

E6RZNMLM Motion
1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

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2
3 NML CAPITAL, LTD.,

3
4 Plaintiff,

4
5 v.

08 CV 6978 (TPG)

5
6 THE REPUBLIC OF ARGENTINA,

6
7 Defendant.

7
8 -----x

8
9 June 27, 2014
9 10:40 a.m.

10
10 Before:

11
11 HON. THOMAS P. GRIESA,

12
12 District Judge

13
13 APPEARANCES

14
14 DECHERT LLP

15 Attorneys for Plaintiff NML Capital, Ltd.

15 BY: ROBERT A. COHEN
16 MATTHEW MCGILL

17
17 FRIEDMAN KAPLAN SEILER & ADELMAN LLP

18 Attorneys for Plaintiff

18 BY: EDWARD A. FRIEDMAN
19 DANIEL B. RAPPORT

20
20 CLEARY GOTTSLIEB STEEN & HAMILTON LLP

21 Attorneys for Defendant

21 BY: CARMINE BOCCUZZI, JR.
22 JONATHAN I. BLACKMAN

23
23 DAVIS POLK & WARDWELL LLP

24 Attorneys for Citibank

24 BY: KAREN E. WAGNER
24 JAMES L. KERR

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1 APPEARANCES:(continued)

2 LATHAM & WATKINS LLP

2 Attorneys for the Euro Bondholders

3 BY: CRAIG BATCHELOR

4

5 REED SMITH LLP

5 Attorneys for The Bank of New York Mellon, as Indenture

6 Trustee

6 BY: ERIC A. SCHAFFER

7 NEIL GRAY

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1 THE LAW CLERK: All rise. You may be seated.
2 In the case of NML Capital versus the Republic of
3 Argentina.

4 THE COURT: Good morning, everybody.
5 I think the best thing to do is to start with Mr.
6 Cohen and see what you want to say about what's happening, the
7 status.

8 I would ask everybody who speaks to go to the lectern.
9 We don't pick things up too well at the microphones at the
10 tables.

11 MR. COHEN: Good morning, your Honor, Robert Cohen
12 from Dechert for plaintiff NML Capital.

13 THE COURT: Okay, go ahead.

14 MR. COHEN: Yesterday Argentina defiantly and
15 contemptuously violated your Honor's orders by making a payment
16 of more than \$800 million on exchange bonds without paying NML
17 or the other plaintiffs here today what they are owed, and
18 without certifying to the Court, to the plaintiff's counsel and
19 to others, that they had made the payment to NML and others.

20 THE COURT: When you say "made the payment" --

21 MR. COHEN: Yes, your Honor.

22 THE COURT: -- how far did that get?

23 MR. COHEN: Argentina believes they have done
24 everything that was in their power to make the payment. They
25 remitted at least \$500 million to Bank of New York Mellon. We

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1 understand that those funds are still with Bank of New York
2 Mellon. And they're here today, and I think they're going to
3 suggest that those funds be the subject of an interpleader.
4 There's another \$300 million that we're not sure where it is.
5 Some of it may be with Citibank, which acts as a custodian for
6 some of the bondholders, and acts as a paying agent or
7 intermediary with respect to other bondholders. So funds may
8 be with Citibank.

9 We are hoping that they, like Bank of New York, have
10 acted prudently, respected this Court's order, and have held
11 onto that money and not moved it to the next step in the
12 payment chain.

13 So Argentina believes it has completed acts required
14 of it to make payment. And as your Honor noted in your order
15 earlier this week in which you dealt with Argentina's request
16 for a stay, the injunction, the equal treatment *pari passu*
17 injunction becomes effective upon that act.

18 So we're here today where Argentina has committed the
19 very act that they were permitted from doing, paying, to the
20 extent they can the exchange bondholders without paying NML and
21 the other plaintiffs who are here today.

22 They knew, Argentina did, exactly what they were
23 doing. They have repeatedly represented to this Court, to the
24 Supreme Court and other courts that they would not violate that
25 order.

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1 THE COURT: That they would not?

2 MR. COHEN: Violate the pari passu order. They
3 threatened to default. They said, if we don't get a stay, we
4 may not pay anyone. We may not pay the exchange bondholders,
5 we may not pay the plaintiffs here today.

6 They knew it would be a violation of your Honor's
7 order to do exactly what they did, attempt to pay the exchange
8 bondholders and ignore the plaintiffs before you.

9 Your Honor, they have issued a press release that
10 shows their contempt of this Court. And if I may hand up, your
11 Honor, a declaration that contains the English language version
12 of this. Maybe we can give a copy to Mr. Boccuzzi and
13 Mr. Blackman.

14 (Handing)

15 MR. COHEN: Your Honor, I'm going to read just a short
16 piece from a translation of exhibit -- that's Exhibit B. It's
17 part of a press conference held by Argentine officials. And at
18 the top of the fourth page of that it says, "This sovereign
19 decision by the Argentine Republic" -- and the decision that's
20 being referred to is the violation of this Court's order by
21 attempting to pay the exchange bondholders.

22 THE COURT: Where are you reading from?

23 MR. COHEN: It's the Exhibit C, page two.

24 THE COURT: I'm just not with you. Exhibit what?

25 MR. COHEN: B.

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1 THE COURT: B?

2 MR. COHEN: Yes, your Honor. I'm terribly sorry, your
3 Honor. Terribly sorry. Exhibit C, page two.

4 THE COURT: Let me get that. All right.

5 MR. COHEN: At the top of the page it says, "This
6 sovereign decision," and that is the decision to pay the
7 exchange bondholders and not to pay the plaintiffs here, "by
8 the Argentine Republic implies a warning to the United States
9 regarding the consequences of its act given the international
10 responsibility it bears for the decisions" --

11 THE COURT: Wait a minute. Where are you? I'm not
12 with you. What paragraph?

13 MR. COHEN: Could I hand this to you? I'm reading
14 from that page.

15 THE COURT: All right, I'm with you. You can have
16 this back.

17 MR. COHEN: Just to quickly recapitulate, your Honor.
18 It says, "This sovereign decision, the decision to violate this
19 Court's order by paying the exchange bondholders and not
20 plaintiffs by the Republic of Argentina, implies a warning to
21 the United States regarding the consequences of its acts given
22 the international responsibility it bears for the decisions
23 taken by its judicial branch to the fiduciary agent, to the
24 financial entities involved, to the litigators and to Judge
25 Thomas Griesa himself with regard to future court actions that

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1 may allow us to legitimately enforce our rights."

2 In other words, your Honor, they are warning us that
3 we may be sued, including your Honor, in some international
4 forum to get redress for the process which they voluntarily
5 participated in, and which they assured the Supreme Court of
6 the United States they would abide by.

7 We can think of nothing that deserves a contempt
8 citation more than that kind of behavior.

9 THE COURT: In what form did the assurance to the
10 Supreme Court come?

11 MR. COHEN: Your Honor, when they petitioned for
12 certiorari with respect to the Second Circuit's affirmance of
13 your Honor's order, they urged the Supreme Court to take that
14 case by saying they would comply with any order of the Court.
15 There was an amicus brief submitted by several district court
16 judges, retired district court judges, including Judge Mukasey,
17 which urged the Court not to take the case because of the
18 defiance that the President of Argentina had expressed with
19 respect to obeying the Court's orders.

20 To respond to that argument, Argentina's counsel
21 represented that they would, indeed, abide by any rulings of
22 the Court. The Court denied certiorari nevertheless, but that
23 representation was clearly made.

24 That representation has been made in this courtroom,
25 your Honor, by counsel for Argentina, where they have

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1 repeatedly said we will not violate the orders. We will not
2 violate the orders.

3 Your Honor, they have directly violated the orders.
4 They did not come to this Court for a variation of the
5 injunction. They simply ignored it, thinking that they could
6 maybe get away with it somehow. Fortunately, the people who
7 received the money declined to pass it along, and we have an
8 opportunity now to deal with it on an interpleader.

9 Our request, your Honor, in light of this conduct is
10 that an order of contempt be entered. Our order does not
11 impose sanctions. It says that what sanctions may be
12 appropriate for this conduct will be determined in the future.
13 And we request discovery so that we can find out how this came
14 about, and also whether there are other plans afoot to violate
15 your Honor's order in other means. And that's a request for
16 prompt discovery from Argentina.

17 We also intend to serve subpoenas on third parties who
18 may have some information about how else violations may occur.
19 So what I ask your Honor is an order of contempt, and I can
20 hand that up, and an order permitting expedited discovery from
21 Argentina to find out how we got to the place we're at today.

22 THE COURT: All right. Who wishes to speak next?

23 MR. FRIEDMAN: Your Honor, before Mr. Boccuzzi speaks,
24 this is Edward Friedman, Friedman Kaplan.

25 THE COURT: Go to the lectern, please.

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1 MR. FRIEDMAN: Edward Friedman, Friedman Kaplan Seiler
2 & Adelman for the Aurelius and Blue Angel plaintiffs.

3 I just would like to add one detail to what Mr. Cohen
4 was saying. Mr. Cohen explained that Argentina has announced
5 payments of \$832 million on the exchange bonds. And we have
6 confirmed, as Mr. Cohen said, that \$539 million of those
7 payments have reached the Bank of New York. And we are asking
8 that those funds be the subject of an interpleader, and that
9 those funds be deposited in New York. And counsel for the Bank
10 of New York has confirmed that they are prepared to do that.

11 THE COURT: Look --

12 MR. FRIEDMAN: Sorry. I just wanted to.

13 THE COURT: What I want to do at this point is see
14 that there is a proper record.

15 Now, what is the record in which the plaintiffs say
16 there is a description of the activities we're discussing this
17 morning? Is there an affidavit or is there -- what do we have
18 as a matter of record?

19 MR. FRIEDMAN: There is, your Honor, a declaration of
20 Robert Cohen that has been submitted to the Court. We have the
21 press release from Argentina.

22 THE COURT: Now, look, you've got to understand. I'm
23 supposed to be on vacation and I'm at home as much as possible,
24 which isn't very much these days, but I arrived in court in
25 time to come to this hearing. I have not gone over what has

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1 been -- what may have been filed, but maybe -- Jordan, why
2 don't you --

3 THE LAW CLERK: Is this the declaration you're
4 referring to?

5 MR. COHEN: Yes, exhibit D.

6 THE LAW CLERK: It's the one you have in front of you,
7 Judge.

8 THE COURT: Declaration of -- I'm sorry. Declaration
9 of Robert Cohen, June 12th, 2014.

10 Now, where is there a description?

11 MR. COHEN: Exhibit C, your Honor, is an official
12 press release from the Argentine government. It talks about it
13 paying on the exchange bonds.

14 (Pause)

15 THE COURT: Well, I know this is to be taken of course
16 very seriously, but is there something that literally shows in
17 sort of transaction form, what has happened; in other words, if
18 there was a payment made, who made the payment, to whom was the
19 payment made, and --

20 MR. COHEN: Your Honor, counsel for Bank of New York
21 Mellon I believe is here. They received the money.

22 MR. FRIEDMAN: Your Honor, we were yesterday in
23 communication with counsel for Bank of New York. Bank of New
24 York has confirmed the receipt of \$539 million in its account.

25 THE COURT: Let me just -- who is here for the Bank of
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1 New York?

2 MR. SCHAFFER: Your Honor --

3 THE COURT: Why don't you -- let's get directly to
4 you. What has happened?

5 MR. FRIEDMAN: Your Honor, I apologize, but I did want
6 to just add one sentence that --

7 THE COURT: I'll get back to you, but I want to get --

8 MR. FRIEDMAN: Okay.

9 THE COURT: I don't want to have a record created by
10 press releases and so forth and discussion. I'd like to
11 definitely have a proper record of the transactions which were
12 made.

13 And your name, sir, is what?

14 MR. SCHAFFER: Your Honor, I'm Eric Schaffer from Reed
15 Smith for the Bank of New York Mellon as indenture trustee.

16 THE COURT: Indenture trustee means what?

17 MR. SCHAFFER: Well, we act as indenture trustee for
18 what's known as the exchange bonds.

19 In the ordinary course, Argentina sends money to Banco
20 Central where it gets deposited into the account of the Bank of
21 New York as indenture trustee. And, in the ordinary course,
22 funds would go from there onto the clearing houses.

23 THE COURT: Now wait a minute. Let's step back.

24 MR. SCHAFFER: Yes, your Honor.

25 THE COURT: Go a little slower for me. You're the
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1 indenture trustee for the exchange bonds.

2 MR. SCHAFFER: Yes.

3 THE COURT: Now, what -- and then I assume you know
4 what happened as far as the transfer of money and so forth,
5 right?

6 MR. SCHAFFER: Yes, your Honor.

7 THE COURT: Okay. Now can you just slowly and
8 carefully describe for me what happened?

9 MR. SCHAFFER: Your Honor, deposits were made into our
10 account at Banco Central in Argentina.

11 THE COURT: All right. Just a minute. Into the
12 account of the Bank of New York.

13 MR. SCHAFFER: Yes, your Honor.

14 THE COURT: Just a second. In what bank in Argentina?

15 MR. SCHAFFER: Your Honor, I believe it's Banco
16 Central, the Republica Argentina.

17 THE COURT: But it's an Argentine bank?

18 MR. SCHAFFER: Yes, your Honor.

19 THE COURT: And I'll say Banco Central until -- Banco
20 Central. And then what happened?

21 MR. SCHAFFER: Your Honor, the deposits were U.S.
22 dollars and euros.

23 THE COURT: All right, just a minute. Okay.

24 MR. SCHAFFER: The deposits, euros was in the amount
25 of 225,852,000 --

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1 THE COURT: In euros?
2 MR. SCHAFFER: Yes, in euros it's 225,852.
3 THE COURT: 225,852.
4 MR. SCHAFFER: 475.66.
5 THE COURT: Meaning 225,852,475.66; is that right?
6 MR. SCHAFFER: Yes, your Honor.
7 THE COURT: And that's euros. And how about dollars?
8 MR. SCHAFFER: In dollars \$230,922,521.14.
9 THE COURT: Now, are you able to give me the total
10 dollar equivalent?
11 MR. SCHAFFER: The dollar equivalent, your Honor,
12 would be approximately \$539 million.
13 THE COURT: All right. Now, after the deposits were
14 made in the Banco Central, what happened then?
15 MR. SCHAFFER: Really nothing, your Honor. We have
16 received this Court's orders, and consistent with this Court's
17 orders the money remains in the accounts at Banco Central.
18 THE COURT: And it's the account of the Bank of New
19 York.
20 MR. SCHAFFER: Yes, your Honor.
21 THE COURT: All right. I want to make a note of that.
22 Now, when the Bank of New York received these funds as
23 you've described in the Argentine bank, were there any
24 instructions from the Republic of Argentina as to what to do
25 further?

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1 MR. SCHAFFER: Your Honor, to my knowledge, there are
2 no instructions beyond what is set forth in the indenture. The
3 indenture provides how funds will move in the ordinary course.
4 But, again, we're aware of this court's order.

5 THE COURT: Well, let's slow down a little bit.

6 MR. SCHAFFER: Your Honor, under the terms of the
7 indenture that governs the rights and obligations of the Bank
8 of New York Mellon as indenture trustee, in the ordinary course
9 Argentina transfers funds to the account of Bank of New York
10 Mellon at Banco Central. Thereafter, funds would be
11 distributed through the clearing houses to the beneficial
12 owners of the exchange bonds.

13 THE COURT: In other words, that would be the regular
14 course of things.

15 MR. SCHAFFER: Yes, your Honor.

16 THE COURT: If there were no other problems.

17 MR. SCHAFFER: Correct.

18 THE COURT: In other words, you don't receive money
19 simply to have it deposited with you.

20 MR. SCHAFFER: Your Honor, the money under the
21 indenture is held in trust for the Bank of New York Mellon as
22 trustee and the bondholders.

23 THE COURT: And the bondholders.

24 MR. SCHAFFER: Yes.

25 THE COURT: And so if money is received, am I correct,
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1 it is your understanding that in the normal course of events,
2 the money would ultimately go to the bondholders?

3 MR. SCHAFFER: Yes, your Honor.

4 THE COURT: All right. And now, you've said this two
5 or three times, but please repeat it, what occurred here and
6 why?

7 MR. SCHAFFER: Your Honor, funds were deposited into
8 the Bank of New York Mellon's account at Banco Central. Those
9 funds remain in that account. Nothing more has happened.

10 THE COURT: And the reason for that is what?

11 MR. SCHAFFER: We have read this Court's order, orders
12 with regard to any distributions of funds. The orders of this
13 Court expressly reference the Bank of New York Mellon as
14 trustee, and in accordance with this Court's order we have not
15 further transferred or distributed any funds.

16 THE COURT: Okay. I think that unless you want to add
17 something, that answers the questions I would have for you.

18 MR. SCHAFFER: Nothing to add, your Honor.

19 THE COURT: All right. Let's go back to whoever was
20 speaking.

21 MR. FRIEDMAN: Your Honor, the one point of
22 clarification I had wanted to offer previously is that I was
23 advised by counsel for Citibank this morning, just before the
24 hearing began, that Citibank has not received funds from
25 Argentina. So the knowledge that we have at the present time

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1 is that, as Bank of New York's counsel said, Bank of New York
2 has 539 million representing a payment by Argentina with
3 respect to the exchange bonds, but Citibank does not have funds
4 at this time. That's what we're being told.

5 And the one other thing, your Honor, is that I would
6 call the Court's attention to exhibit D to Mr. Cohen's
7 declaration.

8 THE COURT: Could I get this turned down a little bit?
9 I'm trying to -- it was so loud.

10 MR. FRIEDMAN: I apologize, your Honor.

11 THE COURT: No, no. Now it's okay.

12 Okay, go ahead.

13 MR. FRIEDMAN: Exhibit D is an announcement by
14 Argentina saying it has fulfilled its obligations to pay the
15 holders of the exchange bonds.

16 THE COURT: All right, let me get that. This is the
17 Exhibit B to Mr. Cohen's declaration or exhibit D; am I right?

18 MR. FRIEDMAN: Yes, exhibit D, your Honor.

19 THE COURT: What is exhibit D?

20 MR. FRIEDMAN: Exhibit D is an announcement dated
21 today by Argentina. It's one, just one page in English, your
22 Honor. It's the last couple of pages of the Cohen declaration.

23 MR. COHEN: If I could clarify, your Honor. My
24 declaration has exhibit D. The first page is a Bloomberg
25 summary of the second page, which is a Spanish announcement,

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1 official announcement by the government of Argentina. We
2 didn't have time to translate it, your Honor, because it came
3 out this morning. But Bloomberg summarizes it, and that's the
4 first English language page to exhibit D.

5 THE COURT: Back to Mr. Friedman.

6 MR. FRIEDMAN: Yes.

7 THE COURT: Can you just summarize the summary, it'll
8 help me?

9 MR. FRIEDMAN: Yes. Exhibit D says Argentina says it
10 has fulfilled its obligations on the restructured debt.
11 Restructured debt means the exchange bonds. If your Honor
12 looks at that page, you will see a series of bullet points.
13 The second bullet point reflects Argentina's statement that,
14 according to Argentina, Bank of New York Mellon has a duty to
15 deliver funds to the bondholders.

16 As counsel for the Bank of New York explained to the
17 Court a moment ago, the payment by Argentina to the Bank of New
18 York is the normal regular course of payment by Argentina when
19 making payment on exchange bonds for which the Bank of New York
20 is the indenture trustee. The significance of this --

21 THE COURT: Now, can we go down -- the next bullet
22 point starts at note.

23 MR. FRIEDMAN: Yes. That bullet point --

24 THE COURT: Let me just read that. Argentina today
25 deposited \$1 billion for restructured bond payments, including

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1 539 million to trustee Bank of New York Mellon.

2 So they're saying they have made a deposit as they
3 refer to it to it of \$1 billion.

4 MR. FRIEDMAN: We understand, your Honor, that the \$1
5 billion is a round figure as to which the undisputed fact is
6 539 million has been paid to Bank of New York Mellon as
7 indenture trustee on certain exchange bonds.

8 We do not have information at this time as to where
9 the balance of the approximate \$1 billion has been paid.

10 THE COURT: All right, thank you. Anything else?

11 MR. FRIEDMAN: Thank you, your Honor.

12 THE COURT: All right, let's hear from the Republic.

13 MR. BOCCUZZI: Good morning, your Honor, Carmen
14 Boccuzzi from Cleary Gottlieb for the Republic of Argentina.

15 The Republic, consistent with its announcements, had
16 hoped to be able to, and still hopes to be able to engage in
17 discussions with plaintiffs and all the hold out creditors to
18 resolve this dispute and resolve the litigation.

19 The reason for the letters that we submitted this week
20 requested breathing space for the upcoming June 30th payment,
21 was to have the ability to have those discussions.

22 THE COURT: I want to comment on those letters. In
23 the course of two letters there -- I don't have them before
24 me -- there is a very abbreviated request to have a stay of the
25 injunctions. Now, you're a very good lawyer and your colleague

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1 is a very good lawyer. That isn't way you make any application
2 to a Court. You can't do it that way. You can't just throw a
3 phrase into a letter. If you're going to apply for something,
4 you apply. And you know how to apply. And what you do is to
5 state what you're applying for, what would be affected by the
6 application and the reason and so forth. Nothing of even
7 approaching that was contained in the letters.

8 Now, I wrote a little ruling denying the application,
9 but I never really received any proper application. And, in
10 any event, there was nothing in there to indicate any real need
11 for assistance or relief or timing in connection with
12 settlement negotiations.

13 Now, why haven't the settlement negotiations gone
14 forward? Surely that little application -- I mean, nobody
15 could reasonably believe that that little application would
16 have any effect. Why haven't the settlement negotiations gone
17 forward? Why aren't they going forward today instead of having
18 us sit in court?

19 MR. BOCCUZZI: The hope, your Honor, was to have those
20 discussions with the parties, but without the threat of the
21 default that would result if the payments were made on
22 June 30th. And so the request, the application was for that
23 breathing space so that as --

24 THE COURT: Now, look, I'm going to interrupt you.
25 We all knew that if there was to be fruitful

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1 settlement negotiations, they probably weren't going to be
2 concluded this week, maybe not next week. Everybody knew that.
3 And what goes on in settlement negotiations is the people who
4 are participating arrange to maintain a status quo, status quo.
5 That's what's done over and over and over in litigation.

6 Now, what was necessary, if anybody wanted to
7 negotiate, was to figure out a way to maintain a status quo so
8 there would not be a default on June 30, but the situation
9 would remain -- and I'm using the phrase over and over again
10 forgive me, in status quo.

11 You had a Special Master who could have assisted a
12 discussion of how that would be done. But it doesn't take any
13 rocket scientist to figure out how to do that. This is done in
14 litigation every day in the world in this country to figure out
15 a way to maintain the status quo.

16 Now, the Republic does not need to engage in
17 settlement negotiations, and it doesn't even need to give
18 excuses. If it doesn't want to engage in settlement
19 negotiations, don't. It doesn't have to. But in the strongest
20 way they indicated they wanted to. They said they were going
21 to send a delegation to see me. Well, I can't participate. I
22 appointed a special master, a very talented special master to
23 assist. So I set up the circumstances under which there could
24 be settlement negotiations.

25 Now, what needs to be done -- and it can be done

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1 beginning now -- is to figure out a way to get through the
2 weekend and June 30, and maintain -- I'm using the term the
3 status quo. That was what was, what any litigating, any
4 litigator would know had to be done.

5 And there were discussions, I am informed -- and I'm
6 not fully informed because I'm not the special master -- but I
7 believe there were discussions along that line, and that's the
8 line that was needed to be taken. And then all of a sudden we
9 have this payment. This is a disruption. Can we get back on
10 track and have settlement negotiations?

11 MR. BOCCUZZI: I hope so, your Honor.

12 THE COURT: And how will that be done?

13 MR. BOCCUZZI: What is the situation that was facing
14 the Republic this week with the approaching June 30th payment,
15 the need for time is the constraints on the Republic that they
16 have to deal with and are trying to deal with imposed both by
17 local, law Argentine law where you need legislative action or
18 otherwise a nonpayment on the June 30th is not authorized by
19 Argentine law, and I am informed by my client, would subject
20 the officials or the employees, the government employees
21 involved with that payment, potentially subject to criminal
22 prosecution.

23 THE COURT: Now, look -- look here.

24 MR. BOCCUZZI: I'm just -- your Honor, just -- that's
25 why we need time, as well as the obligations that are owed

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1 under the so-called rights upon future offer that's in the
2 performing document papers. That's why it's a request for
3 time. I hear your Honor on the status quo. The difficulty of
4 the status quo is that the status quo now is the nonpayment on
5 June 30th, which we're not -- they were not prepared for,
6 unless there's a payment to the plaintiffs in that amount which
7 sweeps in, of course, all the me toos and all the other
8 defaulted that we've been talking about. So that's the
9 situation the Republic found itself in. It's obvious that
10 discussions have to happen, but that was what was behind --

11 THE COURT: If the Republic --

12 MR. BOCCUZZI: -- the request.

13 THE COURT: -- and the others had continued
14 discussions with the Special Master, you could've solved all of
15 the problems you're talking about.

16 You know, and every litigating lawyer in this Court,
17 knows that there are ways to facilitate discussions. There are
18 ways to preserve the rights of the parties while discussions
19 are going on. There are ways to do that. It's done all the
20 time. And if you had continued to meet with the Special
21 Master, bring up the points you're talking about -- of course
22 you're bringing up legitimate points -- but the thing is how to
23 resolve them without some explosive actions such as has been
24 taken by the Republic here. And experience litigating lawyers,
25 and that includes you and Mr. Blackman, know how to do this.

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1 What I think is a problem is that really there was a
2 failure to follow through and work with the Special Master,
3 work on these problems, but don't have a blowup of the kind
4 we've had just now.

5 And I'll come very quickly. The payment, any payment
6 to exchange bondholders which does not comply with -- I've got
7 to find what I'm looking for, so give me just a minute, please.
8 I'm referring to paragraph two of the amended February 23, 2012
9 order. This sets forth the rules and that means -- I'll read
10 it. Whenever the Republic pays any amount due under terms of
11 the bonds or other obligations issued pursuant to the exchange
12 offers, the Republic shall concurrently or in advance make a
13 rateable payment to NML as defined below, and as further
14 defined in the Court's opinion of November 21, 2012

15 Now, just a minute. I imagine there's more language,
16 but I don't -- but that is the essential language. And what
17 that means is that any attempt now to make a payment to the
18 exchange bondholders, without complying with paragraph two, is
19 illegal. It cannot be done and will not be permitted by this
20 Court. And I want the banks and all concerned to know that,
21 and I'll come right down to it right now and state that. That
22 is the effect of what is now in place. Therefore, this payment
23 cannot be made, and anybody who attempts to make it will be in
24 contempt of court by the express terms of this order.

25 Now, where do we go from here? We have disposed of
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1 the fact about -- we have disposed of this payment. This
2 payment is illegal and will not be made.

3 MR. BOCCUZZI: Yes, your Honor.

4 THE COURT: Now, where to go?

5 MR. COHEN: Your Honor -- sorry.

6 MR. BOCCUZZI: I think the hope would be to have
7 discussions.

8 THE COURT: Let me just finish.

9 MR. BOCCUZZI: Yes. I think --

10 THE COURT: Let me just finish.

11 MR. BOCCUZZI: Yes, please.

12 THE COURT: I want to get back to you, of course, of
13 course.

14 Look, it would be desirable, if it is possible, to
15 have a settlement. And I don't think I want to go too much
16 farther in that, but I didn't appoint a Special Master. I
17 didn't do that without being very seriously interested in
18 seeing that there would be settlement negotiations. I would
19 hope that all parties would participate, and I would obviously
20 hope that the Republic would participate, although
21 participating in settlement negotiations is a voluntary thing
22 and nobody has to do it, but I would hope that that would be
23 done. And I would hope that there would be a way to make it
24 clear to whoever is interested in what goes on on June 30, that
25 the settlement negotiations are going on and they are

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1 important. They are important. They're more important than
2 the details of this or that that might be invoked or put in
3 place around the events of June 30th.

4 The important thing are the settlement negotiations.
5 There is a lot of litigation still out there. And if there is
6 a default, there's going to be a lot more. It would be very
7 desirable to reach a settlement. But that's not going to
8 happen by Sunday or Monday.

9 I want to say this to Mr. Boccuzzi and Mr. Blackman.
10 I've had trouble, and I've expressed it, with the Republic, but
11 both of you have been fair and square in every way before me,
12 and I appreciate that.

13 Now, what I would like to do is to really -- I will
14 enter whatever order is appropriate nullifying this purported
15 payment. But I would hope, I would hope that the Republic does
16 not find barriers and difficulties in the circumstances which
17 would prevent settlement discussions. I would hope they would
18 start this afternoon and continue according to the schedule
19 that can be worked out with the Special Master. And I'm going
20 to tell you, it being 11:30, time is better spent arranging for
21 settlement negotiations than having continued argument here in
22 court, and I'm ready to adjourn.

23 MS. WAGNER: Your Honor, may I be heard, please?

24 MR. BETCHELER: I'd also like to be heard, your Honor.

25 MS. WAGNER: Good morning, your Honor, Karen Wagner

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1 from Davis Polk representing Citibank.

2 Your Honor, we made a motion last week which has
3 become extremely urgent. Citibank Argentina is a branch bank
4 in Argentina, and it expects to receive a payment on some bonds
5 shortly. It has not received the payment yet. The bonds for
6 which it is custodian are internal Argentine bonds.

7 THE COURT: Can I just interrupt you?

8 MS. WAGNER: Sure.

9 THE COURT: I apologize for not getting to your
10 motion. There are other things. I want to get to it. Is
11 there any opposition to that motion?

12 MR. FRIEDMAN: Your Honor, this is Edward Friedman on
13 behalf of the Aurelius and Blue Angel plaintiffs.

14 The opposition to that motion is, to begin with, that
15 your Honor's amended February 23 orders are clear that the
16 orders cover exchange bonds, and Citibank is now asking the
17 Court to modify the amended February 23 orders so that --

18 THE COURT: Let me interrupt you. It is my
19 understanding, Ms. Wagner, correct me if I'm wrong --

20 MS. WAGNER: Certainly, your Honor.

21 THE COURT: -- because we've been at this before.

22 MS. WAGNER: Yes, we have, your Honor.

23 THE COURT: And it is my understanding that the bonds
24 you're talking about have been treated differently --

25 MS. WAGNER: Completely --

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1 THE COURT: -- all along.

2 MS. WAGNER: Completely differently, your Honor. Yes.

3 THE COURT: And I think that to grant your motion --
4 and I may have granted a similar motion before -- to grant your
5 motion does not affect the other bonds of concern at all.

6 MS. WAGNER: That's correct, your Honor.

7 THE COURT: All right. I will grant your --

8 MR. FRIEDMAN: Your Honor, may I be heard, please?

9 THE COURT: What?

10 MR. FRIEDMAN: With all respect, the Citibank motion
11 addresses bonds that are clearly within the scope of exchange
12 bonds. It is illegal under your Honor's orders that have been
13 affirmed for Argentina to pay those bonds, and it is illegal
14 for Citibank to facilitate those payments. This is a very
15 serious matter as far --

16 THE COURT: I simply disagree with everything you're
17 now saying. I will grant Ms. Wagner's motion.

18 MS. WAGNER: Thank you very much, your Honor.

19 THE COURT: Now, what do I need to sign?

20 MS. WAGNER: We'll hand up an order, your Honor.

21 THE COURT: Good.

22 MS. WAGNER: Thank you.

23 THE COURT: I'll do it, I'll do it.

24 MS. WAGNER: Thank you, your Honor.

25 Anything else?

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1 MR. BATCHELOR: Yes, your Honor. May I be heard?

2 THE COURT: Yes.

3 MR. BATCHELOR: Good morning, your Honor. I'm Craig
4 Batchelor from Latham & Watkins, and I represent the so-called
5 euro bondholders. This is a group of holders of the Republic's
6 exchange bonds that were issued in the 2005 and 2006.

7 THE COURT: Holders of what? Say it again?

8 MR. BATCHELOR: I represent a group of holders that
9 hold exchange bonds denominated in euros.

10 And I just wanted to clarify a couple of points that
11 were raised by the lawyer for the Bank of New York.

12 As he recognized, there are payments, there are bonds
13 that are denominated in U.S. dollars under the exchanges, and
14 there are also bonds that are denominated in euros. And one
15 thing that's been overlooked in this litigation up until this
16 point is that the payments on those two sets, two different
17 sets of bonds are made very differently. The Bank of New York
18 issued a -- submitted an affidavit in November of 2012, prior
19 to your Court ordering, issuing the amended February 23rd
20 injunctions that clarified that the payments made on the euro
21 bonds are made outside the United States, they're made in
22 euros, and they're processed through foreign entities. These
23 payments never flow through the United States at all. They are
24 paid in Argentina. The money is then transferred to Belgium or
25 to Germany, excuse me, and then to clearing houses in Belgium

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1 or Luxembourg. And these bonds are also governed by English
2 law. They are not governed by New York law.

3 So I don't know the details on the payments that were
4 made, but if those payments were made as Bank of New York's
5 affidavit states, and consistent with the indenture, those
6 payments were made to a Bank of New York Luxembourg entity in
7 Argentina.

8 THE COURT: I've got to confess to you, I'm just not
9 following this.

10 MR. BATCHELOR: I'll try to simplify it.

11 THE COURT: Try to do that.

12 MR. BATCHELOR: The reason this makes a difference,
13 your Honor, is because I believe right now the payments that
14 were made in euros are being held by a foreign entity, Bank of
15 New York Luxembourg outside the United States and governed by a
16 trust under English law. And so I think there are serious
17 questions whether this Court has jurisdiction to issue an order
18 nullifying that payment or perhaps ordering the return of those
19 funds, and we'd like to be heard on that. I think there's
20 serious issues about that and we'd be prepared to submit a
21 motion very quickly on those issues.

22 In addition, any payments that flow through that
23 chain, whether to Euro Clear, Clear Extreme or other entities,
24 are outside this Court's jurisdiction and those parties are
25 bound by foreign law. These are very serious issues. We

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1 raised these in the Second Circuit and submissions to the
2 Supreme Court.

3 THE COURT: What did the Second Circuit do?

4 MR. BATCHELOR: The Second Circuit said that we should
5 come back to the district court and raise these issues.

6 And as noted in your Honor's November or amended
7 February 23rd order, you said that any clarification of the
8 scope of the injunction on third parties would be given by this
9 Court promptly. The Second Circuit, consistent with that, said
10 we should come back to this Court for clarification.

11 So, like Citibank, we have a motion ready to clarify
12 the scope of the injunction on foreign third parties who
13 process payments on the euro bonds.

14 THE COURT: What would that provide?

15 MR. BATCHELOR: That motion would make clear that
16 under the record before your Honor, and consistent with the
17 Bank of New York affidavit which was submitted earlier, that
18 the payments made are made entirely outside the United States
19 through foreign entities beyond this Court's jurisdiction.

20 THE COURT: Payments are made by whom?

21 MR. BATCHELOR: The payments are made by Argentina.

22 THE COURT: All right. That's the crucial thing. The
23 payments are made by the Republic of Argentina, and.

24 MR. BATCHELOR: And, your Honor, in regard --

25 THE COURT: I wasn't finished.

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1 MR. BATCHELOR: Oh.

2 THE COURT: Nothing that you have said indicates to me
3 that paragraph two of the amended February 23, 2012 order does
4 not apply to payments made by the Republic, and I'll read that
5 again. Whenever the Republic pays any amount due under terms
6 of the bonds or other obligations issued pursuant to the
7 Republic's 2005 or 2010 exchange offer, or any subsequent
8 exchange or substitution for and so forth, the Republic shall,
9 concurrently or in advance, make a rateable payment to NML. In
10 other words, it's talking about, as you know, the pari passu
11 requirement that the Court of Appeals has -- I held applied and
12 the Court of Appeals has affirmed on that.

13 Now, what is governed by the overriding rules and
14 regulations is the obligation of the Republic. Now, if the
15 Republic makes payments in a way that involves Luxembourg or
16 Denmark or whatever, it's still a payment by the Republic, and
17 paragraph two of the order applies, and it applies to the
18 Republic. The Republic is within the jurisdiction of the
19 Court, the Republic agreed to the jurisdiction of the Court,
20 and the bonds which were originally issued. And we've been
21 through that a million times.

22 MR. BATCHELOR: Your Honor, just to --

23 THE COURT: Therefore, I'm telling you that it may be,
24 there may be a need for a sort of special language in any
25 order.

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1 But I am not departing from the basic proposition that
2 the Republic cannot make the payments or the payment that it is
3 purported to set in motion. And that is -- that's all. I will
4 have to leave it at that. Thank you very much.

5 MR. BATCHELOR: Your Honor --

6 THE COURT: Thank you very much.

7 MR. BATCHELOR: -- we respectfully object to any --

8 THE COURT: All right.

9 MR. BATCHELOR: -- any order --

10 THE COURT: I'm sure you object, and thank you very
11 much.

12 Is there anyone else who wishes to speak?

13 MR. SCHAFFER: Your Honor, Eric Schaffer for Bank of
14 New York Mellon.

15 THE COURT: Right.

16 MR. SCHAFFER: Your Honor, we're holding onto a lot of
17 money right now in an account in Argentina. We need to figure
18 out what to do with it; either to keep it in that account, to
19 move it to an account in New York, and perhaps what's most
20 appropriate procedurally is that we file an interpleader action
21 so that all of this is properly before you and the Court can
22 determine.

23 THE COURT: There is no need for an interpleader
24 action. What is needed is this. The Republic had no business
25 making any payment to your bank in the way and for the purpose

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1 that it did. It was improper. It was a violation of court
2 orders binding on the Republic, and the Republic in making a
3 payment to you or your bank was in violation. Your bank didn't
4 do anything wrong. Your bank simply received it and then
5 properly held onto it.

6 MR. SCHAFFER: Yes, your Honor.

7 THE COURT: That's very very good that you did. But I
8 would think that the money should simply be returned to the
9 Republic, simple as that. They had no business paying. And,
10 obviously, I imagine you like a deposit in your bank of a few
11 hundred million dollars, and that's great, but it shouldn't
12 even be there. And I will count on Mr. Cohen to draft an
13 order. That money should be returned. It should never have
14 been paid, and it should be returned.

15 Now I'm going to leave it at that. Thank you very
16 much.

17 MR. SCHAFFER: Yes, your Honor.

18 MR. COHEN: Your Honor, could I conclude with just two
19 thoughts? One is --

20 THE COURT: What did --

21 MR. COHEN: This is Robert Cohen, your Honor.

22 THE COURT: Someone else was standing.

23 MR. COHEN: I'm very sorry.

24 MR. SPENCER: Your Honor, Michael Spencer from
25 Milberg. I think your Honor will recall that we had a brief

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1 conference in the robing room after last week's court
2 conference regarding five small actions by bondholders. I am
3 simply asking your Honor to conclude the discussion we had, and
4 I request that you sign the orders that we have submitted to
5 the Court with respect to those five matters.

6 THE COURT: I don't recall, what do they provide?

7 MR. SPENCER: Your Honor, they provide for equivalent
8 parallel injunctive relief for five bondholder plaintiffs in
9 prejudgment cases. And you may remember that Mr. Boccuzzi at
10 the time said that he didn't see any reason that those cases
11 should be treated differently from the cases your Honor has
12 already ruled in; he needed to check with his client.

13 He raised some problems this week, which have been
14 addressed to the Court in two letters. And we could either see
15 your Honor again or allow you and your assistants to resolve it
16 on the papers that the Court has.

17 MR. BOCCUZZI: Your Honor, just briefly. We were in
18 the robing room and I just received the papers or got them the
19 day before. They're basically more me too applications by
20 Mr. --

21 THE COURT: Now what is meant by that?

22 MR. BOCCUZZI: The pari passu injunctions that we've
23 been talking about, it's just additional folks that Mr. Spencer
24 represents saying I want that injunction too for me. And so --

25 THE COURT: Why shouldn't he get them?

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1 MR. BOCCUZZI: Well, when I looked at the papers, one
2 of the plaintiffs didn't even put in proof that they owned a
3 bond. Another one has -- so there are just some issues that I
4 spotted.

5 And I also noted in my letter opposing it that there
6 is no need at this point to add on additional injunctions,
7 because part of our issue has been this whole situation of
8 having to deal with all the hold outs.

9 And so at this point the equities seem to counsel just
10 keep the status quo. He's already in the room in terms of he's
11 got some clients with pari passu injunctions. But at this
12 point one me too among, there are others in the wings, it's
13 just opening the flood gates and it seems unnecessary.

14 THE COURT: I tend to agree with that.

15 MR. SPENCER: Your Honor --

16 THE COURT: Let me finish.

17 MR. SPENCER: yes.

18 THE COURT: We all know that NML and the other, NML
19 and what is the other?

20 MR. SPENCER: Aurelius.

21 THE COURT: Aurelius. NML and Aurelius are not the
22 only parties who may have rights under the pari passu clause.
23 We know that.

24 But at this point -- and their rights aren't going to
25 go away. But at this point in order to have some sensible

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1 organization of settlement discussions and so forth, it seems
2 to me that it is not a good thing for me to start signing
3 additional orders. So your clients have their rights, but I'm
4 not going to sign additional orders. Thank you very much.

5 I think we'll adjourn now.

6 MR. SCHAFFER: Your Honor, if I may? Your Honor, Eric
7 Schaffer for Bank of New York.

8 We understand the Court does not want to subject us to
9 any conflicting obligations under Argentine law or to the
10 bondholders.

11 What I would propose, your Honor, is we will work with
12 Mr. Cohen as best as we can to see if we can't craft something
13 that truly leaves the Bank of New York Mellon not exposed to
14 any liability where it has complied with your Honor's order.

15 THE COURT: Well, you should do that.

16 MR. SCHAFFER: Yes.

17 MR. COHEN: Your Honor, we've imposed on your vacation
18 time more than we should have, and I apologize for that.

19 We, for my clients and the others plaintiffs assure
20 you we are available at any time, principals and lawyers, to
21 meet with the Special Master to engage in negotiations. That
22 has always been our posture, and we hope that Argentina and its
23 principals will make themselves available, your Honor.

24 THE COURT: Look, I'm going to just urge, hope,
25 whatever you can say to Mr. Blackman and Mr. Boccuzzi to get

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1 the Republic to the table.

2 And let's adjourn at that. Thank you.

3 MR. BOCCUZZI: Thank you, your Honor.

4 (Adjourned)

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