

12-105-cv(L)

12-109-cv (CON), 12-111-cv (CON), 12-157-cv (CON), 12-158-cv (CON),
12-163-cv (CON), 12-164-cv (CON), 12-170-cv (CON), 12-176-cv (CON),
12-185-cv (CON), 12-189-cv (CON), 12-214-cv (CON), 12-909-cv (CON),
12-914-cv (CON), 12-916-cv (CON), 12-919-cv (CON), 12-920-cv (CON),
12-923-cv (CON), 12-924-cv (CON), 12-926-cv (CON), 12-939-cv (CON),
12-943-cv (CON), 12-951-cv (CON), 12-968-cv (CON), 12-971-cv (CON)

United States Court of Appeals

for the

Second Circuit

NML CAPITAL, LTD., AURELIUS CAPITAL MASTER, LTD.,

Plaintiffs-Appellees,

— v. —

REPUBLIC OF ARGENTINA,

Defendant-Appellant,

(Caption Continued on Inside Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**OPPOSITION OF DEFENDANT-APPELLANT
THE REPUBLIC OF ARGENTINA TO WASHINGTON LEGAL
FOUNDATION'S MOTION TO ALTER BRIEFING SCHEDULE**

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MARIA ELENA CORRAL, TERESA MUNOZ DE CORRAL, NORMA ELSA
LAVORATO, CARMEN IRMA LAVORATO, CESAR RUBEN VAZQUEZ,
NORMA HAYDEE GINES, MARTA AZUCENA VAZQUEZ, OLIFANT
FUND, LTD.,

Plaintiffs-Appellees,

THE BANK OF NEW YORK MELLON, AS INDENTURE TRUSTEE,

Non-Party Appellant,

EXCHANGE BONDHOLDER GROUP, FINTECH ADVISORY INC., EURO
BONDHOLDERS,

Intervenors.

Defendant-appellant the Republic of Argentina (the “Republic”) opposes the motion of the Washington Legal Foundation (“WLF”), dated December 7, 2012 (“WLF Motion”), seeking to alter the expedited briefing schedule set by the Court in its Order, dated November 28, 2012 (the “November 28 Order”), by extending by three weeks the filing deadline for *amici* supporting affirmance. *See* Order, *NML Capital Ltd. v. Republic of Argentina*, No. 12-105-cv(L) (2d Cir. Nov. 28, 2012).

The expedited briefing schedule set forth by the November 28 Order clearly anticipated the filing of *amicus* briefs in this appeal, and set January 4, 2013 as the date by which *amici* must submit their papers. *See* November 28 Order (“Parties granted *amicus* or intervenor status shall file their briefs by January 4, 2013.”). In setting this schedule, the Court properly did not – as WLF now requests – grant *amici* in support of affirmance additional time so that they may respond to arguments raised by any *amici* in support of reversal. The schedule is therefore consistent with the function of *amicus* briefs, which is to assist the Court in understanding why the ruling on appeal is right or wrong, and not, as WLF claims, *see* WLF Motion at 2, to refute the arguments of any *amici* who seek a different outcome (and who would not have the ability to respond to WLF’s brief). *See United States v. Gotti*, 755 F. Supp. 1157, 1159 (E.D.N.Y. 1991) (“Rather than seeking to come as a ‘friend of the court’ and provide the court with an objective,

dispassionate, neutral discussion of the issues, it is apparent that the NYCLU has come as an *advocate for one side* . . . In doing so, it does the court, itself and fundamental notions of fairness a disservice.”) (emphasis added); Fed. R. App. P. 29 advisory committee’s note (stating that Fed. R. App. P. 29 “generally prohibits the filing of a reply brief by amicus curiae” and that “[t]he role of an amicus should not require the use of a reply brief”).

The current schedule sufficiently allows WLF to fulfill its function as an *amicus* by asserting its interest in the case and expressing its views on the propriety of the Orders entered below. *See Black’s Law Dictionary* (9th ed. 2009) (*amicus curiae*: “[Latin: ‘friend of the court’] A person who is not a party . . . but who petitions the court or is requested by the court to file a brief in the action because that person has a strong interest in the subject matter”) (emphasis added). WLF asserts no circumstances that justify altering the current expedited schedule to give *amici* in support of affirmance an additional three extra weeks to submit their briefs, and its motion should accordingly be denied.

WLF is wrong to claim that “[n]o party will be prejudiced by a January 25, 2013 filing deadline.” WLF Motion at 3. Such a deadline would give the Republic and other appellants only *five business days* to respond to both the arguments raised by any *amici* in support of affirmance as well as those raised by plaintiffs. In contrast, plaintiffs would have *four weeks* to respond to the

Republic's brief and *three weeks* to respond to the intervenors and any *amici* in support of reversal. If time is to be extended at all – which the Republic respectfully submits that it should not – WLF and any other *amici* in support of affirmance should be granted no more than one additional week from the time that *amicus* briefs are currently due, *i.e.*, January 11, 2013.

CONCLUSION

For the foregoing reasons, the Court should deny WLF's motion to alter the appellate briefing schedule.

Dated: New York, New York
December 10, 2012

Respectfully submitted,

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