UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NML CAPITAL, LTD., Plaintiff-Appellee, - v. - REPUBLIC OF ARGENTINA, Defendant-Appellant.	:	12-105-cv(L)

THE REPUBLIC OF ARGENTINA'S RESPONSE TO THE DUANE MORRIS INDIVIDUAL PLAINTIFFS' MOTION FOR LEAVE TO FILE AN *AMICUS* BRIEF

Defendant-appellant the Republic of Argentina (the "Republic") responds to the motion (the "Motion") of the so-called Duane Morris Individual Plaintiffs, dated April 22, 2013, seeking leave to file an *amicus* brief in response to the Republic's March 29 Payment Proposal (the "Proposal"), as set forth below.

ARGUMENT

The proposed submission by the Duane Morris Individual Plaintiffs is both procedurally improper and substantively incorrect, including its mischaracterization of the Republic's Proposal to resolve this litigation. The Motion indeed highlights the fundamental error underlying plaintiffs' demand, in the purported name of equity, that they receive treatment far *better* than that

provided to other holders of the Republic's defaulted debt. The Republic submits this response to make two brief points.

First, the Motion demonstrates that the present appeal does not concern "only" the $1.47 billion demanded by NML and the other plaintiffs-appellees, Pls. Proposal Response at 12, but potentially the entire amount of outstanding defaulted Republic debt subject to a pari passu clause. As the Republic demonstrated in its Proposal – and as neither plaintiffs nor the Duane Morris Individual Plaintiffs dispute – acceptance of the district court's "ratable payment" formula could open the floodgates for over $15 billion in similar pari passu claims. *See* Proposal at 13; *see also* Duane Morris Individual Plaintiffs' *Amicus* Br. at 4 ("[T]he only sensible resolution is a lump-sum payment of *all* interest and principal that has accrued and become due and payable . . . to *all* the current holders of the holdout bonds.") (emphasis in original). The Duane Morris Individual Plaintiffs are themselves just one group of defaulted debt holders who would invoke the same language to demand immediate payment in full, plus interest. Many others will surely follow.

In an attempt to escape this economically unsustainable result, plaintiffs urge the Court to adopt a "first come, first served" pari passu remedy whereby plaintiffs get paid in full because they brought their pari passu claims first, and all other holdout creditors that follow get whatever is "equitable" at that

point in time. *See* Pls. Proposal Response at 12 ("If holders of other defaulted indebtedness later bring equal treatment claims of their own, Argentina will have ample opportunity . . . to make a showing of financial need, based on circumstances then prevailing, for the district court to consider in shaping a remedy."). This proposed remedy demonstrates that plaintiffs do not want "equal treatment" at all, but to enforce their monetary claims in full, regardless of what other, exactly similarly situated creditors receive.

Importantly, this difference in treatment among defaulted debt holders would entitle all other holdout creditors without judgments (and, if the latter are to be believed, those with judgments too, *see* EM Ltd. *Amicus* Brief at 2-3, dated Jan. 4, 2013) to enjoin the Republic from paying plaintiffs *on exactly the same basis* that plaintiffs claim to be entitled to enjoin the Republic from paying the exchange bondholders. Under plaintiffs' theory, the Republic is required to pay all holders of defaulted FAA debt at the same time that it pays plaintiffs, whether or not they have sued; indeed as plaintiffs here repeatedly, albeit incorrectly, argued, the alleged breach of the pari passu clause is, according to them, different and separate from the default stemming from nonpayment. On this reasoning, it would be just as much a breach of the pari passu clause for the Republic to pay plaintiffs without paying all other holdout creditors as it is allegedly a breach for the Republic to pay the exchange bondholders without paying plaintiffs.

Second, both the Duane Morris Individual Plaintiffs' proposed submission and plaintiffs' April 19 brief are replete with errors. If the Court allows any further briefing, the Republic respectfully requests the opportunity to submit a brief reply to correct them.

In order to deal with the implications of the pari passu ruling in a rational manner, the Republic believes that the Court should not just consider self-declared *amici*, but examine the issues and additional evidence required to rule based on equitable principles. There are thousands of claim-holders that are similarly situated to plaintiffs. This case has far broader implications than plaintiffs' claims alone. The Republic can sustainably service all outstanding claims if its Proposal for pari passu debt service is accepted, because only this Proposal reflects the equitable consideration of all potential claimants, both those who have filed claims already, and those who could do so in the future under plaintiffs' pari passu interpretation.

CONCLUSION

For the foregoing reasons, if the Duane Morris Individual Plaintiffs' motion for leave to file an *amicus* brief is granted, the Republic should be permitted to reply to it, as should the many other interested parties. The issues at stake here, including the effect on other sovereign debt restructurings,[1] are too important to foreclose other parties from being heard just because it serves plaintiffs' tactical desires to pretend that these issues only involve them and their particular claims.

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[1] This effect includes, under plaintiffs' "first come, first served" approach, a rush to the courthouse to assert any potentially available pari passu claims in connection with any sovereign debt restructuring, making such restructurings essentially impossible.