

**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

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE PUERTO RICO ELECTRIC POWER
AUTHORITY,

Debtor.

THE SPECIAL CLAIMS COMMITTEE OF THE
FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

and

THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF THE PUERTO RICO ELECTRIC
POWER AUTHORITY,

PROMESA
Title III

Case No. 17-BK-3283 (LTS)

(Jointly Administered)

Case No. 17-BK-4780 (LTS)

Adv. Proc. No.

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

as co-trustees respectively, of
THE PUERTO RICO ELECTRIC POWER
AUTHORITY,

Plaintiffs,²

v.

URS ENGINEERS PSC,

Defendant.

ADVERSARY COMPLAINT

Pursuant to Federal Rule of Bankruptcy Procedure 7001(1) made applicable to these Title III cases by section 310 of the Puerto Rico Oversight, Management, and Economic Stability Act (48 U.S.C. § 2170) (“PROMESA”), (i) the Special Claims Committee (the “Special Claims Committee”) of the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as representative of the Puerto Rico Electric Power Authority of Puerto Rico (“PREPA”), and (ii) the Official Committee of Unsecured Creditors of all Title III Debtors (except PBA and COFINA) (the “Committee,” together with the Special Claims Committee, the “Plaintiffs”), sues URS Engineers PSC (the “Defendant” or “URS”), and alleges:

² The members of the Special Claims Committee, on the one hand, and the Official Committee of Unsecured Creditors, on the other hand, serve as co-trustees and co-plaintiffs in the prosecution of certain adversary proceeding as described in that certain Stipulation And Agreed Order By And Among Financial Oversight And Management Board, Its Special Claims Committee, And Official Committee Of Unsecured Creditors Related To Joint Prosecution Of Debtor Causes Of Action, Case No. 17-BK-3283 (LTS), ECF No. 6505-1, which is referenced herein to the extent necessary and appropriate.

NATURE OF PROCEEDING³

1. Plaintiffs bring this adversary proceeding on behalf of PREPA to avoid and recover transfers PREPA made to URS during a specified timeframe prior to the Petition Date on the grounds that, among other things, such transfers were constructively fraudulent and improperly made under applicable Puerto Rico law.

2. For at least the decade before the Petition Date, PREPA had been on the path to a financial crisis. PREPA sustained itself on credit for years prior to the Petition Date, on increasingly onerous terms, finally admitting its inability to pay its debts in June 2015. Similarly, for the last decade, the value of PREPA's mounting liabilities far exceeded its assets.

3. Beginning not later than 2006 and continuing until the commencement of PREPA's Title III Case, PREPA experienced years of substantial budget deficits during which its debt service obligations exceeded its operating cash flows.

4. PREPA's net income was negative starting in 2007 and all years thereafter.

5. Thus, these deficits were addressed by borrowing more and adding more to PREPA's debt service load. PREPA utilized the proceeds of debt issuances to fund debt service and infrastructure improvements required for regulatory compliance and service provision to customers.

6. In the same period, PREPA's debt service costs increased due to, among other things, its growing operating deficits, significant capital investment needs, and growing credit risk in light of its declining financial performance. During the five years from 2003 through 2008, PREPA doubled its outstanding debt obligations.

³ Capitalized terms in this section have the meaning ascribed to them below.

7. By at least 2006, PREPA's balance sheet began a decline in the ratio of total assets to total liabilities. After removing revenues that would not be collected from accounts receivable and contributions in lieu of taxes payments that would not be made from accounts payable, PREPA operated at a net asset ratio of around zero in 2007, before going negative in 2008.

8. Beginning at least by July 2008, PREPA's annual operating income, adjusted for non-payables tied to subsidies and municipal contributions in lieu of taxes, was insufficient to cover its current debt service payable in the same year (i.e., interest and principal coming due during the fiscal year).

9. Likewise, at all times relevant to the avoidance claims in this Complaint, PREPA found itself unable to satisfy liabilities by increasing its revenues. Factors such as steady population declines, customer base declines, and the unfeasibility of decreasing subsidies or increasing ratepayer prices rendered guaranteed revenue increases impossible.

10. At all times relevant to the avoidance claims in this Complaint, PREPA experienced substantial, multi-million-dollar shortfalls in funding its employer contributions to the Employees' Retirement System of Puerto Rico Electric Power Authority.

11. At all times relevant to the avoidance claims in this Complaint, PREPA's revenues were insufficient to satisfy existing debt service obligations let alone projected increases in debt. PREPA was unable to increase rates to cover its obligations and investment requirements.

12. Accordingly, PREPA was able to operate only through additional borrowing at increasing costs, and was unable to draft balanced budgets and generate sufficient revenue to cover its expenses.

13. Beginning not later than 2002, PREPA experienced challenges that resulted in the degradation of its infrastructure and a deterioration of its financial and operating condition, and an

inability to make investments critical to infrastructure and the services it provides. These challenges grew over time, fluctuating with oil prices and growing financial obligations.

14. These challenges include, but are not limited to, a drop in energy sales; legal requirements to provide power to certain customers at subsidized rates; relatively high levels of theft and non-technical losses; inadequate reinvestments leading to an old, inefficient and unreliable transmission, distribution and generation facilities and outdated information and technology systems; a lack of a strategic environmental compliance plan; a disorganized and ineffective customer service infrastructure; material operating liabilities; and a significant debt burden leading to a debt crisis.

15. As a result of those circumstances, the condition of PREPA's facilities had fallen below industry standards and PREPA would be unable to respond to devastating hurricanes and extreme weather conditions in a timely manner.

16. During this time, PREPA's inability to fund the necessary costs of its services and operations was reflected in its aged infrastructure, which had a median plant age of 44 years, compared to an industry average age of 18 years.

17. In addition, PREPA's generation facilities faced significant outage rates more than 50% higher than U.S. historical averages.

18. Even prior to Hurricanes Irma and Maria, it had been estimated that it would take billions in infrastructure improvements to stabilize PREPA's operational efficiency, safety, reliability, environmental compliance, and conversion to clean energy.

19. PREPA's underinvestment in its infrastructure, its substandard policies, and labor issues also led to a safety system and safety record dramatically below industry standards.

20. Further, at all times relevant to the avoidance claims in this Complaint, PREPA suffered from above-industry-average outages, which significantly affected and affect the energy grid, the economy, and Puerto Rico's residents.

21. PREPA could not generate enough incremental cash flows to cover debt payments, let alone capital investment or its obligations to make contributions to its pension system. PREPA's capital plan projected that nearly 80 percent of capital expenditures would be financed with debt, however, PREPA could not support additional debt or pay its debts as they came due without relying on the issuance of even more debt. At the same time, PREPA required billions of dollars in infrastructure investment to stabilize operational efficiency, safety, and reliability and improve outage rates and extreme weather preparedness to industry standards. This demonstrates that PREPA was not able to pay the cost to provide utility services at the level and quality required for the health, safety and welfare of Puerto Rico.

22. Against this historically dire economic landscape, Plaintiffs seek to avoid and recover transfers PREPA made during its time of crisis in accordance with PROMESA, the Bankruptcy Code, and Puerto Rico law.

PARTIES

23. Co-Plaintiff the Oversight Board was established by PROMESA to help Puerto Rico "achieve fiscal responsibility and access to the capital markets." PROMESA § 101(a). PROMESA grants extensive authority to the Oversight Board, including the powers of a trustee under title 11 of the United States Code as incorporated into PROMESA (the "Bankruptcy Code"). PROMESA §§ 301, 315; *see also Stipulation and Agreed Order Between Special Claims Committee of Financial Oversight and Management Board and Official Committee of Unsecured Creditors Related to Joint Prosecution of Certain Causes of Action of Puerto Rico Electric Power Authority* [ECF No. 7749].

24. Co-Plaintiff, the Committee, is the Official Committee of Unsecured Creditors of the Title III Debtors, other than PBA and COFINA. The Committee was appointed by the United States Trustee on June 15, 2017.

25. Defendant URS is an entity or individual with a principal place of business and/or registered office or domiciled at Ochoa Building, 500 Calle de la Tanca, Suite 514, San Juan, PR, 00901, and an alternative mailing address of PO Box 9022946, San Juan, NJ, 00902-2946.

JURISDICTION AND VENUE

26. This is an adversary proceeding brought pursuant to Federal Rule of Bankruptcy Procedure 7001 and §§ 105(a), 502,⁴ 544, 548 and 550 of the Bankruptcy Code and Puerto Rico law to avoid transfers and recover funds for PREPA.

27. This Court has jurisdiction over the subject matter of this adversary proceeding pursuant to section 306(a) of PROMESA. 48 U.S.C. § 2166(a).

28. Venue is proper in this district pursuant to section 307(a) of PROMESA. 48 U.S.C. § 2167(a).

FACTUAL BACKGROUND

29. On July 2, 2017 (the “Petition Date”), the Oversight Board initiated a Title III debt adjustment proceeding on behalf of PREPA.

30. During the four years prior to the Petition Date (the “Four-Year Fraudulent Transfer Period”), PREPA made eight (8) payments to Defendant in the aggregate amount of \$2,687,497.61

⁴ To the extent that the Defendant has filed a proof of claim or has a claim listed on the Commonwealth’s schedules as undisputed, liquidated, and not contingent, or has otherwise requested payment from the Commonwealth or the Commonwealth’s Title III estates, (collectively, the “Claims”), this Complaint is not intended to be, nor should it be construed as, a waiver of the Plaintiffs’ right to object to such Claims for any reason, including, but not limited to, 11 U.S.C. § 502(a) through (j) (“Section 502”), and such rights are expressly reserved. Notwithstanding this reservation of rights, certain relief pursuant to Section 502 may be sought by the Plaintiffs herein as further stated below.

(“4-Year Transfer(s)”). Certain of these payments (if any, the “2-Year Transfer(s)” and, together with the 4-Year Transfer(s), the “Transfers”) may have occurred during the two years prior to the Petition Date (the “Two-Year Fraudulent Transfer Period”). Attached hereto as Exhibit A is a detailed listing of the Transfers.

31. The Comptroller’s database provides insufficient evidence of a contracting relationship with Defendant to substantiate all of the payments made during the Four-Year Fraudulent Transfer Period.

32. At the time of the Transfers, PREPA was generally not paying its debts as they became due.

33. PREPA’s books and records beginning at least as early as 2012, demonstrate that, at the time of the Transfers, PREPA was defraying substantial operating deficits with deficit financing.

34. At the time of the Transfers, PREPA deferred necessary infrastructure maintenance.

35. From and after 2012, PREPA issued public debt even though it was unable to satisfy the required debt coverage due to insufficient revenues, thereby incurring obligations that were beyond its ability to repay as they became due.

36. At the time of the Transfers, PREPA had failed to generate sufficient funds to sustain its operations and failed to make required payments on debt obligations.

37. At the time of the Transfers, PREPA was unable to pay its debts as they became due.

38. Beginning not later than 2012, commentators observed that Puerto Rico’s debt service requirements, including those of PREPA, were not sustainable. Indeed, in June 2015 the Governor of Puerto Rico admitted this was the case.

39. PREPA entered into a forbearance agreement in 2014 because it was unable to pay its debts while delivering services at the level and quality required for the health, safety, and welfare of Puerto Rico and to avoid a default on its debt obligations.

40. During the course of this proceeding, Plaintiffs may learn (through discovery or otherwise) of additional avoidable transfers made to the Defendant (or its affiliates, including but not limited to: URS Caribe, LLP; URS Puerto Rico LLP; URS Co., Inc.) and during the Four-Year Fraudulent Transfer Period. It is the Plaintiffs' intentions to avoid and recover all transfers made by PREPA of an interest in PREPA's property and to or for the benefit of the Defendant or any other transferee. Plaintiffs reserve their rights to amend this original Complaint to include, without limitation: (i) further information regarding the Transfers, (ii) additional transfers, (iii) modifications of and/or revisions to the Defendant's name, (iv) additional defendants (such as the affiliates identified above), and/or (v) additional causes of action (including but not limited to causes of action under 11 U.S.C. §§ 542, 544, 545, 548, and/or 549) (collectively, the "Amendments"), that may become known to the Plaintiffs at any time during this adversary proceeding, through formal discovery or otherwise, and for the Amendments to relate back to this original Complaint.

CLAIMS FOR RELIEF

COUNT I

(Return of Unlawful Disbursements Pursuant to 2 L.P.R.A. § 97, 3 L.P.R.A. § 283h)

41. The Plaintiffs repeat and re-allege each allegation contained in the preceding paragraphs 1 through 40 as if fully set forth herein.

42. The Office of the Comptroller has insufficient copies of contracts between PREPA and Defendant as necessary to evidence the propriety of the Transfers. See 2 L.P.R.A. § 297.

43. PREPA and Defendant did not have satisfactory contracts that were reduced to writing to evidence the propriety of the Transfers. *See Ocasio v. Alcalde Mun. de Maunabo*, R-84-356, 1988 WL 580831 (P.R. Apr. 19, 1988).

44. The Transfers were disbursements of public funds not authorized by law. 2 L.P.R.A. § 97; 3 L.P.R.A. § 283h(a); *see also, e.g.*, 3 L.P.R.A. §§ 2301-05, 8613 (requiring documentation of contracts with PREPA).

45. The Transfers, being public monies disbursed unlawfully, may be recovered. *See Mun. de Quebradillas v. Corp. de Salud de Lares*, 180 D.P.R. 1003, 1015-16 (2011) (citing similar restrictions on municipal disbursements and noting that holding otherwise “would be leaving public funds in private hands that do not correspond to them” and citing “public policy of protecting the interests and money of the people against waste, prevarication, favoritism and the risks of non-compliance”) (citing *Cancel v. Mun. de San Juan*, 101 D.P.R. 296, 300 (1973)).

46. Plaintiffs are entitled to recover from the Defendant an amount of cash equal to the aggregate amount of the Transfers.

COUNT II

(Avoidance of Constructive Fraudulent Transfer Pursuant to 11 U.S.C. § 548(a)(1)(B))

47. The Plaintiffs repeat and re-allege each allegation contained in the preceding paragraphs 1 through 46 as if fully set forth herein.

48. PREPA received less than a reasonably equivalent value in exchange for the 2-Year Transfers.

49. PREPA was insolvent on the date that such 2-Year Transfers were made.

50. PREPA intended to incur, or PREPA believed that it would incur, debts that would be beyond PREPA’s ability to pay as such debts matured at all relevant times (including, without

limitation, at the time of the 2-Year Transfers). Plaintiffs repeat and re-allege each allegation contained in the preceding paragraphs as if fully set forth herein.

51. The Transfers were fraudulent transfers that Plaintiffs may avoid pursuant to 11 U.S.C. § 548(a)(1)(B).

COUNT III

(Rescission of Transfer Pursuant to 31 L.P.R.A. §§ 3491-3500 and 11 U.S.C. § 544(b))

52. The Plaintiffs repeat and re-allege each allegation contained in the preceding paragraphs 1 through 51 as if fully set forth herein.

53. At the time of the Transfers, PREPA was in a state of insolvency.

54. Defendant knew or should have known that PREPA was insolvent, in the vicinity of insolvency, or unable to satisfy its obligations as they became due.

55. PREPA's insolvency pre-supposes that its patrimony is insufficient to satisfy all the debts weighing upon it.

56. Defendant knew or should have known that PREPA's patrimony was insufficient to satisfy all the debts weighing upon it at the time of the Transfers.

57. There was insufficient consideration for the Transfers because the Transfers to Defendant exceeded the total amount permitted under any contract with PREPA and/or the value of the Transfers exceed the value of the goods and/or services that Defendants provided to the PREPA, if any.

58. Consequently, the Plaintiffs requests that any alleged contracts be deemed null and void and that the Transfers made to Defendant be returned to Plaintiffs.

59. Other than such remedy as may be afforded pursuant to Counts I and II hereof, the Plaintiffs have no remedy other than that provided under 31 L.P.R.A. §§ 3491-3500.

COUNT IV
(Recovery of Avoided Transfer Pursuant to 11 U.S.C. § 550)

60. The Plaintiffs repeat and re-allege each allegation contained in the preceding paragraphs 1 through 59 as if fully set forth herein.

61. Defendant was the initial transferee of the Transfers, the entity for whose benefit the transfers were made, or was the immediate or mediate transferee of the initial transferee receiving the Transfers.

62. Pursuant to 11 U.S.C. § 550(a), the Plaintiffs are entitled to recover from the Defendant an amount of cash equal to the aggregate amount of the Transfers.

COUNT V
(Disallowance of all Claims Pursuant to 11 U.S.C. § 502(d) and (j))

63. The Plaintiffs repeat and re-allege each allegation contained in the preceding paragraphs 1 through 62 as if fully set forth herein.

64. The Defendant is an entity from which property is recoverable under 11 U.S.C. § 550.

65. The Defendant has not repaid the amount of the Transfers, or turned over such property to the Plaintiffs, for which the Defendant is liable under 11 U.S.C. § 550.

66. Pursuant to 11 U.S.C. § 502(d), any and all Claims of the Defendant and/or its assignee against PREPA (as defined in footnote 4 above) must be disallowed until such time as the Defendant pays to the Plaintiffs an amount equal to the aggregate amount of the Transfers.

67. Pursuant to 11 U.S.C. § 502(j), any and all Claims of the Defendant, and/or its assignee, against PREPA previously allowed by PREPA, must be reconsidered and disallowed until such time as the Defendant pays to the Plaintiffs an amount equal to the aggregate amount of the Transfers.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that the Court enter judgment against the Defendant providing, to the extent not inconsistent:

- A. Any purported contract between PREPA and the Defendant relating to the Transfers is null and void pursuant to 2 L.P.R.A. § 97; and any funds disbursed in relation thereto were unlawfully transferred pursuant to, *inter alia*, 3 L.P.R.A. § 283h; and PREPA is entitled to recover from the Defendant an amount of cash equal to the aggregate amount of the Transfers.
- B. Judgment in favor of the Plaintiffs and against Defendant avoiding all of the Transfers and directing Defendant to return to Plaintiffs the amount of the Transfers, pursuant to sections 544, 548, and 550(a) of the Bankruptcy Code and any applicable Puerto Rico Law, plus interest from the date of demand at the maximum legal rate and to the fullest extent allowed by applicable law, together with the costs and expenses of this action including, without limitation, attorneys' fees
- C. The 2-Year Transfers are avoidable under 11 U.S.C. § 548;
- D. The Transfers are avoidable under 11 U.S.C. § 544 and 31 L.P.R.A. § 3493;
- E. Disallowing, in accordance with 11 U.S.C. § 502(d), any Claims held by the Defendant and/or its assignee until the Defendant satisfies the judgment;
- F. Disallowing, in accordance with 11 U.S.C. § 502(j), any Claims held by the Defendant and/or its assignee until the Defendant satisfies the judgment;
- G. Awarding pre-judgment interest at the maximum legal rate running from the date of the Complaint to the date of judgment herein;
- H. Awarding post-judgment interest at the maximum legal rate running from the date of

judgment herein until the date the judgment is paid in full, plus costs;

I. Requiring the Defendant to pay forthwith the judgment amount awarded in favor of the Plaintiffs; and

J. Granting to the Plaintiffs such other and further relief as the Court deems just and proper.

Date: July 28, 2023.

Respectfully submitted:

/s/ Sunni P. Beville

BROWN RUDNICK LLP
Sunni P. Beville, Esq. (*Pro Hac Vice*)
Tristan G. Axelrod, Esq. (*Pro Hac Vice*)
One Financial Center
Boston, MA 02111
Tel: (617) 856-8200
sbeville@brownrudnick.com
taxelrod@brownrudnick.com

*Counsel to the Special Claims Committee of the
Financial Oversight and Management Board*

-and-

/s/ Kenneth Suria

Kenneth Suria (USDC-PR 213302)
/s/ Carlos Infante
Carlos Infante (USDC-PR 301801)
ESTRELLA LLC
150 Tetuan Street, Old San Juan, PR 00901
PO Box 9023596, San Juan, PR 00902 3596
Telephone: (787) 977-5097
Email: kcsuria@estrellallc.com
cinfante@estrellallc.com

/s/ John Arrastia

John Arrastia, Esq. (*Pro Hac Vice*)
Jesus M. Suarez, Esq. (*Pro Hac Vice*)
Angelo M. Castaldi, Esq. (*Pro Hac Vice*)
Continental PLLC
255 Alhambra Cir, Suite 640
Coral Gables, FL 33134
Tel: 305-677-2707
JArrastia@ContinentalPLLC.com
JSuarez@ContinentalPLLC.com
ACastaldi@ContinentalPLLC.com

*Special Litigation Counsel to the Official
Committee of Unsecured Creditors for all Title III
Debtors (other than PBA and COFINA)*

s/ Luis F. Llach

Juan J. Casillas Ayala, Esq. (USDC-PR 218312)
Luis F. Llach Zúñiga, Esq. (USDC-PR 223112)
Juan C. Nieves González, Esq. (USDC-PR 23107)
Natalia E. del Nido-Rodríguez (USDC-PR
301410)
CASILLAS, SANTIAGO & TORRES LLC
El Caribe Office Building
53 Palmeras Street, Ste. 1601
San Juan, Puerto Rico 00901-2419
Telephone: (787) 523-3434
jcasillas@cstlawpr.com
lllach@cstlawpr.com

EXHIBIT A

Transfers to Defendant

Transfers to URS Engineers PSC

<u>Check Date</u>	<u>Amount</u>
10/1/2013	320,720.51
12/2/2013	334,202.16
4/4/2014	171,012.08
9/11/2014	178,964.96
9/11/2014	365,765.88
12/11/2014	175,823.48
3/19/2015	475,858.08
10/23/2015	665,150.46