

# **Bond Case Briefs**

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## **Trump Could Push the Justice Department Into Puerto Rico's Debt Fight.**

- **Instead of a bailout, Trump could try to join court battle**
- **Island's status as a U.S. territory may provide an opening**

After President Donald Trump said Puerto Rico's debt will be wiped out, White House officials rushed to rule out any U.S. bailout of bondholders, who lent the commonwealth about \$74 billion.

But Trump, who used bankruptcy to restructure billions owed by his former businesses, has other ways to insert the federal government into one of the most complicated insolvency cases ever filed in a U.S. court.

He could order the U.S. Justice Department to defend the 2016 federal law that Puerto Rico is trying to use to slash its debt and about \$49 billion in pension obligations. Bondholder Aurelius Investments LLC is trying to have that law, known as Promesa, declared unconstitutional, which would throw the restructuring into chaos.

But he has to move soon. The judge overseeing the Title III bankruptcy case has given the justice department a Nov. 6 deadline to decide whether to defend the constitutionality of Promesa, or leave the job to a federal oversight board.

Another option: the Justice Department becomes a party to the bankruptcy, which would give the White House the chance to directly influence a final restructuring plan of the island's debt load and what Wall Street creditors get repaid. That plan will be put together by the federal oversight board, which is responsible for prosecuting the bankruptcy case and was appointed before Trump got elected.

### **Dynamic Uncertainty**

In any event, bringing the U.S. into the fray would make a difficult case even more complicated, bankruptcy experts say.

"You don't need any more dynamic uncertainty," said James Spiotto, managing director at Chicago-based Chapman Strategic Advisors LLC, whose firm advises on municipal restructurings.

In order to get into the case, the Department of Justice would need permission from the judge overseeing the bankruptcy, U.S. District Court Judge Laura Taylor Swain. To do that, lawyers could point to the fact that because Puerto Rico is a territory, not a state, it's considered property of the U.S. under the constitution.

"That could give Trump the opening to become a party and get involved," said Bruce Markell, a professor at Northwestern University School of Law and a retired bankruptcy judge.

### **Creditor Benefit?**

Even if Trump did push the U.S. into a direct role in Puerto Rico's bankruptcy, he would have to abide by the same rules as any creditor or other participant, Spiotto said. The oversight board would still be in charge of proposing a debt-adjustment plan and the judge would still have the final say over whether that plan is approved.

Being a party to the case would simply mean that the U.S. could participate in hearings and file motions supporting or opposing any of the dozens of legal fights that will need to be resolved before Puerto Rico can exit bankruptcy.

Outside of the bankruptcy case, Trump can't do much to help Puerto Rico eliminate its debt, said Richard Cooper, a restructuring lawyer with Cleary Gottlieb Steen & Hamilton LLP, which until earlier this year had been advising Puerto Rico on its debt troubles.

"Other than using his bully pulpit power or seeking to amend Promesa in a manner that seems to favor the government or the oversight board, there isn't much the U.S. government can do to eliminate or reduce Puerto Rico's debt stock," Cooper said.

Inside the case, there is a risk that dragging the U.S. into a direct role could be used by creditors to their benefit, Spiotto said. Creative bankruptcy lawyers could "try to argue that the debts of Puerto Rico should be debts of the federal government."

The case is *In re Commonwealth of Puerto Rico*, 17-03283, U.S. District Court, District of Puerto Rico (San Juan).

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