

AXIOM  
WESTWOOD  
844.877.9882



Now Pre-Leasing for Summer/Fall 2019!

[www.axiomwestwood.com](http://www.axiomwestwood.com)

One Block to UCLA! | Luxury Renovated Apartments | Gated Parking | Two Pools!



# DAILY BRUIN



## Law professors help Puerto Rico address debt, aim to alleviate financial pressures

BY SAMEERA PANT

Posted: April 15, 2019 11:27 pm

NATIONAL, NEWS



 [SHARE](#)

 [TWEET](#)

---

Two UCLA law professors helped broker a deal that will bring financial relief to Puerto Rico.

Law professors Kenneth Klee and Daniel Bussel have been working on restructuring Puerto Rico's debt since 2017 and finalized the deal in February. Puerto Rico had accumulated \$72 billion in aggregate debt as of 2016, Bussel said.

Klee said Puerto Rico's poor economic condition is a product of the island's history as a territory of the United States.

During the 1960s and 1970s, various industries set up operations in Puerto Rico due to U.S. tax incentives, Klee said. However, former President Bill Clinton's administration later repealed these incentives, which led these businesses to migrate out of Puerto Rico.

As a result, Puerto Rico had to find ways to compensate for lost revenue, using a sales tax and bonds.

Puerto Rico formed an agency, Corporación del Fondo de Interés Apremiante, to hold the revenue generated from this sales tax. COFINA also issued bonds which could be purchased by the public, Klee said.

The island found itself in a significant amount of debt after problems arose with this arrangement in 2016, Bussel said.

Congress enacted a new specialized bankruptcy law tailored to Puerto Rico's crisis, Bussel said. This new law, called the Puerto Rico Oversight, Management and Economic Stability Act, included territories in U.S. bankruptcy code for the first time, Klee said.

It also established a federal oversight board and began bankruptcy proceedings for Puerto Rico and its various agencies, including COFINA, Bussel added.

This move would have been detrimental to COFINA bondholders, as they would not have been able to collect tax revenues from their purchased bonds, Klee said. He added this sparked massive litigation between COFINA and the Puerto Rican government.

The Puerto Rican government was involved in both sides of the situation because it created COFINA and thus could not govern both sides of the situation, Klee said.

"Their solution was to have two agents appointed: one agent for the commonwealth and one for the COFINA entity," Klee said.

Klee and Bussel helped COFINA agent Bettina Whyte, who was appointed to represent bondholders that have purchased so-called COFINA bonds.

The case is particularly challenging because of the complexity of Puerto Rico's debt and the fact that PROMESA had never been tested in the courts.

"The financial problems in Puerto Rico required the largest and most complex government debt restructuring in the history of the United States," Bussel said.

Bussel said the proceedings were further affected by environmental stressors such as hurricanes Irma and Maria.

"This made it all the more urgent that the problem be resolved quickly and that the government of Puerto Rico regain financial stability," Bussel said.

Klee said ultimately the COFINA agent and the commonwealth agent decided that the proper resolution of the dispute was to give a majority of the tax revenues, but not all of it, to COFINA and its bondholders.

Bussel said Puerto Rico will receive \$6 billion in debt relief and approximately 46% of future sales tax revenues under the settlement, with bondholders receiving returns depending on their seniority.

Bussel said COFINA has now reentered the capital markets and may raise additional funding as a court order has confirmed its right to collect approximately 54% of the sales tax.

The successful restructuring of COFINA marked the first time in many years that Puerto Rico was able to successfully enter the capital markets to fund its activities, he said.

Bussel said his and Klee were asked to step in due to their past experience with municipal bankruptcies and debt restructurings, particularly those in Jefferson County, Alabama, and Orange County, California.

“The opportunity to put our bankruptcy expertise to use serving Ms. Whyte and supporting her as municipal bankruptcy counsel was a unique challenge,” Bussel said. “It never occurred to me to pass up the opportunity.”

Lynn LoPucki, a law professor, said the main difference between Puerto Rico’s case and corporate bankruptcy cases, which he specializes in, is that Puerto Rico involves the public.

“The public is essentially a party to the case, the public being the taxpayers. You don’t have that in a private company (case),” LoPucki said. “In (a private company case), you would probably eliminate the shareholders. They lose their ownership of the company and it goes to the creditors.”

However, LoPucki said in the case of municipal bankruptcies, public bondholders cannot be stripped of ownership of their assets.

“The only thing you can do is to cut back on the debt,” LoPucki said.

LoPucki added although repeated reorganization of the debt restructuring process should not be necessary in resolving bankruptcy, it is still possible that this will be needed in municipal bankruptcy cases, like Puerto Rico.

“If they don’t do a good job of reorganizing Puerto Rico, it might be back in bankruptcy a short time later,” LoPucki said. “In particular because Puerto Rico is so complicated a matter, there is always a substantial risk that whatever is done is not going to work.”

Bussel said although he and Klee’s work with the case is completed, they are open to participating further in the debt restructuring process.

“Our hope is that Puerto Rico is able to use the solution in this case as a foundation and model to consensually resolve challenges with tens of billions of dollars in additional bond debt,” Bussel said.

Klee added he thinks the case represented a wonderful opportunity to solve this specific type of debt restructuring problem.

“Municipal bankruptcy cases have a political and public policy element to them that most cases don’t have,” Klee said.

Bussel said this case was both the most challenging and fulfilling one he and Klee had ever worked on because of the high stakes and large scope of the case.

“We’re proud to have been a part of it and hope it is the beginning of better days in Puerto Rico,” Bussel said.

---

---