

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **Schilling 38 Studios Deal Could Push First Southwest to Settle.**

Rhode Island's settlement with former major-league baseball pitcher Curt Schilling and three other executives of 38 Studios leaves First Southwest as the lone defendant in the state's civil suit over losses from the failed video-game company.

Retired Superior Court Judge Francis Darigan, who mediated the settlement, said he hopes to bring holdout First Southwest back to the table.

The Rhode Island Economic Development Corp. – now RI Commerce Corp. – sold \$75 million in bonds in 2010 to entice 38 Studios founder Schilling to relocate his company to downtown Providence from Maynard, Mass. The company folded two years later, sticking the state with the bond debt.

First Southwest was the advisor to the Rhode Island EDC for the deal.

Settling would be practical for First Southwest, said Anthony Sabino, a Mineola, N.Y., white-collar legal expert.

"Yes, there is pressure. You never want to be the last defendant and get left holding the bag, so to speak," said Sabino, a St. John's University law professor.

Earlier this week, 38 Studios founder Schilling, along with fellow executives Thomas Zaccagnino, Richard Wester and Jennifer MacLean, agreed to pay \$2.5 million to end their dispute.

The placement agents on the 38 Studios deal, Wells Fargo Securities and Barclays Capital, agreed in August to settle for \$25.6 million.

"The settlements with Schilling and the others now provide a yardstick for First Southwest to measure itself against, and then settle on relatively reasonable terms close to what the others did," said Sabino. "Speaking more broadly, cases such as these settle far more times than they go to trial. Trial is a risky proposition for both sides."

"It is encouraging that more of the responsible parties have agreed to a settlement that helps recover some of the cost to taxpayers," said state General Treasurer Seth Magaziner, who in November fired First Southwest as the state government's financial advisor and replaced it with Public Resources Advisory Group.

Magaziner hopes First Southwest "will do the right thing and agree to a settlement that helps Rhode Islanders recover more of the money lost in the terrible 38 Studios deal," he said in a statement. "Otherwise, the state remains prepared to go to trial."

First Southwest attorney Gerald Petros, a partner with Hinckley, Allen & Snyder LLP in Providence, said it would be inappropriate to comment further. "First Southwest has participated in each round

of settlement talks. We respect the confidentiality of those discussions,” he said.

Rhode Island Superior Court Judge Michael Silverstein must approve the settlement with Schilling and the three other executives, which after legal fees would net upwards of \$2 million for RI Commerce.

“As I’ve said from the very beginning, 38 Studios was a bad deal for Rhode Islanders and I was against it from the start,” Gov. Gina Raimondo said in a statement. “My team and I remain focused on recovering as much taxpayer money as possible.”

The firm’s demise led to heated debate among state lawmakers about whether Rhode Island should pay the debt, which carried Rhode Island’s moral obligation. That prompted bond rating agencies to threaten to downgrade Rhode Island GOs.

Rhode Island still owes on the debt, to which it has made annual payments. Moody’s Investors Service rates the state Aa2. Fitch Ratings and S&P Global Ratings assign AA ratings.

The Securities and Exchange Commission filed a complaint against various parties in the deal, alleging fraud. Rhode Island said last month it won’t file criminal charges.

Schilling had expected to cash in on his celebrity from having helped the Boston Red Sox win the 2004 World Series — their first in 86 years — and another in 2007.

“At least when Schilling lost a game, Red Sox fans could say they enjoyed hot dog and a nice day at the ballpark. However, in the case of 38 Studios, Rhode Island taxpayers are left with a bitter taste and \$75 million in debt,” said Anthony Figliola, vice president of Empire Government Strategies in Uniondale, N.Y.

“Mr. Schilling blames the state for not doing enough to save his business. Anyone who has run a business from dog groomer to Fortune 100 knows it’s not the government’s responsibility for the success or failure of a business that rest solely on those in executive management.”

The settlement requires Schilling to testify against First Southwest if called.

“After this is completed, what’s stopping me from telling the whole story to the taxpaying citizens of Rhode Island?” Schilling wrote on Twitter.

According to Figliola, Rhode Island should concentrate on its economy. Its 5.6% unemployment rate in August was above the nationwide 4.9%.

“A key industry the state should be looking at is renewable energy which can help provide new jobs and an infusion of new dollars into the economy,” he said.

First Southwest is now part of Hilltop Securities following a merger with Southwest Securities.

## **The Bond Buyer**

By Paul Burton

September 21, 2016