

Litigators of the Week: Matthew McGill of Gibson Dunn and Thomas Mayer of Kramer Levin

By Scott Flaherty
July 9, 2015

When some major bondholders challenged a Puerto Rico debt restructuring law, their lawyers set off on a difficult quest. They would first have to convince a federal judge in San Juan that the law should be tossed, despite Puerto Rico's claims that the law marked a last-ditch effort to grapple with crippling municipal debt.

"Most observers thought it was an uphill climb to get a Puerto Rico court to enjoin and invalidate this Puerto Rico law, when the Puerto Rico government was saying it was absolutely vital to its financial survival," said Matthew McGill of Gibson, Dunn & Crutcher, who represented bondholder BlueMountain Capital Management LLC.

"I like to think I'm a pretty prominent bankruptcy lawyer, but I don't invalidate statutes every day," said Thomas Mayer of Kramer Levin Naftalis & Frankel, who represents Franklin Advisers Inc. and OppenheimerFunds.

The two lawyers did just that in February, when U.S. District Judge Francisco Besosa found that federal bankruptcy law pre-empts the Puerto Rico's Public Corporations Debt Enforcement and Recovery Act. They added to that win on Monday with a ruling by the U.S. Court of Appeals for the First Circuit, which affirmed Besosa and struck down the act.

Puerto Rico's government enacted the recovery law in June 2014 to allow its public utilities to overhaul their municipal bond debt using a model based on Chapter 9 of the Federal Bankruptcy Code. Just after the recovery act was signed into law, Mayer and his Kramer Levin team sued on behalf of Franklin and Oppenheimer, which collectively held about \$1.6 billion in bonds issued by the government-run Puerto Rico Electric Power Authority (Prepa). Soon afterward, McGill and others at Gibson Dunn sued separately to block the law on behalf of BlueMountain, which held roughly \$400 million in Prepa bonds.

The cases were considered jointly at the district court, and the two firms worked together. McGill brought to the partnership an expertise in constitutional law and federal pre-emption issues, while Mayer, a co-head of Kramer Levin's



Matthew McGill

restructuring and bankruptcy department who's spent years working for bondholders in municipal bankruptcies, provided expertise on the intricacies of bankruptcy law.

Opposing the bondholders were a collection of top advocates: The Commonwealth of Puerto Rico was represented by Kirkland & Ellis' Christopher Landau; Puerto Rico's government development bank was represented by Martin Bienstock of Proskauer Rose; and Prepa had Cleary Gottlieb Steen & Hamilton's Lewis Liman.

McGill argued first on the bondholders' side, hitting early on one key issue—whether Congress, when it passed a 1984 amendment to federal bankruptcy law, intended to give Puerto Rico the authority to enact its own Chapter 9-type restructuring law. Congress didn't, McGill argued, since it would have effectively given Puerto Rico a power that no other state has.

Mayer credits McGill with doing much of the heavy lifting as the first to argue. (As Mayer dramatically put it: "He went over the top and took the first shell fire.") As second to argue, the Kramer Levin partner sought to drive home the bondholders' main point: "The 1984 amendment was very narrow, and showed no invitation to change what was a really well-settled pre-emption of state law," Mayer said.

As a result of their First Circuit win, the bondholders clearly have more leverage. "Now we have a real negotiation where the bargaining power is essentially even," said McGill.