stockton, Cal.*, 478 B.R. 8, 20 (Bankr. E.D. Cal. 2012) (holding that § 904(2) prohibited court from ordering municipal debtor to continue paying certain retiree health benefits because such relief would interfere with debtor’s “property or revenues”); *In re Valley Health Sys.*, 429 B.R. 692, 714 (Bankr. C.D. Cal. 2010) (because of § 904, debtor “retains title to,

possession of, and complete control over its property and its operations, and is not restricted in its ability to sell, use, or lease its property”).

Fifth, assuming, *arguendo*, that the bonds at issue in this case are secured by an enforceable lien, whether Bankruptcy Code Section 552(a) bars any lien from attaching to funds received by HTA during the post-petition period.

Sixth, whether police power provides the Commonwealth with broad authority to regulate in times of fiscal and other emergencies. *E.g.*, *Faitoute Iron & Steel Co. v. City of Asbury Park*, 316 U.S. 502 (1942); *Home Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 231 (1934).

Seventh, whether Assured, National and FGIC have established a violation of the Contract Clause of the United States Constitution, and if so, the value of the allegedly impaired contractual obligations. *Id.*

The Contract Clause applies only to legislative action by a state (or the Commonwealth). It therefore does not apply to executive orders or FOMB actions, which are not legislation. *E.g.*, *City of Pontiac Ret. Emps. Ass’n v. Schimmel*, 751 F.3d 427 (6th Cir. 2014). To the extent the Assured, National and FGIC contend that the FOMB’s actions fall within the Contract Clause because they were authorized by PROMESA, the Clause is inapplicable because PROMESA is a *federal* law, not a law of the Commonwealth, and thus is not subject to the Contract Clause. *E.g.*, *PBGC v. R.A. Gray & Co.*, 467 U.S. 717 (1984). In addition, Assured, National and FGIC cannot seek dismissal of the Title III petition under the Contract Clause because (i) the Title III petition was filed pursuant to federal, not Commonwealth, legislation, and (ii) the petition is authorized by federal law.

To the extent Assured, National and FGIC claim that their alleged rights arise from a statute, Assured, National and FGIC must prove that the statutory right is a contractual right for purposes of the Contract Clause. *See, e.g.*, *Parella v. Ret. Bd. of R.I. Emps.’ Ret. Sys.*, 173 F.3d

46, 60 (1st Cir. 1999) (“Where a public contract allegedly arises out of statutory language, rather than out of a contract, the burden of proving that a contractual relationship exists is high, because normally state statutory enactments do not of their own force create a contract with those whom the statute benefits. . . . Indeed, absent some clear indication that the legislature intends to bind itself contractually, the presumption is that a law is not intended to create private contractual or vested rights.”) (internal quotation marks omitted).

Even if Assured, National and FGIC have a contract right for constitutional purposes, no violation occurred. Plaintiff cannot demonstrate a substantial impairment of its contracts, as opposed to a mere breach of the obligation to make payments, because the repayment obligation under the bonds has not been discharged at this point. *See, e.g. Redondo Const. Corp. v. Izquierdo*, 662 F.3d 42, 48 (1st Cir. 2011) (“The clause does not bar a state from merely breaching a contract, which is the prerogative of any private party, subject to liability for the breach. A contract creates alternatives obligations: performance or payment of damages for breach.”) Moreover, because the value of the contractual obligation was small in the context of the fiscal emergency and Assured, National and FGIC cannot overcome Defendants’ right to exercise police power in a dire fiscal emergency. Even if a substantial impairment of allegedly contractual rights has occurred, Assured, National and FGIC have not met their burden of showing that the impairment was not “reasonable and necessary to serve an important government purpose. *UAW v. Fortuño*, 633 F.3d 37, 41 (1st Cir. 2011). Defendants’ decisions about what is reasonable and necessary are entitled to “meaningful deference,” *id.* at 44, and Assured, National and FGIC have not overcome that deference by meeting their burden of pleading and proving *specific* alternatives that would have accomplished the same purposes with allegedly less destructive impact on contractual rights, *id.* at 42-45.

Furthermore, even assuming, *arguendo*, that there was an impairment, now that HTA is the subject of a Title III proceeding, the Bankruptcy Power exercised by this Court permits the impairment of contractual obligations. *See, e.g., In re City of Detroit*, 504 B.R. 191, 231-32 (E.D. Mich. 2013) (“The Bankruptcy Clause necessarily authorizes Congress to make laws that would impair contracts. It long has been understood that bankruptcy law entails impairment of contracts.”); *In re City of Stockton, Cal.*, 478 B.R. 8, 15-16 (Bankr. E.D. Cal. 2012) (while states cannot impair contracts, Congress can, and it does so through the bankruptcy clause).

Eighth, whether Assured, National and FGIC have established a violation of the Takings Clause of the Fifth Amendment of the United States Constitution.

The Takings Clause does not apply in a Title III or bankruptcy context.

Assured, National and FGIC do not have a property right within the meaning of the Takings Clause, because (i) Assured, National and FGIC do not have a statutory lien on the allegedly pledged revenues under the HTA Enabling Act, and the 1968 and 1998 Resolutions did not (and could not) create statutory liens, and/or (ii) even if Assured, National and FGIC do have a security interest in existing funds, that interest does not extend to *future* revenue streams that do not yet exist.

Even if Assured, National and FGIC do have a property interest in some or all of the allegedly pledged revenues, that interest was not improperly “taken” within the meaning of the Fifth Amendment because the challenged conduct constituted valid exercises of police power. *See, e.g., Keystone Bituminous Coal Ass’n v. DeBenedictis*, 480 U.S. 470 (1987); *Buffalo Teachers Fed’n v. Tobe*, 464 F.3d 362 (2d Cir. 2006); *Ropico, Inc. v. City of N.Y.*, 425 F. Supp. 970 (S.D.N.Y. 1976).

Staying enforcement of liens only abridges contractual rights, is not a taking, and is allowed by the bankruptcy power to further reorganization. *Continental Bank v. Rock Island Ry.*,

294 U.S. 648, 680-681 (1935); *Lend Lease v. Briggs Transp. Co. (In re Briggs Transp. Co.)*, 780 F.2d 1339 (8th Cir. 1985). Assured, National and FGIC should not receive any relief from the Court that may worsen the Commonwealth’s fiscal emergency until after the Court has ruled on plans of adjustment for the Commonwealth and HTA.

Even if a “taking” occurred, no “just compensation” is owed – and the Takings Clause has therefore not been violated – because Assured, National and FGIC and other creditors would have been worse off in the long run without the challenged actions. *See, e.g., Brown v. Legal Found. of Wash.*, 538 U.S. 216 (2003); *A&D Auto Sales, Inc. v. U.S.*, 748 F.3d 1142 (Fed. Cir. 2014).

Ninth, whether Assured, National and FGIC have established a violation of the Due Process Clause of the United States Constitution.

No procedural due-process violation exists where, as here, Assured, National and FGIC have been provided with notice and an opportunity to be heard.

No substantive due-process violation exists where, as here, an economic regulation is not “arbitrary, discriminatory or demonstrably irrelevant to the policy that the legislature is free to adopt. *Pennell v. San Jose*, 485 U.S. 1, 11 (1988).

3. Peaje Adversary Proceedings:

Peaje:

Defendants have not asserted any counterclaims against Peaje. Given Defendants’ reservation of rights, Peaje reserves its rights with respect to any counterclaim, defense, or pleading Defendants may file.

Defendants:

Pursuant to the Court’s June 7, 2017 Order Scheduling Hearing, Defendants’ time to respond to the Complaint by motion to dismiss, answer or otherwise has been extended to thirty

days following the Court's resolution of the Motion for Preliminary Injunction. Defendants anticipate that, when their responsive pleading is due, they will file a motion to dismiss the Complaint. Accordingly, Defendants have not yet raised affirmative defenses. Pursuant to the Court's June 13, 2017 Order Scheduling Briefing and Discovery on the Motion for Preliminary Injunction, Defendants will file their memorandum of points and authorities in opposition to the Motion for Preliminary Injunction on July 14, 2017.

The legal issues that Defendants believe this Court will need to address are set forth in Defendants' above response in Section E. Defendants reserve the right to add additional legal issues after the Court's resolution of the Motion for Preliminary Injunction. Preliminarily, however, Defendants believe that the following threshold legal issues, each of which is potentially dispositive of all or most of the Verified Complaint, should be decided by the Court at the earliest possible juncture. Defendants reserve the right to supplement this concise statement of the legal basis of each defense, including citations to other statutes, rules, and case law that may be applicable:

1. Peaje specifically alleges that its Bonds are secured by a statutory lien that Peaje contends arises from the Enabling Act and the 1968 Resolution. Peaje's contention is wrong as a matter of law. Pursuant to 11 U.S.C. § 101(53), a statutory lien exists only where a lien arises automatically by force of a statute on specified circumstances or conditions, and is not based on any agreement to give a lien. The Enabling Act does not itself pledge anything or create a lien. The Enabling Act merely creates HTA as a "public corporation and governmental instrumentality" having the authority to resolve to issue bonds that may contain security provisions that will become part of the contract with the bond holders. The 1968 Resolution does not create a statutory lien because HTA is not part of the Legislature of Puerto Rico and, even if it were, the 1968 Resolution is not a statute. Moreover, to the extent that the 1968

Resolution may give rise to certain contractual rights between HTA and Peaje, such rights would not be a statutory lien and would not extend to the Toll Revenues at issue in this action. Although the Complaint generally alleges that Peaje has a “valid, first-priority lien,” Peaje has not alleged any facts, or provided any evidence in support of its motion for preliminary injunction, to attempt to establish a valid, enforceable lien other than a purported statutory lien.

2. PROMESA Section 305 deprives the Court of authority to grant Peaje’s requested affirmative and injunctive relief. PROMESA Section 305 bars this Court from ordering HTA to move or place its property in any particular manner. *See* 48 U.S.C. § 2165. PROMESA Section 305 is modeled after Section 904 of the Bankruptcy Code and employs nearly identical language. Section 904 of the Bankruptcy Code prevents a court from “interfer[ing] with a chapter 9 debtor’s political or governmental powers, or the use of the debtor’s property, without the debtor’s consent. *In re New York City Off-Track Betting Corp.*, 434 B.R. 131, 140 (Bankr. S.D.N.Y. 2010). “As a practical matter, the § 904 restriction functions as an anti-injunction statute—and more. *In re City of Stockton, Cal.*, 478 B.R. 8, 20 (Bankr. E.D. Cal. 2012) (holding that Section 904(2) prohibited the Court from ordering the municipal debtor to continue payment of certain retirees health benefits since such relief would constitute an interference with the debtor’s “property or revenues”); *In re Valley Health Sys.*, 429 B.R. 692, 714 (Bankr. C.D. Cal. 2010) (the debtor “retains title to, possession of, and complete control over its property and its operations, and is not restricted in its ability to sell, use, or lease its property” on account of Section 904).

I. A concise statement of the measure of proof and on whom the burden of proof falls as to each cause of action or defense.

1. Ambac Adversary Proceeding:

Ambac:

Ambac bears the burden of showing as matter of law or by a preponderance of the evidence its claims for relief. Defendants bear the burden of proving any affirmative defenses that they assert by a preponderance of the evidence, including that section 928(b) of the Bankruptcy Code applies to all of the Pledged Revenues. *See In re Jefferson County*, 482 B.R. 404, 427 n. 14 (Bankr. N.D. Ala. 2012) (“the County bears the burden because it is attempting to invoke the ‘necessary operating expense’ exception in § 928(b).”).

Defendants:

Plaintiff has the burden of proof on all its claims.

Plaintiff has the burden of establishing that the bonds at issue in this case are secured by an enforceable lien, which is a threshold matter that should be decided by the Court while the case is otherwise held in abeyance.

Assuming, arguendo, that Plaintiff establishes the bonds at issue in this case are (i) secured by an enforceable lien, and (ii) entitled to adequate protection, then Defendants have the burden of proof with regard to establishing that the collateral for the bonds is adequately protected.

At this time, Defendants have not asserted any counterclaims or raised any affirmative defenses because the date for filing a responsive pleading has not passed. Any such counterclaims or affirmative defenses would be subject to the applicable burdens of proof.

2. Assured Adversary Proceedings:

Assured/National/FGIC:

Assured, National and FGIC bear the burden of showing as a matter of law or by a preponderance of the evidence their claims for relief. Defendants bear the burden of proving any affirmative defenses that they assert by a preponderance of the evidence, including that Section 928(b) of the Bankruptcy Code applies to all of the Pledged Revenue. *See In re Jefferson County*, 482 B.R. 404, 427 n. 14 (Bankr. N.D. Ala. 2012) (“the County bears the burden because it is attempting to invoke the ‘necessary operating expense’ exception in § 928(b).”).

Defendants:

Assured, National and FGIC have the burden of proof on all their claims.

Assured, National and FGIC have the burden of establishing that the bonds at issue in this case are secured by an enforceable lien, which is a threshold matter that should be decided by the Court while the case is otherwise held in abeyance.

Assuming, *arguendo*, that Assured, National and FGIC establish the bonds at issue in this case are (i) secured by an enforceable lien, and (ii) entitled to adequate protection, then Defendants have the burden of proof with regard to establishing that the collateral for the bonds is adequately protected.

At this time, Defendants have not asserted any counterclaims or raised any affirmative defenses because the date for filing a responsive pleading has not passed. Any such counterclaims or affirmative defenses would be subject to the applicable burdens of proof.

3. Peaje Adversary Proceedings:

Peaje:

Other than as modified by Sections 362(g) and 922(b) of the Bankruptcy Code, Peaje contends that it has the burden of proof with respect to its claims for relief. Peaje contends that

Defendants bear the burden of proving any affirmative defenses that they assert based on statutory exceptions or otherwise, including that Section 928(b) of the Bankruptcy Code applies to the 1968 Bondholders' lien on the Toll Revenues. *See Jefferson County*, 482 B.R. at 427 n. 14 (“the County bears the burden because it is attempting to invoke the ‘necessary operating expense’ exception in § 928(b)”). With respect to Peaje’s claims for adequate protection and for relief from stay raised in Counts 2 and 7 the complaint, Peaje contends that it has the burden of proof on the validity, priority or extent of its lien in the Toll Revenues, and Defendants have the burden of proof on the issue of adequate protection and all other issues. *See* 11 U.S.C. §§ 362(g) & 922(b).

Defendants:

Peaje has the initial burden of proof on all its claims.

As a threshold matter, Peaje has the burden of establishing that the Bonds at issue in this case are secured by a valid, enforceable statutory lien.

Assuming, *arguendo*, that Peaje establishes that it (i) has a statutory lien, and (ii) that it is entitled to adequate protection, then Defendants have the burden of proof with regard to establishing that Peaje’s collateral for the Bonds is adequately protected.

Pursuant to the Court’s June 7, 2017 Order Scheduling Hearing, Defendants’ time to respond to the Complaint by motion to dismiss, answer or otherwise has been extended to thirty days following the Court’s resolution of the Motion for Preliminary Injunction. Accordingly, Defendants have not yet raised affirmative defenses or asserted any counterclaims, but reserve the right to do so at the appropriate time. Any such counterclaims or affirmative defenses would be subject to the applicable burdens of proof.

J. Whether and to what extent amendments to pleadings and/or the addition or substitutions of parties will be required, and proposed deadlines therefor

1. Ambac Adversary Proceeding:

Ambac:

Ambac may amend its complaint in the Ambac Adversary Proceeding to remove its Sixth Claim for Relief in the event Ambac's motion to intervene is granted in the adversary proceeding captioned *Peaje Investments LLC v. Puerto Rico Highways & Transportation Authority, et al.*, Adv. Proc. No. 17-151-LTS (D.P.R.). Ambac does not otherwise anticipate amending its complaint or adding or substituting defendants at this time. Ambac reserves its right to so do in accordance with the applicable Federal Rules of Civil Procedure.

Defendants:

Defendants intend to file dispositive motions under Fed. R. Civ. P. Rules 12(b) and/or 56, which could eliminate or alter the pleadings. Defendants reserve their rights to file pleadings in accordance with the applicable Federal Rules of Civil Procedure.

2. Assured Adversary Proceedings:

Assured/National/FGIC:

At this time, Assured, National and FGIC do not anticipate amending their complaint, or adding or substituting defendants. As the Assured Adversary Proceedings proceed, Assured, National and FGIC may require such amendments, or may need to add or substitute defendants.

Defendants:

Defendants intend to file dispositive motions under Fed. R. Civ. P. Rules 12(b) and/or 56, which could eliminate or alter the pleadings. Defendants reserve their rights to file pleadings in accordance with the applicable Federal Rules of Civil Procedure.

3. Peaje Adversary Proceedings:

Peaje:

Plaintiff does not anticipate substituting additional parties at this time. Plaintiff reserves the right to so amend its pleadings or add parties after Defendants file their responsive pleadings and defenses, and after the completion of discovery.

Defendants:

Pursuant to the Court's June 7, 2017 Order Scheduling Hearing, Defendants' time to respond to the Complaint by motion to dismiss, answer or otherwise has been extended to thirty days following the Court's resolution of the Motion for Preliminary Injunction. Defendants reserve their rights to file dispositive motions under Fed. R. Civ. P. Rules 12(b) and/or 56 following the conclusion of the preliminary injunction hearing, which could eliminate or alter the pleadings. Defendants reserve their rights to file pleadings in accordance with the applicable Federal Rules of Civil Procedure.

K. What, if any, changes should be made in the timing, form or requirements for disclosures under Fed. R. Civ. P. 26(a), including a statement as to when any disclosures required under Fed. R. Civ. P. 26(a)(1) were made or will be made.

1. Ambac Adversary Proceeding:

Ambac:

Ambac does not believe that any changes should be made in the timing, form or requirements for disclosures under Federal Rule 26(a). Initial disclosures shall be provided by both parties within 14 days of the Rule 26(f) conference.

Defendants:

Unless the Court enters the schedule as Defendants propose in Sections L and P, below, then Defendants intend to move to dismiss Plaintiffs' Adversary Complaint, in its entirety. Subject to the proposal set forth in Sections L and P below, Defendants propose that such motion

shall be filed on or before July 28, 2017. Defendants' position is that no disclosures under Fed. R. Civ. P. 26(a) should be required unless and until the Court determines that Plaintiffs' Adversary Complaint survives the motion to dismiss in whole or in part.

2. Assured Adversary Proceedings:

Assured/National/FGIC:

Assured, National and FGIC do not believe that any changes should be made in the timing, form or requirements for disclosures under Fed. R. Civ. P. 26(a). Initial disclosures shall be provided by all parties within 14 days of the Rule 26(f) conference.

Defendants:

Unless the Court enters a schedule as Defendants propose in Sections L and P, below, then Defendants intend to move to dismiss Plaintiffs' Adversary Complaint, in its entirety. Defendants propose that such motion shall be filed on or before July 28, 2017. Subject to the proposal set forth in Sections L and P below, Defendants' position is that no disclosures under Fed. R. Civ. P. 26(a) should be required unless and until the Court determines that Plaintiffs' Adversary Complaint survives the motion to dismiss in whole or in part.

3. Peaje Adversary Proceedings:

Peaje:

The Parties shall exchange initial disclosures under Fed. R. Civ. P. 26(a) within 14 days after the resolution of the hearing on Plaintiff's Motion for Preliminary Injunction.

Defendants:

The parties are already engaged in discovery exchanges to resolve Peaje's motion for a preliminary injunction. Pursuant to the Court's June 7, 2017 Order Scheduling Hearing, Defendants' time to respond to the Verified Complaint by motion to dismiss, answer or otherwise has been extended to thirty days following the Court's resolution of the Motion for

Preliminary Injunction. The Parties shall meet and confer regarding the timing of initial disclosures under Fed. R. Civ. P. 26(a) after the Court's resolution of Peaje's Motion for Preliminary Injunction.

L. The subjects on which disclosure may be needed, means of coordinating discovery on common issues and a proposed discovery cut-off date.

1. Ambac Adversary Proceeding:

Ambac:

Ambac anticipates the filing of dispositive motions but, in light of the continued lack of transparency of financial information, Ambac believes that discovery should proceed on all material issues notwithstanding. Ambac proposes that such discovery proceed in accordance with the applicable Federal Rules and that the parties negotiate and jointly submit a proposed scheduling order for the Court's consideration.

Defendants:

Defendants dispute Plaintiff's assertion that there has been a lack of transparency of financial information, and respectfully refer the Court to the June 15, 2017 status report filed by the FOMB.

The core threshold issue in each of the three cases is whether the plaintiffs have an enforceable lien as pled by each plaintiff. The absence of an enforceable lien eliminates all claims in the Peaje Adversary Proceedings and the Assured Adversary Proceedings, and a number of claims in the Ambac Adversary Proceedings. Accordingly, the Court should stage the litigation to address first whether the plaintiffs have an enforceable lien. While Defendants believe that the complaints in each case fail to state a claim on which relief can be granted, Defendants are prepared to move directly to the merits of whether the plaintiffs have an enforceable lien as a threshold matter. As set forth below, in section P, the Plaintiffs should

immediately make their Rule 26 disclosures as to the ownership and/or control of HTA bonds, as well as the existence of any enforceable lien. In addition, Defendants have proposed a short schedule for adjudicating the existence of a lien. To the extent that one or more Plaintiffs establishes an enforceable lien, the parties will meet and confer to discuss coordination of discovery on the operations and finances of HTA.

2. Assured Adversary Proceedings:

Assured/National/FGIC:

Assured, National and FGIC propose that the Assured Adversary Proceeding be divided into two stages. The first stage would address the First Claim for Relief (“Stage One”) alleged by Assured, National and FGIC. The second stage would address the Second and Third Claims for Relief (“Stage Two”) alleged by Assured, National and FGIC. Stage Two may only be necessary if Defendants fail to comply with the Court’s declaratory judgment on the First Claim for Relief alleged by Assured, National and FGIC.

With regard to discovery in Stage One, if the Court agrees that the Pledged Revenues are special revenues but holds that Section 928(b) applies as a matter of law, then depending on what is shown in discovery, there may be factual issues concerning the extent to which HTA’s “necessary operating expenses” are covered by Section 928(b). Such evidence on HTA’s expenses may be needed in order for Assured, National and FGIC to prevail on dispositive motions on their First Claim for Relief. At most, Assured, National and FGIC believe that they need the same discovery being sought in the Peaje Adversaries regarding HTA’s expenses.

More discovery may be required before Assured, National and FGIC could prevail on dispositive motions on their Second and Third Claims for Relief. If Stage Two is necessary, Assured, National and FGIC may take discovery concerning the balance of hardship on the parties if permanent injunctive relief is or is not granted. This type of discovery will involve

different issues, documents and witnesses than discovery in Stage One. Therefore, in Stage One, the Court should rule on dispositive motions on the First Claim for Relief before the parties engage in discovery regarding the Second and Third Claims for Relief.

Defendants:

The core threshold issue in each of the three cases is whether the plaintiffs have an enforceable lien as pled by each plaintiff. The absence of an enforceable lien eliminates all claims in the Peaje Adversary Proceedings and the Assured Adversary Proceedings, and a number of claims in the Ambac Adversary Proceedings. Accordingly, the Court should stage the litigation to address first whether the plaintiffs have an enforceable lien. While Defendants believe that the complaints in each case fail to state a claim on which relief can be granted, Defendants are prepared to move directly to the merits of whether the plaintiffs have an enforceable lien as a threshold matter. As set forth below, in section P, the Plaintiffs should immediately make their Rule 26 disclosures as to the ownership and/or control of HTA bonds, as well as the existence of any enforceable lien. In addition, Defendants have proposed a short schedule for adjudicating the existence of a lien. To the extent that one or more Plaintiffs establishes an enforceable lien, the parties will meet and confer to discuss coordination of discovery on the operations and finances of HTA.

3. Peaje Adversary Proceedings:

Peaje:

The Court has already issued an Order Scheduling Briefing and Discovery on Plaintiff's Preliminary Injunction and Stay Relief Requests. After the Court has ruled on Plaintiff's pending motion, the Parties will meet and confer regarding additional discovery and a deadline to complete such discovery. The scope and timing of that discovery will likely depend on the Court's decision.

The Parties will also confer with the parties in *Assured Guaranty Corp. v. Commonwealth of Puerto Rico*, Adv. Proc. Nos. 17-155-LTS, 17-156-LTS and *Ambac Assurance Corp. v. Commonwealth of Puerto Rico*, Adv. Proc. No. 17-159-LTS, and make reasonable efforts to coordinate discovery on common issues. For example, the Parties anticipate that document productions can be made across all cases on certain topics and that certain depositions can be jointly noticed. In response to Defendants' suggestion, Peaje does not believe that piecemeal litigation of the issues is warranted or appropriate, and that the issues in the litigation should be resolved together in a non-piecemeal fashion.

Defendants:

The core threshold issue in each of the three cases is whether the plaintiffs have an enforceable lien as pled by each plaintiff. The absence of an enforceable lien eliminates all claims in the Peaje Adversary Proceedings and the Assured Adversary Proceedings, and a number of claims in the Ambac Adversary Proceedings. Accordingly, the Court should stage the litigation to address first whether the plaintiffs have an enforceable lien as pled by each of them. While Defendants believe that the complaints in each case fail to state a claim on which relief can be granted, Defendants are prepared to move directly to the merits of whether the plaintiffs have an enforceable lien as a threshold matter. In the Peaje Adversary Proceedings, the Defendants intend to address the absence of an enforceable lien as part of their opposition to Peaje's Motion for Preliminary Injunction. In addition, as set forth below, in section P, the Plaintiffs should immediately make their Rule 26 disclosures as to the ownership and/or control of HTA bonds, as well as the existence of any enforceable lien. In addition, Defendants have proposed a short schedule for adjudicating the existence of a lien. To the extent that one or more plaintiffs establishes an enforceable lien, the parties will meet and confer to discuss coordination of discovery on the operations and finances of HTA.

M. Whether and to what extent expert evidence will be required, and proposed deadlines for expert discovery.

1. Ambac Adversary Proceeding:

Ambac:

Ambac anticipates the presentation of expert testimony in support of its contention that GO Debt can be satisfied in accordance with the preexisting order of priorities established by Puerto Rico law, without clawback of Pledged Revenues. Ambac further anticipates presentation of expert testimony related to necessary operating expenses under section 922(d) of the Bankruptcy Code. Ambac proposes that expert discovery proceed in accordance with the applicable Federal Rules and that the parties negotiate and jointly submit a proposed scheduling order for the Court's consideration.

Notwithstanding the foregoing, Ambac reserves the right to present expert testimony in rebuttal, as necessary.

Defendants:

If some or all of Plaintiff's claims survive the intended motion to dismiss for lack of subject matter jurisdiction and other grounds and/or motion for partial summary judgment, Defendants currently expect that the following expert testimony may be required:

- a. Transportation Expert(s) (*e.g.*, impact on highway system, expenses of highway and transportation system, including without limitation application of toll revenue to the entirety of the system)
- b. Economist(s) (*e.g.*, adequate protection, discount rates)
- c. Macroeconomist(s) (*e.g.*, impact on fiscal plan and economy of Puerto Rico)
- d. Rebuttal expert(s) in response to any expert(s) designated by Plaintiff
- e. Expert discovery shall be completed 60 days after the close of fact discovery.

2. Assured Adversary Proceedings:

Assured/National/FGIC:

In Stage One, Assured, National and FGIC propose submitting declarations from experts in support of their motion for partial summary judgment regarding HTA's expenses and the extent to which HTA's "necessary operating expenses" are covered by Section 928(b) of the Bankruptcy Code. Defendants can then depose experts of Assured, National and FGIC following the submission of such declarations. If Stage Two is necessary, Assured, National and FGIC propose submitting declarations from experts concerning the balance of hardship on the parties if permanent injunctive relief is or is not granted.

For both Stage One and Stage Two, Assured, National and FGIC reserve all of their rights to present additional expert testimony depending on the nature of expert evidence submitted by Defendants.

Defendants:

If some or all of Assured's, National's and FGIC's claims survive the intended motion to dismiss for lack of subject matter jurisdiction and other grounds and/or motion for partial summary judgment, Defendants currently expect that the following expert testimony may be required:

- a. Transportation Expert(s) (*e.g.*, impact on highway system, expenses of highway and transportation system, including without limitation application of toll revenue to the entirety of the system)
- b. Economist(s) (*e.g.*, adequate protection, discount rates)
- c. Macroeconomist(s) (*e.g.*, impact on fiscal plan and economy of Puerto Rico)
- d. Rebuttal expert(s) in response to any expert(s) designated by Assured, National and FGIC

Expert discovery shall be completed 60 days after the close of fact discovery.

3. Peaje Adversary Proceedings:

Peaje:

The Court has already issued an Order Scheduling Briefing and Discovery on Plaintiff's Preliminary Injunction and Stay Relief Requests, which includes expert discovery deadlines. After the Court has ruled on Plaintiff's pending motion, the parties will meet and confer regarding additional expert discovery and a deadline to complete such discovery. The scope and timing of that discovery will likely depend on the Court's decision. Plaintiff reserve the right to seek additional expert testimony following this Court's resolution of the Plaintiff's Motion for a Preliminary Injunction.

Defendants:

The Court has already issued an Order Scheduling Briefing and Discovery on Peaje's Preliminary Injunction and Stay Relief Requests, which includes certain deadlines for expert discovery with respect to resolution of Peaje's Motion for Preliminary Injunction. Defendants currently expect that the following expert testimony may be required:

- a. Transportation Expert(s) (*e.g.*, impact on highway system, expenses of highway and transportation system, including without limitation application of toll revenue to the entirety of the system)
- b. Economist(s) (*e.g.*, adequate protection, discount rates)
- c. Macroeconomist(s) (*e.g.*, impact on fiscal plan and economy of Puerto Rico)
- d. Rebuttal expert(s) in response to any expert(s) designated by Peaje

Defendants reserve the right to seek additional expert testimony following this Court's resolution of Peaje's Motion for Preliminary Injunction.

N. What, if any, changes should be made in the limitations on discovery imposed under the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, or the Local Rules of the Bankruptcy Court for the District of Puerto Rico, and what other limitations should be imposed.

1. Ambac Adversary Proceeding:

Ambac:

Ambac proposes that it promptly receive all documents produced, and transcripts of depositions taken, in *Peaje Investments LLC v. Puerto Rico Highways & Transportation Authority*, Adv. Proc. Nos. 17-151-LTS, 17-152-LTS. Ambac also proposes that the Court order that Federal Rule 30(d) that limits depositions to “1 day of 7 hours” be modified so that depositions will be “7 hours plus any additional time if needed to fairly examine the deponent.

In addition, to promote efficiency and avoid unnecessary expenses, Ambac respectfully requests a waiver of Rule 83A(f) of the Local Civil Rules for the U.S. District Court for the District of Puerto Rico, to the extent applicable in this matter under Rule 1001-1(d) of the Local Bankruptcy Rules, to allow counsel admitted pro hac vice to attend the deposition of witnesses without local counsel present. Rule 83A(f) provides that “[t]he attendance of the member of the bar of this Court is required at all proceedings, unless excused by the Court.”

At this time, Ambac does not propose any other changes in the limitations of discovery imposed under the applicable rules, except to the extent that the parties have proposed or agreed upon completion dates that represent such a change.

Defendants:

Defendants do not propose any changes in the limitations of discovery imposed under the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, or the Local Rules of the Bankruptcy Court for the District of Puerto Rico, except to the extent, if any, that the parties have proposed completion dates that represent such a change. Defendants specifically object to allowing more than 7 hours to depose any deponent in the absence of an express

agreement between the parties or further order of the Court. Defendants see no reason to waive Rule 83A(f) of the Local Civil Rules for the U.S. District Court for the District of Puerto Rico, except to the extent that attendance by telephone be permitted.

2. Assured Adversary Proceedings:

Assured/National/FGIC:

As discussed above, Assured, National and FGIC propose that the Assured Adversary Proceeding be divided into two stages. Assured, National and FGIC also propose that they promptly receive all documents produced and transcripts of depositions taken in *Peaje Investments LLC v. Puerto Rico Highways & Transportation Authority*, Adv. Proc. Nos. 17-151-LTS, 17-152-LTS. Assured, National and FGIC further propose that the Court order that Federal Rule 30(d) that limits depositions to “1 day of 7 hours” be modified so that depositions will be “7 hours plus any additional time if needed to fairly examine the deponent.

To promote efficiency and avoid unnecessary expenses, Plaintiff respectfully requests a waiver of Rule 83A(f) of the Local Civil Rules for the U.S. District Court for the District of Puerto Rico, to the extent applicable in this matter under Rule 1001-1(d) of the Local Bankruptcy Rules, to allow counsel admitted *pro hac vice* to attend the deposition of witnesses without local counsel present. Rule 83A(f) provides that “[t]he attendance of the member of the bar of this Court is required at all proceedings, unless excused by the Court.”

At this time, Assured, National and FGIC do not propose any other changes in the limitations of discovery imposed under the applicable rules, except to the extent that the parties have proposed completion dates that represent such a change.

Defendants:

Defendants do not propose any changes in the limitations of discovery imposed under the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, or the Local Rules

of the Bankruptcy Court for the District of Puerto Rico, except to the extent, if any, that the parties have proposed completion dates that represent such a change. Defendants specifically object to allowing more than 7 hours to depose any deponent in the absence of an express agreement between the parties or further order of the Court. Defendants see no reason to waive Rule 83A(f) of the Local Civil Rules for the U.S. District Court for the District of Puerto Rico, except to the extent that attendance by telephone be permitted.

3. Peaje Adversary Proceedings:

Peaje:

To the extent that depositions are noticed across multiple cases, Plaintiff respectfully requests that the seven-hour time limit for a deposition pursuant to Fed. R. Civ. Pro. 30(d)(1) be waived. Depending on the nature of the witness, the Parties will meet and confer regarding the appropriate length of the depositions and reserve the right to seek guidance from the Court.

To promote efficiency and avoid unnecessary expenses, Plaintiff respectfully requests a waiver of Rule 83A(f) of the Local Civil Rules for the U.S. District Court for the District of Puerto Rico, to the extent applicable in this matter under Rule 1001-1(d) of the Local Bankruptcy Rules, to allow counsel admitted *pro hac vice* to attend the deposition of witnesses without local counsel present. Rule 83A(f) provides that “[t]he attendance of the member of the bar of this Court is required at all proceedings, unless excused by the Court.”

Based upon the facts presently known, Plaintiff does not request any additional changes to the standard discovery rules at this time, but Plaintiff reserves all rights to make such requests in the future.

Defendants:

Defendants do not propose any changes in the limitations of discovery imposed under the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, or the Local Rules

of the Bankruptcy Court for the District of Puerto Rico, except to the extent, if any, that the parties have proposed completion dates that represent such a change. Defendants specifically object to allowing more than 7 hours to depose any deponent in the absence of an express agreement between the parties or further order of the Court. Defendants see no reason to waive Rule 83A(f) of the Local Civil Rules for the U.S. District Court for the District of Puerto Rico, except to the extent that attendance by telephone be permitted.

O. The status of settlement discussions and the prospects for settlement of any or all of the above-captioned adversary proceeding in whole or in part, provided that the Preliminary Pre-Trial Statement must not disclose to the Court specific settlement offers or demands.

1. Ambac Adversary Proceeding:

Ambac:

The Parties have previously engaged in settlement discussions; those discussions were not successful. The parties are willing to engage in further mediation, as ordered by the Court. Ambac believe that any mediation should proceed concurrently with the prosecution of the Ambac Adversary Proceeding.

Defendants:

The parties have engaged in settlement discussions and are open to the prospect of further settlement discussion. However, to date, no resolution has been reached. Defendants are willing to engage in further mediation as ordered by the Court. Whether the calendar for discovery and briefing is impacted by such discussion or mediation should be subject to further order of the Court, including consideration of any recommendation that may be made by an appointed mediator.

2. Assured Adversary Proceedings:

Assured/National/FGIC:

The parties engaged in settlement discussions, which were unsuccessful. The parties are willing to engage in further mediation as ordered by the Court as long as such mediation is conducted in parallel to discovery and briefing in the Assured Adversary Proceedings.

Defendants:

The parties have engaged in settlement discussions and are open to the prospect of further settlement discussion. However, to date, no resolution has been reached. Defendants are willing to engage in further mediation as ordered by the Court. Whether the calendar for discovery and briefing is impacted by such discussion or mediation should be subject to further order of the Court, including consideration of any recommendation that may be made by an appointed mediator.

3. Peaje Adversary Proceedings:

Peaje:

The Parties have engaged in a settlement discussion, which was unsuccessful. Plaintiff is willing to participate in mediation but contends that any mediation should be conducted in parallel with discovery and other case proceedings.

Defendants:

The Parties have engaged in settlement discussions and are open to the prospect of further settlement discussion. However, to date, no resolution has been reached. Defendants are willing to engage in further mediation as ordered by the Court. Whether the calendar for discovery and briefing is impacted by such discussion or mediation should be subject to further order of the Court, including consideration of any recommendation that may be made by an appointed mediator.

P. A suggested methodology for coordinated briefing of any anticipated dispositive motion practice in these adversary proceedings.

1. Ambac Adversary Proceeding:

Ambac:

Ambac anticipates the filing of dispositive motions and proposes that such motion practice proceed in accordance with the applicable Federal Rules. Ambac proposes that the parties negotiate and jointly submit a proposed briefing schedule for the Court's consideration. Ambac further notes that the schedule proposed by Defendants below was included in this pre-trial statement after midnight on the date it was due to be submitted and was not the subject of negotiation or conferral among the parties; and avers that Defendants' proposed schedule is unworkable and unfairly prioritizes Defendants' assertion of their purported defenses over Plaintiff's right to prosecute its affirmative claims. Any schedule ordered in this case should permit either Plaintiff or Defendants to pursue whatever dispositive motions they believe appropriate in the ordinary course as contemplated by the Federal Rules.

Defendants:

A threshold issue in each of the three cases is whether the plaintiffs have an enforceable lien as pled by each plaintiff. The absence of an enforceable lien eliminates all claims in the Peaje Adversary Proceedings and the Assured Adversary Proceedings, and a number of claims in the Ambac Adversary Proceedings. In Peaje Adversary Proceedings, the Defendants intend to address the absence of an enforceable lien as part of their opposition to the plaintiff's motion for preliminary injunction.

In the other two cases, the Court should establish the following schedule:

- a. **July 5:** Plaintiffs to identify:
 - i. The amount and type of bonds that they own and/or insure; and
 - ii. The precise type of enforceable lien(s) that they are claiming.

- b. **July 7:** Plaintiffs to complete Rule 26 Disclosures concerning their alleged lien(s).
- c. **July 12:** Defendants to serve document requests limited to issues concerning the alleged lien(s).
- d. **July 19:** Plaintiffs to serve written responses and objections to document requests and to commence producing responsive documents.
- e. **July 26:** Plaintiffs to complete production of responsive documents.
- f. **August 16:** Defendants to file motions for partial summary judgment with respect to plaintiffs' alleged lien(s).
- g. **August 28:** Plaintiffs to file oppositions to motions for partial summary judgment.
- h. **September 5:** Defendants to file reply briefs to motions for partial summary judgment.

Following the adjudication of the existence of the alleged enforceable lien(s), the Parties will meet and confer to set a schedule to address the remaining issues, if any.

To the extent Plaintiff has concerns about the timing of the delivery of the proposed schedule, Defendants responded within 48 hours from having received Plaintiff's original submission.

2. Assured Adversary Proceedings:

Assured/National/FGIC:

In response to Defendants' suggestions, Plaintiffs Assured, National and FGIC do not believe that piecemeal litigation of isolated issues is warranted or appropriate, and submit that the issues in the litigation should be resolved together. Defendants' proposed schedule is unworkable and unfairly prioritizes Defendants' assertion of their purported defenses over Plaintiff's right to prosecute its affirmative claims. Any schedule ordered in this case should permit either Plaintiff or Defendants to pursue whatever dispositive motions they believe appropriate in the ordinary course as contemplated by the Federal Rules.

For Stage One, Assured, National and FGIC propose the following briefing schedule:

- Defendants shall file answers or otherwise respond to the complaint, including filing motions to dismiss, by July 10, 2017.
- Assured, National and FGIC shall file oppositions to the motions to dismiss and cross-motions for partial summary judgment on the First Claim for Relief by July 24, 2017.
- Defendants shall file reply briefs in further support of motions to dismiss and oppositions to the cross-motions for partial summary judgment on the First Claim for Relief by August 7, 2017.
- Assured, National and FGIC shall file reply briefs in further support of cross-motions for partial summary judgment on the First Claim for Relief by August 14, 2017.

For discovery in Stage One, Assured, National and FGIC propose that they promptly receive all documents produced in the Peaje Adversaries and transcripts of depositions taken in the Peaje Adversaries. Assured, National and FGIC reserve all of their rights to seek additional discovery.

Defendants:

A threshold issue in each of the three cases is whether the plaintiffs have an enforceable lien as pled by each plaintiff. The absence of an enforceable lien eliminates all claims in the Peaje Adversary Proceedings and the Assured Adversary Proceedings, and a number of claims in the Ambac Adversary Proceedings. In the Peaje Adversary Proceedings, the Defendants intend to address the absence of an enforceable lien as part of their opposition to the plaintiffs' motion for preliminary injunction.

In the other two cases, the Court should establish the following schedule:

- a. **July 5:** Plaintiffs to identify:
 - i. The amount and type of bonds that they own and/or insure; and
 - ii. The precise type of enforceable lien(s) that they are claiming.

- b. **July 7:** Plaintiffs to complete Rule 26 Disclosures concerning their alleged lien(s).
- c. **July 12:** Defendants to serve document requests limited to issues concerning the alleged lien(s).
- d. **July 19:** Plaintiffs to serve written responses and objections to document requests and to commence producing responsive documents.
- e. **July 26:** Plaintiffs to complete production of responsive documents.
- f. **August 16:** Defendants to file motions for partial summary judgment with respect to plaintiffs' alleged lien(s).
- g. **August 28:** Plaintiffs to file oppositions to motions for partial summary judgment.
- h. **September 5:** Defendants to file reply briefs to motions for partial summary judgment.

Following the adjudication of the existence of the alleged enforceable lien(s), the Parties will meet and confer to set a schedule to address the remaining issues, if any.

3. Peaje Adversary Proceedings:

Peaje:

The Parties will meet and confer on a methodology for coordinated briefing of any dispositive motions after the Court's decision on Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction, and for Relief from Stay or, Alternatively, Adequate Protection. In response to Defendants' suggestion, Peaje does not believe that piecemeal litigation of the issues is warranted or appropriate, and that the issues in the litigation should be resolved together in a non-piecemeal fashion.

Defendants:

A threshold issue in each of the three cases is whether the plaintiffs have an enforceable lien as pled by each plaintiff. The absence of an enforceable lien eliminates all claims in the Peaje Adversary Proceedings and the Assured Adversary Proceedings, and a number of claims in

the Ambac Adversary Proceedings. In the Peaje Adversary Proceedings, the Defendants intend to address the absence of an enforceable statutory lien as part of their opposition to the plaintiff's motion for preliminary injunction.

In the other two cases, the Court should establish the following schedule:

- a. **July 5:** Plaintiffs to identify:
 - i. The amount and type of bonds that they own and/or insure; and
 - ii. The precise type of enforceable lien(s) that they are claiming.
- b. **July 7:** Plaintiffs to complete Rule 26 Disclosures concerning their alleged lien(s).
- c. **July 12:** Defendants to serve document requests limited to issues concerning the alleged lien(s).
- d. **July 19:** Plaintiffs to serve written responses and objections to document requests and to commence producing responsive documents.
- e. **July 26:** Plaintiffs to complete production of responsive documents.
- f. **August 16:** Defendants to file motions for partial summary judgment with respect to plaintiffs' alleged lien(s).
- g. **August 28:** Plaintiffs to file oppositions to motions for partial summary judgment.
- h. **September 5:** Defendants to file reply briefs to motions for partial summary judgment.

Following the adjudication of the existence of the alleged enforceable lien(s), the Parties will meet and confer to set a schedule to address the remaining issues, if any.

Q. With respect to each adversary proceeding, a statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days expected to be needed for presentation of that party's case.

1. Ambac Adversary Proceeding:

Ambac:

To the extent that the Ambac Adversary Proceeding cannot be resolved through dispositive motions, the Ambac Adversary Proceeding can be tried without a jury and such a trial will take 6 days.

Defendants:

Plaintiff has not requested a jury trial. To the extent that the Adversary Complaint cannot be resolved through dispositive motions, based on Plaintiff's estimate above, Defendants currently expect that the trial will take 6 days to present (assuming that the bulk of direct testimony will be submitted by affidavit and supplemented by limited live direct testimony, as needed).

2. Assured Adversary Proceedings:

Assured/National/FGIC:

To the extent that the Assured Adversary Proceedings cannot be resolved through dispositive motions, the Assured Adversary Proceedings can be tried without a jury and such a trial will take 4 days.

Defendants:

Assured, National and FGIC have not requested a jury trial. To the extent that the Adversary Complaint cannot be resolved through dispositive motions, Defendants currently expect that the trial will take 4 days to present (assuming that the bulk of direct testimony will be submitted by affidavit and supplemented by limited live direct testimony, as needed).

3. Peaje Adversary Proceedings:

Peaje:

Plaintiff has not requested a jury trial. Given that this case is at an early stage, that no responsive pleadings have been filed, and that there has been only limited discovery, it is premature to estimate the duration of a trial at this time.

Defendants:

Peaje has not requested a jury trial. Because the number of issues to be determined at trial will be affected by this Court's determination of the motion for preliminary injunction, Defendants believe it is premature to suggest a number of trial days for presentation of its case until after the motion for preliminary injunction has been resolved.

R. Any other orders that should be entered by the Court under Fed. R. Civ. P. 26(c) or Fed. R. Civ. P. 16(b) and (c).

1. Ambac Adversary Proceeding:

Ambac:

The Parties anticipate that they will jointly propose an agreed protective order to govern the disclosure and use of any confidential documents or information produced in discovery. The parties will submit such proposed order to the Court by June 30, 2017.

Defendants:

The parties may request that the Court enter orders regarding confidentiality and electronically-stored information.

2. Assured Adversary Proceedings:

Assured/National/FGIC:

The parties request that the Court issue a protective order regarding the confidentiality of documents produced and testimony taken in the Assured Adversary Proceedings and an ESI order. The parties will submit such proposed orders to the Court by June 30, 2017.

Defendants:

The parties may request that the Court enter orders regarding confidentiality and electronically-stored information.

3. Peaje Adversary Proceedings:

Peaje:

The Parties intend to request the entry of a protective order governing the use of confidential information. The Parties are not aware of any other orders pursuant to Fed. R. Civ. P. 26(c) or Fed. R. Civ. P. 16(b) or (c) that should be entered at this time, but the Parties reserve the right to seek such orders in the future.

Defendants:

The Parties may request that the Court enter orders regarding confidentiality and electronically-stored information.

Dated: San Juan, Puerto Rico
June 22, 2017

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EXHIBIT A

CUSIPS of HTA Bonds insured by Assured

745181C54	745190NP9
745181C62	745190NQ7
745181C70	745190P69
745181C88	745190RV2
745181D38	745190SG4
745181D46	745190SH2
745181D53	745190SL3
745181F77	745190UC0
745181F85	745190UD8
745181K89	745190UE6
745181NF0	745190UF3
745181PE1	745190UR7
745181Q42	745190UT3
745181YV3	745190UU0
745181ZL4	745190VM7
745190AU2	745190VR6
745190AV0	745190VW5
745190CN6	745190W79
745190EF1	745190X37
745190E87	745190X45
745190E95	745190X52
745190GK8	745190X86
745190GL6	745190Y51
745190HC5	745190Y69
745190HD3	745190ZR2
745190HE1	745190ZS0
745190HF8	745190ZT8
745190HG6	745190Z35
745190HH4	745190Z43
745190HJ0	745190Z50
745190MV7	7451904B1
745190MX3	7451904L9
745190MZ8	7451904M7
745190M54	X745190SG
745190M62	X745190X5
745190NM6	X745190Y5
745190NN4	X7451904B

EXHIBIT B

CUSIPS of HTA Bonds insured by National

745181D61
745181D87
745181D95
745181E29
745181E37
745181E45
745181E78
745181E86
745181E94
745181F69
745181N60
745181N78
745181N86
745181N94
745181XN2
745181XQ5
745181YW1
7451903K2
7451903L0
7451903P1
7451904F2
7451904G0
7451904H8
745190CN6
745190CY2
745190CZ9
745190DA3
745190DH8
745190N20
745190RZ3
745190UJ5
745190UK2
745190UL0
745190UN6
745190UP1
745190ZP6
745190ZQ4
745190ZU5

EXHIBIT C

CUSIPS of HTA Bonds insured by FGIC

7451902Q0
7451902R8
745190KC1
7451902W7
745190KX5
745190KY3
745190KZ0
745190PF9
745190PG7
745190PH5
745190PJ1
745190PK8
7451902Z0
745190PM4
745190PN2
745190PP7
745190PQ5
745190QH4
7451903M8
745190UG1
745190UH9
745190UM8
745190ZT8
745190MF2
745190MG0
745190MH8
745190MJ4
745190MN5
745190NA2
745190NB0