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November 26, 2012

BY ECF

Catherine O'Hagan Wolfe
Clerk of the Court
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *NML Capital, Ltd. v. Republic of Argentina*, 12-105-cv(L)

Dear Ms. Wolfe:

We write on behalf of the Republic of Argentina pursuant to Federal Rule of Appellate Procedure 28(j) concerning the district court's November 21 orders and the "me-too" orders ("Orders") issued following this Court's October 26 decision ("Decision"). Currently pending before this Court are the Republic's petition for panel rehearing and rehearing *en banc* of the Decision ("Petition"), as well as an emergency motion being filed today seeking a stay of the Orders.

The Orders, issued while the mandate remains with this Court, require the Republic – as a condition to making interest payments on \$24 billion of restructured debt – to pay \$1.3 billion into an escrow account for plaintiffs. The Orders also enjoin all trustees and intermediaries, and other persons, from performing their legal functions in connection with restructured debt anywhere in the world.

Ms. Wolfe, p. 2

The Amended Injunctions highlight the impermissibility of the original injunctions as demonstrated in the Petition: in violation of the Foreign Sovereign Immunities Act (“FSIA”), they restrain the Republic’s use of immune assets to pay, outside of the United States, legitimate debts unless the Republic pays to plaintiffs, also with immune assets, the full amount of their claims. Petition at 4-10.

In upholding the injunctions, the Court reasoned that they do not violate the FSIA because they do not subject the Republic’s property to the court’s “dominion.” Decision at 25. But the Orders do precisely that. The required payment of \$1.3 billion into an escrow account is a classic “turnover order” under C.P.L.R. § 5225(b), which is clearly barred under the FSIA. Moreover, the district court revised the injunctions so they operate precisely as C.P.L.R. § 5222 restraining orders, requiring third party financial institutions to restrain assets of exchange bondholders, against whom plaintiffs do not even purport to have any claim. *See Aurelius Capital Partners, LP v. Republic of Argentina*, 584 F.3d 120 (2d Cir. 2009) (vacating, *inter alia*, restraining notices directed to assets of private pension funds and therefore not property of the sovereign being used for commercial activity in the United States).

The Court should accordingly grant the Republic’s Petition.

Respectfully submitted,

/s/ Carmine Boccuzzi

Carmine D. Boccuzzi

cc: Counsel of Record (via ECF)

Attachments

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
NML CAPITAL, LTD.,	:	
	:	
Plaintiff,	:	<u>OPINION</u>
	:	08 Civ. 6978 (TPG)
- against -	:	09 Civ. 1707 (TPG)
	:	09 Civ. 1708 (TPG)
REPUBLIC OF ARGENTINA,	:	
	:	
Defendants.	:	
	:	
-----X		

On October 26, 2012, the Court of Appeals handed down an opinion affirming certain injunctions entered by the District Court. These injunctions were designed to remedy Argentina’s breach of the *Pari Passu* Clause, including the “Equal Treatment Provision,” contained in the contractual provisions of the Fiscal Agency Agreement Bonds (“FAA Bonds”) at issue in this litigation. This breach resulted from the fact that Argentina had issued new debt pursuant to exchange offers in 2005 and 2010 (“Exchange Bonds”), and was making the payments required on this new debt, but had declared that it would make no payments to those still holding the FAA Bonds. It is of note that the Court of Appeals affirmed the finding of the District Court that, although there had originally been a default on the FAA Bonds because of a well-known financial crisis, currently Argentina is able to make the payments on both the FAA Bonds owned by plaintiffs and the Exchange Bonds.

An essential part of the ruling of the Court of Appeals was to affirm the injunctive relief fashioned by the District Court. It ruled that Argentina must make appropriate payments to plaintiffs on their FAA Bonds concurrent with or in advance of any payments to holders of the 2005 and 2010 Exchange Bonds. However, the Court of Appeals remanded, directing that the District Court clarify precisely how the payment formula, regarding payments to plaintiffs, is intended to operate. Also, the Court of Appeals directed a more precise determination as to how the injunctions would apply to third parties, including intermediary banks.

On remand, the court has not only received briefs from plaintiffs and Argentina, but has also received briefs and letters from exchange bondholders, parties responsible for handling the payment process to these bondholders, and the Federal Reserve Bank. The court has considered these materials without requiring formal interventions.

Payment Formula

The injunctions affirmed by the Court of Appeals are contained in an Order of the District Court dated February 23, 2012, which contains a number of injunction provisions and which is referred to by the Court of Appeals as the “Injunctions.” Paragraph two of the Injunctions provides:

The Republic accordingly is permanently ORDERED to specifically perform its obligations to NML under Paragraph 1(c) of the FAA as follows:

- a. Whenever the Republic pays any amount due under terms of the bonds or other obligations issued pursuant to the Republic's 2005 or 2010 Exchange Offers, or any subsequent exchange of or substitution for the 2005 and 2010 Exchange Offers that may occur in the future (collectively, the "Exchange Bonds"), the Republic shall concurrently or in advance make a "Ratable Payment" (as defined below) to NML.
- b. Such "Ratable Payment" that the Republic is ORDERED to make to NML shall be an amount equal to the "Payment Percentage" (as defined below) multiplied by the total amount currently due to NML in respect of the bonds at issue in these cases (08 Civ. 6978, 09 Civ. 1707, and 09 Civ. 1708), including pre-judgment interest (the "NML Bonds").
- c. Such "Payment Percentage" shall be the fraction calculated by dividing the amount actually paid or which the Republic intends to pay under the terms of the Exchange Bonds by the total amount then due under the terms of the Exchange Bonds.

The Court of Appeals stated that it is unable to discern from the record precisely how this formula is intended to operate, and further stated:

It could be read to mean that if, for example, Argentina owed the holders of restructured debt \$100,000 in interest and paid 100% of that amount then it would be required to pay the plaintiffs 100% of the accelerated principal and all accrued interest. Or it could be read to mean that, if such a \$100,000 payment to the exchange bondholders represented 1% of the principal and interest outstanding on the restructured debt, then Argentina must pay plaintiffs 1% of the amount owed to them. The following discussion is intended to provide the clarification requested by the Court of Appeals.

Although the provisions of the February 23, 2012 Injunctions regarding the "Ratable Payment" are phrased in a somewhat complicated manner, the actual meaning is quite straightforward. The obligation to plaintiffs under the February 23, 2012 Injunctions accrues whenever Argentina "pays any amount due" under the terms of the Exchange Bonds. The next time this will occur will be in December 2012, when Argentina is scheduled to make interest payments

on the Exchange Bonds of about \$3.14 billion: \$42 million on December 2, \$3 billion on December 15, and \$100 million on December 31. When this occurs, Argentina will be required to make a “Ratable Payment” to plaintiffs. Assuming that Argentina pays 100% of what is then due on the Exchange Bonds, this is the “Payment Percentage” referred to in paragraph 2(b). Argentina would be required to pay 100% “multiplied by the total amount currently due” to plaintiffs. There is no question about what is “currently due” to plaintiffs. The amount that is currently due is the amount of the unpaid principal, the due date of which has been accelerated, and accrued interest.¹ The total of these amounts due to plaintiffs is approximately \$1.33 billion. Thus, at some time in December 2012, when Argentina makes the interest payments on the Exchange Bonds, amounting to a total of about \$3.14 billion, Argentina will be required to pay plaintiffs approximately \$1.33 billion.

This is in accord with the first hypothetical situation posed in the Court of Appeals’ opinion, describing the situation in which Argentina owes the holders of restructured debt \$100,000 in interest and pays 100% of that amount, resulting in the requirement to pay plaintiffs 100% of the accelerated principal plus all accrued interest.

¹ Although judgments have been entered in other related cases, the cases before the court in this matter are ones where judgment has not been entered. See Transcript of Oral Argument at 26-27, NML Capital v. The Republic of Argentina, (February 23, 2012) (03 Civ. 8845).

The second hypothetical situation posed by the Court of Appeals, resulting in Argentina paying plaintiffs 1% of the amount owed to them, is based on a misinterpretation of the relevant language of the Injunctions. The second hypothetical assumes a \$100,000 payment to the Exchange bondholders, representing 1% of the total “principal and interest outstanding on the restructured debt,” most of which is payable in the future. But the obligation of Argentina under the payment formula in the Injunctions arises when Argentina “pays any amount due” to the exchange bondholders. In the present case, this would next occur when Argentina pays the interest due on the Exchange Bonds in December 2012. Also, the Payment Percentage is calculated on the basis of “the amount actually paid or which the Republic intends to pay,” as a percentage of “the total amount then due.” None of this relevant language refers to any calculation based upon the total amount of principal and interest outstanding on the restructured debt, including large amounts of principal and interest to be paid into the future.

To recapitulate, the Ratable Payment provisions in the Injunctions, as correctly interpreted and as intended by the court, would be currently applied as follows. In December 2012, there are interest payments of approximately \$3.14 billion due on the Exchange Bonds. Presumably, Argentina intends to pay 100% of what is owed. There are currently debts owed to plaintiffs by Argentina of approximately \$1.33 billion. It should be emphasized that these are debts currently owed, not debts spaced out over future periods of time. In

order to comply with the terms of the Injunctions, Argentina must pay plaintiffs 100% of that \$1.33 billion concurrently with or in advance of the payments on the Exchange Bonds.

This result is not only in accordance with the payment formula provisions of the Injunctions, it is consistent with the *Pari Passu* Clause and its Equal Treatment Provision. In saying this, the court recognizes that the debt now owed to the exchange bondholders is of a different amount and of a different nature from what is owed to plaintiffs. What is owed in December 2012 to exchange bondholders are interest payments, which are part of a series which will go on being paid until the maturity of the Exchange Bonds. The debt owed to plaintiffs is accelerated principal plus accrued interest. But it is obvious that a *Pari Passu* Clause does not require that the debts in question be in the same amount or of the same nature. What is required is that the obligations under the various debts are complied with to the same extent, rather than having the obligations on one debt honored and the obligations on the other debt repudiated, as has occurred in the present case.

Of course, what is being done here is not literally to carry out the *Pari Passu* Clause, as would be done in a normal commercial situation, but to provide a remedy for Argentina's violation of the Clause. NML Capital v. The Republic of Argentina, No. 12-105(L), at 19 n.10 (2d Cir. Oct. 26, 2012)(hereinafter "Opinion"). Yet, the remedy must bear some reasonable relation to the *Pari Passu* Clause in order to be a sensible remedy. One

definition of *pari passu* in Black's Law Dictionary (8th ed. 2004) is "proportionally," obviously referring to the use of the same proportion in paying down two kinds of debts. This is clearly reflected in the Ratable Payment provisions in the Injunctions, as correctly interpreted. These provisions properly start with the fact that if 100% of what is currently due to the exchange bondholders is paid, then 100% of what is currently due to plaintiffs must also be paid. The payment to plaintiffs must surely relate to a debt actually due to them. And this leads to the problem which this court finds in the second hypothetical posed by the Court of Appeals. There is simply no debt owed to plaintiffs on terms providing for payments of 1% of some sum of money, spaced out over 100 installments of 1% each. The second hypothetical of the Court of Appeals would involve a radical departure from the payment formula in the Injunctions and from the *Pari Passu* Clause.

Again, there is no suggestion of interfering with what the exchange bondholders are due to be paid. The question raised by the Court of Appeals relates solely to how much plaintiffs are to be paid at the time exchange bondholders are paid. But the fact is that the amount owed to plaintiffs by Argentina is the accelerated principal plus accrued interest. Argentina owes this and owes it now. No one has suggested any basis in contract or in policy why Argentina deserves to have payment of the amount due to plaintiffs spread over some period of time.

Moreover, and this is most important, to apply the second hypothetical of the Court of Appeals and spread payment to plaintiffs over a period of time, would be a far cry from a proper remedy for the flagrant and intentional contract violations committed by Argentina.

Argentina and certain exchange bondholders argue that it is unjust for them to be receiving thirty cents on the dollar by virtue of the Exchange Bonds, while plaintiffs receive full payment pursuant to the court rulings. The Court of Appeals essentially answered this argument (Opinion at 26 n.15). However, some further discussion is in order.

In accepting the exchange offers of thirty cents on the dollar, the exchange bondholders bargained for certainty and the avoidance of the burden and risk of litigating their rights on the FAA Bonds. However, they knew full well that other owners of FAA Bonds were seeking to obtain full payment of the amounts due on such bonds through persisting in the litigation. Indeed, the exchange bondholders were able to watch year after year while plaintiffs in the litigation pursued methods of recovery against Argentina which were largely unsuccessful. However, decisions have now been handed down by the District Court and the Court of Appeals based on the *Pari Passu* Clause, which give promise of providing plaintiffs with full recovery of the amounts due to them on their FAA Bonds. This is hardly an injustice. The exchange bondholders made the choice not to pursue the route which plaintiffs have pursued. Moreover, it is hardly an injustice to have legal rulings which, at long last, mean that

Argentina must pay the debts which it owes. After ten years of litigation this is a just result.

Third Parties

It is the intention of the court to properly apply Rule 65(d) of the Federal Rules of Civil Procedure. This Rule provides that an injunction binds the parties, the parties' agents, and other persons who are in active concert or participation with the parties or their agents. It is further provided that an injunction binds these people only if they receive actual notice of the injunction.

The issue arises because of the need to ensure enforcement of the Injunctions' requirement that payments are to be made on the Exchange Bonds only if appropriate payments are made concurrently or in advance to plaintiffs. The Court of Appeals noted that the District Court was invoking Rule 65(d), "Anticipating that Argentina would refuse to comply with the Injunctions and in order to facilitate payment." It goes without saying that if Argentina is able to make the payments on the Exchange Bonds without making the payments to plaintiffs, the District Court and Court of Appeals' rulings and the Injunctions will be entirely for naught. To avoid this, it is necessary that the process for making payments on the Exchange Bonds be covered by the Injunctions, and that the parties participating in that process be so covered.

The February 23, 2012 Injunctions contain a provision prohibiting Argentina from taking any action to evade the directives of the Injunctions and further prohibiting Argentina from altering or amending the processes or specific transfer mechanisms by which it makes payments on the Exchange Bonds, without obtaining prior approval of the court.

The process and the parties involved in making payments on the Exchange Bonds are as follows. Argentina transfers funds to the Bank of New York Mellon (“BNY”), which is the indenture trustee in a Trust Indenture of 2005.² Presumably there is a similar indenture for the 2010 exchange offer. BNY then forwards the funds to the “registered owner” of the Exchange Bonds. There are two registered owners for the 2005 and 2010 Exchange Bonds. One is Cede & Co. and the other is the Bank of New York Depository (“BNY Depository”). Cede and BNY Depository transfer the funds to a “clearing system” such as the Depository Trust Company (“DTC”). The funds are then deposited into financial institutions, apparently banks, which then transfer the funds to their customers who are the beneficial interest holders of the bonds.

Plaintiffs assert that under Rule 65(d), the Injunctions should bind Argentina, the indenture trustee, the registered owners, and the clearing system, whoever they are. It is probably true that these parties are not all

² There is apparently a dispute as to whether this payment takes place in Argentina or the United States. However, BNY is surely a United States entity. The rest of the process, without question takes place in the United States.

agents of Argentina, but they surely are “in active concert or participation” with Argentina in processing the payments from Argentina to the exchange bondholders.

There is a problem under Article 4A of the U.C.C. about including intermediary banks. But plaintiffs address this in seeking a carve-out in the Injunctions for such intermediary banks. Plaintiffs are also not requesting that the financial institutions receiving funds from the DTC be bound by the Injunctions.

It would appear that plaintiffs have requested that a reasonable set of parties be bound by the Injunctions, and this is in compliance with Rule 65(d).

BNY, and to some extent others on the above list, object to any application of Rule 65(d) to them. Particularly BNY strenuously asserts that it has duties as indenture trustee, and these duties should be the beginning and the end of its responsibilities.

These arguments miss the point. If Argentina complies with the rulings of the Court of Appeals, there will be no problem about funds destined for exchange bondholders being deposited with BNY and going up the chain until they arrive in the hands of such bondholders. But if Argentina attempts to make payments to the exchange bondholders, contrary to the ruling of the Court of Appeals and thus contrary to law, this would not involve the normal and proper situation dealt with by BNY under the indenture, and dealt with by

others in the chain. Under these circumstances, these third parties should properly be held responsible for making sure that their actions are not steps to carry out a law violation, and they should avoid taking such steps.

The Order

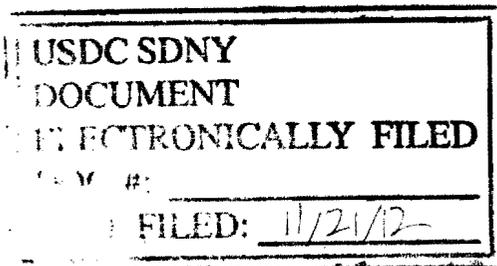
Since the Court of Appeals has essentially affirmed the February 23, 2012 Order containing the Injunctions, that Order will remain in effect, subject to the following qualifications. In paragraph 2a, there will be an appropriate reference to the definitions contained in the current opinion, which does not change the relevant wording but further defines it.

The court believes that plaintiffs properly recommend specific wording listing the parties bound by the Order under Rule 65(d). Accordingly, that listing will be included.

Dated: New York, New York
November 21, 2012



Thomas P. Griesa
U. S. District Judge



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x	:	
NML CAPITAL, LTD.,	:	
	:	
Plaintiff,	:	<u>OPINION</u>
	:	08 Civ. 6978 (TPG)
- against -	:	09 Civ. 1707 (TPG)
	:	09 Civ. 1708 (TPG)
REPUBLIC OF ARGENTINA,	:	
	:	
Defendants.	:	
-----x	:	

On March 5, 2012, this court signed an order staying the effect of the February 23, 2012 Order pending Argentina’s appeal. Specifically, the stay was to remain in effect until the Court of Appeals issued its mandate disposing of Argentina’s appeal. However, the March 5, 2012 Order contained the following provision in paragraph 2:

2. To secure Plaintiffs’ rights during the pendency of the Republic’s appeals of the February 23, 2012 Orders to the Second Circuit, it is ordered that the Republic shall not during the pendency of the appeal to the Second Circuit take any action to evade the directives of the February 23, 2012 Orders in the event they are affirmed, render them ineffective in the event they are affirmed, or diminish the Court’s ability to supervise compliance with the February 23, 2012 Orders in the event they are affirmed, including without limitation, altering or amending the processes or specific transfer mechanisms by which it makes payments on the Exchange Bonds, without prior approval of the Court.

Finally, the concluding paragraph 4 of the March 5, 2012 Order provided:

4. This Court shall retain jurisdiction to monitor and enforce this ORDER, and, on notice to the parties, to modify, amend, or extend it as justice requires to achieve its equitable purposes and account

for materially changed circumstances, including any failure by the Republic to abide by Paragraph (2) herein.

The February 23, 2012 Order was affirmed by the Court of Appeals on October 26, 2012, subject to a remand to the District Court for clarification on two specified questions. The District Court is this day filing an opinion responding to the questions raised by the Court of Appeals. The matter will now return to the Court of Appeals to deal with the District Court's responses to the questions posed. After that, there will be a final ruling by the Court of Appeals. However, it should be made clear that the questions posed to the District Court did not affect the basic ruling of the Court of Appeals that there can be no payments by Argentina to exchange bondholders without an appropriate payment to plaintiffs.

Under these circumstances, the District Court would ordinarily leave the March 5, 2012 Stay in effect until the Court of Appeals has finished its work. However, an extraordinary circumstance has arisen, which clearly demands judicial action, and that action can only be taken now by the District Court, where the case now resides.

From the moment of the October 26, 2012 Court of Appeals' decision, the highest officials in Argentina have declared that Argentina would pay the exchange bondholders but would not pay one dollar to holders of the original FAA Bonds. President Cristina Kirchner made such a statement. The Minister

of Economy, Lorenzino, declared that despite any ruling to come out of any jurisdiction, Argentina would not pay the FAA bondholders.

On November 9, 2012, the court met with counsel and asked the attorney for Argentina if the press reports of the above statements were correct. In response, the attorney turned to other subjects, meaning that the press reports were not denied. At the November 9, 2012 meeting, the court reminded all concerned that Argentina is subject to the jurisdiction of the federal courts in New York, to which Argentina has consented. For the past ten years Argentina has repeatedly submitted matters to the District Court and the Court of Appeals, and received what was undoubtedly fair treatment, since Argentina prevailed in most matters. The court went on to urge that the Argentine government should back away from these ill-advised threats to defy the current court rulings, and that any defiance of the rulings of the courts would not only be illegal but would represent the worst kind of irresponsibility in dealing with the judiciary.

This did not stop the highest Argentine officials who have continued to the present time their inflammatory declarations that the court rulings will not be obeyed.

These statements are a violation of paragraph 2 of the March 5, 2012 Stay Order. In that paragraph, Argentina is prohibited, during the appeal, from taking any action to evade the February 23, 2012 Order in the event it is affirmed, and is further prohibited from taking any action to diminish the

court's ability to supervise compliance with the February 23, 2012 Order in the event of affirmance. Pursuant to paragraph 4 of the Stay Order, the Court retains jurisdiction to deal with materially changed circumstances, including any failure by Argentina to abide by paragraph 2.

It could be argued that the statements of the high Argentine officials do not literally constitute the kind of "action" referred to in paragraph 2. But the essential issue goes beyond this.

Surely an extraordinary circumstance of the most serious nature arises from continuous declarations by the President of Argentina and cabinet officers, that Argentina will not honor or carry out the current rulings of the District Court and Court of Appeals in the litigation to which Argentina is a party.

It is the view of the District Court that these threats of defiance cannot go by unheeded, and that action is called for.

After due consideration, the court has resolved that the following steps should be taken. The court believes that the Order regarding Ratable Payments should be put into effect at the earliest possible time. The less time Argentina is given to devise means for evasion, the more assurance there is against such evasion. Therefore, the provision in the March 5, 2012 Order staying the carrying out of the February 23, 2012 Order is vacated and it is directed that the February 23, 2012 Order, as now somewhat modified, is to be

carried out forthwith. This means that the February 23, 2012 Order will be applicable to the interest payments made to exchange bondholders in December 2012. In order to avoid confusion and to give some reasonable time to arrange mechanics, the court specifies that the precise interest payment involved will be that of December 15, 2012. Counsel for Argentina is directed to consult with counsel for plaintiffs in order to arrive at the exact amount to be paid to plaintiffs and other mechanics.

Since the Court of Appeals has not finally spoken on the subject of the calculation of the payment to plaintiffs, such payment is to be made into an escrow account, so that any adjustments required by the final Court of Appeals' ruling can be made. The court will consult with counsel about the proper party or institution to hold the escrow account.

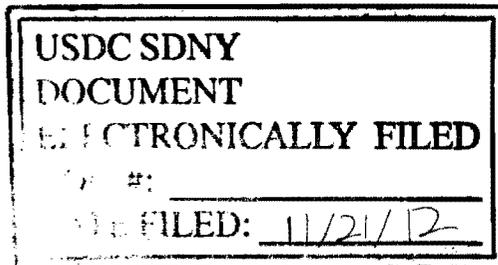
Copies of this opinion, together with copies of the Amended February 23, 2012 Order, such amendment to be dated as of this date, will be promptly provided to the parties involved in payments to exchange bondholders, who will be on notice that the December 15, 2012 interest payments due to exchange bondholders cannot be made unless Argentina certifies that it is making the appropriate payment for the benefit of plaintiffs to the escrow account, either in advance of or concurrent with any payment to exchange bondholders.

The Amended February 23, 2012 Order is being issued today. It will be called "Amended February 23, 2012 Order," and will be dated today, November 21, 2012.

Dated: New York, New York
November 21, 2012



Thomas P. Griesa
U. S. District Judge



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
NML CAPITAL, LTD.,	:	
	:	<u>ORDER</u>
Plaintiff,	:	08 Civ. 6978 (TPG)
	:	09 Civ. 1707 (TPG)
- against -	:	09 Civ. 1708 (TPG)
REPUBLIC OF ARGENTINA,	:	
	:	
Defendants.	:	
-----X	:	

AMENDED FEBRUARY 23, 2012 ORDER

WHEREAS, in an Order dated December 7, 2011, this Court found that, under Paragraph 1(c) of the 1994 Fiscal Agency Agreement (“FAA”), the Republic is “required . . . at all times to rank its payment obligations pursuant to NML’s Bonds at least equally with all the Republic’s other present and future unsecured and unsubordinated External Indebtedness.”

WHEREAS, in its December 7, 2011 Order, this Court granted partial summary judgment to NML on its claim that the Republic repeatedly has breached, and continues to breach, its obligations under Paragraph 1(c) of the FAA by, among other things, “ma[king] payments currently due under the Exchange Bonds, while persisting in its refusal to satisfy its payment obligations currently due under NML’s Bonds.”

And WHEREAS NML Capital, Ltd. (“NML”) has filed a renewed motion for equitable relief as a remedy for such violations pursuant to Rule 65(d) of the Federal Rules of Civil Procedure and the Court’s inherent equitable powers.

Upon consideration of NML’s renewed motion, the response of the Republic of Argentina (the “Republic”) thereto, NML’s reply, and all other arguments submitted to the Court in the parties’ papers and at oral argument, it is HEREBY ORDERED that:

1. It is DECLARED, ADJUDGED, and DECREED that NML is irreparably harmed by and has no adequate remedy at law for the Republic’s ongoing violations of Paragraph 1(c) of the FAA, and that the equities and public interest strongly support issuance of equitable relief to prevent the Republic from further violating Paragraph 1(c) of the FAA, in that:

- a. Absent equitable relief, NML would suffer irreparable harm because the Republic’s payment obligations to NML would remain debased of their contractually-guaranteed status, and NML would never be restored to the position it was promised that it would hold relative to other creditors in the event of default.
- b. There is no adequate remedy at law for the Republic’s ongoing violations of Paragraph 1(c) of the FAA because the Republic has made clear – indeed, it has codified in Law 26,017 and Law

26,547 – its intention to defy any money judgment issued by this Court.

- c. The balance of the equities strongly supports this Order in light of the clear text of Paragraph 1(c) of the FAA and the Republic's repeated failures to make required payments to NML. In the absence of the equitable relief provided by this Order, the Republic will continue to violate Paragraph 1(c) with impunity, thus subjecting NML to harm. On the other hand, the Order requires of the Republic only that which it promised NML and similarly situated creditors to induce those creditors to purchase the Republic's bonds. Because the Republic has the financial wherewithal to meet its commitment of providing equal treatment to both NML (and similarly situated creditors) and those owed under the terms of the Exchange Bonds, it is equitable to require it to do so. Indeed, equitable relief is particularly appropriate here, given that the Republic has engaged in an unprecedented, systematic scheme of making payments on other external indebtedness, after repudiating its payment obligations to NML, in direct violation of its contractual commitment set forth in Paragraph 1(c) of the FAA.
- d. The public interest of enforcing contracts and upholding the rule of law will be served by the issuance of this Order, particularly here, where creditors of the Republic have no

recourse to bankruptcy regimes to protect their interests and must rely upon courts to enforce contractual promises. No less than any other entity entering into a commercial transaction, there is a strong public interest in holding the Republic to its contractual obligations.

2. The Republic accordingly is permanently ORDERED to specifically perform its obligations to NML under Paragraph 1(c) of the FAA as follows:

- a. Whenever the Republic pays any amount due under terms of the bonds or other obligations issued pursuant to the Republic's 2005 or 2010 Exchange Offers, or any subsequent exchange of or substitution for the 2005 and 2010 Exchange Offers that may occur in the future (collectively, the "Exchange Bonds"), the Republic shall concurrently or in advance make a "Ratable Payment" to NML (as defined below and as further defined in the Court's Opinion of November 21, 2012).
- b. Such "Ratable Payment" that the Republic is ORDERED to make to NML shall be an amount equal to the "Payment Percentage" (as defined below) multiplied by the total amount currently due to NML in respect of the bonds at issue in these cases (08 Civ. 6978, 09 Civ. 1707, and 09 Civ. 1708), including pre-judgment interest (the "NML Bonds").
- c. Such "Payment Percentage" shall be the fraction calculated by dividing the amount actually paid or which the Republic

- intends to pay under the terms of the Exchange Bonds by the total amount then due under the terms of the Exchange Bonds.
- d. The Republic is ENJOINED from violating Paragraph 1(c) of the FAA, including by making any payment under the terms of the Exchange Bonds without complying with its obligation pursuant to Paragraph 1(c) of the FAA by concurrently or in advance making a Ratable Payment to NML.
- e. Within three (3) days of the issuance of this ORDER, the Republic shall provide copies of this ORDER to all participants in the payment process of the Exchange Bonds (“Participants”). Such Participants shall be bound by the terms of this ORDER as provided by Rule 65(d)(2) and prohibited from aiding and abetting any violation of this ORDER, including any further violation by the Republic of its obligations under Paragraph 1(c) of the FAA, such as any effort to make payments under the terms of the Exchange Bonds without also concurrently or in advance making a Ratable Payment to NML.
- f. “Participants” refer to those persons and entities who act in active concert or participation with the Republic, to assist the Republic in fulfilling its payment obligations under the Exchange Bonds, including: (1) the indenture trustees and/or registrars under the Exchange Bonds (including but not limited to The Bank of New York Mellon f/k/a/ The Bank of New York);

(2) the registered owners of the Exchange Bonds and nominees of the depositaries for the Exchange Bonds (including but not limited to Cede & Co. and The Bank of New York Depository (Nominees) Limited) and any institutions which act as nominees; (3) the clearing corporations and systems, depositaries, operators of clearing systems, and settlement agents for the Exchange Bonds (including but not limited to the Depository Trust Company, Clearstream Banking S.A., Euroclear Bank S.A./N.V. and the Euroclear System); (4) trustee paying agents and transfer agents for the Exchange Bonds (including but not limited to The Bank of New York (Luxembourg) S.A. and The Bank of New York Mellon (including but not limited to the Bank of New York Mellon (London))); and (5) attorneys and other agents engaged by any of the foregoing or the Republic in connection with their obligations under the Exchange Bonds.

- g. Nothing in this ORDER shall be construed to extend to the conduct or actions of a third party acting solely in its capacity as an “intermediary bank,” under Article 4A of the U.C.C. and N.Y.C.L.S. U.C.C. § 4-A-104, implementing a funds transfer in connection with the Exchange Bonds.
- h. Any non-party that has received proper notice of this ORDER, pursuant to Rule 65(d)(2), and that requires clarification as to

its duties, if any, under this ORDER may make an application to this Court, with notice to the Republic and NML. Such clarification will be promptly provided.

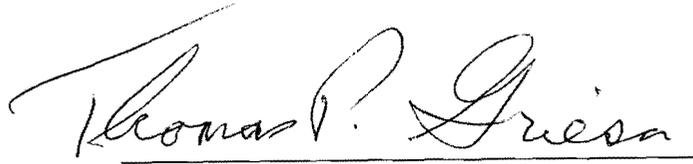
- i. Concurrently or in advance of making a payment on the Exchange Bonds, the Republic shall certify to the Court and give notice of this certification to its Participants, and to counsel for NML, that the Republic has satisfied its obligations under this ORDER to make a Ratable Payment to NML.

3. NML shall be entitled to discovery to confirm the timing and amounts of the Republic's payments under the terms of the Exchange Bonds; the amounts the Republic owes on these and other obligations; and such other information as appropriate to confirm compliance with this ORDER;

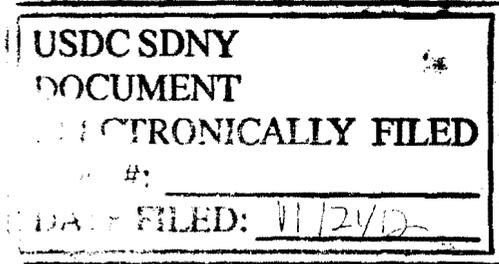
4. The Republic is permanently PROHIBITED from taking action to evade the directives of this ORDER, render it ineffective, or to take any steps to diminish the Court's ability to supervise compliance with the ORDER, including, but not limited to, altering or amending the processes or specific transfer mechanisms by which it makes payments on the Exchange Bonds, without obtaining prior approval by the Court;

5. This Court shall retain jurisdiction to monitor and enforce this ORDER, and to modify and amend it as justice requires to achieve its equitable purposes and to account for changing circumstances.

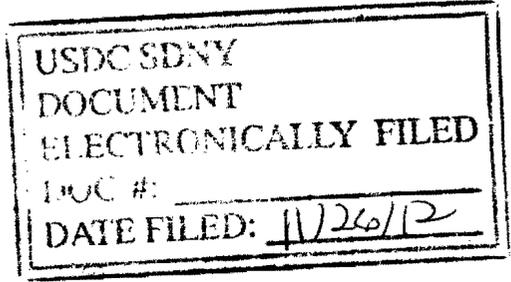
Dated: New York, New York
November, 21 2012



Thomas P. Griesa
U.S. District Judge



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



OLIFANT FUND, LTD.,
Plaintiff,
- against -
REPUBLIC OF ARGENTINA,
Defendant.

ORDER
10 Civ. 9587 (TPG)

~~REPEATED~~ AMENDED FEBRUARY 23, 2012 ORDER

Upon consideration of the motion by Olifant Fund, Ltd. ("Olifant") for partial summary judgment pursuant to Rule 56(a) of the Federal Rules of Civil Procedure ("FRCP") and for injunctive relief and/or specific performance pursuant to FRCP 65(d) and the court's inherent equitable powers, the response of the Republic of Argentina (the "Republic") thereto, and all other arguments submitted to the court in the parties' papers and at the hearing on this matter;

WHEREAS the uncontested facts establish that:

1. The Republic issued bonds pursuant to a 1994 Fiscal Agency Agreement ("FAA").
2. Paragraph 1(c) of the FAA provides, among other things, that:

The Securities [i.e., the bonds] will constitute . . . direct, unconditional, unsecured and unsubordinated obligations of the Republic and shall at all times rank pari passu and without any preference among themselves. The payment obligations of the Republic under the Securities shall at all times rank at least equally with all its other present and future unsecured and unsubordinated External Indebtedness (as defined in this Agreement).

3. The bonds issued pursuant to the FAA contain the following clause, as quoted in *EM Ltd. v. The Republic of Argentina*, 720 F. Supp. 2d 273, 278 (S.D.N.Y. 2010):

The Republic has in the Fiscal Agency Agreement irrevocably submitted to the jurisdiction of any New York state or federal court sitting in the Borough of Manhattan, The City of New York and the courts of the Republic of Argentina (the "Specified Courts") over any suit, action, or proceeding against it or its properties, assets or revenues with respect to the Securities of this Series or the Fiscal Agency Agreement (a "Related Proceeding") except with respect to any actions brought under the United States federal securities laws. The Republic has in the Fiscal Agency Agreement waived any objection to Related Proceedings in such courts whether on the grounds of venue, residence or domicile or on the ground that the Related Proceedings have been brought in an inconvenient forum. The Republic agrees that a final nonappealable judgment in any such Related Proceeding (the "Related Judgment") shall be conclusive and binding upon it and may be enforced in any Specified Court or in any other courts to the jurisdiction of which the Republic is or may be subject (the "Other Courts"), by a suit upon such judgment.

4. Olifant owns bonds pursuant to the FAA ("Olifant's Bonds").
5. The Republic issued other bonds in its 2005 and 2010 Exchange Offers ("Exchange Bonds"), thereby creating new unsecured and unsubordinated External Indebtedness.
6. The Republic has satisfied the payment obligations that have come due to date under the Exchange Bonds.
7. The Republic has not paid principal or interest on Olifant's Bonds since December, 2001.
8. Olifant has brought the above-captioned action to recover on the defaulted bonds, pursuant to its legal rights, and also pursuant to the express undertakings in the bonds.

9. On February 10, 2005, Argentina enacted Law 26,017, providing that the “national State shall be prohibited from conducting any type of in-court, out-of-court or private settlement with respect to bonds” that were eligible to participate in the 2005 Exchange Offer.

10. On December 9, 2009, Argentina enacted Law 26,547, which, inter alia, suspended the effect of Law 26,017 for a period of time during which the 2010 Exchange Offer was launched, closed, and consummated. Law 26,547 also provides that the “Republic of Argentina . . . is prohibited to offer holders of government bonds [including those issued pursuant to the FAA] who may have initiated judicial, administrative, arbitration or any other type of action [to enforce their rights], more favorable treatment than what is offered to those who have not done so.”

WHEREAS Olifant claims that the Republic breached (and continues to breach) its contractual duty to rank its payment obligations under Olifant’s Bonds at least equally with all its other present and future unsecured and unsubordinated External Indebtedness, Olifant seeks summary judgment on the Republic’s liability for that breach, and Olifant seeks an injunction that would restore it to its bargained-for position among other creditors;

It is HEREBY ORDERED that:

1. The motion for partial summary judgment pursuant to Rule 56(a) is GRANTED.

2. It is DECLARED, ADJUDGED, and DECREED that the Republic is required under Paragraph 1(c) of the FAA at all times to rank its payment obligations

pursuant to Olifant's Bonds at least equally with all the Republic's other present and future unsecured and unsubordinated External Indebtedness.

3. It is DECLARED, ADJUDGED, and DECREED that the Republic's payment obligations on the bonds include its payment obligations to bondholders who have brought actions to recover on their defaulted bonds, and on judgments entered pursuant to judicial action brought by bondholders.

4. It is DECLARED, ADJUDGED, and DECREED that the Republic violates Paragraph 1(c) of the FAA whenever it lowers the rank of its payment obligations under Olifant's Bonds below that of any other present or future unsecured and unsubordinated External Indebtedness, including (and without limitation) by relegating Olifant's Bonds to a non-paying class by failing to pay the obligations currently due under Olifant's Bonds while at the same time making payments currently due to holders of other unsecured and unsubordinated External Indebtedness or by legislative enactment.

5. It is DECLARED, ADJUDGED, and DECREED that the Republic lowered the rank of Olifant's Bonds in violation of Paragraph 1(c) of the FAA when it made payments currently due under the Exchange Bonds, while persisting in its refusal to satisfy its payment obligations currently due under Olifant's Bonds.

6. It is DECLARED, ADJUDGED, and DECREED that the Republic lowered the rank of Olifant's Bonds in violation of Paragraph 1(c) of the FAA when it enacted Law 26,017 and Law 26,547.

7. It is DECLARED, ADJUDGED, and DECREED that the aforesaid laws were in direct violation of the right of Olifant under the FAA and the bond agreements to bring a legal action in court to recover on the defaulted bonds.

8. It is DECLARED, ADJUDGED, and DECREED that Olifant is irreparably harmed by and has no adequate remedy at law for the Republic's ongoing violations of Paragraph 1(c) of the FAA, and that the equities and public interest strongly support issuance of equitable relief to prevent the Republic from further violating Paragraph 1(c) of the FAA, in that:

- a. Absent equitable relief, Olifant would suffer irreparable harm because the Republic's payment obligations to Olifant would remain debased of their contractually-guaranteed status, and Olifant would never be restored to the position it was promised that it would hold relative to other creditors in the event of default.
- b. There is no adequate remedy at law for the Republic's ongoing violations of Paragraph 1(c) of the FAA because the Republic has made clear—indeed, it has codified in Law 26,017 and Law 26,547—its intention to defy any money judgment issued by this Court.
- c. The balance of the equities strongly supports this Order in light of the clear text of Paragraph 1(c) of the FAA and the Republic's repeated failures to make required payments to Olifant. In the absence of the equitable relief provided by this Order, the Republic will continue to violate Paragraph 1(c) with impunity, thus subjecting Olifant to harm. On the other hand, the Order requires of the Republic only that which it promised Olifant and similarly situated creditors to induce those creditors to purchase the

Republic's bonds. Because the Republic has the financial wherewithal to meet its commitment of providing equal treatment to both Olifant (and similarly situated creditors) and those owed under the terms of the Exchange Bonds, it is equitable to require it to do so. Indeed, equitable relief is particularly appropriate here, given that the Republic has engaged in an unprecedented, systematic scheme of making payments on other external indebtedness, after repudiating its payment obligations to Olifant, in direct violation of its contractual commitment set forth in Paragraph 1(c) of the FAA.

- d. The public interest of enforcing contracts and upholding the rule of law will be served by the issuance of this Order, particularly here, where creditors of the Republic have no recourse to bankruptcy regimes to protect their interests and must rely upon courts to enforce contractual promises. No less than any other entity entering into a commercial transaction, there is a strong public interest in holding the Republic to its contractual obligations.

9. The Republic accordingly is permanently ORDERED to specifically perform its obligations to Olifant under Paragraph 1(c) of the FAA as follows:

- a. Whenever the Republic pays any amount due under terms of the bonds or other obligations issued pursuant to the Republic's 2005 or 2010 Exchange Offers, or any subsequent exchange of or substitution for the 2005 and 2010 Exchange Offers that may occur

in the future (collectively, the “Exchange Bonds”), the Republic shall concurrently or in advance make a “Ratable Payment” to Olifant (as defined below and as further defined in the Court’s Opinion of November 21, 2012 in the *NML Capital, Ltd. v. The Republic of Argentina* cases, Nos. 08 Civ. 6978, 09 Civ. 1707, and 09 Civ. 1708).

- b. Such “Ratable Payment” that the Republic is ORDERED to make to Olifant shall be an amount equal to the “Payment Percentage” (as defined below) multiplied by the total amount currently due to Olifant in respect of the bonds at issue in this case (10 Civ. 9587), including pre-judgment interest (the “Olifant Bonds”).
- c. Such “Payment Percentage” shall be the fraction calculated by dividing the amount actually paid or which the Republic intends to pay under the terms of the Exchange Bonds by the total amount then due under the terms of the Exchange Bonds.
- d. The Republic is ENJOINED from violating Paragraph 1(c) of the FAA, including by making any payment under the terms of the Exchange Bonds without complying with its obligation pursuant to Paragraph 1(c) of the FAA by concurrently or in advance making a Ratable Payment to Olifant.
- e. Within three (3) days of the issuance of this ORDER, the Republic shall provide copies of this ORDER to all participants in the payment process of the Exchange Bonds (“Participants”). Such

Participants shall be bound by the terms of this ORDER as provided by Rule 65(d)(2) and prohibited from aiding and abetting any violation of this ORDER, including any further violation by the Republic of its obligations under Paragraph 1(c) of the FAA, such as any effort to make payments under the terms of the Exchange Bonds without also concurrently or in advance making a Ratable Payment to Olifant.

- f. “Participants” refer to those persons and entities who act in active concert or participation with the Republic, to assist the Republic in fulfilling its payment obligations under the Exchange Bonds, including: (1) the indenture trustees and/or registrars under the Exchange Bonds (including but not limited to The Bank of New York Mellon f/k/a/ The Bank of New York); (2) the registered owners of the Exchange Bonds and nominees of the depositaries for the Exchange Bonds (including but not limited to Cede & Co. and The Bank of New York Depository (Nominees) Limited) and any institutions which act as nominees; (3) the clearing corporations and systems, depositaries, operators of clearing systems, and settlement agents for the Exchange Bonds (including but not limited to the Depository Trust Company, Clearstream Banking S.A., Euroclear Bank S.A./N.V. and the Euroclear System); (4) trustee paying agents and transfer agents for the Exchange Bonds (including but not limited to The Bank of New

York (Luxembourg) S.A. and The Bank of New York Mellon (including but not limited to the Bank of New York Mellon (London)); and (5) attorneys and other agents engaged by any of the foregoing or the Republic in connection with their obligations under the Exchange Bonds.

- g. Nothing in this ORDER shall be construed to extend to the conduct or actions of a third party acting solely in its capacity as an “intermediary bank,” under Article 4A of the U.C.C. and N.Y.C.L.S. U.C.C. § 4-A-104, implementing a funds transfer in connection with the Exchange Bonds.
- h. Any non-party that has received proper notice of this ORDER, pursuant to Rule 65(d)(2), and that requires clarification as to its duties, if any, under this ORDER may make an application to this Court, with notice to the Republic and Olifant. Such clarification will be promptly provided.
- i. Concurrently or in advance of making a payment on the Exchange Bonds, the Republic shall certify to the Court and give notice of this certification to its Participants, and to counsel for Olifant, that the Republic has satisfied its obligations under this ORDER to make a Ratable Payment to Olifant.

10. Olifant shall be entitled to discovery to confirm the timing and amounts of the Republic’s payments under the terms of the Exchange Bonds; the amounts the

Republic owes on these and other obligations; and such other information as appropriate to confirm compliance with this ORDER;

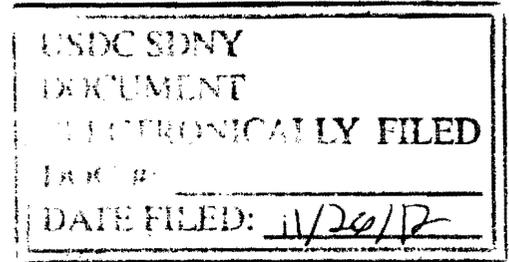
11. The Republic is permanently PROHIBITED from taking action to evade the directives of this ORDER, render it ineffective, or to take any steps to diminish the Court's ability to supervise compliance with the ORDER, including, but not limited to, altering or amending the processes or specific transfer mechanisms by which it makes payments on the Exchange Bonds, without obtaining prior approval by the Court;

12. This Court shall retain jurisdiction to monitor and enforce this ORDER, and to modify and amend it as justice requires to achieve its equitable purposes and to account for changing circumstances.

Dated: New York, New York
November 21, 2012


Thomas P. Griesa
U.S. District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
PABLO ALBERTO VARELA, *et al.*,

Plaintiffs,

No. 10 Civ. 5338 (TPG)

- against -

THE REPUBLIC OF ARGENTINA,

Defendant.
-----X

~~PROPOSED~~ **AMENDED FEBRUARY 23, 2012 ORDER**

WHEREAS, in an Order dated December 13, 2011, this Court found that, under Paragraph 1(c) of the 1994 Fiscal Agency Agreement (“FAA”), the Republic is “required . . . at all times to rank its payment obligations pursuant to Plaintiffs’ Bonds at least equally with all the Republic’s other present and future unsecured and unsubordinated External Indebtedness.”

WHEREAS, in its December 13, 2011 Order, this Court granted partial summary judgment to Plaintiffs on their claim that the Republic repeatedly has breached, and continues to breach, its obligations under Paragraph 1(c) of the FAA by, among other things, “ma[king] payments currently due under the Exchange Bonds, while persisting in its refusal to satisfy its payment obligations currently due under Plaintiffs’ Bonds.”

And WHEREAS Plaintiffs have filed a motion for equitable relief as a remedy for such violations pursuant to Rule 65(d) of the Federal Rules of Civil Procedure and the Court’s inherent equitable powers.

Upon consideration of Plaintiffs’ motion, the response of the Republic of Argentina

(the “Republic”) thereto, Plaintiffs’ reply, and all other arguments submitted to the Court in the parties’ papers and at oral argument, it is HEREBY ORDERED that:

1. It is DECLARED, ADJUDGED, and DECREED that Plaintiffs are irreparably harmed by and have no adequate remedy at law for the Republic’s ongoing violations of Paragraph 1(c) of the FAA, and that the equities and public interest strongly support issuance of equitable relief to prevent the Republic from further violating Paragraph 1(c) of the FAA, in that:

- a. Absent equitable relief, Plaintiffs would suffer irreparable harm because the Republic’s payment obligations to Plaintiffs would remain debased of their contractually-guaranteed status, and Plaintiffs would never be restored to the position they were promised that they would hold relative to other creditors in the event of default.
- b. There is no adequate remedy at law for the Republic’s ongoing violations of Paragraph 1(c) of the FAA because the Republic has made clear – indeed, it has codified in Law 26,017 and Law 26,547 – its intention to defy any money judgment issued by this Court.
- c. The balance of the equities strongly supports this Order in light of the clear text of Paragraph 1(c) of the FAA and the Republic’s repeated failures to make required payments to Plaintiffs. In the absence of the equitable relief provided by this Order, the Republic will continue to violate Paragraph 1(c) with impunity, thus subjecting Plaintiffs to harm. On the other hand, the Order requires of the Republic only that which it promised Plaintiffs and similarly situated creditors to induce those creditors to purchase the Republic’s bonds. Because the Republic has the financial wherewithal to meet its

commitment of providing equal treatment to both Plaintiffs (and similarly situated creditors) and those owed under the terms of the Exchange Bonds, it is equitable to require it to do so. Indeed, equitable relief is particularly appropriate here, given that the Republic has engaged in an unprecedented, systematic scheme of making payments on other external indebtedness, after repudiating its payment obligations to Plaintiffs, in direct violation of its contractual commitment set forth in Paragraph 1(c) of the FAA.

- d. The public interest of enforcing contracts and upholding the rule of law will be served by the issuance of this Order, particularly here, where creditors of the Republic have no recourse to bankruptcy regimes to protect their interests and must rely upon courts to enforce contractual promises. No less than any other entity entering into a commercial transaction, there is a strong public interest in holding the Republic to its contractual obligations.

2. The Republic accordingly is permanently ORDERED to specifically perform its obligations to Plaintiffs under Paragraph 1(c) of the FAA as follows:

- a. Whenever the Republic pays any amount due under terms of the bonds or other obligations issued pursuant to the Republic's 2005 or 2010 Exchange Offers, or any subsequent exchange of or substitution for the 2005 and 2010 Exchange Offers that may occur in the future (collectively, the "Exchange Bonds"), the Republic shall concurrently or in advance make a "Ratable Payment" to Plaintiffs (as defined below and as further defined in the Court's Opinion of November 21, 2012 in the *NML Capital, Ltd. v. The Republic of Argentina* cases, Nos. 08 Civ. 6978, 09 Civ. 1707, and 09 Civ. 1708).

- b. Such “Ratable Payment” that the Republic is ORDERED to make to Plaintiffs shall be an amount equal to the “Payment Percentage” (as defined below) multiplied by the total amount currently due to Plaintiffs in respect of the bonds at issue in these cases (09 Civ. 8757, 09 Civ. 10620, 10 Civ. 1602, 10 Civ. 3507, 10 Civ. 3970, 10 Civ. 4101, 10 Civ. 4782, 10 Civ. 8339), including pre-judgment interest (the “Plaintiffs’ Bonds”).
- c. Such “Payment Percentage” shall be the fraction calculated by dividing the amount actually paid or which the Republic intends to pay under the terms of the Exchange Bonds by the total amount then due under the terms of the Exchange Bonds.
- d. The Republic is ENJOINED from violating Paragraph 1(c) of the FAA, including by making any payment under the terms of the Exchange Bonds without complying with its obligation pursuant to Paragraph 1(c) of the FAA by concurrently or in advance making a Ratable Payment to Plaintiffs.
- e. Within three (3) days of the issuance of this ORDER, the Republic shall provide copies of this ORDER to all participants in the payment process of the Exchange Bonds (“Participants”). Such Participants shall be bound by the terms of this ORDER as provided by Rule 65(d)(2) and prohibited from aiding and abetting any violation of this ORDER, including any further violation by the Republic of its obligations under Paragraph 1(c) of the FAA, such as any effort to make payments under the terms of the Exchange Bonds without also concurrently or in advance making a Ratable Payment to Plaintiffs.
- f. “Participants” refer to those persons and entities who act in active concert or

- participation with the Republic, to assist the Republic in fulfilling its payment obligations under the Exchange Bonds, including: (1) the indenture trustees and/or registrars under the Exchange Bonds (including but not limited to The Bank of New York Mellon f/k/a/ The Bank of New York); (2) the registered owners of the Exchange Bonds and nominees of the depositaries for the Exchange Bonds (including but not limited to Cede & Co. and The Bank of New York Depository (Nominees) Limited) and any institutions which act as nominees; (3) the clearing corporations and systems, depositaries, operators of clearing systems, and settlement agents for the Exchange Bonds (including but not limited to the Depository Trust Company, Clearstream Banking S.A., Euroclear Bank S.A./N.V. and the Euroclear System); (4) trustee paying agents and transfer agents for the Exchange Bonds (including but not limited to The Bank of New York (Luxembourg) S.A. and The Bank of New York Mellon (including but not limited to the Bank of New York Mellon (London))); and (5) attorneys and other agents engaged by any of the foregoing or the Republic in connection with their obligations under the Exchange Bonds.
- g. Nothing in this ORDER shall be construed to extend to the conduct or actions of a third party acting solely in its capacity as an “intermediary bank,” under Article 4A of the U.C.C. and N.Y.C.L.S. U.C.C. § 4-A-104, implementing a funds transfer in connection with the Exchange Bonds.
- h. Any non-party that has received proper notice of this ORDER, pursuant to Rule 65(d)(2), and that requires clarification as to its duties, if any, under this ORDER may make an application to this Court, with notice to the Republic

and Plaintiffs. Such clarification will be promptly provided.

- i. Concurrently or in advance of making a payment on the Exchange Bonds, the Republic shall certify to the Court and give notice of this certification to its Participants, and to counsel for Plaintiffs, that the Republic has satisfied its obligations under this ORDER to make a Ratable Payment to Plaintiffs.

3. Plaintiffs shall be entitled to discovery to confirm the timing and amounts of the Republic's payments under the terms of the Exchange Bonds; the amounts the Republic owes on these and other obligations; and such other information as appropriate to confirm compliance with this ORDER;

4. The Republic is permanently PROHIBITED from taking action to evade the directives of this ORDER, render it ineffective, or to take any steps to diminish the Court's ability to supervise compliance with the ORDER, including, but not limited to, altering or amending the processes or specific transfer mechanisms by which it makes payments on the Exchange Bonds, without obtaining prior approval by the Court;

5. This Court shall retain jurisdiction to monitor and enforce this ORDER, and to modify and amend it as justice requires to achieve its equitable purposes and to account for changing circumstances.

Dated: New York, New York
Nov. 21, 2012



Thomas P. Griesa
U.S. District Judge