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November 6, 2012

VIA HAND DELIVERY

Honorable Thomas P. Griesa
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St., Room 1630
New York, N.Y. 10007-1312

Re: *NML Capital, Ltd. v. the Republic of Argentina*, Nos. 08 Civ. 6978 (TPG), 09 Civ. 1707 (TPG), and 09 Civ. 1708 (TPG); *Aurelius Capital Master, Ltd. et al. v. the Republic of Argentina*, Nos. 09 Civ. 8757 (TPG), 09 Civ. 10620 (TPG), 10 Civ. 1602 (TPG), 10 Civ. 3507 (TPG), 10 Civ. 3970 (TPG), 10 Civ. 8339 (TPG); *Blue Angel Capital I, LLC v. the Republic of Argentina*, Nos. 10 Civ. 4101 (TPG), 10 Civ. 4782 (TPG); *Pablo Alberto Varela, et al. v. the Republic of Argentina*, No. 10 Civ. 5338 (TPG), *Olifant Fund, Ltd. v. the Republic of Argentina*, 10 Civ. 9587 (TPG)

Dear Judge Griesa:

We represent NML Capital, Ltd. (“NML”) and write on behalf of the plaintiffs in the above-captioned actions. On October 26, 2012, the United States Court of Appeals for the Second Circuit affirmed this Court’s decisions “(1) granting summary judgment to plaintiffs on their claims for breach of the Equal Treatment Provision and (2) ordering Argentina to make ‘Ratable Payments’ to plaintiffs concurrent with or in advance of its payments to the holders of 2005 and 2010 restructured debt.” Slip op. at 28 (“October 26 Decision”). The Second Circuit then remanded the case so that this Court could clarify two particular aspects as to how this Court’s injunctions are to function. We write to request expedited orders resolving that remand and confirming that this Court’s injunction is now effective.

Almost from the moment the Second Circuit issued its decision, Argentina’s President and cabinet-level officials have stated their intention never to comply. Argentina’s President, Cristina Kirchner, flatly declared in response to the October 26 Decision that Argentina was “going to pay” the Exchange Bondholders “with dollars because we have them,” but would not pay “one dollar to the ‘vulture funds.’” (Attachment E.) And Argentina’s Minister of Economy, Hernán Gaspar Lorenzino, announced to the press that “despite any ruling that could come out of any jurisdiction, in this case New York,” “Argentina isn’t going to change its position of not paying vulture funds.” (Attachment F.) Indeed, in spite of the preliminary injunction prohibiting Argentina from taking any steps to evade this Court’s injunctions in the event they were affirmed,



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numerous Argentine newspapers have reported that the Argentine government now is developing various alternatives to evade this Court's orders.¹ As the *Financial Times* put it, "[s]ince last week's US Appeals Court ruling went against Argentina, there's been a lot of comment about how the country could try changing the trustee or payments structure of the bonds which came out of its 2005-2010 restructuring." (Attachment G.) It is clear that Argentina now is in the process of trying to render the Equal Treatment Orders ineffective and will employ and exploit any delay tactics necessary to evade this Court.

Accordingly, we respectfully request that the Court, on an expedited basis:

1. Resolve the Second Circuit's limited remand in accordance with the proposed orders enclosed with this letter and explained below.
2. Enter an order reflecting our understanding that the stay pending appeal issued by this Court on March 5, 2012, which provided that it would remain in effect "until the Second Circuit has issued its mandate," is no longer in effect, and that the Equal Treatment Orders are now binding on Argentina, its agents, and those acting in concert with it.

A. Order Resolving Remand

While affirming this Court's conclusions that Argentina is violating the Equal Treatment Provision and that plaintiffs are entitled to the specific performance relief fashioned by the Court in the orders dated February 23, 2012 (the "February 23 Orders"), the Second Circuit remanded for the Court to clarify its February 23 Orders in two narrow respects. We address each in turn.

1. Remand Regarding Argentina's Obligation to Make Ratable Payments

The Second Circuit affirmed the Court's order commanding "Argentina to make 'Ratable Payments' to plaintiffs concurrent with or in advance of its payments to holders of the 2005 and

¹ For example, the Argentine newspaper *Ambito Financiero*, in an article entitled "Proper and timely payment is promised (*where is still being looked at*)," reported that Argentina is "now preparing *alternative payment schemes . . . so that they can make [the Exchange Bond payments] abroad*." (Attachment H.) And the Argentine newspaper *El Cronista* confirmed this report, explaining that Argentina's "technical staff" spent "all weekend" after the Second Circuit's October 26 Decision "on various scenarios that will be opening up from here on out to confront the vulture funds." (Attachment I.)

2010 restructured debt.” Op. 28. The Second Circuit requested clarification only as to how the ratable payment formula “is intended to operate.” Op. 11.

The parties previously agreed—and therefore there can be no dispute—as to how the Ratable Payment formula is intended to operate: The payment required by the Ratable Payment formula is the total amount Argentina currently is obligated to pay under the plaintiffs’ bonds in these cases (“Plaintiffs’ Bonds”) (*i.e.*, the full principal plus accrued and unpaid interest, including capitalized and prejudgment interest), multiplied by the proportion (in percentage terms) that Argentina pays under the Exchange Bonds of the amount it is obligated to pay on those bonds at that time (*i.e.*, the payment due). Thus, when a payment is due under the Exchange Bonds, if Argentina pays 100% of the money it owes at that time under any of the Exchange Bonds, the Ratable Payment formula requires Argentina to pay all of what it owes under the Plaintiffs’ Bonds at that time, which is to say the full principal and accrued and unpaid interest. Argentina never before expressed any confusion on this point, and it should not be heard to do so now.²

Plaintiffs’ proposed order seeks to further clarify this aspect of the Injunctions by adding a new paragraph that defines the phrase “amount due under the terms of the Exchange Bonds” to reflect the amount due to be paid as of a specific date, rather than the amount of principal and interest outstanding on the restructured debt (as the Second Circuit speculated it might, Op. 11). For additional clarification, the proposed order uses as an illustration the approximately \$3 billion payment Argentina is scheduled to make under the Exchange Bonds on December 15. Plaintiffs respectfully request that the Court resolve this aspect of the Second Circuit’s remand in accordance with the proposed order herein submitted.

² See, e.g., Argentina 2d Cir. Br. 19 (describing the February 23 Orders as “enjoining the Republic from making payments on the discounted debt issued pursuant to its 2005 and 2010 Exchange Offers, unless the Republic simultaneously pays in full all past due principal and interest owed to plaintiffs”); Argentina Mem. In Opp. To NML’s Motion For Injunctive Relief, Dkt. 368, at 7 (describing the proposed February 23 Orders as “enjoining the Republic from making payments to beneficial owners of its Discounted Exchange Bonds, unless it concurrently pays 100% of the full face value, plus interest, due to NML on its defaulted debt”); Feb. 23, 2012 Hr’g Tr. 34 (Argentina’s counsel describing the proposed February 23 Orders as requiring that “when everybody else is getting deeply discounted bonds and just payments of interest over time, that they get 100 percent of full principal and interest”).



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2. Remand Concerning Application of the Injunction to Third Parties

Second, the Second Circuit expressed “concerns about the [February 23 Orders’] application to banks acting as pure intermediaries” and “confusion as to how the challenged order will apply to third parties generally,” and thus requested that the Court “more precisely determine the third parties to which the Injunctions will apply.” Op. 27-28.

To resolve this aspect of the remand, plaintiffs’ proposed orders would amend the injunction orders to: (1) provide a new definition of the term “Agents and Participants” that refers to the particular institutional roles identified in the Argentina’s 2005 and 2010 Exchange Bond offerings and names the entities currently aiding Argentina in those capacities; (2) further provide that the injunctions shall not prohibit activities of third parties functioning solely as an “intermediary bank” as that term is defined by the UCC; and (3) explicitly provide that any third party in need of clarification as to its obligations under the injunctions may apply to the Court for such clarification.

Plaintiffs respectfully request that the Court resolve this aspect of the Second Circuit’s remand in accordance with the proposed orders herein submitted.

B. Order Clarifying That The Stay Has Dissolved

This Court’s March 5 Order provided that “the effect of the February 23, 2012 Orders is stayed until the U.S. Court of Appeals for the Second Circuit has issued its mandate disposing of the Republic’s appeal of the February 23, 2012 Orders.” Even though the Second Circuit issued its mandate to this Court on October 26, Argentina asserts in its letter to the Court today that the stay is still in effect. *See* Argentina Letter To The Court, Nov. 5, 2012, at 2. This is consistent with the statements of the Argentine government, which seems to assume that this stay remains in effect and that several months will pass before it is ordered to comply with the Equal Treatment Provisions. Reuters, U.S. Court Rules Against Argentina Over Payments, *N.Y. Times* (Oct. 26, 2012) (reporting that Argentine Finance Secretary Adrian Cosentino indicated that the ruling “had no immediate impact on debt payments”) (Attachment J). The Argentine government has taken solace in this understanding because it is obligated to make a very substantial payment—approximately \$3 billion—under the Exchange Bonds by December 15, 2012, and another \$850 million in interest payments on December 2 and 31, 2012.

Argentina’s understanding, however, is incorrect. On October 26, the Second Circuit issued a mandate that resolved every issue the Republic raised on appeal against it and in favor of plaintiffs. That mandate, therefore, did resolve the Republic’s appeal and the stay accordingly dissolved as of that time. But to resolve any doubts on this score, plaintiffs respectfully request



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that the Court enter an order confirming that the stay is dissolved in accordance with the proposed order herein submitted.

Indeed, the Second Circuit's affirmance of the injunction requiring Argentina to make ratable payments to plaintiffs makes clear that a stay no longer can be maintained by this Court. To maintain a stay a party must maintain "a strong showing that he is likely to succeed on the merits." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). The October 26 Decision makes clear Argentina has no likelihood of success on the merits.

Maintenance of the stay would be particularly inappropriate because it will severely prejudice the plaintiffs. On December 2, 2012, Argentina is scheduled to make an interest payment on certain Exchange Bonds, and on December 15, 2012, Argentina is scheduled to make a massive payment on its GDP Warrant Exchange Bonds of approximately **\$3 billion**—more than twice the entire amount owed plaintiffs under their bonds in these actions. If this Court's judgment—now affirmed by the Second Circuit in all respects as it applies to Argentina—is once again stayed, plaintiffs will continue to get nothing while Exchange Bondholders get billions. This prejudice is compounded by the fact that Argentina has made clear that it seeks to delay the implementation of the February 23 Orders and will use any delay in enforcement to devise and execute plans to evade this Court's orders.

Accordingly, plaintiffs request that the Court enter an order confirming that its stay pending appeal has dissolved. Argentina will suffer no unfair prejudice from this order. First, because Argentina's next payment under the Exchange Bonds is not scheduled to occur until December 2, Argentina has ample time to seek a stay from higher courts. Second, if no such stay is granted, plaintiffs will commit to forebear enforcement of the injunctions if Argentina posts a bond covering the total amount due on the Plaintiffs' Bonds. Posting such a bond would alleviate the otherwise very substantial risk that Argentina will take steps to evade enforcement of the order.

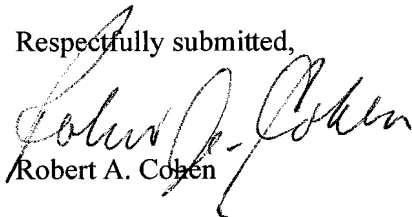
Plaintiffs cannot abide by the Republic's suggestion of a conference followed by a multiple rounds of briefing when it is clear that Argentina will use any delay to develop and execute means to render ineffective the equitable relief this Court has carefully fashioned. Accordingly, the plaintiffs propose that Argentina respond with any objections to the proposed orders by Friday, November 9, 2012, and that plaintiffs be required to reply to these objections by Tuesday, November 13, 2012, with a hearing on these matters to be held before the Court on



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Thursday, November 15, 2012, or at the Court's earliest convenience. Plaintiffs further request that the Court "so order" this schedule.³

Respectfully submitted,



Robert A. Cohen

Enclosures

cc: Carmine D. Boccuzzi, Esq. (via email and by hand)
Edward A. Friedman, Esq. (via email)
Daniel B. Rapport, Esq. (via email)
Stephen D. Poss, Esq. (via email)
Robert D. Carroll, Esq. (via email)
Michael C. Spencer, Esq. (via email)
Gary Snitow, Esq. (via email)

³ Attached for the convenience of the Court is (1) a copy of the Second Circuit's October 26 Decision; (2) the Proposed Amending Orders to respond to the Second Circuit's request for clarification, and a redline of the changes that would apply to the February 23 Orders; (3) the Proposed Order Dissolving the Stay; (4) plaintiffs' letter to the Court, dated July 19, 2012, warning that Argentina was actively preparing to evade the Court's February 23 Orders; (5) several recent articles explaining that, since the October 26 Decision, Argentina has intensified its plans to evade the February 23 Orders.