Commonwealth Avoidance Actions Trust Files Lawsuit Against Major Banks for Misconduct in Puerto Rico's Fiscal Crisis

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The Trustee for the Commonwealth Avoidance Actions Trust has filed a Second Amended Complaint in the United States District Court of Puerto Rico in its suit against 13 major banks for their role in deepening Puerto Rico's debt crisis. The Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al., created the Trust to hold and manage certain litigation claims that were transferred to the Trust and to distribute the proceeds of any such litigation to general unsecured creditors as provided for in the Plan. The Trustee is represented by law firms Selendy Gay PLLC, Casillas, Santiago & Torres, LLC, and Continental PLLC.

The Complaint asserts that the defendant banks facilitated a "scoop and toss" scheme, through which Puerto Rico issued unlawful debt and deepened its insolvency while the banks received underwriting fees and payments on swap agreements from the proceeds. The suit seeks to recover unlawful payments made to these defendants and distribute the recoveries to Puerto Rico's unsecured creditors—overwhelmingly, Puerto Rico-based individuals and businesses who provided services to Puerto Rico and were never paid.

The lawsuit names as defendants Barclays Capital, Inc., BMO Capital Markets Corp., BofA Securities, Inc., Citigroup Global Markets Inc., Goldman Sachs & Co. LLC, Jefferies Group LLC, J.P. Morgan Securities, LLC, Merrill, Lynch, Pierce, Fenner & Smith Inc., Morgan Stanley & Co. LLC, Royal Bank of Canada, Samuel A. Ramirez & Co., Inc., Santander Securities LLC, UBS Financial Services, Inc. of Puerto Rico, and several affiliated entities.

The Complaint alleges that the Commonwealth of Puerto Rico was insolvent by 2008 and inevitably bound to default. Instead of confronting its financial condition then, the defendants encouraged Puerto Rico to issue more and more debt, including bonds issued without statutory authority or in violation of Puerto Rico's constitutional debt limit, to pay underwriting fees and swap payments to themselves.

Through this “scoop and toss” financing tactic, Puerto Rico recycled and grew its debt, delaying—and thus worsening—the impact of its inevitable default while distributing close to $500 million in fees and swap payments to the banks.

As the banks received handsome fees, Puerto Rico’s total public debt climbed from $55 billion in fiscal year 2009 to $67.8 billion in fiscal year 2014, while its total budget deficit skyrocketed from $4 billion to $6.2 billion. When finally forced to commence Title III Bankruptcy proceedings in 2017, the total debt burden for the island was an astounding $74 billion. While attempting to service such an unsustainable debt burden, the government of Puerto Rico was forced to make drastic cuts to essential public services, including schools, hospitals, pensions, utilities, and basic infrastructure—cuts that only became deeper and more painful when the inevitable default occurred.

The crisis devastated the island, leading to a nearly 5-year bankruptcy that cost in excess of $2 billion and ongoing austerity and cuts to education, pensions and Government services, hurting individuals and businesses across the island and leaving Puerto Rico’s unsecured creditors, including Puerto Rico’s employees, trade creditors, and service providers, still unpaid.

The team at Selendy Gay includes Maria Ginzburg, David Flugman, Andrew Dunlap, Amy Nemetz, and Alvaro Mon Cureño.

The team at Casillas, Santiago & Torres includes Juan Casillas, Edna M. Tejeda Oyola, Juan Nieves-Gonzalez, and Luis Llach.

The team at Continental includes John Arrastia, Jesus Suarez, and Angelo Castaldi.

Read the full complaint here.

Attorneys

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