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National and MBIA Insurance File Lawsuit Against Wall Street Banks for Misconduct as Underwriters in Puerto Rico's Fiscal Crisis.

SAN JUAN, Puerto Rico, Aug. 8, 2019 /PRNewswire/ — Today, National Public Finance Guarantee Corporation and MBIA Insurance Corporation (collectively, "National" or "Plaintiffs") filed suit in the Court of First Instance, Superior Court of San Juan, Puerto Rico, against eight major Wall Street banks to hold them accountable for inequitable conduct in Puerto Rico's municipal bond market that contributed to Puerto Rico's economic collapse.

Plaintiffs are bond insurers that have been presented with, and fully honored, over a billion dollars in claims after the municipal debt underwritten by the banks became unsustainable on their terms for the Commonwealth and its agencies and they defaulted on their obligations. The lawsuit names as defendants UBS Financial Services, Inc.; UBS Securities LLC; Citigroup Global Markets Inc.; Goldman Sachs & Co. LLC; J.P. Morgan Securities LLC; Morgan Stanley & Co. LLC; Merrill Lynch, Pierce, Fenner & Smith Inc.; RBC Capital Markets LLC; and Santander Securities LLC.

Each bank underwrote one or more bonds issued by each of the Commonwealth, the Puerto Rico Electric Power Authority, the Puerto Rico Highways and Transportation Authority, and the Puerto Rico Sales Tax Financing Corporation. The Complaint alleges that, for over a decade, these banks urged Puerto Rico and its agencies to issue massive amounts of this debt, allowing the banks to profit from underwriting and selling the bonds, as well as from related interest rate swap, refinancing and other transactions. In their capacity as underwriters, the banks had a fundamental 'gatekeeper' responsibility that assured the markets that these municipal bonds could be repaid. But, as shown by a Special Investigation Report prepared for Puerto Rico's Financial Oversight and Management Board, the banks did not conduct appropriate due diligence, resulting in key disclosures being materially false or misleading. These diligence failures concealed essential facts that would have demonstrated that the debt was not sustainable and could not be repaid in accordance with its terms.

This debt burden ultimately forced the Commonwealth from the municipal markets, leaving it and its public institutions—like power utilities, hospitals, schools, and essential infrastructure on which millions of Puerto Ricans rely—in financial distress. Bond insurers like National have paid billions of dollars in claims payments to date, while uninsured municipal bond investors, including many Puerto Ricans, have suffered huge losses.

"We are honored to represent National in this litigation," said Philippe Selendy, founding partner of Selendy & Gay, counsel for National and former lead counsel for the Federal Housing Finance Agency in its RMBS litigations. "As alleged in the Complaint: 'El legado de la conducta injusta de los bancos afectará a Puerto Rico por generacione. Éstos no solo desatendieron su obligación de actuar como celosos guardianes, sino que se aprovecharon de las circunstancias imperantes en Puerto Rico, llevando a Puerto Rico directamente a su crisis actual. Mientras los bancos se enriquecían, le infligían graves daños al Gobierno de Puerto Rico y a sus ciudadanos, al igual que a National. Deben por tanto responder por esta conducta ilícita.'"[i] [English translations have been made available in

the endnotes].

The Complaint is based upon two equitable doctrines of Puerto Rican law—doctrina de actos propios and declaración unilateral de la voluntad.

According to Federico Hernández Denton, former Chief Justice of the Supreme Court of Puerto Rico and counsel for National, "The Complaint alleges: '[L]os Demandados, por medio de sus actos, le garantizaron a los demandantes que habían realizado investigaciones completas y razonables de los términos de los bonos que los demandantes aseguraron, y éstos de buena fe confiaron en dichas representaciones, al emitir sus seguros. Pero los Demandados frustraron las expectativas legítimas y de buena fe de los demandantes, al no llevar a cabo esas investigaciones y en torno a la veracidad y de las representaciones que hicieron en las solicitudes de seguro….Estas circunstancias extraordinarias ameritan que se aplique la doctrina de actos propios y/o de declaración unilateral de la voluntad.'"[ii]

In the face of the bonds' defaults, National has paid every cent of every claim on its policies—over a billion dollars—to cover the losses of insured investors.

"Just like the Commonwealth, and the people of Puerto Rico, National was misled by the underwriters of the Commonwealth's bonds," said Bill Fallon, CEO of MBIA Inc., the parent company of the Plaintiffs.

"This time of turmoil should be the occasion for rebuilding. National insured its first Puerto Rico government bond more than 30 years ago and to date has insured more than $15.7 billion of debt for Puerto Rico issuers," Fallon added. "Our insurance has helped Puerto Rico raise the money to build schools and hospitals and other vital public services. We're proud of that. The future of Puerto Rico and the integrity and transparency of the capital markets demand that the underwriters be held accountable."

Philippe Selendy, awarded "Litigator of the Year, Grand Prize" by The American Lawyer, has recovered over $35 billion for his public and private clients. Lauded by the Financial Times as "The Man Who Took on Wall Street," AmLaw reported that the Federal Housing Finance Agency "hit the jackpot" when it hired Mr. Selendy to lead its "litigation assault on Wall Street" that recovered billions for taxpayers in the aftermath of the Great Recession.

Retired Chief Justice of the Supreme Court of Puerto Rico, Federico Hernández Denton has over 50 years of expertise in law practice and litigation. He was Chief Justice of the Supreme Court of Puerto Rico (2004-2014), when he retired from the Court after presiding the Judicial Branch of Puerto Rico. Upon his retirement, he was appointed by the U.S. District Court of Puerto Rico as a Constitutional Lawyer of the Monitor of the Puerto Rico Police Commission.

MBIA Inc., headquartered in Purchase, New York is a holding company whose subsidiaries provide financial guarantee insurance for the public and structured finance markets.

National Public Finance Guarantee is a wholly owned subsidiary of MBIA Inc. and independently capitalized with $3.8 billion in claims-paying resources as of June 30, 2019.

The Complaint is available here.

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[i] "'The legacy of the banks' unjust conduct will affect Puerto Rico for generations. The banks not only disregarded their gatekeeping role but exploited it, leading Puerto Rico straight into its current

crisis. While the banks enriched themselves, they caused great damage to the Commonwealth, its people, and National. They should now bear the costs of their inequitable conduct.'"

[ii] "'Defendants through their acts assured National that they were conducting reasonable investigations regarding the terms of the bonds that National insured, and National relied on those acts in issuing its insurance. But Defendants frustrated National's legitimate, good faith expectations by choosing not to conduct those investigations and utterly failing to ensure that they had confirmed the truthfulness and completeness of the integral materials in the insurance applications.…These extraordinary circumstances warrant application of doctrina de actos propios and/or the unilateral declaration of will.'"

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