

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

Brigade Leveraged Capital Structures Fund Ltd.,  
Brigade Distressed Value Master Fund Ltd.,  
Tasman Fund LP, Claren Road Credit Master  
Fund, Ltd., Claren Road Credit Opportunities  
Master Fund, Ltd., Fir Tree Value Master Fund,  
L.P., Fir Tree Capital Opportunity Master Fund,  
L.P., Fir Tree Special Opportunities Fund IV, LP,  
Fir Tree Special Opportunities Fund V, LP, Fore  
Multi Strategy Master Fund, Ltd., Sola Ltd, Ultra  
Master Ltd, Solus Opportunities Fund 5 LP,

Plaintiffs,

- against -

Alejandro J. García Padilla, in his official  
capacity as Governor of Puerto Rico; Juan C.  
Zaragoza Gómez, in his official capacity as  
Secretary of the Puerto Rico Department of the  
Treasury, and John Doe, in his/her official  
capacity as receiver for the Government  
Development Bank for Puerto Rico,

Defendants.

**CIVIL NO 16-01610 (FAB)**

**AMENDED  
COMPLAINT**

Brigade Leveraged Capital Structures Fund Ltd., Brigade Distressed Value  
Master Fund Ltd., Tasman Fund LP, Claren Road Credit Master Fund, Ltd., Claren Road  
Credit Opportunities Master Fund, Ltd., Fore Multi Strategy Master Fund, Ltd., Sola Ltd,  
Ultra Master Ltd, and Solus Opportunities Fund 5 LP, by and through their attorneys  
Vicente & Cuebas and Davis Polk & Wardwell LLP, and Fir Tree Value Master Fund,  
L.P., Fir Tree Capital Opportunity Master Fund, L.P., Fir Tree Special Opportunities  
Fund IV, LP, and Fir Tree Special Opportunities Fund V, LP, by and through their  
attorneys Vicente & Cuebas and Robinson McDonald & Canna LLP, allege upon

personal knowledge with regard to information about Plaintiffs, and otherwise upon information and belief, as follows:

**NATURE OF THE ACTION**

1. This action arises under the Constitution of the United States, the Constitution of Puerto Rico, and 42 U.S.C. § 1983, and challenges certain provisions of the Puerto Rico Emergency Moratorium and Financial Rehabilitation Act, Law 21 of 2016 (the “Moratorium Act”) (attached hereto as Exhibit A), a statute enacted by the Commonwealth of Puerto Rico (the “Commonwealth”). The challenged provisions of the Moratorium Act wholly rewrite the statutory receivership procedure for the Government Development Bank for Puerto Rico (“GDB”), authorize a receiver appointed under the Moratorium Act to transfer selected assets and liabilities of GDB to a “bridge bank” in a manner that allows preferential treatment of some creditors over others of equal rank, and stay the exercise of creditor remedies. Executive Order 2016-010 (the “Executive Order”) (attached hereto as Exhibit B), issued by Governor García Padilla pursuant to the Moratorium Act on April 8, 2016, declared a “state of emergency” with respect to GDB.

2. As described further herein, on or about May 2, 2016, GDB and a group of GDB bondholders including the Plaintiffs (the “Holders”), announced an agreement on indicative terms of a proposed restructuring of GDB’s outstanding debt, subject to the negotiation of remaining terms and conditions. A mere three days later, Law 40 of 2016 (“Law 40”) (attached hereto as Exhibit C) amended certain provisions of the Moratorium Act to expand a potential GDB receiver’s ability to engage in preferential treatment of GDB creditors of equal rank. As used hereinafter, “Moratorium Act” shall refer to Law 21 of 2016 as amended by Law 40 of 2016.

3. The United States Constitution and the Puerto Rico Constitution both prohibit the Commonwealth from enacting a law that substantially impairs the obligation of contracts in a manner that is not a reasonable, necessary, or narrowly tailored means of promoting a legitimate, important, or compelling government interest. *See* U.S. Const. art. I, § 10; P.R. Const. art. II § 7. The United States Constitution and the Puerto Rico Constitution also prohibit the Commonwealth from taking private property for public use without just compensation. *See* U.S. Const. amend. V; P.R. Const. art. II, § 9. The United States Constitution further prohibits the Commonwealth from enacting a law that facially discriminates against interstate commerce by providing for preferential treatment of actors residing in Puerto Rico over actors residing in the fifty states unless there is no reasonable nondiscriminatory alternative. *See* U.S. Const. art. I, § 8, cl. 3. The United States Constitution additionally reserves to the United States Congress the power to enact bankruptcy laws and preempts laws that conflict with the federal Bankruptcy Code. Lastly, the United States Constitution provides a right to open access to the federal courts.

4. Certain provisions of the Moratorium Act are null and void as unconstitutional because they:

- a. substantially, unreasonably, unnecessarily, and discriminatorily impair essential bargained-for elements of Plaintiffs' contract with the Commonwealth's instrumentality, GDB;
- b. take Plaintiffs' property for the benefit of the Commonwealth and its instrumentalities without just compensation;

- c. facially discriminate against interstate commerce by providing for preferential treatment of certain Puerto Rico resident institutional holders of GDB bonds over non-resident holders of GDB bonds of equal rank—even among bonds of the same series;
- d. are preempted by the federal Bankruptcy Code and exercise powers that the Bankruptcy Clause of the United States Constitution reserves for the United States Congress; and
- e. unconstitutionally bar suit in federal court.

5. The challenged provisions of the Moratorium Act have harmed Plaintiffs and, if allowed to stand, will further harm Plaintiffs. Plaintiffs accordingly seek a declaration that Sections 105, 201(b), 201(c), 203(b)(i), 203(f), 301, 302, and 401 of the Moratorium Act are null and void because they violate the United States Constitution, other federal laws, and the Puerto Rico Constitution, and an injunction prohibiting Defendants from enforcing the challenged provisions of the Moratorium Act.

#### **PARTIES, JURISDICTION AND VENUE**

6. Plaintiffs are investors that collectively hold a substantial amount, more than \$750 million, of the nearly \$3.75 billion of outstanding bonds issued by GDB. Plaintiffs comprise the following entities:

- a. Plaintiff Brigade Leveraged Capital Structures Fund Ltd. is an exempted company organized under the laws of the Cayman Islands. Its principal place of business is in New York, New York.
- b. Plaintiff Brigade Distressed Value Master Fund Ltd. is an exempted company organized under the laws of the Cayman Islands. Its principal place of business is in New York, New York.

- c. Plaintiff Tasman Fund LP is a limited partnership organized under the laws of the Cayman Islands. Its principal place of business is in New York, New York.
- d. Plaintiff Claren Road Credit Master Fund, Ltd. is an exempted limited company organized under the laws of the Cayman Islands. Its principal place of business is in New York, New York.
- e. Plaintiff Claren Road Credit Opportunities Master Fund, Ltd. is an exempted limited company organized under the laws of the Cayman Islands. Its principal place of business is in New York, New York.
- f. Plaintiff Fir Tree Value Master Fund, L.P. is an exempted limited partnership organized under the laws of the Cayman Islands. Its principal place of business is in the Cayman Islands.
- g. Plaintiff Fir Tree Capital Opportunity Master Fund, L.P. is an exempted limited partnership organized under the laws of the Cayman Islands. Its principal place of business is in the Cayman Islands.
- h. Plaintiff Fir Tree Special Opportunities Fund IV, LP is a limited partnership organized under the laws of the State of Delaware. Its principal place of business is in New York, New York.
- i. Plaintiff Fir Tree Special Opportunities Fund V, LP is a limited partnership organized under the laws of the State of Delaware. Its principal place of business is in New York, New York.

- j. Plaintiff Fore Multi Strategy Master Fund, Ltd. is an exempted limited company organized under the laws of the Cayman Islands. Its principal place of business is in the Cayman Islands.
- k. Plaintiff Sola Ltd is an exempted company organized under the laws of the Cayman Islands. Its principal place of business is in the Cayman Islands.
- l. Plaintiff Ultra Master Ltd is an exempted company organized under the laws of the Cayman Islands. Its principal place of business is in the Cayman Islands.
- m. Plaintiff Solus Opportunities Fund 5 LP is a limited partnership organized under the laws of the State of Delaware. Its principal place of business is in New York, New York.

7. Defendant Alejandro J. García Padilla is the Governor of the Commonwealth of Puerto Rico. Plaintiffs sue Governor García Padilla in his official capacity.

8. Defendant Juan C. Zaragoza Gómez is the Secretary of the Commonwealth's Department of the Treasury (the "Treasury Secretary"). Plaintiffs sue Secretary Zaragoza Gómez in his official capacity.

9. Defendant John Doe (the "Receiver") is the person who may be appointed as the receiver for GDB pursuant to Section 301 of the Moratorium Act. Plaintiffs sue the Receiver in his or her official capacity.

10. The Court has subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1367(a). The Court is authorized to issue the declaratory relief sought here under 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) because Defendants are residents of the Commonwealth of Puerto Rico.

**FACTUAL BACKGROUND**

**THE GOVERNMENT DEVELOPMENT BANK FOR PUERTO RICO**

12. GDB acts as a public financing conduit for the Commonwealth of Puerto Rico: it borrows funds from investors in public bonds, from the Commonwealth and its public enterprises and instrumentalities, from municipalities, and from private parties. Using proceeds of such borrowings, it extends loans to the Commonwealth, municipalities, and other government agencies and enterprises to finance capital expenditures, expenses, and operational deficits of these entities. In contravention of its duties to creditors, GDB has knowingly rendered itself insolvent by deliberately extending billions of dollars of loans to other Commonwealth entities, even though the Commonwealth government had not appropriated to those entities funds to repay the loans (or authorized the entities to raise funds to repay by charging sufficient amounts for the services they provide).

13. Act 17 of September 23, 1948 is GDB's organic act and charter ("GDB Act") and, as amended, sets forth the rights and obligations of GDB. These statutory provisions were incorporated into the set of contractual promises between the Commonwealth, GDB, and GDB's creditors by Article 17 of the GDB Act, 7 L.P.R.A. § 567, which provides that "[n]o amendment to §§ 551-568 of this title or to any other law of Puerto Rico shall impair any obligation or commitment of the Bank."

14. Under Article 6 of the GDB Act, GDB was required to maintain a minimum reserve of 20 percent of its demand deposit liabilities in short-term investments.

7 L.P.R.A. § 554.

15. Under Article 14 of the GDB Act, GDB's creditors were protected from unlawful preferential transfers out of GDB when GDB is insolvent or "anticipate[s]" its insolvency. Article 14, 7 L.P.R.A. § 562 ("Section 562"), provided that "All transfers" of anything of value "to [GDB's] creditors, made while the Bank is insolvent, or in anticipation of its insolvency . . . with the intent of giving preference to one creditor over another, shall be null and ineffective." 7 L.P.R.A. § 562.

16. Under Article 11 of the GDB Act, 7 L.P.R.A. § 559, if GDB became insolvent or failed to maintain the reserve required by Article 6 of the GDB Act, GDB could be placed into a court-supervised receivership by which the receiver would "suspend operations and settle the obligations of the Bank." 7 L.P.R.A. § 559.

17. GDB issued the GDB bonds that Plaintiffs purchased pursuant to a Master Trust Indenture with Banco Popular de Puerto Rico, as Trustee (succeeded by Wilmington Trust Company, as Successor Trustee), dated February 17, 2006 (the "Master Trust Indenture") (attached hereto as Exhibit D), as supplemented by supplemental indentures issued from time to time.

18. The Master Trust Indenture sets forth the terms of GDB's obligations to its bondholders, including Plaintiffs. Among other things, GDB promised that:

- a. GDB would "duly and punctually pay" the principal and interest due on its bonds in accordance with their terms;
- b. The rights of bondholders would not be changed without the consent of a majority of affected bondholders of the relevant series (subject to the requirement of individual bondholder consent discussed below);

- c. The Indenture Trustee, or a minimum quorum of holders should the Indenture Trustee decline to act, could declare an “Event of Default” if GDB failed to pay interest, failed to pay principal, breached its covenants, defaulted on other debt obligations, or, most important, entered into a receivership or similar insolvency proceeding; and
- d. All bondholders would have the “absolute and unconditional” right to receive principal and interest when due and to institute suit to collect unpaid principal and interest when due, and that these rights would not be modified without the consent of each affected bondholder.

19. GDB made further promises to and for the benefit of its bondholders, including Plaintiffs, in the resolutions of GDB’s Board of Directors (the “Authorizing Resolutions”) and supplemental indentures that authorized the issuance of series of GDB bonds (the “Supplemental Indentures”). The Supplemental Indentures set forth the schedule for principal and interest payments due and the final maturity date for the corresponding series of bonds. The Authorizing Resolutions authorized the issuance of the bonds subject to the terms established in the Master Trust Indenture and applicable Supplemental Indenture.

20. GDB reaffirmed the promises of the Master Trust Indenture, Supplemental Indentures, and Authorizing Resolutions in the “official statements” by which the bonds were marketed to investors (the “Official Statements”). Among other things, the Official Statements reiterated GDB’s promises that the GDB bonds were “general, unsecured senior obligations of Government Development Bank, *ranking on a parity with all other general, unsecured and unsubordinated obligations of Government Development Bank*”

and that “pursuant to [GDB’s] enabling law, *no amendment to such law or to any other law of the Commonwealth may impair any of its outstanding obligations or commitments.*” (Government Development Bank for Puerto Rico, Senior Notes, 2012 Series A (Taxable), Official Statement, front cover (emphasis added) (attached hereto as Exhibit E); *see also, e.g.*, Government Development Bank for Puerto Rico, Senior Notes, 2011 Series H, Senior Notes, 2011 Series I, Official Statement, cover page (same).)

21. Under the Master Trust Indenture, Supplemental Indentures, Authorizing Resolutions, and Official Statements, GDB has issued and sold approximately \$3.75 billion in outstanding principal amount of GDB bonds as an additional source of funding for its activities.

22. Unlike deposits at a federally insured bank, so-called “deposits” maintained at GDB are not entitled to any statutory preference or priority over other creditors of GDB under applicable law. As general unsecured claims against GDB, GDB’s bond debt is on a parity with “deposits” that GDB owes to the Commonwealth, municipalities, public entities, and other parties. All GDB bonds of a series are *pari passu* with all other bonds of that series.

23. Plaintiffs own a substantial amount of various series of GDB bonds. Investors who purchased GDB’s bonds relied on the Commonwealth’s promises and obligations under the GDB Act, the Master Trust Indenture, Supplemental Indentures, the Authorizing Resolutions, and Official Statements. As a matter of law, the Master Trust Indenture, Supplemental Indentures, and Authorizing Resolutions incorporated and were subject to the GDB Act as it existed at the time GDB and the Indenture Trustee entered

into the Master Trust Indenture and Supplemental Indentures. The Master Trust Indenture and applicable Supplemental Indentures remain in effect.

24. Similarly, the operations of GDB, and its obligations and duties to creditors of GDB, including Plaintiffs, other bondholders, and depositors, were governed by the GDB Act.

25. On April 4, 2016, several of the Plaintiffs filed the initial Complaint, which sought to enjoin preferential transfers of GDB assets as void under Section 562. The Moratorium Act and the Executive Order were enacted shortly thereafter. GDB has argued that the Section 562 cause of action is stayed by the Moratorium Act and that the transfers sought to be enjoined may fall within the exculpation provisions of the Moratorium Act. Although this Amended Complaint does not seek relief under the new, unconstitutionally curtailed scope of Section 562, Plaintiffs maintain, and hereby incorporate by reference, the factual allegations of Paragraphs 1-59 of the initial Complaint concerning unlawful and preferential transfers. Plaintiffs also reserve the right to further amend the Complaint to challenge further amendments to the GDB Act or the Moratorium Act, or other legislation impairing Plaintiffs' rights, or to seek relief from parties that authorized, participated in, received, or intermediated unlawful, preferential, or fraudulent transfers of GDB assets.

26. Under the terms of the Master Trust Indenture and the Supplemental Indentures, GDB was required to pay approximately \$423 million in principal and interest on May 1, 2016.

27. On or about May 2, 2016, GDB and the Holders, reached agreement on indicative terms of a proposed restructuring of the Holders' GDB bonds, subject to the

negotiation of remaining terms and conditions. The indicative terms of the agreement contemplate a two-step restructuring that substantially reduces the face amount of the Holders' GDB bonds. In the first step, existing GDB bonds would be exchanged for new GDB bonds with a face amount of 56.25% of the original GDB bonds. If a global exchange of Puerto Rico's debt occurs, the exchanged GDB bonds would be further exchanged for consideration with an agreed value of 47% of the face amount of the Holder's original GDB bonds. To maintain a level playing field pending negotiation of definitive documentation of the restructuring, the Holders announced that they expected to enter into 30-day forbearance with respect to any defaults by GDB in connection with the principal payments on the Holders' bonds due May 1, 2016. The Holders had also refrained from challenging unconstitutional provisions of the Moratorium Act pending restructuring negotiations until now.

28. On May 2, 2016, the Governor declared a moratorium on the portion of the \$423 million in GDB bond payments due on May 1, 2016 to creditors that had not agreed to forbear from declaring default or exercising remedies. GDB thus defaulted on a portion of the May 1, 2016 payments due, and on May 5, 2016 the Trustee under the Master Trust Indenture issued a notice of default to GDB. GDB's default may imminently lead the Governor to exercise further powers under the Moratorium Act, including placing GDB into receivership and appointing a receiver.

29. On May 5, 2016, the Moratorium Act was amended by the passage of Law 40. While the Holders, including Plaintiffs, fully expect and intend to continue to negotiate the definitive terms of the agreed exchange with GDB and its advisors, the Legislative Assembly of Puerto Rico (the "Legislature") has once again skewed the playing field by

changing the rules of the game and has given every indication that it will continue to do so at its whim in the future. The passage of Law 40 has significantly decreased the likelihood that the proposed restructuring of GDB's debts will be consummated. The indicative terms of the proposed restructuring require participation of one hundred percent of GDB bondholders: this threshold is much less likely to be met now that an unconstitutional statutory preference has emboldened resident institutional holders to hold out for a recovery higher than what will be received by other creditors of equal rank. In addition to Law 40, several other bills proposing to amend the Moratorium Act are currently under consideration by the Legislature. As recently as May 16, 2016, the Puerto Rico Senate passed Senate Bill 1673, which proposed to further amend the Moratorium Act. Accordingly, the Holders have concluded they can no longer stand by as the Legislature repeatedly, and with total impunity, passes laws that retroactively and unconstitutionally strip them of their rights. Plaintiffs have no choice but to take action to ensure that the contractual and property rights embodied in their existing GDB bonds are not and will not be further unconstitutionally impaired and taken for public use without just compensation.

**PROVISIONS OF THE MORATORIUM ACT THAT RETROACTIVELY ALTER THE CONTRACTUAL AND LEGAL RIGHTS OF GDB'S CREDITORS**

30. On April 6, 2016, the Moratorium Act was signed into law after being presented to and passed by the Legislature in roughly 48 hours.

31. On April 8, 2016, Governor García Padilla issued the Executive Order pursuant to the Moratorium Act. The Executive Order imposed limits on withdrawals by GDB depositors and transfers to GDB creditors.

32. On May 5, 2016, certain provisions of the Moratorium Act were amended by Law 40 of 2016.

33. Provisions of the Moratorium Act that unconstitutionally impair the contractual rights of GDB bondholders, unconstitutionally deprive GDB bondholders of property without just compensation, unconstitutionally facially discriminate against interstate commerce by providing for preferential treatment of Puerto Rico resident institutional holders of GDB bonds over non-resident holders of GDB bonds of equal rank, and even discriminate among bonds of the same series, constitute bankruptcy laws preempted by the Bankruptcy Clause, the Supremacy Clause, and the Bankruptcy Code, and/or unconstitutionally attempt to bar suit in federal court include the provisions described below.

34. The challenged provisions of the Moratorium Act replace the receivership provisions of Article 11 of the GDB Act with an entirely new receivership procedure that permits preferential treatment of creditors of equal rank to the detriment of Plaintiffs:

- a. Under Section 301, upon a recommendation from the GDB Board or the Treasury Secretary to place GDB into receivership, the Governor is empowered to appoint (or to direct the Treasury Secretary to appoint) “any person” to serve as the receiver for GDB without any court supervision of the decision to enter receivership, selection of the receiver, or conduct of the receivership.
- b. Section 301 grants the receiver expansive powers to, among other things, (i) take over the assets of and operate GDB in receivership; (ii) collect all obligations and money due to GDB; (iii) sell, transfer, and

compromise any asset, liability, right, power, or obligation of GDB; and

(iv) petition the Treasury Secretary to establish a bridge bank for GDB pursuant to Section 401 of the Moratorium Act.

- c. Section 301 of the Moratorium Act, as amended by Law 40, directs the receiver to “preserve and prioritize the safety, soundness and stability of depository financial institutions and their deposits.”
- d. Section 301 of the Moratorium Act further empowers the receiver to allow, disallow, or otherwise determine claims related to GDB. Under Section 301, the maximum liability of GDB, the receiver, or the receivership is capped at “the amount such creditor would have received if the Bank had been liquidated on the date of the appointment of the receiver.” Section 301 also attempts to divest any court of jurisdiction to hear a dispute regarding the receiver’s determination with respect to a claim against GDB other than the Court of First Instance of Puerto Rico, San Juan Part.
- e. Section 302 of the Moratorium Act authorizes the receiver to reject contracts or leases that the receiver believes to be “burdensome.” It also provides that “no person may exercise any right or power to terminate, accelerate, or declare a default” under any contract with the bank during the 90-day period after appointment of receiver.
- f. Section 302, as amended by Law 40, further provides that debts owed to “depository institutions,” defined as Puerto Rico resident institutional

holders of GDB bonds, should be preferred over debts owed to non-resident holders of GDB bonds of equal rank, even of the same series.

- g. Section 401 of the Moratorium Act creates an entirely new “bridge bank” mechanism for GDB. The Treasury Secretary may charter a “bridge bank” (and the receiver appointed for the GDB may petition the Treasury Secretary to do so) to which GDB may transfer selected assets and which may assume and pay selected liabilities of GDB, while disfavored assets and liabilities are left behind in GDB.
- h. Section 401 further provides that claims of creditors assumed by the bridge bank can be preferred over other creditors of GDB because creditors of GDB of equal rank that are not assumed by the bridge bank are entitled to receive only what is available under a “fire sale” valuation of GDB’s assets, even if creditors of the bridge bank are paid in full. This deprives left-behind GDB creditors of their right to be treated on a parity with deposits and other obligations of equal rank assumed by the bridge bank, and the right to have all GDB bonds of any series treated equally with all other bonds of that series. The power to cherry-pick and transfer assets of GDB to a bridge bank and to have the bridge bank selectively assume and pay selected favored depositors and bondholders and other creditors of GDB is a taking of property by the Commonwealth from those disfavored GDB bondholders and other creditors left behind in the receivership.

35. Other Sections of the Moratorium Act further strip creditors of GDB, including Plaintiffs, of their contractual and legal rights:
- a. Section 105 of the Moratorium Act grants an immunity to all persons from liability arising out of any violation of the GDB Act and purports to immunize any transfer of funds taken *before* enactment of the Moratorium Act from giving rise to any liability for violations of *any* provision of the GDB Act, including violations of Article 14 of the GDB Act, 7 L.P.R.A. § 562.
  - b. Section 203(f) of the Moratorium Act further purports to exempt transfers “in the ordinary course” from liability under Section 562.
  - c. Section 201(b) of the Moratorium Act suspends, during any “state of emergency” declared by the Governor, the operation of any “ipso facto” clause providing for the right to terminate, modify, or accelerate any contract upon the insolvency or commencement of a bankruptcy or receivership for a Commonwealth entity.
  - d. Section 201(b) of the Moratorium Act further purports to stay, during the existence of a “state of emergency” declared by the Governor, the commencement or continuation of any suit against a Commonwealth instrumentality to recover for a default of the entity’s obligations to GDB.
  - e. Section 201(c) of the Moratorium Act makes any violation of Section 201(b) “void and punishable by contempt of court[,]” thereby denying Plaintiffs and other creditors, or their representatives, access to the

federal courts to enforce their contractual rights under threat of being held in contempt of a Commonwealth court.

- f. Section 203(b)(i) of the Moratorium Act suspends GDB's statutory duty to comply with its requirement to maintain minimum reserves of short-term investments equal to 20 percent of its demand deposit liabilities.

**THE CHALLENGED PROVISIONS OF THE MORATORIUM ACT  
ARE UNCONSTITUTIONAL**

36. The challenged provisions of the Moratorium Act violate the Contract and Takings Clauses of both the United States Constitution and the Puerto Rico Constitution, violate the Commerce, Bankruptcy, and Supremacy Clauses of the United States Constitution, contravene Section 903(1) of the Bankruptcy Code, and unconstitutionally close the doors to federal courts because they (i) rewrite the contractual and legal rights and entitlements of GDB's creditors, including Plaintiffs; (ii) take, without due process or just compensation, property to which GDB's creditors, such as Plaintiffs, are entitled for the benefit of the Commonwealth, other Puerto Rico government entities, and their respective creditors; (iii) facially discriminate against interstate commerce by providing for preferential treatment of Puerto Rico resident institutional holders of GDB bonds over non-resident holders of GDB bonds of equal rank, even of the same series; (iv) establish a law on bankruptcy within the power of the United States Congress and preempted by Congress's exercise of those powers; and (v) unconstitutionally seek to preclude creditors of GDB, including Plaintiffs, from suing in federal court.

37. Article 1, Section 10 of the United States Constitution provides that “[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts[.]” U.S. Const. art. I, § 10, cl. 1. Article II, Section 7 of the Puerto Rico Constitution similarly provides

that “[n]o laws impairing the obligation of contracts shall be enacted.” P.R. Const. art. II, § 7.

38. The Fifth Amendment to the United States Constitution provides that “nor shall private property be taken for public use, without just compensation.” U.S. Const. amend. V. Article II, Section 9 of the Puerto Rico Constitution contains a substantially identical provision: “Private property shall not be taken or damaged for public use except upon payment of just compensation and in the manner provided by law.” P. R. Const. art. II, § 9.

39. Article 1, Section 8, Clause 3 of the United States Constitution provides that “Congress shall have Power . . . [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes[.]” U.S. Const. art. I, § 8, cl. 3. This clause, through what is commonly referred to as the “Dormant Commerce Clause,” implicitly prohibits States and the Commonwealth from passing statutes that discriminate against interstate commerce.

40. The Bankruptcy Clause of the United States Constitution gives Congress the “[p]ower . . . [t]o establish . . . uniform Laws on the subject of Bankruptcies throughout the United States.” U.S. Const. art. I, § 8, cl. 4. In accordance with that authority, Congress enacted the detailed, comprehensive Bankruptcy Code. *See* 11 U.S.C. §§ 101 *et seq.* The Supremacy Clause of the Constitution, U.S. Const. art. VI, cl. 2, invalidates state laws that interfere with, or are contrary to, the Bankruptcy Code. Section 903(1) of the Bankruptcy Code, 11 U.S.C. § 903(1), expressly prohibits States and Puerto Rico from creating their own laws providing for a “composition of indebtedness” for an entity such as GDB.

41. Any law that denies litigants access to federal court and that purports to divest the federal courts of jurisdiction to hear suits arising under the United States Constitution or federal law is unconstitutional on its face.

42. The Master Trust Indenture, Supplemental Indentures, Authorizing Resolutions, and Official Statements, together with the GDB Act, create an irrevocable contractual and legal relationship between GDB and the holders of GDB bonds, including Plaintiffs, and establish the relative rights and entitlements of GDB's creditors *inter se*. Under Puerto Rico law, the Commonwealth was bound to not amend the GDB Act or "any other law of Puerto Rico" to "impair any obligation or commitment of [GDB]." 7 L.P.R.A. § 567.

43. The challenged provisions of the Moratorium Act unconstitutionally purport to amend these irrevocable contractual and legal rights, and the rights and entitlements of GDB's creditors *inter se*.

44. The new receivership and bridge bank provisions of the Moratorium Act substantially impair creditors' contractual rights, take the property of GDB's creditors without just compensation, facially discriminate against interstate commerce, and unlawfully attempt to limit the jurisdiction of federal courts. Among other things:

- a. They impair contractual rights and take for the benefit of the Commonwealth property from creditors of GDB, including Plaintiffs, by allowing the preferential treatment of creditors of equal rank—and even among the same series of GDB bonds—pursuant to the receivership, bridge bank, and other provisions of the Moratorium Act. *See, inter alia*, Moratorium Act, Section 105 (granting immunity from

liability arising out of any violation of the GDB Act); Section 203(f) (exempting transfers “in the ordinary course” from liability); Section 301 (granting broad powers to the receiver, purporting to limit the liability of GDB, the receiver, or the receivership to the amount the creditor would have received in a liquidation, and purporting to direct the receiver to prioritize claims owed to Puerto Rico financial institutions over creditors of equal rank); Section 302 (authorizing the receiver to reject contracts or leases); Section 401 (authorizing the creation of a bridge bank and selective transfers of assets to and assumption of liabilities by the bridge bank).

- b. They facially discriminate against interstate commerce by providing for preferential treatment of Puerto Rico resident institutional holders of GDB bonds over non-resident holders, including Plaintiffs, of GDB bonds of equal rank, and even discriminate among bonds of the same series. *See* Moratorium Act, Section 302 (providing “amounts owed for any reason to depository institutions” have priority over other debts of GDB); *see also* Section 103 (kk) (defining “Depository Institution” as “Banks and cooperative savings and credit associations . . . *operating in Puerto Rico*, and the Public Corporation for the Supervision and Insurance Cooperatives of Puerto Rico”) (emphasis added).
- c. They deprive creditors, including Plaintiffs, of the protections of a disinterested court overseeing the receivership process by overriding the prior Article 11 of the GDB Act, 7 L.P.R.A. § 559, which provided for

court oversight of the appointment of a receiver and the receivership process, with a new receivership process that grants the Governor unfettered discretion to appoint “any person” as receiver and does not provide for direct court supervision. *See* Moratorium Act, Section 301.

- d. They deprive bondholders, including Plaintiffs, of the “absolute and unconditional” right to receive principal, premium (if any), and interest on the stated due dates, the right to sue if GDB defaults on such payments, the right to exercise remedies upon default, the right to be free from nonconsensual modification to the right to receive principal and interest, and the right to declare a default upon appointment of a receiver for GDB. *See* Moratorium Act, Sections 301 and 302.
- e. They invalidate contractual provisions such as *ipso facto* clauses. *See* Moratorium Act, Section 201(b) (authorizing a stay of litigation and suspending the operation of contractual rights to terminate, accelerate, or exercise remedies upon an event of default or imposition of a moratorium); 203(b)(i) (suspending requirement of GDB to maintain minimum reserves of short-term investments equal to 20 percent of its demand deposit liabilities).
- f. They alter the legal and contractual rights of creditors, including Plaintiffs, by substantially limiting Article 14 of the GDB Act’s prohibition on “all transfers” of anything of value “made while the Bank is insolvent, or in anticipation of its insolvency . . . with the intent of giving preference to one creditor over another,” which “shall be null and

ineffective,” 7 L.P.R.A. § 562. *See* Moratorium Act, Sections 105, 201(c), and 203(f).

45. The new receivership provisions of the Moratorium Act also contravene the Bankruptcy Clause and are preempted by the Bankruptcy Code because they attempt to vest the receiver with numerous bankruptcy powers, including the power of the receiver to take over the assets of and operate GDB in receivership, to collect all obligations and money due to GDB, to sell, transfer, and compromise any asset, liability, right, power, or obligation of GDB, to allow, disallow, or otherwise determine claims related to GDB, to reject contracts or leases that the receiver believes to be “burdensome,” and to invalidate *ipso facto* clauses—each tracking powers the Bankruptcy Code grants to a trustee or a debtor-in-possession and exceeding in many respects the powers the Bankruptcy Code grants to a government instrumentality debtor under Chapter 9. *See, e.g.*, 11 U.S.C. §§ 365 (reject contracts), 704 (take over assets and operate as debtor, object to claims), 1107, 1108; *see also* 11 U.S.C. § 901 (excluding 11 U.S.C. §§ 704, 1107, 1008 from sections made applicable to a debtor under Chapter 9 of the Bankruptcy Code).

**The Challenged Provisions of the Moratorium Act Are Not Reasonable, Necessary, or Narrowly Tailored Means of Achieving the Act’s Legislative Purpose**

46. None of these contractual impairments, takings of property without just compensation, and facially discriminatory burdens on interstate commerce are reasonable, necessary, or narrowly tailored means to accomplish the Commonwealth’s stated aims for the Moratorium Act or any legitimate, important, or compelling government interest that cannot be adequately served by a reasonable nondiscriminatory alternative.

47. The unconstitutional provisions of the Moratorium Act are not necessary to restructure GDB, to address GDB's default, or to maintain essential services provided by the Commonwealth and its municipalities and instrumentalities. The GDB could be restructured, and essential services could continue to be funded, in a manner that respects the contractual and property rights of all creditors and other interstate commercial actors. The following are illustrative examples of nondiscriminatory alternatives to the unconstitutional provisions of the Moratorium Act:

- a. GDB could be placed into receivership under the receivership provisions of the GDB Act. This would permit GDB to be wound down in an orderly, court-supervised process, treating creditors of equal rank—bondholders, depositors, and all other unsecured creditors—equally, without impairing or taking the property of GDB's creditors, and honoring the promises GDB and the Commonwealth made to GDB's creditors. In contrast, the Moratorium Act receivership procedure is a device deliberately designed to pick “winners and losers” from among GDB's creditors and to cause GDB's creditors who are not favored “depository financial institutions” under Section 301 or “depository institutions” under Section 302 to bear a disproportionate share of GDB's losses, which largely resulted from the Commonwealth's actions in causing GDB to knowingly and improperly make loans to the Commonwealth and its other instrumentalities in the absence of a source of repayment from such entities.

- b. The Commonwealth and GDB could work to appropriate promised funds to the entities that borrowed from GDB so that these entities could repay their debts to GDB. This would equitably distribute the costs of the loans from GDB to the borrower and its creditors rather than to GDB's creditors, and would remedy the root cause of the GDB's insolvency: imprudent loans to Commonwealth instrumentalities that did not have a source of repayment.
- c. The Commonwealth and its instrumentalities and municipalities could fund public services from other funds or incoming revenues rather than force GDB's creditors to accept an inequitable and discriminatory share of losses from GDB, or could agree to allow for adequate protection of GDB's creditors as a condition to allowing favored depositors to receive a disproportionately high recovery.
- d. GDB could work to collect debt owed to GDB by other Puerto Rico instrumentalities, many of which also have their own bonds outstanding. If GDB had decided to work to collect on these loans as an arm's-length lender would have, GDB's assets would be substantially augmented for the benefit of all GDB creditors.
- e. GDB could protect depositors from the damaging effects of a bank run without creating a bridge bank procedure—as is shown by the absence of a bridge bank procedure for the Economic Development Bank for Puerto Rico in the Moratorium Act. *See* Moratorium Act, Sections 501 and 502.

- f. Even if a bridge bank procedure were necessary, it was not necessary for the bridge bank procedure of the Moratorium Act to disregard the bargained-for right of bondholders to recover on a parity with depositors and all other unsecured obligations.

48. Despite these available options, there is no evidence that the Legislature had any interest in considering alternative approaches that would have avoided discriminating in favor of selected creditors of GDB prior to passing the Moratorium Act. As recognized by the minority leader in the Commonwealth’s House of Representatives, the Moratorium Act reflects the Commonwealth “work[ing] under the cover of night” in a “rush and absolute improvisation.”<sup>1</sup> Indeed, legislative leaders from the majority party “pushed the [Moratorium Act] through the upper chamber within hours of its filing after midnight[.]”<sup>2</sup> And, when asked whether the Commonwealth’s legislators should consider the constitutionality of the Moratorium Act, the President of the Commonwealth’s Senate responded, “I don’t think that is the job of the legislature at this time[.]”<sup>3</sup> The Commonwealth clearly failed to consider reasonable nondiscriminatory alternatives for achieving the Moratorium Act’s stated purpose, choosing instead to pass a bankruptcy law and other provisions that substantially, unlawfully, and discriminatorily impair the contractual and property rights of holders of GDB bonds while treating depositors and other favored creditors of equal rank as if they were a preferred class.

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<sup>1</sup> *Puerto Rico to Introduce Bill Tonight Granting Governor Power to Declare Debt Payment Moratorium on All Credits*, REORG RESEARCH, Apr. 4, 2016.

<sup>2</sup> *Bill Would Amend Debt Moratorium to Shield GOs, COFINA, Securitization Bonds*, REORG RESEARCH, Apr. 6, 2016.

<sup>3</sup> *Id.*

**CLAIMS FOR RELIEF**

**COUNT I**

**Declaratory and Injunctive Relief—Contract Clauses**

49. Plaintiffs reallege and incorporate by reference as though set forth in full the allegations in paragraphs 1 through 48, inclusive.

50. Sections 105, 201(b), 201(c), 203(b)(i), 203(f), 301, 302, and 401 of the Moratorium Act (as amended) substantially impair the contractual obligations imposed by the GDB Act, the Master Trust Indenture, the Supplemental Indentures, and the Authorizing Resolutions. Because reasonable alternatives are available, and because such substantial impairment is not a necessary or narrowly tailored means to promote a legitimate, important, or compelling government interest, this impairment violates the Contract Clauses of the United States and Puerto Rico Constitutions.

51. By authorizing the appointment of a receiver pursuant to the Moratorium Act, or by taking any other action to enforce the unconstitutional provisions of the Moratorium Act, Defendants will further harm Plaintiffs and deprive Plaintiffs of their constitutional rights under the Contracts Clauses.

52. Plaintiffs are therefore entitled to a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 57 that the offending provisions of the Moratorium Act are null and void as unconstitutional because they violate the Contract Clauses of the United States and Puerto Rico Constitutions, and an injunction prohibiting the Defendants from enforcing the offending provisions of the Moratorium Act, and the Executive Order to the extent it implements the offending provisions, placing GDB into receivership under the Moratorium Act, or establishing a bridge bank thereunder.

**COUNT II**

**Declaratory and Injunctive Relief—Takings Clauses**

53. Plaintiffs reallege and incorporate by reference as though set forth in full the allegations in paragraphs 1 through 52, inclusive.

54. Sections 105, 201(b), 201(c), 203(b)(i), 203(f), 301, 302, and 401 of the Moratorium Act (as amended), take, without just compensation, Plaintiffs' bargained-for property rights under the GDB Act, the Master Trust Indenture, the Supplemental Indentures, and the Authorizing Resolutions, and empower the receiver to further take Plaintiffs' property and divert it to public use without just compensation. These sections of the Moratorium Act thus violate the Takings Clauses of the United States and Puerto Rico Constitutions.

55. By authorizing the appointment of a receiver pursuant to the Moratorium Act, or by taking any other action to enforce the unconstitutional provisions of the Moratorium Act, Defendants will further harm Plaintiffs and deprive Plaintiffs of their constitutional rights under the Takings Clauses.

56. Plaintiffs are therefore entitled to a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 57 that the offending provisions of the Moratorium Act are null and void as unconstitutional because they violate the Takings Clauses, and an injunction prohibiting the Defendants from enforcing the offending provisions of the Moratorium Act, and the Executive Order to the extent it implements the offending provisions, placing GDB into receivership under the Moratorium Act, or establishing a bridge bank thereunder.

**COUNT III**

**Declaratory and Injunctive Relief—Commerce Clause**

57. Plaintiffs reallege and incorporate by reference as though set forth in full the allegations in paragraphs 1 through 56, inclusive.

58. Sections 105, 201(b), 201(c), 203(b)(i), 203(f), 301, 302, and 401 of the Moratorium Act (as amended), facially discriminate against interstate commerce by providing for preferential treatment of Puerto Rico resident institutional holders of GDB bonds over non-resident holders of GDB bonds of equal rank, even of the same series. Because there are reasonable nondiscriminatory alternatives that adequately serve the Commonwealth's purpose, these sections of the Moratorium Act violate the Commerce Clause of the United States Constitution.

59. By authorizing the appointment of a receiver pursuant to the Moratorium Act, or by taking any other action to enforce the unconstitutional provisions of the Moratorium Act, Defendants will further harm Plaintiffs and deprive Plaintiffs of their constitutional rights under the Commerce Clause.

60. Plaintiffs are therefore entitled to a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 57 that the offending provisions of the Moratorium Act are null and void as unconstitutional because they violate the Commerce Clause, and an injunction prohibiting the Defendants from enforcing the offending provisions of the Moratorium Act, and the Executive Order to the extent it implements the offending provisions, placing GDB into receivership under the Moratorium Act, or establishing a bridge bank thereunder.

**COUNT IV**

**Declaratory and Injunctive Relief—Federal Preemption**

61. Plaintiffs reallege and incorporate by reference as though set forth in full the allegations in paragraphs 1 through 60, inclusive.

62. Sections 105, 201(b), 201(c), 203(b)(i), 203(f), 301, 302, and 401 of the Moratorium Act (as amended) are preempted by Congress’s power to “establish uniform laws on the subject of bankruptcy” under the Bankruptcy Clause, and by the Supremacy Clause and Section 903(1) of the Bankruptcy Code, 11 U.S.C. § 903(1), which expressly prohibit States and Puerto Rico from creating their own laws providing for a “composition of indebtedness” for an entity such as GDB.

63. Plaintiffs are therefore entitled to a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 57 that the offending provisions of the Moratorium Act are null and void as unconstitutional because they violate the Supremacy Clause and the Bankruptcy Clause, and an injunction prohibiting the Defendants from enforcing the offending provisions of the Moratorium Act, placing GDB into receivership under the Moratorium Act, or establishing a bridge bank thereunder.

**COUNT V**

**Declaratory and Injunctive Relief—Right to Sue in Federal Court**

64. Plaintiffs reallege and incorporate by reference as though set forth in full the allegations in paragraphs 1 through 63, inclusive.

65. The Moratorium Act (as amended) violates the United States Constitution because provisions of Section 105, 201(b), 201(c), 203(b)(i), 203(f), 301, 302, and 401 of the Moratorium Act purport to enjoin, stay, suspend, or penalize bondholders from suing in federal court.

66. Plaintiffs are therefore entitled to a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 57 that the offending provisions of the Moratorium Act are null and void because they violate the United States Constitution, and an injunction prohibiting the Defendants from enforcing the offending provisions of the Moratorium Act, placing GDB into receivership under the Moratorium Act, establishing a bridge bank thereunder, or taking any other action to prevent Plaintiffs from suing or seeking other relief in federal court.

**WHEREFORE**, Plaintiffs pray for judgment as follows:

- a) On Count I, declaring that Sections 105, 201(b), 201(c), 203(b)(i), 203(f), 301, 302, and 401 of the Moratorium Act (as amended), and any action to enforce these provisions, are null and void because they violate the Contract Clauses of the United States and Puerto Rico Constitutions, severing these provisions from the Moratorium Act, and enjoining Defendants from taking any action to enforce these provisions;
- b) On Count II, declaring that Sections 105, 201(b), 201(c), 203(b)(i), 203(f), 301, 302, and 401 of the Moratorium Act (as amended), and any action to enforce these provisions, are null and void because they violate the Takings Clauses of the United States and Puerto Rico Constitutions, severing these provisions from the Moratorium Act, and enjoining Defendants from taking any action to enforce these provisions;
- c) On Count III, declaring that Sections 105, 201(b), 201(c), 203(b)(i), 203(f), 301, 302, and 401 of the Moratorium Act (as amended), and any action to enforce these provisions, are null and void because they violate

the Commerce Clause of the United States Constitution, severing these provisions from the Moratorium Act, and enjoining Defendants from taking any action to enforce these provisions;

- d) On Count IV, declaring that Sections 105, 201(b), 201(c), 203(b)(i), 203(f), 301, 302, and 401 of the Moratorium Act (as amended), and any action to enforce these provisions, are null and void because they are preempted by Section 903(1) of the Bankruptcy Code and violate Article I, Section 8 of the United States Constitution, severing these provisions from the Moratorium Act, and enjoining Defendants from taking any action to enforce these provisions;
- e) On Count V, declaring that Sections 105, 201(b), 201(c), 203(b)(i), 203(f), 301, 302, and 401 of the Moratorium Act (as amended), and any action to enforce these provisions, are null and void because they violate the United States Constitution insofar as they authorize a stay or penalize the filing of federal court proceedings, severing these provisions from the Moratorium Act, and enjoining Defendants from taking any action to enforce these provisions;
- f) On each of Counts I through V, awarding Plaintiffs' costs, attorneys' and experts' fees, and expenses of suit; and
- g) On each of Counts I through V, such compensation or other legal or equitable relief as the Court may deem just and proper.

Dated: May 20, 2016  
San Juan, Puerto Rico

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**CERTIFICATE OF ELECTRONIC FILING AND SERVICE**

I hereby certify that on May 20, 2016, I caused to be electronically filed the Amended Complaint, Exhibits, and Proposed Summonses with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Dated: May 20, 2016  
San Juan, Puerto Rico

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