

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS THE EXPORT-IMPORT BANK OF THE REPUBLIC OF CHINA DEFENDANTS GRENADA  
MAR 04 2013

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Sullivan & Worcester LLP 1633 Broadway, New York, New York 10019 / 212.660.3000  
ATTORNEYS (IF KNOWN) Frankfurt Kurnit Klein & Selz, P.C. 488 Madison Avenue, New York, New York 10022 / (212) 980-0120

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE) (DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

28 U.S.C. § 1330. This is an action to enforce loan agreements.

Has this or a similar case been previously filed in SDNY at any time? No  Yes  Judge Previously Assigned Harold Baer, Jr.

If yes, was this case Vol.  Invol.  Dismissed. No  Yes  If yes, give date \_\_\_\_\_ & Case No. 06-cv-2469

IS THIS AN INTERNATIONAL ARBITRATION CASE? No  Yes

(PLACE AN [x] IN ONE BOX ONLY) NATURE OF SUIT

| CONTRACT                                |   | PERSONAL INJURY              |  | PERSONAL INJURY              |  | FORFEITURE/PENALTY           |                                       | BANKRUPTCY                   |                                     | OTHER STATUTES               |   |
|---|---|------------------------------|--|------------------------------|--|------------------------------|---------------------------------------|------------------------------|-------------------------------------|------------------------------|---|
| <input type="checkbox"/> 110            | INSURANCE   | <input type="checkbox"/> 310 | AIRPLANE                                 | <input type="checkbox"/> 362 | PERSONAL INJURY -                          | <input type="checkbox"/> 610 | AGRICULTURE                           | <input type="checkbox"/> 422 | APPEAL                              | <input type="checkbox"/> 400 | STATE   |
| <input type="checkbox"/> 120            | MARINE  | <input type="checkbox"/> 315 | AIRPLANE PRODUCT LIABILITY               | <input type="checkbox"/> 365 | MED MALPRACTICE                            | <input type="checkbox"/> 620 | OTHER FOOD & DRUG                     | <input type="checkbox"/> 423 | WITHDRAWAL                          | <input type="checkbox"/> 410 | REAPPORTIONMENT   |
| <input type="checkbox"/> 130            | MILLER ACT  | <input type="checkbox"/> 320 | ASSAULT, LIBEL & SLANDER                 | <input type="checkbox"/> 368 | PERSONAL INJURY PRODUCT LIABILITY          | <input type="checkbox"/> 625 | DRUG RELATED SEIZURE OF PROPERTY      |                              | 28 USC 158                          | <input type="checkbox"/> 430 | ANTITRUST   |
| <input type="checkbox"/> 140            | NEGOTIABLE INSTRUMENT                               | <input type="checkbox"/> 330 | FEDERAL EMPLOYERS' LIABILITY             | <input type="checkbox"/> 368 | ASBESTOS PERSONAL INJURY PRODUCT LIABILITY | <input type="checkbox"/> 630 | LIQUOR LAWS                           |                              | 28 USC 157                          | <input type="checkbox"/> 430 | BANKS & BANKING   |
| <input type="checkbox"/> 150            | RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT   | <input type="checkbox"/> 340 | MARINE                                   |                              | PERSONAL PROPERTY                          | <input type="checkbox"/> 640 | RR & TRUCK                            | <input type="checkbox"/> 820 | COPYRIGHTS                          | <input type="checkbox"/> 450 | COMMERCIAL ORGANIZATION ACT (RICO)  |
| <input type="checkbox"/> 151            | MEDICARE ACT  | <input type="checkbox"/> 345 | MARINE PRODUCT LIABILITY                 | <input type="checkbox"/> 370 | OTHER FRAUD                                | <input type="checkbox"/> 650 | AIRLINE REGS                          | <input type="checkbox"/> 830 | PATENT                              | <input type="checkbox"/> 460 | DEPORTATION   |
| <input type="checkbox"/> 152            | RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS) | <input type="checkbox"/> 350 | MOTOR VEHICLE                            | <input type="checkbox"/> 371 | TRUTH IN LENDING                           | <input type="checkbox"/> 660 | OCCUPATIONAL SAFETY/HEALTH OTHER      | <input type="checkbox"/> 840 | TRADEMARK                           | <input type="checkbox"/> 470 | RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT   |
| <input type="checkbox"/> 153            | RECOVERY OF OVERPAYMENT OF VETERANS' BENEFITS       | <input type="checkbox"/> 355 | MOTOR VEHICLE PRODUCT LIABILITY          | <input type="checkbox"/> 380 | OTHER PERSONAL PROPERTY DAMAGE             | <input type="checkbox"/> 690 | LABOR                                 |                              | SOCIAL SECURITY                     | <input type="checkbox"/> 480 | CONSUMER CREDIT   |
| <input type="checkbox"/> 160            | STOCKHOLDERS SUITS                                  | <input type="checkbox"/> 360 | OTHER PERSONAL INJURY                    | <input type="checkbox"/> 385 | PROPERTY DAMAGE PRODUCT LIABILITY          | <input type="checkbox"/> 710 | FAIR LABOR STANDARDS ACT              | <input type="checkbox"/> 861 | HIA (1395f)                         | <input type="checkbox"/> 490 | CABLE/SATELLITE TV  |
| <input checked="" type="checkbox"/> 190 | OTHER CONTRACT                                      |                              | ACTIONS UNDER STATUTES                   |                              | PRISONER PETITIONS                         | <input type="checkbox"/> 720 | LABOR/MGMT RELATIONS                  | <input type="checkbox"/> 862 | BLACK LUNG (923)                    | <input type="checkbox"/> 510 | SELECTIVE SERVICE   |
| <input type="checkbox"/> 195            | CONTRACT PRODUCT LIABILITY                          |                              | CIVIL RIGHTS                             | <input type="checkbox"/> 510 | MOTIONS TO VACATE SENTENCE                 | <input type="checkbox"/> 730 | LABOR/MGMT REPORTING & DISCLOSURE ACT | <input type="checkbox"/> 863 | DIWC/DIWW (405(g))                  | <input type="checkbox"/> 520 | SECURITIES/COMMODITIES/ EXCHANGE  |
| <input type="checkbox"/> 196            | FRANCHISE   | <input type="checkbox"/> 441 | VOTING                                   | <input type="checkbox"/> 530 | HABEAS CORPUS                              | <input type="checkbox"/> 740 | RAILWAY LABOR ACT                     | <input type="checkbox"/> 864 | SSID TITLE XVI                      | <input type="checkbox"/> 530 | CUSTOMER CHALLENGE  |
|   | REAL PROPERTY                                       | <input type="checkbox"/> 442 | EMPLOYMENT                               | <input type="checkbox"/> 535 | DEATH PENALTY                              | <input type="checkbox"/> 790 | OTHER LABOR LITIGATION                | <input type="checkbox"/> 865 | RSI (405(g))                        | <input type="checkbox"/> 540 | 12 USC 3410   |
| <input type="checkbox"/> 210            | LAND CONDEMNATION                                   | <input type="checkbox"/> 443 | HOUSING/ ACCOMMODATIONS                  | <input type="checkbox"/> 540 | MANDAMUS & OTHER                           | <input type="checkbox"/> 791 | EMPL RET INC SECURITY ACT             |                              | FEDERAL TAX SUITS                   | <input type="checkbox"/> 550 | OTHER STATUTORY ACTIONS   |
| <input type="checkbox"/> 220            | FORECLOSURE   | <input type="checkbox"/> 444 | WELFARE                                  |                              | PRISONER CIVIL RIGHTS                      | <input type="checkbox"/> 791 | EMPL RET INC SECURITY ACT             | <input type="checkbox"/> 870 | TAXES (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 550 | AGRICULTURAL ACTS   |
| <input type="checkbox"/> 230            | RENT LEASE & EJECTMENT                              | <input type="checkbox"/> 445 | AMERICANS WITH DISABILITIES - EMPLOYMENT | <input type="checkbox"/> 550 | CIVIL RIGHTS                               | <input type="checkbox"/> 462 | NATURALIZATION APPLICATION            | <input type="checkbox"/> 871 | IRS-THIRD PARTY                     | <input type="checkbox"/> 550 | ECONOMIC STABILIZATION ACT  |
| <input type="checkbox"/> 240            | TORTS TO LAND                                       | <input type="checkbox"/> 446 | AMERICANS WITH DISABILITIES - OTHER      | <input type="checkbox"/> 555 | PRISON CONDITION                           | <input type="checkbox"/> 463 | HABEAS CORPUS- ALIEN DETAINEE         | <input type="checkbox"/> 871 | IRS-THIRD PARTY                     | <input type="checkbox"/> 550 | ENVIRONMENTAL MATTERS   |
| <input type="checkbox"/> 245            | TORT PRODUCT LIABILITY                              | <input type="checkbox"/> 440 | OTHER CIVIL RIGHTS (Non-Prisoner)        |                              |  | <input type="checkbox"/> 465 | OTHER IMMIGRATION ACTIONS             | <input type="checkbox"/> 871 | IRS-THIRD PARTY                     | <input type="checkbox"/> 550 | ENERGY ALLOCATION ACT   |
| <input type="checkbox"/> 290            | ALL OTHER REAL PROPERTY                             |                              |  |                              |  |                              |                                       | <input type="checkbox"/> 871 | IRS-THIRD PARTY                     | <input type="checkbox"/> 550 | FREEDOM OF INFORMATION ACT  |
|   |   |                              |  |                              |  |                              |                                       | <input type="checkbox"/> 871 | IRS-THIRD PARTY                     | <input type="checkbox"/> 550 | APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE CONSTITUTIONALITY OF STATE STATUTES |

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint JURY DEMAND:  YES  NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- 1 Original Proceeding
- 2 Removed from State Court
  - a. all parties represented
  - b. At least one party is pro so.
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from (Specify District)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judge Judgment

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

IF DIVERSITY, INDICATE CITIZENSHIP BELOW. (28 USC 1332, 1441)

- 1 U.S. PLAINTIFF
- 2 U.S. DEFENDANT
- 3 FEDERAL QUESTION (U.S. NOT A PARTY)
- 4 DIVERSITY

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

|   |   |   |
|---|---|---|
| CITIZEN OF THIS STATE<br>PTF DEF<br>[ ] 1 [ ] 1 | CITIZEN OR SUBJECT OF A FOREIGN COUNTRY<br>PTF DEF<br>[ ] 3 [ ] 3     | INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE<br>PTF DEF<br>[ ] 5 [ ] 5 |
| CITIZEN OF ANOTHER STATE [ ] 2 [ ] 2            | INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE [ ] 4 [ ] 4 | FOREIGN NATION [ ] 6 [ ] 6  |

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

The Export-Import Bank of the Republic of China  
 3 Nanhai Road, 8th Floor  
 Taipei (100) Taiwan  
 Republic of China

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Grenada  
 Ministry of Finance  
 Financial Complex  
 Carenage, St. George's, Grenada

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO:  WHITE PLAINS  MANHATTAN  
 (DO NOT check either box if this a PRISONER PETITION/PRISONER CIVIL RIGHTS COMPLAINT.)

DATE 03/05/2013 SIGNATURE OF ATTORNEY OF RECORD



ADMITTED TO PRACTICE IN THIS DISTRICT

[ ] NO  
 YES (DATE ADMITTED Mo. 07 Yr. 1996)  
 Attorney Bar Code # AS 9200

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

Ruby J. Krajick, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

13 CV 1450

Paul E. Summit  
Andrew T. Solomon  
SULLIVAN & WORCESTER LLP  
1633 Broadway  
New York, NY 10019  
(212) 660-3000

*Attorneys for Plaintiff/Judgment Creditor*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
THE EXPORT-IMPORT BANK OF :  
THE REPUBLIC OF CHINA, :  
 :  
Plaintiff/Judgment Creditor, :  
 :  
-against- :  
 :  
GRENADA, :  
 :  
Defendant/Judgment Debtor. :  
-----X

Civil Action No:

**COMPLAINT**

Plaintiff The Export-Import Bank of the Republic of China ("Ex-Im Bank"), by its attorneys, Sullivan & Worcester LLP, complains of the defendant Grenada as follows:

13 MAR -4 PM 4:16  
S.D. N.Y.  
FILED

**JURISDICTION AND VENUE**

1. This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1330.
2. Venue properly exists in this district pursuant to 28 U.S.C. § 1391(f), based upon the residence and status of the parties, the events and omissions giving rise to the claims, and the agreement which provides the basis for this action.

3. In addition, Grenada irrevocably consented to the non-exclusive jurisdiction of any State or Federal Court in New York, New York, to waive any objection to that venue on any ground, and to accept service of process by registered or certified mail to the notice address provided in the agreements at issue.

### **THE PARTIES**

4. Ex-Im Bank is a banking institution organized and existing under the laws of the Republic of China, with its principal place of business in Taipei, the Republic of China. The business of Ex-Im Bank includes the lending of money internationally.

5. Grenada is a foreign state as defined in 28 U.S.C. § 1603(a).

### **BACKGROUND**

6. Between 1990 and 2000, Ex-Im Bank and Grenada executed four loan agreements by which Grenada borrowed a total of \$28,000,000 from Ex-Im Bank (the "Loan Agreements").

7. On March 16, 2007, in an earlier action between the parties, Civil Action No. 06-CV-2469(HB)(AJP), this Court entered an amended judgment in favor of Ex-Im Bank and against Grenada in the amount of \$21,586,057.38, plus pre-judgment interest, attorney's fees and statutory interest in connection with Grenada's default on four multi-million dollar promissory notes executed by Grenada in favor of Ex-Im Bank pursuant to the Loan Agreements.

8. With post-judgment interest, Ex-Im Bank's judgment against Grenada now stands in excess of \$32,000,000.

9. Almost six years later, Grenada has still not paid anything to Ex-Im Bank in satisfaction of the judgment.

10. Section 4.04 of the Loan Agreement of April 24, 1997 states, “Borrower’s obligations under this Agreement and the Note will at all times rank at least pari passu with Borrower’s any other External Indebtedness (direct or contingent) outstanding from time to time.”

11. Section 4.04 of the Loan Agreement of October 1, 1997 has identical language.

12. Section 5.04 of the Loan Agreement of July 27, 1990 has a materially identical *pari passu* clause.

13. Section 5.01(d) of the Loan Agreement of January 21, 2000 also has a materially identical *pari passu* clause.

14. The Loan Agreements also contain (see, e.g., Section 5.02 of the April 24, 1997 Loan Agreement (and similar provisions in the other Loan Agreements)) a negative covenant that precludes Grenada, until Ex-Im Bank is paid in full, from permitting any obligation “to have any priority or be subject to *any preferential arrangement*, whether or not constituting a security agreement, *in favor of any creditor or class of creditors*, as to security, *the repayment of principal and interest* or the right to receive income or revenue.” (Emphasis added).

15. The Loan Agreements each define “External Indebtedness” as debt denominated in a currency other than Grenada’s and payable to a nonresident of Grenada.

16. According to their plain language, the *pari passu* clauses preclude Grenada from making a payment to a holder of External Indebtedness without making a ratable payment at the same time to Ex-Im Bank.

17. In 2005, Grenada made an offer to restructure its commercial debt, which most of Grenada's eligible external debtholders accepted.

18. According to its Offering Memorandum, Grenada's debt restructuring involved an exchange of defaulted bonds—processed through J.P. Morgan Chase Bank, N.A. (“JPM”) in New York, acting as Exchange Agent—for a series of new bonds denominated in United States dollars, governed by New York law, and issued pursuant to an indenture with JPM, as indenture trustee.

19. In Grenada's Offering Memorandum for that exchange, it stated plainly that Grenada did *not intend to pay* any debt that elected not to restructure unless resources became available to do so. In addition, Grenada stated that it did *not intend to pay* any amount in respect of any debt that elected not to restructure if, at the time such payment is due, a payment default then existed under any new bond issued in the exchange.

20. Ex-Im Bank did not participate in the restructuring.

21. Upon information and belief, Grenada also received debt relief from the Paris Club in 2006, resulting in the rescheduling of its obligations to bilateral creditors including Belgium, the United Kingdom, the United States, and France.

22. Upon information and belief, in connection with the 2005 and the Paris Club restructurings, Grenada has been making substantial interest payments on its external debt for years, to the tune of over \$43,000,000 (approximately \$8,242,000 in 2008, \$11,429,000 in 2009, \$11,478,000 in 2010, and \$12,443,000 in 2011).

23. As recently as October 15, 2012, Grenada paid a full interest payment to the holders of a \$193,000,000 bond arising from the 2005 debt restructuring.

24. At least a portion of these payments are being made through Grenada's paying agent, the Bank of New York Mellon (global headquarters at One Wall Street, New York, NY).

25. In a prospectus for the refinancing of Grenada treasury bills in November 2012, Grenada (1) claimed that it "has witnessed a remarkable recovery" since Hurricanes Ivan and Emily in 2004 and 2005; (2) highlighted its 2005 commercial debt restructuring, the debt relief it received from the Paris Club, its years-long participation in IMF economic reform programs, and its establishment of a Debt Management Unit within its Ministry of Finance; and (3) stated that it "has an exemplary record" of repaying all issues of treasury bills since Grenada's entry into that market.

26. In the earlier action between the parties, Grenada has made many efforts to evade responsibility for its debts to Ex-Im Bank.

27. Ex-Im Bank has been damaged as a result of Grenada's violations of the *pari passu* clauses and will continue to be damaged by the ongoing violations.

**CLAIM FOR SPECIFIC ENFORCEMENT OF THE *PARI PASSU* CLAUSES AND THE  
NEGATIVE COVENANT FOR INJUNCTIVE RELIEF**

28. Ex-Im Bank repeats and re-alleges the allegations set forth in paragraphs 1 through 25 herein.

29. Pursuant to the *pari passu* clauses of the Loan Agreements, Grenada guaranteed that, "Borrower's obligations under this Agreement and the Note will at all times rank at least

pari passu with Borrower's any other External Indebtedness (direct or contingent) outstanding from time to time.”

30. Grenada, therefore, may not make any payment of its External Indebtedness without also making a ratable payment at the same time to Ex-Im Bank.

31. Pursuant to the negative covenant, described in paragraph 14 above, Grenada promised not to enter into any “preferential arrangement” with any “class of creditors” as to “the repayment of principal and interest.”

32. Grenada, therefore, may not enter into any agreement other creditors under which it prefers those creditors as to the payment of principal and interest above its obligation to pay Ex-Im Bank.

33. Grenada's past payments to holders of its other External Indebtedness, while paying nothing to Ex-Im Bank, violated the *pari passu* clauses and its negative covenant not to prefer other creditors over Ex-Im Bank with respect to the repayment of principal and interest.

34. Grenada's continuing payments to holders of its other External Indebtedness, without making any payments to Ex-Im Bank, will be ongoing violations of the *pari passu* clauses and its negative covenant against granting preferences in payment to other creditors.

35. Ex-Im Bank has suffered irreparable injury from Grenada's violation of the *pari passu* clauses and will continue to suffer such injury unless the Court specifically enforces the clauses with a mandatory injunction requiring Grenada to pay Ex-Im Bank ratably whenever it makes payments on its other External Indebtedness.




36. Remedies available at law are inadequate to compensate for such injury.
37. Ex-Im Bank has performed its part of the Loan Agreements with Grenada.
38. The balance of equities tips overwhelmingly toward the issuance of an injunction.
39. The public interest would not be harmed by the issuance of a permanent injunction.

WHEREFORE, Ex-Im Bank demands judgment against Grenada (1) specifically enforcing the *pari passu* clauses and the negative covenant against granting preferential payment arrangements to other creditors, and (2) awarding Ex-Im Bank its costs, prejudgment interest, attorneys' fees and such other and further relief as the Court shall deem just and proper.

Dated: New York, New York  
March 4, 2013

SULLIVAN & WORCESTER LLP

By:   
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Import Bank of the Republic of China*