

Plaintiffs-Appellees NML Capital, Ltd., Aurelius Capital Master, Ltd., Aurelius Opportunities Fund II, LLC, ACP Master, Ltd., Blue Angel Capital I LLC, Pablo Alberto Varela et al., and Olifant Fund, Ltd. (collectively, “Appellees”), hereby oppose the Duane Morris Individual Bondholders’ April 22, 2013, Motion for Leave to File an *Amicus Curiae* Brief.¹

There are numerous people who would like the Court’s ear in this case. Through oral argument on February 27, the Court appropriately accommodated as many as would come forward to express their views. In this round of the appeal (following a limited remand on October 26, 2012), there have been two dozen briefs, a variety of motions, and a four-lawyer oral argument spanning nearly two and a half hours. Every party to this proceeding—and every non-party with an asserted connection to the issues before the Court—has been heard at length. The Duane Morris Individual Bondholders themselves were fully heard in their *amicus* brief filed on January 16, 2013. Dkt. 804.

¹ We note that the Duane Morris Individual Bondholders refer to themselves as “plaintiffs.” They *are not* plaintiffs in this action; they are judgment creditors of Argentina in other cases. We therefore refer to them as the Duane Morris Individual Bondholders. We further note that Argentina and non-party appellant the Exchange Bondholder Group likewise have objected to the Duane Morris Individual Bondholders’ proposed filing. The Duane Morris Individual Bondholders’ motion suggests (at 1-2) that only certain Appellees responded with an objection before this motion was filed; it is unclear how the Duane Morris Individual Bondholders formed that view, but let there be no doubt: *All* of the Appellees join in this opposition and object to the proposed filing.

Since oral argument, the Court has requested two submissions—and *only* two more submissions. The Court’s March 1 Order directed Argentina to submit a payment proposal, and that order was crystal clear with respect to whether responses would be accepted: “Should a response be sought from any other party to Argentina’s submission, a further order will issue from the court.” Dkt. 903. On April 2, the Court specifically directed “Plaintiffs-Appellees” to “file a response to the payment proposal submitted by the Republic of Argentina.” Dkt. 937. These orders do not invite another round of briefing and the additional delays that would ensue. To the contrary, the March 1 Order unambiguously declares that a response from “any other party” is not welcome unless and until the Court orders it. The Court ordered Appellees to respond, and Appellees filed a single joint submission. To state the obvious, that most recent order did not invite or authorize a response from individual non-party bondholders or anyone other than Appellees. The parties have respected these orders; the Duane Morris Individual Bondholders’ filing directly contradicts them. For that reason alone, the Duane Morris Individual Bondholders’ motion should be denied.

Moreover, the Duane Morris Individual Bondholders do not suggest any reason why their participation as *amici curiae* at this stage is necessary or appropriate. Like many of the *amici* and intervenors, the Duane Morris Individual Bondholders’ interest in this case is, at most, indirect. The Duane Morris

Individual Bondholders are not parties to this proceeding; they are judgment creditors of Argentina in separate actions. Moreover, this Court’s March 1 Order directed Argentina to state what it is prepared to pay Appellees specifically, not what it is willing to pay adversaries in other cases.² The Duane Morris Individual Bondholders’ proposed filing also sheds no light on the issues before the Court; it largely repeats some of the basic points made in Appellees’ response. Nor do the Duane Morris Individual Bondholders offer a novel perspective on this matter—the Varela Appellees (whose bonds are *actually* at stake in this litigation) are fully capable of speaking to the effects Argentina’s behavior has had on individual bondholders.

Equally misguided is the Duane Morris Individual Bondholders’ assertion that “[t]he question” before the Court “is the extent, if any, that the district court’s order should be modified.” Motion at 9. The question is whether the district court abused its discretion in defining the appropriate ratable payment that Argentina must make when it makes a payment on the Exchange Bonds. This is an appeal

² The first sentence of the Court’s March 1 Order read as follows: “At oral argument on Wednesday, February 27, 2013, counsel for the Republic of Argentina appeared to propose that, in lieu of the ratable payment formula ordered by the district court in its injunction and accompanying opinion of November 21, 2012, Argentina was prepared to abide by a different formula for repaying debt owed on both the original and exchange bonds *at issue in this litigation*” (emphasis added). Nothing in the rest of the order even remotely supports the Duane Morris Individual Bondholders’ assertion (Proposed Br. 4 n.3) that this Court “*specifically directed* that the Proposal address all the holdout bonds” (emphasis added).

from a district court's judgment, not an open negotiation among Argentina and its various creditors—and, in all events, the Duane Morris Individual Bondholders *do not* speak for Appellees.

What is more, granting the Duane Morris Individual Bondholders' motion would surely draw a forest's worth of proposed *amicus* filings from the non-party appellants, intervenors, and *amici* that filed briefs leading up to the February 27 oral argument—each with their own reaction to Argentina's proposal and Appellees' response. The parties would, of course, presumably be entitled to submit responses to these additional filings. That onslaught of further submissions would impose serious and harmful consequences on the Court and on Appellees.

The additional burdens such filings would impose upon the Court are obvious and require no explication from the parties. Inviting an additional round of *amicus* filings would severely prejudice Appellees in a very concrete way. It would delay resolution of this appeal and therefore delay the implementation of a remedy for the irreparable harm this Court has held that Argentina has imposed on Appellees for years and is continuing to impose with each new payment to the Exchange Bondholders without ratable payments to Appellees. Argentina owes its next payments to Exchange Bondholders on June 2 and June 30; accordingly, even a relatively modest delay for the receipt of additional submissions (and party responses to such filings) would confer a tremendous practical benefit on

Argentina and inflict still further harm on Appellees. Further delay is thus a boon to Argentina—which has not posted any security during the nearly six months since this Court’s October 26 decision—and inflicts continued harm on Appellees.

Delay also favors Argentina in yet another, and still more important, respect. As explained in Appellees’ response to Argentina’s March 29 letter (Dkt. 952), Argentina has reiterated its intent to pay the exchange bondholders without paying Appellees, no matter how the Court rules. Specifically, its Vice President has confirmed that Argentina is seeking a “mechanism” to evade the Court’s eventual order. Each round of briefing affords Argentina additional time to devise and implement such an end-run and thus increases the likelihood that Argentina will render the Court’s ruling ineffective.

The Court has indicated that it has all the information it wants to decide whether the district court abused its discretion. The Duane Morris Individual Bondholders’ motion does not illuminate that issue, but instead opens the door to a fusillade of unnecessary and inappropriate briefing, which would contravene the Court’s explicit directives, punish those who have respected those orders, and threaten to render all of the Court’s work on this case a dead letter. The Duane Morris Individual Bondholders’ motion should be denied.

Respectfully submitted,

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By: /s/ Roy T. Englert, Jr.

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