IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NML CAPITAL, LTD., AURELIUS CAPITAL MASTER, LTD., ACP MASTER, LTD., BLUE ANGEL CAPITAL I LLC, AURELIUS OPPORTUNITIES FUND II, LLC, PABLO ALBERTO VARELA, LILA INES BURGUENO, MIRTA SUSANA DIEGUEZ, MARIA EVANGELINA CARBALLO, LEANDRO DANIEL POMILIO, SUSANA AZQUERRETA, CARMEN IRMA LAVORATO, CESAR RUBEN VAZQUEZ, NORMA HAYDEE GINES, MARTA AZUCENA VAZQUEZ, OLIFANT FUND, LTD.,

Plaintiffs-Appellees,

v.

THE REPUBLIC OF ARGENTINA,

Defendant-Appellant.

Nos. 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)

ORAL ARGUMENT REQUESTED

OPPOSITION TO PLAINTIFFS-APPELLEES' EMERGENCY MOTION TO AMEND OR MODIFY THE STAY TO REQUIRE THE REPUBLIC OF ARGENTINA TO POST SECURITY IN ORDER TO MAINTAIN THE STAY

O'SHEA PARTNERS LLP
Sean F. O'Shea
Michael E. Petrella
521 Fifth Avenue, 25th Floor
New York, New York 10175
Tel.: (212) 682-4426

BOIES, SCHILLER & FLEXNER LLP
David Boies
David A. Barrett
Nicholas A. Gravante, Jr.
Steven I. Froot
575 Lexington Avenue
New York, New York 10022
Tel.: (212) 446-2300

Attorneys for the Exchange Bondholder Group

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

The Interested Non-Parties listed in Appendix A (collectively, the "Exchange Bondholder Group" or "EBG") submit this Opposition to Plaintiffs-Appellees' (collectively, "NML's") Emergency Motion to Amend or Modify the Stay to Require the Republic of Argentina (the "Republic") to Post Security in Order to Maintain the Stay (the "Motion").

PRELIMINARY STATEMENT

On November 28, 2012, this Court recognized the irreparable harm to the EBG that would result from various orders of the district court dated November 21, 2012 (the "Injunctions") and accordingly, ordered them stayed pending appeal (the "Stay"). This Court also expedited this appeal on its own initiative. Yet just two days later, at nearly 10:00 p.m. on Friday evening, November 30, 2012, NML filed the Motion, which seeks to eviscerate the protections afforded by the Stay by conditioning it on the Republic's willingness to post a bond of up to $1.3 billion.

The Motion is a desperate attempt at an end-run around a fair appellate process designed to carefully evaluate the effect of the Injunctions on the EBG, which consists of innocent third party creditors of the Republic who have already suffered substantial losses to facilitate its internationally supported debt restructuring. NML seeks to condition the continued protection of the EBG's constitutional rights on a separate party's willingness to post a bond—relief the district court has already considered and denied in its discretion. Such a result

would be manifestly unfair and contrary to the most elemental principles of equity; the EBG's rights should not be infringed upon based solely on whether ***another*** party is willing to take the steps necessary to safeguard them. Moreover, the bond sought by the Motion would constitute an unlawful attachment under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1601 *et seq.* ("FSIA").

NML's proffered rationale for the Motion—preventing the Republic from modifying the payment mechanism under the Exchange Bonds to evade the strictures of the Injunctions in the future—is unsupported and illusory. It relies entirely on speculative press reports that have already been discredited by the Republic and the EBG. Moreover, the possibility of so-called "evasion" is so impracticable as to be non-existent—a point emphasized in the EBG's November 26, 2012 submission to this Court, to which NML has conspicuously failed to respond. NML's real goal is transparent: to re-litigate the stay issue it already lost.[1] NML should not be allowed to continue leveraging and infringing the rights

[1] NML may also seek to increase the Republic's risk of default to profit from the credit default swaps it is widely reported to have purchased to hedge its bets in this litigation. Ex. 12: Around the Water Cooler, "Vulture fund goes for broke: it bet US $100 million on new default," *ambito.com*, Nov. 15, 2012 http://www.ambito.com/noticias/imprimir.asp?id=663458 (translated from Spanish to English); Ex. 25: Helen Popper & Daniel Bases, "Argentine Bondholders Seek Fresh Halt on Court Ordered Payments," *Reuters*, Nov. 26, 2012, http://www.reuters.com/article/2012/11/26/us-argentina-debt-idUSBRE8AP0LD20121126.

of the blameless EBG in pursuit of its private financial interests. The Motion should be denied.

BACKGROUND

A. The FAA Bonds and the Republic's Default

The relevant background is set forth in this Court's opinion dated October 26, 2012. Ex. 1: *NML Capital Ltd. v. Republic of Argentina*, --- F.3d ----, No. 12-CV-105(L), (2d Cir. Oct. 26, 2012) (the "2d Cir. Op.").[2] Between 1994 and 2001, the Republic issued debt securities (the "FAA Bonds") in the aggregate amount of approximately $82 billion. Ex. 1: 2d Cir. Op. at 4, 7. In 2001, the Republic defaulted on the FAA Bonds and has not since made any payments on them. *Id.* at 3. Indeed, domestic Argentine law (the "Lock Law") expressly bars any further payments on the FAA Bonds. Ex. 1: 2d Cir. Op., at 6.

B. The Exchange Offers

In 2005 and 2010, the Republic initiated exchange offers (the "Exchange Offers") allowing holders of the FAA Bonds to replace those instruments with new unsecured and unsubordinated external debt at a rate of 25 to 29 cents on the dollar (the "Exchange Bonds"). Ex. 1: 2d Cir. Op., at 5-6. Over 91% of the holders of FAA bonds (including the EBG) elected to participate in the Exchange Offers, allowing the Republic to restructure approximately $74.5 billion of debt. *Id.* at 6-

[2] All Exhibits cited herein are attached to the Declaration of Sean F. O'Shea dated December 3, 2012.

9. To date, the Republic has fully honored its obligations to the holders of the Exchange Bonds (the Exchange Bond Holders" or "EBHs"), including the EBG. *Id.* at 8. The EBG represents EBHs with total holdings of Exchange Bonds in excess of $1 billion. *See* Ex. 18: Declaration of David C. Hinman dated November 16, 2012 ¶ 2; Ex. 19: Declaration of Robert S. Koenigsberger dated November 16, 2012 ("Koenigsberger Dec.") ¶¶ 8-9; Ex. 20: Declaration of Robin A. Stelmach dated November 16, 2012 ¶ 3; Ex. 21: Declaration of James P. Taylor dated November 16, 2012 ¶ 3.

The payment mechanism for the Exchange Bonds is set forth in a 2005 Trust Indenture between the Republic and The Bank of New York ("BNY") as Trustee (the "Indenture").[3] Ex. 2: Declaration of Matias Isasa, executed on February 1, 2012 ("Isasa Dec.") ¶ 3. Pursuant to the Indenture, the Republic makes payments of principal and interest to the Trustee, which receives the payments in trust for the EBHs. Ex. 3: Indenture § 3.1. The Republic cannot modify the payment mechanism for the Exchange Bonds unilaterally—to do so, it would require the cooperation of BNYM and the Depository Trust Company ("DTC"), among others. Ex. 23: Declaration of Stephen Choi dated November 26, 2012 ("Supp. Choi Dec.") ¶¶ 5-13.

[3] The Trustee was originally BNY, and later The Bank of New York Mellon ("BNYM"). Ex. 2: Isasa Dec. ¶ 3.

C. The February 23 Injunction and the March 5 Stay

Between 2009 and 2011, Plaintiffs-Appellees commenced actions against the Republic for breach of its obligations under the FAA Bonds. Ex. 1: 2d Cir. Op. at 9. On February 23, 2012, the district court entered an injunction directing specific performance of the *pari passu* clause contained in the indenture for the FAA Bonds. That injunction imposed conditions on the Republic's ability to honor its obligations to the non-party EBG by providing that, before it could make any further payment to the EBHs, it must "concurrently or in advance make a 'Ratable Payment'" to Plaintiffs. Ex. 4: Order dated February 23, 2012 ¶ 2(a). It further enjoined "all parties involved, directly or indirectly, in advising upon, preparing, processing or facilitating any payment on the Exchange Bonds" from "aiding and abetting any violation … including any further violation by the Republic … such as any effort to make payments under the … Exchange Bonds without also concurrently or in advance making a Ratable Payment" to Plaintiffs. *Id.* ¶ 2(e).

The Republic filed a Notice of Appeal and, on March 5, 2012, the district court stayed the application of the injunction until this Court "ha[d] issued its mandate disposing of the Republic's appeal[.]" Ex. 5: Order dated March 5, 2012 ¶ 1. Although NML specifically requested that the district court require a bond as a condition of that stay, it declined to do so. Ex. 7: 2/23/12 Hearing, T51:22-

52:10. From March 5, 2012 through November 29, 2012, NML ***never*** sought a bond from this Court, even though the Republic's officials made repeated public statements indicating that they intended to abide by the Lock Law and would refuse to pay NML regardless of any U.S. court orders. *See, e.g.* Pl. Br., Ex. DD: Martin Kanenguiser, "Concern over debt case," *La Nacion*, dated July 13, 2012; *see also EM Ltd. v. Republic of Argentina*, 720 F. Supp. 2d 273, 304 (S.D.N.Y. 2010) (noting the pattern of "sheer willful defiance of the obligations of the Republic to honor the judgments of a federal court").

D. This Court's Consideration of the February 23, 2012 Injunction

On October 26, 2012, this Court entered an Order affirming the district court's decision to award specific performance of the FAA bonds' *pari passu* clause, but expressing concern with the application of the February 23, 2012 injunction to third parties generally. This Court's concerns about the potential effects on third parties were articulated broadly. Specifically, this Court stated:

> Oral argument and, to an extent, the briefs revealed some confusion as to how the challenged order will apply to third parties generally. Consequently, we believe the district court should more precisely determine the third parties to which the Injunctions will apply ***before we can decide*** whether the Injunctions' application to them is reasonable. Accordingly, we remand . . . for such further proceedings as are necessary to address the Injunctions' application to third parties . . . .

Ex. 1: 2d Cir. Op., at 28 (emphasis added). The Court thus "remand[ed] the Injunctions to the district court under *United States v. Jacobson*, [15 F.3d 19, 22 (2d Cir. 1994)] … for such further proceedings as are necessary to address [their] application to third parties" while expressly reserving decision on whether their application to third parties was lawful. *Id.*

E. The District Court's Actions on Remand

On November 9, 2012, the district court set a briefing schedule to consider the remanded issues. Ex. 6: 11/9/12 Hearing, T24:14-25:5. Although the EBG had not yet been heard, the district court allowed it only one week to prepare a written submission, which was filed on November 16, 2012.[4] That submission sought vacatur of the February 23 injunction and raised numerous constitutional arguments that emphasized the irreparable harm faced by the EBHs and the markets at large. Ex. 9: EBG Brief dated November 16, 2012 at 12-18.

Nonetheless, at approximately 9:00 p.m. on November 21, 2012, the night before the Thanksgiving holiday, the district court entered the Injunctions, which expanded upon the scope and applicability of the February 23 injunction. Effective

[4] The EBG had only ***three days*** to respond to arguments raised by Plaintiffs, whose submissions were filed the evening of November 12, 2012.

December 15, 2012, the district court also purported to lift the stay that had been in place since March 5, 2012, without any bond from the Republic.[5]

F. This Court's Entry of an Emergency Stay Pending Appeal

In light of the irreparable harm that would have been caused by the district court's lifting of the March 5, 2012 stay before this Court could rule on the Injunctions' application to third parties, on November 26, 2012 the EBG, Fintech Advisory Inc. (another EBH) and the Republic all filed emergency motions seeking a stay pending appeal. *See, e.g.*, Ex. 24: EBG Motion dated November 26, 2012. This Court granted the Stay on November 28, 2012, thereby restoring the *status quo ante* that had prevailed—without any complaint from NML—since March 5, 2012. Ex. 26: Order dated November 28, 2012. On its own initiative, the Court also expedited its consideration of the appeal. *Id.*

ARGUMENT

I. NML'S PROFFERED JUSTIFICATION FOR REQUIRING A BOND IS SPECULATIVE AND UNFOUNDED.

NML claims that a bond is necessary because the Republic is purportedly in the process of attempting to find ways to pay the EBHs outside the United States without making a Ratable Payment to Plaintiffs. In making this argument, NML

[5] In so doing, the district court exceeded the narrow mandate of this Court under *Jacobson*, 15 F.3d at 22, which did not permit modification of the existing stay, and further ignored the fact that the mandate was stayed by virtue of the Republic's filing of its *en banc* petition on November 13, 2012. *See* Fed. R. Civ. P. 41(d)(1).

ignores the EBG's lengthy explication of reasons why evasion is impossible, as set forth in its Emergency Motion for Stay Pending Appeal dated November 26, 2012 (the "Stay Application"). Ex. 24: Stay Application at 3-4.

First, there is no competent evidence to support Plaintiffs' premise. Both the Republic and the EBG have submitted affidavits confirming that no efforts have been made to receive bond payments outside of the United States. *See* Ex. 8: Declaration of Francisco Guillermo Eggers dated November 16, 2012 ("Eggers Dec.") ¶ 4; Ex. 19: Koenigsberger Dec. ¶ 5; Supplemental Declaration of Robert S. Koenigsberger dated December 2, 2012 ("Supp. Koenigsberger Dec.") ¶ 3. Plaintiffs only response is to point to unsubstantiated speculation in press reports (of which they could well have been the source), and to spuriously claim that unless the Republic specifically denies every false media report, those reports must be true. Self-serving speculation is not a basis on which this Court should jeopardize the constitutional rights of innocent non-parties.

Second, Plaintiffs erroneously assume that the Republic can modify the payment mechanism for the Exchange Bonds unilaterally. But other parties, such as BNYM and DTC, must cooperate to make that possible. Ex. 23: Supp. Choi Dec. ¶¶ 5-13. The district court's March 5, 2012 stay order remains in effect by virtue of this Court's November 28, 2012 order. *See supra* at 8. The March 5 stay order prohibits efforts to evade the Injunctions, and both BNYM and DTC are

aware of its terms. Ex. 5: Order dated March 5, 2012. It is highly unlikely that BNYM, DTC or any other party would risk contempt by assisting the Republic in violating a court order. Moreover, the Republic is required to make payments to the EBHs' Trustee, BNYM. To replace BNYM as trustee, the numerous EBHs would have to initiate and conduct a vote, which could not be done surreptitiously and could easily be enjoined. Ex. 3: Indenture § 5.9(c).

In sum, the Republic cannot "evade" the Injunction without the active cooperation and assistance of the EBHs, BNYM and DTC, and Plaintiffs do not offer a shred of evidence to suggest that any of them have considered such action. Indeed, the only competent record evidence on that issue is the Supplemental Koenigsberger Declaration, which clearly states that no efforts have been made to change the Trustee or otherwise alter the payment mechanism for the Exchange Bonds. Supp. Koenigsberger Dec. ¶¶ 4-5. The entire rationale for NML's Motion is specious.

II. CONDITIONING THE STAY ON THE REPUBLIC'S WILLINGNESS TO POST A BOND WOULD UNLAWFULLY BURDEN THE RIGHTS OF INNOCENT THIRD PARTIES.

The erroneous premise of NML's motion is that the Stay has been entered solely to protect the Republic's rights pending appeal. In fact, the Stay is necessary to safeguard the ***EBG's*** constitutional rights and should not be conditioned on the ***Republic's*** unrelated willingness to post a bond. As noted in

the Stay Application, the Injunction infringes the EBHs' constitutional rights by, *inter alia*, conditioning their otherwise unconditional rights to payments on the Exchange Bonds upon the Republic's willingness to make Ratable Payments to NML. This conscription of the EBHs' property violates the Due Process Clause and the Takings Clause. Ex. 24: Stay Application at 11-16.

The risk that constitutional rights will be violated is *ipso facto* a threat of irreparable harm justifying a stay. *Statharos v. New York City Taxi and Limousine Comm'n*, 198 F.3d 317, 322 (2d Cir. 1999). Lifting the stay would also trigger other forms of irreparable harm to the EBG, including an indefinite freeze on the Republic's payments to its members; a potential default that would force the EBG to sue a foreign sovereign immune from execution; the realization of economic losses resulting from forced sales in a depressed market; a catastrophic loss of market standing due to the "mark-to-market" accounting practices of the EBG's members; and other problems. Ex. 1: 2d Cir. Op., at 24 (noting "monetary damages are an ineffective remedy when… Argentina will simply refuse to pay any judgments"); Ex. 17: Declaration of Stephen Choi dated November 16, 2012 ¶ 19 (addressing implications of default for mark-to-market accounting); *see also Grand River Enters. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 67 (2d Cir. 2007) ("It is well-established that a movant's loss of current or future market share may

constitute irreparable harm."). In sum, the Stay is required for the EBG's protection, regardless of whether the Republic is willing to post a bond.

Recognizing these facts, NML seeks not to address them, but to obfuscate by asserting that if the Republic fails to post a bond, this Court can lift the Stay solely "as to Argentina." Pls. Br. at 4 & 17 n.4. While NML does not explain precisely what this means, it asserts that it would avoid any harm to third parties. However, even assuming NML is suggesting that the EBHs will be permitted to receive payments on the Exchange Bonds in the event the Republic declines to post a bond in response to an order of this Court, and then flouts the Injunctions prohibiting payments to the EBHs without a Ratable Payment to NML, the Injunctions are still unacceptable. Enjoining the Republic from making payments under the Exchange Bonds unless it makes a Ratable Payment to NML will force it to choose between compliance with its domestic legislation (i.e., the Lock Law) and this Court's orders. In effect, NML seeks to set a "contempt trap" for the Republic that will inevitably undermine its willingness to make payments due to the EBHs. As noted above and in the EBG's Stay Application, the resultant burden on the EBHs' property is unconstitutional and inequitable. Ex. 24: Stay Application at 11-16.

Further, a bond should not be required when it could harm third parties or other creditors of the defendant. *See Olympia Equip. Leasing Co. v. Western Union Telegraph Co.*, 786 F.2d 794, 799 (7th Cir. 1986) (Posner, J.) (declining to

exercise discretion to require bond for stay of execution pending appeal because it would jeopardize defendant's other creditors). NML offers no analysis of these issues in its Motion, and fails completely to provide any basis for disregarding established law. The purpose of the EBG's appeal is to determine whether the Injunctions are a legitimate exercise of judicial power inasmuch as they affect third-party rights. Enforcing the Injunctions before that issue is decided—particularly given the irreparable harm that would cause to the EBG—would be grossly inequitable and would effectively end this case before this Court could complete its review of the district court's orders.

III. THE FSIA PROHIBITS THIS COURT FROM REQUIRING A BOND.

The Motion must be denied for another reason: This Court has squarely held that requiring a bond constitutes an attachment under the FSIA because it "would force [the sovereign] to place some of [its] assets in the hands of the United States courts for an indefinite period . . . [which is] precisely the same result that would obtain if the foreign sovereign's assets were formally attached." *Stephens v. Nat'l Distillers and Chem. Corp.*, 69 F.3d 1226, 1230 (2d Cir. 1995). As this Court noted, the FSIA "forbids any 'attachment, arrest or execution' of a foreign sovereign's property subject only to the exceptions set forth in §§ 1610-1611." *Id.* The only conceivably relevant exception is waiver from attachment in aid of execution. *See* 28 U.S.C. § 1610(a). However, "[e]ven when a foreign state

completely waives its immunity from execution, courts in the U.S. may execute only against property" that is (i) located in the United States; *and* (ii) used for commercial activity. *EM Ltd. v. Republic of Argentina*, 473 F.3d 463, 481 n. 19 (2d Cir. 2007) (citing 28 U.S.C. § 1610(a)). Because a requirement to post a bond constitutes attachment, *Stephens*, 69 F.3d at 1230, this Court cannot order the Republic to send money from Argentina to post a bond. Such an order would effectively be an attachment of funds not in the United States and not used for commercial activity. NML's assertion to the contrary, Pls. Br. at 19, is plainly wrong.[6]

IV. THERE IS NO NEED TO FURTHER EXPEDITE THE APPEAL.

In the alternative, NML seeks reconsideration of this Court's already expedited schedule by requesting comprehensive briefing from all interested parties, including intervenors and *amici curiae*, in just ten days. Apparently NML would like the Court to decide this appeal in one or two days. By rushing the schedule in this way, NML hopes to serve its litigation objectives and leverage

[6] Plaintiffs cite three cases for the proposition that requiring an appellate bond from a foreign sovereign is lawful. Those decisions are inapposite. *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1472 (9th Cir. 1992) is not from this Circuit and, to the extent it holds that a supersedeas bond is permissible under the FSIA, directly conflicts with *Stephens*. *Sales v. U.S. Underwriters Ins. Co.*, No. 93-CV-7580 (CSH), 1995 WL 144783, at *6 (S.D.N.Y. Apr. 3, 1995) and *Morgan Guar. Trust Co. of N.Y. v. Republic of Palau*, 702 F. Supp. 60, 65 (S.D.N.Y. 1988) are district court opinions (one unpublished) that predate *Stephens* and do not even address whether a bond pending appeal violates the FSIA.

payments owed to the EBHs for its own purposes. NML ignores the fact that this Court has ***already*** set an expedited briefing schedule, which balances the need for prompt resolution of the underlying dispute against the careful and deliberate consideration required by the complex issues presented—including constitutional issues. Further accelerating the schedule would risk repeating the miscarriage of justice that occurred in the district court, where the EBG was given only three days to respond to NML's arguments. It is vital that the EBG and other affected parties be afforded a reasonable time in which to prepare arguments for presentation to this Court, and that the Court have sufficient time for deliberation.

V. NML SHOULD BE REQUIRED TO POST A BOND IF THE COURT GRANTS THE REQUESTED RELIEF.

This Court should reject NML's request that the Republic be ordered to post a bond for the reasons set forth above. However, in the unlikely event this Court finds it necessary to require security from the Republic, then it should also require that ***NML*** post security in order to protect the EBG against losses that will undoubtedly occur if the Republic refuses to post a bond, the stay is consequently lifted, and the EBG does not receive its payments. Pursuant to Fed. R. Civ. P. 62(c), "[w]hile an appeal is pending from an interlocutory order or final judgment that grants . . . an injunction, the court may suspend, modify, restore, or grant an injunction on terms ***for bond*** . . . ." (emphasis added). Under Rule 62(c), this Court can require a party who has been *granted* injunctive relief to post a bond in

order to safeguard affected parties from potential harm. *See, e.g.*, *Dayton Christian Schools v. Ohio Civil Rights Comm'n*, 604 F. Supp. 101, 104-05 (S.D. Ohio 1984) (requiring plaintiffs, who successfully moved for injunctive relief, to execute a bond pending appeal of injunction under Rule 62(c) in order to protect against potential harm to defendants and ***an interested third party***).

This Court has further authority to require NML to post a bond under Fed. R. Civ. P. 65(c). Because this Court did ***not*** affirm the district court's Injunction with respect to its effects on innocent non-parties and instead retained its jurisdiction pursuant to *United States v. Jacobson* (Ex. 1: 2d Cir. Op. at 28-29), the Injunction remains preliminary in nature until this Court renders an opinion on the appeals of the Republic, the EBG, and all other intervening parties. Under these circumstances, it is entirely proper to order NML to post a bond pursuant to Rule 65(c) in order to protect the EBG from "damages sustained" to its property if this Court ultimately finds the Injunction was "wrongfully issued." Fed. R. Civ. P. 65(c); *cf. Universal Athletic Sales Co. v. Am. Gym*, 480 F. Supp. 408, 424 (W.D. Pa. 1979) (injunction bond that had been vacated by district court "should have remained in effect to cover the contingency which did happen, namely the [Court of Appeals] held that the preliminary injunction had been improvidently entered"). The EBG has the right to request such a bond because the district court's Injunction directly burdens and restrains the EBG's property and precludes it from

exercising its unconditional property rights for an indefinite period of time.[7] *Cf. Trinity Indus., Inc. v. Rittenhouse*, CIV. A. 88-1813, 1990 WL 28376, at *1 (E.D. La. Mar. 12, 1990) (defendants had no standing to request modification of injunction freezing certain funds because, unlike the present case, defendants had "no equitable or legal interest in the escrowed funds").

The extraordinary harm that will result if the Stay is lifted was extensively detailed in the EBG's Stay Application, and is underscored by the harm that in fact occurred prior to this Court's entry of the Stay on November 28, 2012. Ex. 24: Stay Application at 16-18. If the Republic proves unwilling to post security and the Stay is lifted, over $1 billion of Exchange Bonds held by the EBG and over $65 billion in Exchange Bonds and GDP Warrants held by the EBHs in total will be immediately imperiled by the threat of default, and payments to the EBHs (and potentially the bonds themselves) will, at a minimum, be frozen indefinitely. *Id.* at 6-8. Thus, equity requires NML to furnish adequate security in the amount of approximately $2 billion to protect the EBG against the devastating losses that will certainly occur if the Republic refuses to provide a bond and this Court lifts the Stay as a result.[8]

---

[7] NML's Motion also suggests that, in addition to denying EBHs the right to receive payments, the Injunctions may infringe their rights to transfer their bonds in connection with future exchanges. *See* Pls. Br. at 13-14.

[8] The rationale for this number is set forth in the Supplemental Koenigsberger Declaration at ¶¶ 6-8.

CONCLUSION

For the foregoing reasons, NML' Emergency Motion to Amend or Modify the Stay to Require the Republic of Argentina to Post Security in Order to Maintain the Stay should be denied.

December 3, 2012

By: /s/ Sean F. O'Shea
Sean F. O'Shea
Michael E. Petrella
O'SHEA PARTNERS LLP
521 Fifth Avenue, 25th Floor
New York, New York 10175
Tel.: (212) 682-4426

David Boies
David A. Barrett
Nicholas A. Gravante, Jr.
Steven I. Froot
BOIES, SCHILLER & FLEXNER LLP
575 Lexington Avenue
New York, NY 10022
Tel.: (212) 446-2300

Attorneys for the Exchange Bondholder Group