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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 NML CAPITAL, LTD., et al.,

4 Plaintiffs,

5 v.

08 CV 6978 (TPG)

6 THE REPUBLIC OF ARGENTINA,

Argument

7 Defendant.

8 -----x

9 New York, N.Y.
9 July 22, 2014
10 10:30 a.m.

11 Before:

12 HON. THOMAS P. GRIESA,

13 District Judge

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15
16 APPEARANCES

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(Case called)

THE COURT: We have certain motions to be taken care of. I'll take them in any order. I suppose the logical order would be to deal with the motion regarding the Citibank situation in Argentina. Who wants to speak about that motion?

MR. FRIEDMAN: Your Honor, Edward Friedman on behalf of all of the plaintiffs. I will address that motion. I'm with the firm of Friedman Kaplan Seiler & Adelman, attorneys for the Aurelius and Blue Angel plaintiffs. Mr. Cohen on behalf of NML and I and other plaintiffs' counsel have decided that I will have the honor of addressing this motion on before your Honor on behalf of all the plaintiffs.

THE COURT: Go ahead.

MR. FRIEDMAN: Shall I go to the lectern?

THE COURT: That would help.

MR. FRIEDMAN: May it please the Court, this is a motion for partial reconsideration of your Honor's June 27 order with respect to Citibank. Citibank had made a motion for clarification of the injunction, sometimes referred to as the amended February 23 orders.

In granting Citibank's motion for clarification, your Honor clarified that the amended February 23 orders do not as a matter of law prohibit payments by Citibank N.A.'s Argentina branch on peso- and U.S. dollar-denominated bonds governed by

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1 Argentine law and payable in Argentina. This motion for
2 reconsideration relates only to the U.S. dollar-denominated
3 bonds. We are not challenging your Honor's ruling that
4 Citibank can pay the peso-denominated bonds.

5 With respect to the U.S. dollar-denominated bonds,
6 however, we believe there are numerous grounds for
7 reconsideration, and we are respectfully requesting that your
8 Honor confirm that the U.S. dollar-denominated bonds are in
9 fact covered by the amended February 23 orders.

10 THE COURT: How are they covered?

11 MR. FRIEDMAN: The first basis, your Honor, is that
12 the U.S. dollar-denominated bonds are not simply paid in
13 Argentina. What the record shows, and this is a filing
14 yesterday by Euroclear, what the record shows is that the funds
15 moved from Citibank with respect to these U.S. dollar-
16 denominated bonds to Euroclear. Euroclear --

17 THE COURT: They are simply clearinghouses. They
18 don't act as banks. I don't understand this motion, I'll be
19 very frank with you.

20 MR. FRIEDMAN: If I may, your Honor, I'll try to very
21 briefly address a few basic points. I'll come back to the
22 payment process. The first basic point is that in contrast to
23 the peso-denominated bonds, the U.S. dollar-denominated bonds
24 are external indebtedness within the --

25 THE COURT: I have read that brief. Couldn't we
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1 exercise a little common sense what we have under the major
2 order is the great bulk, more than bulk, we have the exchange
3 bonds covered by that order and we have the pari passu, but the
4 bonds are the exchange bonds. It is my understanding that the
5 bonds being talked about in your motion are not part of the
6 exchange. Am I right or wrong?

7 MR. FRIEDMAN: Respectfully, your Honor, that would
8 not be correct. These U.S. dollar-denominated bonds are
9 unquestionably part of the bonds that were issued in the 2005
10 and 2010 exchanges. In those exchanges the exchange bonds that
11 were issued and the exchange bonds that were external
12 indebtedness were issued under the laws of the U.S., the UK,
13 Argentina, and Japan. All of those bonds are exchange bonds.

14 THE COURT: Where are they payable?

15 MR. FRIEDMAN: The payment process, your Honor, for
16 all of those --

17 THE COURT: They go through the indenture trustee,
18 right?

19 MR. FRIEDMAN: Not for the Japanese and the Argentine
20 law exchange bonds.

21 THE COURT: I'm glad you mentioned the Japanese. We
22 will get back to the Japanese in a little while. You're saying
23 the exceptions are those Argentine bonds and the Japanese
24 bonds. We'll get to the Japanese later. I want to talk now
25 about those particular Argentine bonds. They are not payable

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1 through the indenture trustee, are they?

2 MR. FRIEDMAN: Your Honor, is absolutely correct. The
3 Argentine law U.S. dollar-denominated exchange bonds are not
4 paid through the indenture trustee.

5 THE COURT: In your brief you don't spend much time
6 discussing that. In my view it is very, very important, but it
7 is not much discussed in the brief filed.

8 MR. FRIEDMAN: Your Honor, what I would say is that
9 when we look at your Honor's amended February 23 order, there
10 are two very important provisions which bear on this question
11 concerning the fact that Bank of New York not the indentured
12 trustee on the Argentine law bonds.

13 The first provision, which I will mention just briefly
14 because we have talked about it extensively, the first
15 provision says that if Argentina makes a payment on the
16 exchange bonds, Argentina must make a ratable payment to
17 plaintiffs. That provision, as has been discussed extensively,
18 your Honor, applies to all the exchange bonds whether or not
19 Bank of New York is the indenture trustee.

20 The second, and this is something we have not
21 discussed recently, there is a separate paragraph in your
22 Honor's February 23 order that specifically enjoins the
23 republic from violating the pari passu provision in the fiscal
24 agency agreement. It is a separate provision from the
25 paragraph that requires the ratable payment.

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1 The point of that paragraph enjoining a violation of
2 the pari passu provision is that when we look at this universe
3 of exchange bonds, whether or not the Bank of New York is the
4 indenture trustee, all of these exchange bonds, because they
5 are payable in a currency other than Argentine pesos, they all
6 are external indebtedness within the meaning of the pari passu
7 provision.

8 What we are facing here, your Honor --

9 THE COURT: Can I interrupt you?

10 MR. FRIEDMAN: Of course.

11 THE COURT: I don't understand the practical point
12 that would emerge from your argument. It seems to me that you
13 have something different. You have bonds issued in Argentina,
14 payable in Argentina, clients I assume of Citibank in
15 Argentina. From a practical, common sense standpoint, why do
16 they have to get dragged into this international complex?
17 Can't we just possibly use some common sense and recognize that
18 they have differences?

19 You may be technically right. Your brief was
20 technically right. All of that is fine. But cannot we
21 recognize that there are some people down in Argentina who are
22 really in a different situation, and can't we allow them to get
23 paid instead of dragging them into this overall difficulty,
24 which is certainly difficult? I'm just saying that I would
25 like to see some common sense applied here and not a lot of

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1 undoubtedly fine legal reasoning, and so forth.

2 MR. FRIEDMAN: Your Honor, I think there is an
3 important point of clarification I need to make. I heard your
4 Honor say we should be practical about bondholders, customers
5 of Citibank in Argentina who want to be paid. The important
6 point of clarification is that when Citibank receives the money
7 and passes it on so that exchange bondholders can be paid, we
8 are not simply talking about the bondholders in Argentina.

9 THE COURT: We are talking about a couple of
10 clearinghouses in Europe, that's what we are doing, and that's
11 about all.

12 MR. FRIEDMAN: With all respect, your Honor, if I may
13 say, Euroclear, as your Honor points out, is one of the
14 European clearinghouses. With respect to these Argentine law
15 U.S. dollar-denominated bonds, Citi has transferred funds to
16 Euroclear bank. Those funds are now in the account of
17 Euroclear bank in New York. Euroclear will then send the funds
18 to Euroclear participants whose customers hold Argentine law --

19 THE COURT: But they are still clearinghouses.

20 MR. FRIEDMAN: The point I was going to make, your
21 Honor, is that while Euroclear is a clearinghouse, the exchange
22 bondholders who receive payments through Euroclear are exchange
23 bondholders in Europe and the United States. The simple point
24 I wanted to make for your Honor's consideration is that we are
25 not speaking about --

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1 THE COURT: This does not go through the indenture
2 trustee, does it?

3 MR. FRIEDMAN: That is correct, your Honor, it does
4 not go through the indenture trustee. But these bonds, even
5 though they do not go through the indenture trustee, are not in
6 any sense of the word internal Argentine bonds, because, as
7 your Honor points out, they go through the clearinghouses where
8 the exchange bondholders are all over the United States and
9 Europe. I want that to be clear.

10 THE COURT: All right.

11 MR. FRIEDMAN: Your Honor, the other practical point
12 that I would like to address, since the Court has asked about
13 it, is that I do believe we are trying to be practical. This
14 is not a technical argument we are presenting. What I mean by
15 that is we have a situation where your Honor issued a clear
16 order. It was affirmed by the Second Circuit. The Republic of
17 Argentina was prohibited from paying exchange bonds, prohibited
18 from paying external indebtedness without making a ratable
19 payment to the plaintiffs.

20 The reason we are here now is that with respect to the
21 entire array of exchange bonds and external indebtedness
22 covered by the pari passu provision, Argentina has transferred
23 funds to pay every single one of them. That is why we are now
24 in a situation where Citibank, Euroclear --

25 THE COURT: You are getting into a different subject
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1 matter. You are talking about the fact that indeed the
2 Republic of Argentina made a transfer, whether it was
3 500 million or a billion, attempted to pay those bonds without
4 honoring the pari passu clause. That is a different subject
5 from this rather minute exception that I am talking about down
6 in Argentina. I don't think it is a good idea to confuse all
7 of that.

8 MR. FRIEDMAN: Your Honor, first let me say, if I may,
9 it is not a minute situation. The U.S. dollar-denominated
10 exchange bonds we are talking about under Argentine law which
11 are owned by bondholders all over the world, those account for
12 over 20 percent of the exchange bonds that were issued.

13 THE COURT: Say that again.

14 MR. FRIEDMAN: The universe of exchange bonds consists
15 of U.S. dollar-denominated bonds under Argentine law, yen bonds
16 under Japanese law, Eurobonds under UK law, and U.S. dollar
17 bonds under New York law. If we look at the bonds we are now
18 talking about, the Argentine law U.S. dollar-denominated
19 exchange bonds, those are almost 25 percent of the universe of
20 exchange bonds covered by the amended February 23 orders. They
21 are covered by the orders. They are external indebtedness. It
22 is not a little exception.

23 THE COURT: I didn't realize the percentages were the
24 way you talk about. There is a lot to do today. We will be
25 back to you, but I want to hear from Ms. Wagner. Thank you

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1 very much.

2 MS. WAGNER: Good morning, your Honor. May it please
3 the Court, Karen Wagner from Davis Polk for Citibank. Your
4 Honor, as you have recognized, when you issued your injunction,
5 your opinion describing the bonds subject to your injunction
6 were those that were payable through Bank of New York Mellon.

7 The bonds that we are here discussing right now are
8 not in any respect paid in any way in the United States. Those
9 bonds are paid in Argentina pursuant to local law, to the KRIL,
10 which is the local registration and clearance entity in
11 Argentina. The payments then go to the Caja de Valores, which
12 accepts payment from the republic on behalf of both Citibank
13 and the holders at Citibank. This is all laid out in the
14 affidavits that we presented to the Court. At that point
15 payment by the republic and to the bondholders is complete.

16 At that point, your Honor, it is certainly true that
17 the holders of the bonds, including the Euroclear system, can
18 take the money they get. They are not required to keep the
19 money in Argentina. They do whatever they want to with the
20 money. But the payment under the bond prospectus and under the
21 bond system has been made to them, and that entire payment
22 process is entirely in Argentina.

23 THE COURT: In contrast to the other situation --

24 MS. WAGNER: In extreme contrast to the other
25 situation. In the other situation payment is made to Bank of
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1 New York, and then Bank of New York must make the payment to
2 one of the depositories, and payment by Argentina is not
3 complete until payment to the depository has been made. That
4 is the same as in Argentina, but in Argentina it is made wholly
5 in Argentina, and on the other bonds it is made outside of
6 Argentina, in part in this country. So there is a very, very
7 big distinction, your Honor.

8 There is no reason why the fact that your Honor
9 recognizes that there is a difference between what goes on in
10 Argentina and what goes on out of Argentina is somehow going to
11 undo everything that has been done in this court, which is what
12 seems to be suggested here.

13 In addition, your Honor, as we have also argued at
14 great length, Citibank Argentina is in a unique position.
15 Nobody else in this proceeding is in Citibank Argentina's
16 position. Citibank is a branch bank in Argentina. It is
17 subject to civil, regulatory, and criminal laws in Argentina,
18 which it must obey. Your Honor has recognized in past
19 decisions of this Court that that puts Citibank Argentina in a
20 very different position than anybody else.

21 When we had our discussion the last time we were here,
22 I believe that is what your Honor was likely thinking about.
23 We have made this argument in the past and your Honor has
24 accepted it in the past. Because of the vulnerability of
25 Citibank Argentina, it is treated differently. Doctrines such

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1 as Act of State and Sovereign Compulsion apply to that entity
2 in a way that they would not apply to an entity that is not
3 subject to local law.

4 THE COURT: Let me interrupt you and ask, what is the
5 volume that we are talking about?

6 MS. WAGNER: Your Honor, I heard what you just heard.
7 I did not think it was that high. I need to check that for
8 you. I will get back to you. I thought it was smaller. I
9 will get back to your Honor.

10 THE COURT: Go ahead.

11 MS. WAGNER: All in all, your Honor, I think that for
12 a number of reasons Citibank Argentina and Citibank have
13 presented to you an extremely different picture. I don't think
14 when your Honor issued the original order, based on the opinion
15 which your Honor issued which describes, as other opinions you
16 have issued described, in detail what the payment is of the
17 bonds you are addressing, you discussed the fact that it is
18 payable to Bank of New York Mellon. These bonds are not, as
19 has been made clear.

20 I don't want to repeat myself. It is just an entirely
21 separate situation both in terms of the issuance of the bonds,
22 payment on the bonds, and the fact that Citibank Argentina is
23 acting as custodian of the bonds for various customers, some of
24 them local, some of them not. But once the money is received
25 by the customer, the customer, obviously, can do whatever it

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1 wants without implicating the payment system under the bonds.

2 For all these reasons, your Honor, I think, number
3 one, there is no reason to believe that we shouldn't be treated
4 differently. Number two, if these bonds are treated
5 differently and Citibank Argentina is treat differently, there
6 is no impact on anybody else. These are unique situations, and
7 I think there is no reason why your Honor should be concerned
8 that somehow this will affect anything else in this case.

9 THE COURT: I don't mean that you should have it down
10 to the last dollar or peso, but can't you give me an idea of
11 the amount involved, some idea of the amount involved?

12 MS. WAGNER: Your Honor, for Citibank Argentina I
13 believe that the last payment that was made was around a
14 hundred million dollars total, translated. But I don't know,
15 unfortunately --

16 THE COURT: Of interest?

17 MS. WAGNER: Of interest. I don't know how that
18 translates into a proportion as far as the interest payments
19 across the board. I apologize for that. I will try to get
20 that information to your Honor.

21 THE COURT: Anything else on this motion?

22 MS. WAGNER: Thank you, your Honor.

23 THE COURT: Thank you very much, Ms. Wagner.

24 MR. FRIEDMAN: May I be heard for another minute, your
25 Honor?

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1 THE COURT: Of course you can.

2 MR. FRIEDMAN: Thank you.

3 First, I'd like to address one very important
4 practical consideration, and then I would like to respond
5 specifically to some of the arguments by Citibank's counsel.

6 The practical consideration, your Honor, is I believe
7 an important, big-picture consideration that applies to these
8 U.S. dollar-denominated bonds that we are talking about. It is
9 simply that, as I was starting to say before, Argentina has
10 directly violated your Honor's order and has made payments on
11 all of the exchange bonds.

12 I understand I have to come back and address your
13 Honor's issue about exchange bonds where the Bank of New York
14 is not the indenture trustee. I just want to be clear that
15 where your Honor's --

16 THE COURT: What are you now talking about?

17 MR. FRIEDMAN: What I'm talking about, your Honor, is
18 that we have a situation which I would respectfully submit has
19 very significant consequences that are not limited to payment
20 to Argentine citizens in Argentina, a small portion of the
21 bonds. We are talking about a situation where payments are
22 made through the clearinghouses which are specifically
23 identified in your Honor's amended February 23 order. The
24 clearinghouses, as your Honor has ruled, stand between
25 Argentina and various steps and then the exchange bondholders.

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1 The effectiveness of your Honor's order, which has
2 been affirmed by the Second Circuit, counts on third parties,
3 such as the clearinghouses, not --

4 THE COURT: I completely fail to comprehend the point
5 you are now making. You started out by saying Argentina had
6 made some kind of a payment. What payment are you talking
7 about?

8 MR. FRIEDMAN: Your Honor, I apologize for not being
9 clear. The payment I'm talking about is the payment that
10 Argentina made, or I should say payments, plural, that
11 Argentina made shortly before June 30, 2014. These were
12 payments made at a time when your Honor's injunction became
13 effective because --

14 THE COURT: Can I interrupt you. Those payments were
15 made to the indenture trustee, right?

16 MR. FRIEDMAN: Only in part, your Honor. I'm also
17 referring to payments that were made to pay exchange bonds as
18 to which Bank of New York is not the indenture trustee.

19 THE COURT: Look, I don't understand what relevance
20 those payments have to the present issue. Here is what I am
21 talking about. The republic attempted to pay the interest on
22 the exchange bonds without complying with the requirements of
23 the pari passu clause. There is no doubt in my mind that the
24 republic was attempting to do that.

25 \$500 million or so went to the Bank of New York as the

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1 indenture trustee, and the Bank of New York very, very
2 responsibly stopped at that point, recognizing that to conclude
3 the payment would be a violation of the existing orders. I
4 don't know the details of any other payments of that kind and I
5 don't know how far they went, and so forth, but --

6 MR. FRIEDMAN: I can address that, your Honor, if that
7 would be helpful.

8 THE COURT: It would be helpful.

9 MR. FRIEDMAN: The other payments that were made have
10 now come to rest in New York and Japan. In New York, Euroclear
11 is holding the funds it received from Citibank. Euroclear is
12 waiting to distribute those funds to exchange bondholders in
13 the United States and Europe who hold Argentine law U.S.
14 dollar-denominated exchange bonds.

15 So, in addition to Argentina --

16 THE COURT: You are getting beyond my question. What
17 I am talking about is specifically one thing, and that is the
18 attempt by the republic to pay the interest to the exchanges
19 that was due on June 30 and ignore the obligations under the
20 pari passu clause. That is what I am talking about. What
21 happened was, I guess we have said this several times this
22 morning, the Bank of New York acted very responsibly and did
23 not complete the payment. It held the money in regard for my
24 order. That was a very responsible thing for them to do.

25 That was about 500 million. I never was presented

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1 with facts or any applications, to my knowledge, about maybe
2 another 500 million or so. That is as far as my knowledge went
3 and as far as my action went and as far as what I understood
4 the Bank of New York's situation went.

5 What I don't understand is why any of that is relevant
6 to the situation involved in the motion now being considered,
7 which involves dollar bonds, not peso bonds but some dollar
8 bonds, issued by the republic, payable in Argentina, as I
9 understand it, not payable through the indenture trustee or any
10 similar. Payable in Argentina.

11 It doesn't help me to talk about another kind of
12 payment. This seems to me a different kind of payment than I
13 have dealt with in the past and you have referred to. This is
14 a different kind of payment, is it not?

15 MR. FRIEDMAN: It is different from the payment to
16 Bank of New York. But if I may clarify, your Honor, I believe
17 there is a very important point concerning the amended February
18 23 orders and the pari passu provision which maybe I have not
19 articulated as clearly as I should.

20 The simple point is that the amended February 23 order
21 covers bonds issued in the 2005 and 2010 exchanges. For some
22 of those bonds, but not all, payments are through Bank of New
23 York as a indenture trustee. The pari passu provision and the
24 amended February 23 orders prohibit payments on any exchange
25 bonds without making a ratable payment.

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1 THE COURT: Say that more slowly. Go over that very
2 carefully.

3 MR. FRIEDMAN: Yes. The amended February 23 orders
4 and the pari passu provision itself prohibit payments by
5 Argentina on any exchange bonds unless Argentina makes a
6 ratable payment to the plaintiffs. In those orders and in the
7 pari passu provision itself, exchange bonds constitute all the
8 bonds issued in the 2005 and 2010 exchanges.

9 For some of those bonds, payments are through Bank of
10 New York as indenture trustee. For others of those bonds,
11 payments move in a different path or process, but they are
12 still clearly covered by the amended February 23 order.

13 THE COURT: Step back.

14 MR. FRIEDMAN: Sure.

15 THE COURT: You have said this about three times. I
16 want to follow up. Summarize the provisions of the February 23
17 just once more, and I want to follow up.

18 MR. FRIEDMAN: Sure. There are two important
19 provisions. One is paragraph 2(a). Paragraph 2(a) says that
20 if the republic makes a payment on any of the exchange bonds,
21 the republic must in advance or concurrently made a ratable
22 payment to plaintiffs.

23 THE COURT: Let me interrupt you.

24 MR. FRIEDMAN: Yes.

25 THE COURT: Are the bonds we are talking about in this
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1 motion exchange bonds?

2 MR. FRIEDMAN: Yes, your Honor, no question about
3 that. No question about that. These U.S. dollar-denominated
4 bonds --

5 THE COURT: When was the exchange?

6 MR. FRIEDMAN: These were part of the larger 2005 and
7 2010 exchange. There is no dispute about that.

8 THE COURT: Say that again.

9 MR. FRIEDMAN: The U.S. dollar-denominated bonds
10 issued under Argentine law were part of the exchange bonds
11 issued in the 2005 and 2010 exchanges. There is no dispute
12 about that. These are exchange bonds in every sense of the
13 word.

14 THE COURT: Can I then interrupt you.

15 Ms. Wagner, let me go back to you. Does that not
16 mean, then, that these bonds are covered by the February 23
17 order?

18 MS. WAGNER: Your Honor, when you issued the
19 injunction, you issued orders covering exchange bonds and you
20 issued an opinion describing the basis for the injunction. The
21 opinion describes bonds for which payment is made through Bank
22 of New York. The order covers exchange bonds. Our bonds are
23 indeed exchange bonds, and that is why we sought clarification.

24 It was our view that, number one, there was no
25 description of any of our bonds in the opinion describing the

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1 basis for the order. The opinion describes the Bank of New
2 York bonds. But we, in an excess of caution, said exchange
3 bonds does include our bonds, we should find out, we should
4 clarify whether the Court really intend to cover us. So we
5 made a motion for clarification.

6 We don't think the Court intended us to be covered.
7 There is certainly no mention in the orders of Citibank or KRIL
8 or the Caja which you would expect to see if in fact that
9 series of payments was intended to be prohibited.

10 Also, your Honor, we thought then and we think now
11 that as a matter of law it would not be appropriate to include
12 these bonds in that order, because, and I think there is no
13 dispute here, they are paid by the republic in Argentina and
14 payment is received by the holders in Argentina.

15 For that reason as well, and for the third reason that
16 Citibank Argentina is a branch bank in Argentina, we believe
17 that if your Honor had it in mind at all to think about these
18 bonds, which was unlikely, because they were not raised to your
19 Honor's attention during the process by which these injunctions
20 were issued, if your Honor had thought about it and if we had
21 been there, we would have explained as a matter of law why they
22 should not be covered.

23 We are still of the view, your Honor, number one, that
24 you were not considering these bonds when you issued the order.
25 Number two, you shouldn't put these bonds in the order for the

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1 reasons that we have articulated. Number three --

2 THE COURT: Let's slow down. This is probably
3 something that I didn't give attention to at the time. Now it
4 has to be given attention. Let's start one step at a time and
5 go through your reasoning. These bonds that we are talking
6 about are exchange bonds, right?

7 MS. WAGNER: Yes.

8 THE COURT: They were part of the 2005 or the 2010 or
9 both, right?

10 MS. WAGNER: Yes.

11 THE COURT: Sitting here right now and recognizing
12 that I may have very well not covered things that should have
13 been covered, but sitting here right now it strikes me that,
14 being exchange bonds, they should be treated as exchange bonds
15 and that they should be included with the other exchange bonds
16 in the February 23 order. That is the way it strikes me now.
17 I'm not trying to review everything that I've gone over. Why
18 should that not be the case?

19 MS. WAGNER: Your Honor, we would argue respectfully
20 that it should not be the case, for two reasons. One, because
21 the bonds are issued in Argentina pursuant to local laws, not
22 pursuant to an indenture. There is no subjection to U.S.
23 jurisdiction. They are payable wholly in Argentina.

24 For that reason, various doctrines, such as Act of
25 State and Sovereign Compulsion, would suggest that your Honor

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1 should not be reaching internal Argentine processes with an
2 order of this Court. That would be the main argument for why
3 these bonds, even though they are exchange bonds, should not be
4 included in your Honor's injunction order.

5 The second argument is that because Citibank Argentina
6 is the custodian, Citibank Argentina should not be subjected to
7 injunctions that require it to restrain property which belongs
8 to customers in a country where they are subject to Argentine
9 law and will be subject to both civil, regulatory, and criminal
10 process if they restrain payment to their customers.

11 Those are the two reasons, your Honor, one having to
12 do with what the bonds are and one having to do with who
13 Citibank Argentina is, that we think as a matter of law it is
14 not appropriate to include these bonds in the injunction order.
15 We would refer your Honor again to some of your prior
16 decisions, the one on the Boden bonds and the one on the Onsess
17 pension payments in which Citibank Argentina made similar
18 arguments which your Honor accepted. They were not, obviously,
19 identical fact situations, but the legal analysis was the same.

20 THE COURT: The thing that concerns me is that as a
21 general proposition, the February 23 order dealt with the
22 exchange bonds. It did, of course.

23 MS. WAGNER: It did, your Honor, yes.

24 THE COURT: Without doubt. Focusing again on the
25 February 23 order, focusing there, I did not make any

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1 exceptions in that order, right?

2 MS. WAGNER: That is correct, your Honor. I would
3 refer you back to your opinion issued on the same day, which
4 does describe the bond that you were talking about at that
5 time.

6 THE COURT: What is that language?

7 MS. WAGNER: Let me read you a little bit of it.

8 "The process and the parties involved in making
9 payments on the exchange bonds are as follows. Argentina
10 transfers funds to the Bank of New York Mellon, which is the
11 indenture trustee in a trust indenture of 2005. Presumably,
12 there is a similar indenture for the 2010 exchange offer. BNY
13 then forwards the funds to the registered owner of exchange
14 bonds. There are two registered owners for the 2005 and 2010
15 exchange bonds. One is CD & Company and the other is Bank of
16 New York depository. CD and BNY depositories transfer the
17 funds to a clearing system, such as the Depository Trust
18 Company. The funds are then deposited into financial
19 institutions, apparently banks, which then transfer the funds
20 to their customers, who are the beneficial interest holders of
21 the bonds."

22 Your Honor, just reading that description, there is no
23 reason to think that the Argentine law bonds were part of this
24 order. It is absolutely true that for exchange bonds the words
25 in the order didn't make an exception. But this opinion is

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1 very clearly about these bonds, which clearly does not include
2 the Argentine law bonds

3 THE COURT: The issues raised today I haven't really
4 dealt with in any opinion, so I have to reserve decision on the
5 motion before me. Thank you all very much. Let's go on to the
6 next.

7 MS. WAGNER: Thank you, your Honor.

8 MR. FRIEDMAN: Your Honor, if I might suggest, it
9 probably makes sense next to consider the motions for
10 clarification by Euroclear and Clearstream, since those motions
11 are based on your Honor's order.

12 THE COURT: I will reserve decision. What comes next?

13 MR. FRIEDMAN: I believe what comes next, and your
14 Honor may feel the same way, we have a letter motion for
15 clarification that was made by JPMorgan relating to the yen-
16 denominated exchange amount.

17 THE COURT: I will reserve decision.

18 MR. FRIEDMAN: The positions are set forth in letters
19 that your Honor has.

20 I believe that brings us to the Bank of New York
21 motion for clarification. There is also a euro bondholder
22 motion for clarification.

23 THE COURT: Who wants to speak on those motions?

24 MR. FRIEDMAN: On the Bank of New York motion, their
25 counsel is here. May I say one thing first, your Honor?

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1 THE COURT: Of course.

2 MR. FRIEDMAN: This will come a little out of left
3 field, but I would like to say it for the record to protect the
4 rights of my clients and all the plaintiffs in these cases
5 where pari passu injunctions have been issued.

6 I mentioned that payments on the U.S. dollar Argentine
7 law bonds have been transferred in part to Euroclear and those
8 funds are now sitting in a Euroclear bank account in New York.
9 I'm sure your Honor has considered, and your Honor has
10 expressed views and we don't dispute those views, as to what
11 should happen with funds that the Court determines were
12 improperly paid. We are totally respectful of that.

13 For the record, and just to avoid what may be a flurry
14 of litigation, I want to put a motion on the record, with the
15 understanding that your Honor will deny it.

16 THE COURT: Let me interrupt you. We'll get back to
17 you. This recaps what you have said, but let me do it. About
18 500 million was paid to the Bank of New York, and the Bank of
19 New York has held on to that, right?

20 MR. FRIEDMAN: Yes, your Honor.

21 THE COURT: What other funds are you talking about,
22 paid to whom? I didn't follow you completely.

23 MR. FRIEDMAN: I apologize, your Honor. Are you
24 asking a question about what we were discussing earlier or a
25 question about what I was just saying this minute?

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1 THE COURT: What you were just saying.

2 MR. FRIEDMAN: I apologize. What I was saying this
3 minute was that with respect to the U.S. dollar-denominated
4 Argentine law exchange bonds where Citibank received payments,
5 some of the funds received by Citibank have been transferred
6 along the payment chain to Euroclear and Euroclear would then
7 distribute the funds to exchange bondholders. This is a
8 technical point I just want to have on the record.

9 The funds held by Euroclear are now in a Euroclear
10 bank account at Citibank in New York, for the record --

11 THE COURT: Let me interrupt you. I want to go back
12 to the attempt by the republic to make interest payments as of
13 June 30, when they paid about \$500 million to the indenture
14 trustee. We had a hearing about that. We all know what
15 happened there. Did the republic -- maybe you covered it
16 today, but forgive me -- pay another 500 million or so as part
17 of that exercise?

18 MR. FRIEDMAN: The information we have, my
19 understanding, is that it was not as much as another
20 500 million. My understanding is that the amount paid to Bank
21 of New York was 539 million. I believe the additional amounts
22 paid by the republic were somewhat in excess of 200 million,
23 close to 300.

24 THE COURT: Whatever the amount was to what
25 institution or bank or whatever, who was it paid to?

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1 MR. FRIEDMAN: As we understand the facts now, your
2 Honor, there are two other institutions involved regarding the
3 payments. One is Citibank, which we have just been discussing
4 as the recipient of payments on the U.S. dollar-denominated
5 exchange bonds, and the other is JPMorgan Chase Bank, which has
6 disclosed in a letter filed with the Court that it received
7 payments in Japan on exchange bonds that had been issued under
8 Japanese law.

9 So, the extent of our knowledge about the republic's
10 attempts to make payments on exchange bonds is the Bank of New
11 York with 539 million, Citibank with somewhat more than
12 200 million, that is an approximation, and JPMorgan, which has
13 said it received just about 2 million for payment of yen-
14 denominated exchange bonds.

15 THE COURT: I don't want to get confused between two
16 things. There are two things that I have in mind that have
17 raised issues. One is the attempt by the republic to make
18 payment to the exchangers of interest as of June 30. That's
19 one thing. That involved the payment to the Bank of New York,
20 and so forth.

21 The other thing is what I understand to be something
22 distinct, although maybe there is an argument about it not
23 being so distinct, but the other thing that we have discussed
24 this morning is the situation in Argentina, which we have
25 discussed and I won't try to recap all that.

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1 My understanding is that the two things are different.
2 In other words, the republic was trying to pay the interest to
3 the exchangers; second, the republic is trying to deal with
4 bonds issued in Argentina, payable in Argentina, and so forth.

5 Now I want to talk about the first. I hope I have
6 them in decent categories. I think you have answered this, but
7 I'm going to ask you again. How much money was paid when the
8 republic attempted to make the interest payments to the
9 exchangers on or about June 30th? We know about the 500-plus
10 million dollars that went to Bank of New York. You probably
11 said this 15 times today, but please, again, what other
12 payments were made in the category I'm talking about?

13 MR. FRIEDMAN: The number, the total number, including
14 the 539 million to Bank of New York, I believe is 832 million.
15 But I believe we may, your Honor, have a disconnect about the
16 categories. The 832 million which I refer to as Argentina's
17 attempting to pay the exchangers, that does include the payment
18 to Citibank for the exchange bonds issued under Argentine law
19 that we have been discussing.

20 THE COURT: Put aside Citibank for a minute. What
21 other institutions received money in connection with what you
22 have just talked about?

23 MR. FRIEDMAN: If we put aside Citibank and if we put
24 aside the Bank of New York, the only other information we have
25 is \$2.1 million that is being held by JPMorgan Chase Bank in

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1 Japan, where it was received for payment on yen-denominated
2 exchange bonds.

3 THE COURT: Say that again, please.

4 MR. FRIEDMAN: Yes. When we talk about the
5 exchangers, we are talking about bondholders who have exchange
6 bonds issued under various laws, and some of the exchangers
7 hold yen-denominated exchange bonds that were issued under
8 Japanese law.

9 We know, based on the letter filed by JPMorgan Chase,
10 that the republic has attempted to make an interest payment as
11 of June 30 in the amount of \$2.1 million on the yen-denominated
12 exchange bonds. Those funds are currently being held at
13 JPMorgan Chase Bank in Japan.

14 THE COURT: Before we get to JPMorgan Chase in Japan,
15 the other blocks are -- please forgive me. Repeat it.

16 MR. FRIEDMAN: The other blocks, your Honor, are the
17 Bank of New York and Citibank. Those are the only recipients.

18 THE COURT: Citibank in Argentina?

19 MR. FRIEDMAN: The payment went to Citibank in
20 Argentina, and from there to New York and other places with
21 respect to the U.S. dollar-denominated bonds.

22 THE COURT: The amount being?

23 MR. FRIEDMAN: I believe that the amount paid to
24 Citibank in Argentina is somewhere between 200 million and
25 300 million. I don't have an exact figure.

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1 THE COURT: Do you know where that money is now on
2 deposit?

3 MR. FRIEDMAN: In part, yes, your Honor. Part of that
4 money is now on deposit in the account of Euroclear Bank in New
5 York, at Euroclear Bank's account in New York at Citibank N.A.

6 THE COURT: Is that being held?

7 MR. FRIEDMAN: Euroclear has held that money and
8 Euroclear has asked for permission to pass that money on to the
9 exchange bondholders in the U.S. and Europe who hold the
10 Argentine law U.S. denominated exchange bonds.

11 THE COURT: I should have written it down. That
12 entity is called what?

13 MR. FRIEDMAN: Euroclear Bank, your Honor.

14 THE COURT: Euroclear. Aside from Euroclear, are
15 there any of the funds in the category we are talking about?

16 MR. FRIEDMAN: Not that I know of, your Honor.

17 THE COURT: So it is really what went to Bank of New
18 York and what went from Citibank to Euroclear, right?

19 MR. FRIEDMAN: Yes, your Honor.

20 THE COURT: Is the latter being held?

21 MR. FRIEDMAN: We have been told by Euroclear yes,
22 that Euroclear at this time is holding the money.

23 THE COURT: I think we started this discussion because
24 there was some motion by you, right?

25 MR. FRIEDMAN: Yes. I apologize, your Honor. If I

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1 may, this is a very technical matter. I'm doing this hopefully
2 to avoid further proceedings and complexity. As I say, I fully
3 understand that your Honor will not look favorably upon this
4 motion and will, I anticipate, deny it. But just in case, for
5 the record, I want to make, on behalf of the plaintiffs in the
6 cases where we have pari passu injunctions, a motion for
7 attachment with respect to the funds held by Euroclear in New
8 York.

9 The reason I say that is we don't want to see a big
10 fight with lots of other creditors coming in and multiplying
11 the proceedings. If for some reason your Honor should decide
12 that this sort of attachment is appropriate, we simply wanted
13 to make the first motion and have the priority that goes with
14 it. I say with full understanding that --

15 THE COURT: Has that been part of the briefing before
16 me?

17 MR. FRIEDMAN: No, your Honor. This came up only
18 because yesterday for the first time it was disclosed that
19 significant funds went from Citibank in Argentina to Euroclear
20 in New York. Yesterday, when we saw the Euroclear paper, that
21 was the first time we knew that there were funds in New York.

22 I fully appreciate that your Honor has expressed the
23 view that illegal payments by Argentina should be returned. I
24 know your Honor does not want to see a lot of litigation about
25 funds in this court or other jurisdictions. But I just wanted

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1 to put that motion on the record so that (a) we would have
2 priority and (b) hopefully it will forestall further litigation
3 by other creditors who might otherwise be running into court.

4 THE COURT: If you have a right to an attachment, you
5 have a right to an attachment. I don't carry in my mind all
6 the things that you have to show to get an attachment. It
7 seems to me that there are grounds under state law for
8 attachments. It seems to me if you file a motion, I'll handle
9 that very quickly. If there are grounds for the attachment,
10 the attachment will be allowed.

11 Does that complete your motions?

12 MR. FRIEDMAN: That completes, your Honor, the motion
13 for partial reconsideration with respect to Citibank. And yes,
14 I appreciate the opportunity to make that attachment motion on
15 the record. I believe we have already discussed the motions by
16 Euroclear and Clearstream for clarification, which are based on
17 the Citibank order.

18 THE COURT: On all that, decision is reserved.

19 MR. FRIEDMAN: Yes. I understand your Honor also
20 reserved decision on the JPMorgan motion, which we talked about
21 briefly. That brings us, as I understand it, to the Bank of
22 New York, where I believe the issue simply is the proper form
23 of order to be entered by your Honor. In other words, the Bank
24 of New York is holding in its account at the Central Bank of
25 Argentina the \$539 million dollars.

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1 THE COURT: Holding where?

2 MR. FRIEDMAN: The Bank of New York is holding
3 \$539 million at the Bank of New York's account at the Central
4 Bank of Argentina. That is where the Bank of New York has
5 advised the funds are being held.

6 THE COURT: Let's conclude. Thank you. You have been
7 very helpful.

8 MR. VASSOS: Your Honor, if I could just a moment on
9 the last motion before moving on?

10 THE COURT: Of course.

11 MR. VASSOS: Thank you. John Vassos of Morgan Lewis &
12 Bockius on behalf of Clearstream.

13 Your Honor, I wanted to make a couple of points of
14 clarification. Your Honor asked Mr. Friedman where the money
15 from Argentina went, and he said Euroclear. Money has also
16 gone to my client, Clearstream. I want that to be clear on the
17 record to make sure your Honor has all the information.

18 The only other point I have, your Honor, and I think
19 it is one actually and rarely not in dispute, plaintiffs in
20 their papers dealing with the Citibank rehearing has said that
21 they concede that payments in Argentina peso-denominated bonds
22 are not subject to the injunction and can be made.

23 To the extent that money has gone through Citibank
24 Argentina to my client and I believe also to Euroclear on
25 peso-denominated bonds, if there is no dispute about that and

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1 we are holding that money as the clearinghouse, I would ask
2 that we be given permission to pass that money on to the
3 investors.

4 MR. FRIEDMAN: Your Honor, may I address that?

5 THE COURT: Right.

6 MR. FRIEDMAN: I agree, plaintiffs are not challenging
7 your Honor's Citibank order with respect to the peso-
8 denominated bonds. We would agree that Citibank can pass on
9 those payments and that when Euroclear and Clearstream receive
10 payments on the peso-denominated bonds, they may pass on the
11 payments to the exchange bonds.

12 THE COURT: Of course. Thank you very much.

13 MS. WAGNER: Your Honor, may I be heard for one
14 moment?

15 THE COURT: Of course.

16 MS. WAGNER: Karen Wagner again. Your Honor, to the
17 best of our knowledge, Mr. Friedman's numbers are not quite
18 correct. Also, the Euroclear funds are not being held at
19 Citibank. We will get the correct numbers to the Court.

20 THE COURT: If there is anything that needs
21 correcting, there is the U.S. mail.

22 MS. WAGNER: Thank you, your Honor, yes.

23 MR. VASSOS: On the peso-denominated bonds, your
24 Honor, what we will do is draft up a proposed order, submit it
25 to the party, and then hopefully submit it to the Court.

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1 THE COURT: Anybody else?

2 MR. CLARK: Chris Clark for the euro bondholders. If
3 it please the Court, I think if we addressed our motion before
4 the Bank of New York's, it might make more logical sense. But
5 we will defer to whatever the Court desires.

6 THE COURT: Say that again.

7 MR. CLARK: Chris Clark for the euro bondholders. We
8 have made a motion for clarification. I think it might make
9 more logical sense if we address it before Bank of New York
10 addresses their motion for clarification.

11 THE COURT: Very good.

12 MR. CLARK: Thank you, your Honor.

13 THE COURT: That concludes dealing with the motions.
14 I want to now discuss something else.

15 Do you have anything?

16 MR. CLARK: That something else would be my motion or
17 something from your Honor?

18 THE COURT: If there is another motion, make your
19 motion.

20 MR. CLARK: Thank you, your Honor. We move the Court
21 to clarify the injunction to the extent that it brings into its
22 sway bonds governed by non-U.S. law and that it binds foreign
23 parties who act solely outside the United States not subject to
24 the jurisdiction of this Court.

25 First of all, I want to say, your Honor, we don't

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1 condone or we didn't participate in or ask for in any way
2 Argentina to make the payment in question to Bank of New York.
3 However, we have investors, your Honor, in the various funds
4 that I represent.

5 THE COURT: You represent who?

6 MR. CLARK: I represent a group of funds who owned
7 euro-denominated exchange bonds which are paid in euro and
8 governed by English law. We are here, your Honor, to request
9 that you clarify the order so that at the very least the
10 foreign parties over whom you don't have jurisdiction are not
11 subject to the order's dictates.

12 THE COURT: The crucial thing is the Court has
13 jurisdiction over the Republic of Argentina, and the Republic
14 of Argentina is making these payments. That is the crucial
15 thing.

16 MR. CLARK: We concur with your Honor a thousand
17 percent. We don't dispute that in any manner. And Euroclear,
18 for instance, has joined us. Your Honor discussed earlier that
19 Euroclear is just a clearinghouse. With regard to our bonds,
20 it operates solely in Belgium. It does nothing in the United
21 States. It doesn't come into the United States to undertake
22 its duties. Your Honor's order has the effect of requiring it
23 to do something that violates Belgian law.

24 Our application would ask, your Honor, for a simple
25 amendment to the injunction that says nothing in the injunction

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1 requires a party to violate the law of its forum state or the
2 law of the place of performance. We don't know why that would
3 be objectionable. It would certainly hopefully forestall
4 something --

5 THE COURT: I know why it would be objectionable. It
6 would start making important exceptions to the basic ruling and
7 injunction which this Court has entered. I will not start
8 making those exceptions. Is your motion brief?

9 MR. CLARK: It is, your Honor.

10 THE COURT: I will certainly deal with it in a ruling.
11 But I'm going to tell you right now I'm not going to start
12 making exceptions of the kind -- I don't expect to be making
13 exceptions of the kind you're talking about. But I will
14 consider it and write a ruling. Thank you very much.

15 MR. CLARK: Can I raise one other issue not relating
16 directly to the exception issue?

17 THE COURT: OK.

18 MR. CLARK: I know that the mediator is in the
19 courtroom today I just want to state for the record that we are
20 substantial holders of exchange bonds. We strongly support a
21 negotiated solution to this issue. We in our brief that your
22 Honor will review suggested one possible way to try to resolve
23 difficulties relating to the RUFO clause. I don't think either
24 party thought it was necessarily a solution.

25 We would certainly be willing on behalf of our group

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1 to consider and accept a fair and effective waiver of the RUFO
2 clause if that would help negotiations. I wanted to let the
3 Court know that we have made this application because we think
4 there are serious issues that arise under the injunction and
5 that the injunction should be corrected in the manner that we
6 have stated, but that we also want to try to be constructive
7 and resolve this matter, your Honor.

8 THE COURT: I think the special master had better get
9 your name, address, and phone number.

10 MR. CLARK: I'm happy to provide it, your Honor. It
11 is on our brief as well.

12 THE COURT: I think you undoubtedly ought to exchange
13 contact information. Thank you very much for your remarks.
14 They are very helpful.

15 MR. SCHAFFER: Your Honor, Eric Schaffer from
16 ReedSmith for the Bank of New York Mellon. We are the last
17 motion I think that is left. Let me say we are the good guys
18 here. We complied with your Honor's injunction. We agree we
19 acted very responsibly. We agree with plaintiffs that we
20 thwarted violations.

21 Our issue goes to what do we do with the money. Under
22 the existing injunctions, we hold the money. The plaintiffs
23 have asked that we return the money. As set forth in our
24 motion, our memorandum, that creates a lot of unnecessary
25 issues for the Bank of New York Mellon.

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1 THE COURT: Can I interrupt you?

2 MR. SCHAFFER: Of course.

3 THE COURT: What do you believe should be done with
4 the money?

5 MR. SCHAFFER: Your Honor, think consistent with the
6 existing injunctions we should be holding the money pending
7 whatever further proceedings take place here either with the
8 special master or --

9 THE COURT: I agree with that. Thank you very much.

10 MR. SCHAFFER: Thank you, your Honor.

11 MR. FRIEDMAN: Your Honor, may I be heard briefly with
12 respect to that?

13 THE COURT: Sure.

14 MR. FRIEDMAN: Thank you. Two things, your Honor.
15 First, when the issue was first presented to the Court, your
16 Honor expressed the view that the attempted payment by the
17 Republic of Argentina to the Bank of New York was an illegal
18 payment and should be nullified. What the Court said at that
19 time was that the funds should be returned to Argentina. We
20 have since then had discussions with counsel for the Bank of
21 New York about an appropriate order.

22 I would like to state very briefly why we believe that
23 your Honor's original statement that the funds should be
24 returned is both --

25 THE COURT: Can I interrupt you?

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1 MR. FRIEDMAN: Yes.

2 THE COURT: Look, of all the issues we have, and there
3 are a lot of issues, it seems to me this surely should be able
4 to be agreed on. The republic attempted to pay interest. That
5 attempt was improper. We talked about that many, many times.
6 But money actually had been paid. The bank was very
7 responsible and certainly paid attention to my existing order
8 and complied with it as well as it could. It didn't refuse the
9 receipt of the money, but it did not carry it on. Very
10 responsible.

11 What should be done now with that money? Can't the
12 parties agree? It's money. Whether it should go back to the
13 republic or not, can't you agree on that?

14 MR. FRIEDMAN: We, your Honor, have had discussions,
15 and I'm certainly willing to pursue those discussions. What I
16 would say to the Court is there really are two major concerns
17 with respect to the Bank of New York retaining the money.

18 One is that with the funds at the Bank of New York,
19 the republic has been proclaiming its continued defiance of
20 your Honor's order and asserting that it has paid and will
21 continue to pay the exchangers. The republic points to the
22 539 million paid to the Bank of New York.

23 Second, the term I would use with respect to the funds
24 held at Bank of New York would be "attractive nuisance" in the
25 sense that we are already seeing rumblings of litigation in

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1 courts other than the United States. Your Honor heard a little
2 bit about that from counsel for the exchange bondholders who
3 hold euro bonds. We are concerned that with the funds at Bank
4 of New York, we will be in and out of this Court and other
5 courts.

6 THE COURT: Let me interrupt you. I don't really know
7 the effects of banking law, and so forth. The reason the funds
8 are in the hands of the Bank of New York was really an illegal
9 move on the part of the Republic of Argentina. It was illegal.
10 Now, is it possible to clear the decks and to eliminate the
11 effects of that illegality? Is it possible to return the money
12 to the republic?

13 MR. FRIEDMAN: I would say yes, your Honor. What I
14 will discuss with counsel for the Bank of New York is whether
15 we can agree on a simple form of order that would say that the
16 Bank of New York will return the funds and that the republic
17 shall not obstruct or prevent but shall provide necessary
18 information and otherwise cooperate, because the republic is of
19 course subject to your Honor's jurisdiction. We would
20 understand that if the republic --

21 THE COURT: Can I interrupt you again. I want to
22 conclude this and get to something else. I would say to you
23 that I would be certainly willing to sign an appropriate order
24 having that money returned. It should be returned. Maybe
25 there will be objections to the order. Obviously, I don't

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1 care. I think the money should be returned. Can we leave it
2 at that?

3 MR. FRIEDMAN: Yes. I will try to negotiate with
4 counsel for Bank of New York on a form of order. If there are
5 any disagreements, we will come back to your Honor.

6 THE COURT: Very good.

7 MR. FRIEDMAN: Thank you.

8 MR. SCHAFFER: Your Honor, Eric Schaffer for Bank of
9 New York Mellon. Your Honor, I won't repeat everything that is
10 in our memorandum, but return exposes the trustee needlessly to
11 a lot more litigation in a lot of countries. We have complied
12 with this Court's order. There are practical problems. There
13 are due process problems.

14 THE COURT: Can you tell me what should be done.

15 MR. SCHAFFER: Your Honor, I believe the answer is we
16 hold the money right where it is, that we do exactly what your
17 existing injunctions require.

18 THE COURT: I'm completely silent because I have
19 nothing to say. Try to work something out that you can agree
20 on, the thing that will create the least problems, the least
21 potential litigation we want to do. Unfortunately, we are in
22 the soup. I can't help that. Thank you very much, everybody.

23 MR. CLARK: Your Honor, can I make one request?
24 Before any order is submitted to your Honor to be signed, that
25 it be docketed so that the other parties who might be

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1 interested can view it?

2 THE COURT: Absolutely.

3 MR. CLARK: Thank you, your Honor.

4 THE COURT: I want to turn now to something that is
5 really of the greatest possible importance, and that is that if
6 sensible steps are not taken, there could well be a default by
7 the republic as of the end of July. I think because of a grace
8 period there was no default as of the end of June, but there
9 could be a default as of the end of July. A default meaning
10 that interest payments would not be made to the exchangers and
11 an appropriate payment would not be made under the pari passu
12 clause.

13 I have appointed a special master, Daniel Pollack, to
14 work with the parties to the litigation about an attempt to
15 settle. Mr. Pollack is here. Could Mr. Pollack stand up.
16 Thank you.

17 I want to do a little history. After the default in
18 around 2001 or whenever it was, in accordance with the
19 contractual provisions in the bonds, many lawsuits were filed
20 in this court against the republic based on the defaults. I
21 don't know how many, but judgments were obtained. There really
22 wasn't any opposition generally to proceedings to obtain
23 judgments, and judgments were obtained by various parties
24 against the republic in various amounts. Judgments.

25 In 2005 and 2010 the republic made offers to exchange
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1 the existing bonds for new bonds with a lower interest rates,
2 and so forth. It is my information that maybe 90 percent or so
3 of the bondholders accepted those exchange offers, but not
4 everybody did. There were people who had their judgments, and
5 they were not willing to give up those judgments in exchange
6 for a new offer. They were exercising their rights under the
7 law and under the contractual provisions which the republic
8 originally offered in the bond contracts. Over 10 or 11 years
9 the people who had these valid judgments sought to recover on
10 those judgments. With possibly one small exception, those
11 efforts were unsuccessful.

12 The republic does not have a substantial store of
13 assets of any kind in the United States which can be recovered
14 upon. What the people who had the judgments did was to find
15 something that they thought might be an asset and that they
16 might be able to recover on, but, with one possible exception,
17 those attempts were turned down by me. I think to the extent
18 they went up to the Court of Appeals, basically they were
19 turned down in the Court of Appeals.

20 We went for about 10 years, 11 years, whatever it was,
21 with the republic refusing to pay the judgments, and of course
22 they didn't supply anything against which the judgments could
23 be recovered. The rhetoric that was developed in the republic
24 during this time was unfortunate, although not as incendiary as
25 recent rhetoric.

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1 The republic took every step it could to indicate it
2 would not pay the judgments, it would not negotiate the
3 judgments. I think laws were passed in the Congress, and so
4 forth. The judgments were treated as things that the republic
5 should have nothing to do with. This was unfortunate.

6 Judgments are judgments. The people who obtained the
7 judgments obtained those judgments because of the contractual
8 provisions granted by the republic. But for 11 years or so the
9 republic not only did not pay the judgments but in every way
10 indicated its unwillingness to recognize those judgments.

11 This changed. I can't remember whether it was 2010 or
12 2011, but thereabouts, the attorneys for the plaintiffs
13 requested the Court to recognize a provision which had been in
14 the contractual documents all along but had not been relied on,
15 and that is the pari passu provisions, essentially meaning if
16 the republic paid certain kinds of debts, there had to be a
17 recognition -- and I'm not trying to get into the arithmetic --
18 there had to be a recognition of the rights of people with
19 judgments under the pari passu clauses, whatever they were.

20 This changed the situation, meaning it was necessary
21 for the republic to deal with the judgments. Speaking in a
22 general, rather loose way, after the invocation of the pari
23 passu clauses, it was now clear that the republic could not pay
24 the exchangers without a recognition, and I won't get into the
25 formula, recognition of the people with the judgments who were

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1 invoking the pari passu clause.

2 That means, and I'm repeating myself, that there had
3 to be a dealing with and a recognition of the judgments. The
4 desirability of a settlement is always clear to a judge. It
5 became clear to me that it was very, very important to try to
6 arrive at a settlement, a settlement which would at long last
7 take into account the exchangers, take into account the people
8 who had the judgments, take into account all of the obligations
9 of the republic. I emphasize obligations.

10 The obligations under the judgments didn't arise
11 yesterday. They arose 10 years ago, 11 years ago, whenever.
12 But the republic sought to hold them aside, so to speak. That
13 could not any longer be done, because of the invocation of the
14 pari passu clause, which I held could be done, and the Court of
15 Appeals affirmed me.

16 In many cases a settlement is a nice thing, but one of
17 many options. What we have here facing the republic and others
18 is something much more crucial. If proper arrangements are not
19 made, there could be a default by the republic on or about July
20 30. That would be most unfortunate, unfortunate for the people
21 who were expecting interest payments, etc., and certainly
22 unfortunate for the republic itself.

23 To try to see if a settlement of issues could be
24 achieved, the Court appointed the gentleman I introduced to you
25 a few moments ago, Daniel Pollack, as special master. He is a

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1 special master to assist in settlement negotiations.

2 The reason I've gone into this history is to indicate
3 that we have had years of background, but now we are at a very
4 either the crucial time or a crucial time. We have arrived
5 there. If it is possible, it would be good to have the
6 rhetoric consisting of full-page newspaper ads let up. If
7 there is a default, it will be pretty stale in people's mouths.
8 They may have talked about vultures, and so forth. what we are
9 talking about is real live issues, real live litigation, real
10 live dollars and cents.

11 I know there are hard feelings. I know there are hard
12 feelings by the republic about the people who have the
13 judgments and wouldn't settle, wouldn't exchange. But if the
14 republic could recognize that the people who have the judgments
15 simply have what they have a right to have under the very
16 contracts that the republic put forward, and if the republic
17 and everybody else would recognize that there are obligations
18 here, there are obligations, and those obligations of course
19 need to be dealt with.

20 I'm taking a step to implement the order that I
21 entered in appointing the special master. I'm doing this
22 because time is short. There is not a long time before the end
23 of July. If the end of July comes and there is a default, that
24 will be very, very sad and unfortunate. We want to do
25 everything we can to avoid that. And that means settlement.

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1 I am adding to the provisions that I put down in my
2 appointment of the special master this direction. I am
3 directing, and please take note of this, that the parties and
4 their lawyers in this case meet with the Special Master Daniel
5 Pollack promptly, at a time to be set by Mr. Pollack, and to
6 meet with him continuously until a solution is reached.

7 If there can be no solution, I want to hear about it
8 in open court. I think there can be a solution. I think there
9 can be a negotiated situation here. I repeat, I'm directing
10 that the parties and their lawyers in this case meet with Mr.
11 Pollack promptly, at a time to be set by him, and to meet with
12 him continuously in the greatest attempt to reach a negotiated
13 solution.

14 With that, please.

15 MR. BLACKMAN: Your Honor, Jonathan Blackman
16 representing the Republic of Argentina. I know it has been a
17 long morning, and we appreciate everything the Court has said
18 and appreciate the decade and more that we have spent before
19 you.

20 The first time I ever stood at this podium, which was
21 in 2002, a shocking thought, I told the Court that sovereign
22 debt restructuring is necessarily voluntary. I said that the
23 republic's wish then was to try to reach a negotiated
24 resolution with all of its creditors. That was the only way a
25 resolution could be reached.

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1 There is no cram-down, there is no bankruptcy for
2 states. If there were, we wouldn't be here, because the 92
3 percent of originally defaulted debt that was resolved through
4 the exchange offers is far more than this country or any
5 country would require to bind the holdouts. We don't have that
6 regime.

7 I said at this podium again in 2002 that we recognize
8 the rights of creditors who do not wish to voluntarily settle
9 or exchange to assert their legal rights. We did have a quite
10 profound disagreement with the Court as to what those legal
11 rights were or were not with respect to the pari passu clause.
12 But we are past that.

13 We are in a situation now where, as a result of the
14 Court's orders, the republic does face a very imminent risk of
15 default at the end of this month. Those orders, I would have
16 to remind the Court, are very blunt instruments.

17 I know the Court's objective was to require the
18 republic or encourage the republic to engage with the holdout
19 creditors. But the fact is that under those orders, those
20 holdout creditors have a legal right, as the Court interpreted
21 that clause, to be paid 100 cents on the dollar of all of their
22 principal and all of their interest for any single interest
23 payment to the made to the 92 percent.

24 We want to negotiate a settlement with everyone, but
25 to do that requires movement. We can't have a situation where

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1 holdout creditors are insisting on their judgment or their
2 claim. That is point one.

3 Point two, there are very, very significant
4 constraints on the ability to reach a resolution between now
5 and the end of the month. We have set those forth in our
6 papers. First, there is the so call RUFO clause, the right of
7 first refusal. Until the end of this year the exchange
8 bondholders, the 92 percent, who, as the Court recognized, also
9 have legal right and to whom the republic has obligations, have
10 a right that in essence is to get whatever improved treatment
11 the holdouts get in any further voluntary exchange.

12 As I think the Court recognizes --

13 THE COURT: Say that last again.

14 MR. BLACKMAN: The RUFO clause in essence says that if
15 the republic at any time before December 31, 2014, offers a
16 better deal -- I'm being colloquial -- offers a better deal to
17 the holdouts, the exchange bondholders have a right to that
18 deal as well. This was put in there deliberately to prevent
19 the republic from making a deal with 92 percent and then
20 turning around the next day and making a better deal with other
21 people. It's totally understandable.

22 The Court has talked about all the judgment holders.
23 Beyond all the judgment holders, there are people who don't yet
24 have judgments but who also have pari passu rights under the
25 Court's interpretation. What this means is we have to make a

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1 global offer to everybody. But we also are constrained by the
2 RUFO that we can't do that before the end of the year without
3 triggering that clause for the benefit of the exchange
4 bondholders.

5 That is the first huge constraint. That was one of
6 the features of our stay applications. It will be hugely
7 complex to resolve this in any event. The RUFO adds a whole
8 additional layer of complexity. That at least sunsets, it's
9 gone after December 31. But until then, that is a huge issue.

10 The second issue is Argentina is a state. The Court's
11 order contemplates things that I remember, I'm sure the Court
12 does, from earlier days when labor/management negotiations
13 would go on around the clock, and so on, and there would be a
14 federal mediator. I have visions of reading the newspapers
15 from the '50s and '60s.

16 States don't operate like that. With all respect,
17 your Honor, a minister cannot be expected to sit in New York in
18 Mr. Pollack's office continuously. He has to hear. He has to
19 report. He has to consult at the literally highest level of
20 the state, its president. These are not only economic
21 decisions, they are political decisions, they are policy
22 decisions.

23 Very importantly, and this is the next constraint,
24 they are constitutional and legal decisions. Argentina can't
25 just sign a contract. It has laws that need to be addressed.

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1 It has constitutional obligations incumbent on its officials,
2 including, as Ms. Wagner mentioned with respect to her client
3 Citi, criminal penalties and the like. Argentine officials are
4 subject to and have been prosecuted in the past for doing
5 things with respect to debt restructuring that were not fully
6 authorized by Argentine law. That is a separate set of
7 constraints, legal/constitutional constraints.

8 Finally, as in any settlement, but I will emphasize
9 them, there are financial constraints. Argentina could not,
10 and we have told the Court this, pay the holdout creditors in
11 full, as the pari passu clause as interpreted by the Court
12 would require, or anything like that. There are going to have
13 to be detailed and, I suspect, painful negotiations with a
14 universe of people, not just these plaintiffs, not even the \$10
15 billion of judgment holders in this court, but the entire
16 universe of holdouts whose claims we estimate to be in excess
17 of \$20 billion, to make a deal which has to treat everyone the
18 same.

19 What I would therefore ask your Honor are two things.
20 One, I would be remiss in my duty as a lawyer for my client if
21 I did not repeat our request for a stay at least to get us
22 through this payment and through the end of the year so we
23 don't have the RUFO to deal with anymore.

24 Number two, to modify your order. Having round-the-
25 clock negotiations between now and the end of the year is

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1 unlikely, in fact I would say impossible, for all the reasons
2 that I gave you, to result in a settlement. The RUFO alone, if
3 it's not allowed to die an actual death at the end of the year,
4 will require months to get the waivers that counsel for one of
5 the other parties mentioned earlier. It simply can't be done
6 by the end of this month.

7 I would respectfully suggest that rather than round-
8 the-clock negotiations, we do think it is a good idea -- we
9 have had meetings. There should be more of them. We should be
10 exchanging ideas. But rather than create the kind of
11 artificial pressure cooker that in this situation if a stay is
12 not going to work, that we proceed down the road that we are
13 proceeding. But we would think a stay would really expedite
14 that and facilitate it.

15 MR. COHEN: Your Honor, may I respond?

16 THE COURT: No.

17 Thank you. I'm glad you spoke, Mr. Blackman. The
18 problem with the so-called stay application was that it would
19 take away the rights. It would take away rights. It really
20 wouldn't be a stay in the sense of holding the status quo. In
21 my view, the stay application, pro or con, is not something
22 that is necessary to a negotiation of settlement.

23 You have articulated very well maybe not all but most
24 of the problems. The reason for having settlement negotiations
25 is to try to deal with those problems. That's what settlement

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1 negotiations are about. Most importantly, to avoid a default
2 at the end of July.

3 In my view, every single problem you are talking about
4 is susceptible of being handled in some way in a settlement.
5 It is not going to be a settlement written in one paragraph.
6 It will deal, have to deal, with complex problems, with
7 conflicts. It will have to deal with all that. But if we
8 don't, there will be a default on July 30th, and that is the
9 worst thing. That is about the worst thing that, sitting here,
10 I can envision. I don't want that to happen. People will be
11 hurt by that, real hurt. Not vultures being hurt, but real
12 people will be hurt.

13 Whether the negotiations are round-the-clock or
14 something, we have a special master. I have not really tried
15 to tell him how to conduct the negotiations. That's up to him.
16 But what I want to indicate, and more than indicate, I am
17 directing that the parties and the lawyers meet promptly and
18 continuously. I don't mean anything absurd. I don't mean that
19 the finance minister of the Republic of Argentina has to
20 personally be in New York round the clock. Of course. But he
21 undoubtedly has staff.

22 If the parties here recognize the absolute necessity
23 of trying to reach a settlement by the end of the month -- and
24 that settlement won't take care of all issues that might arise
25 in the next year. It may. But there are ways to somehow avoid

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1 a default. That is what is being attempted.

2 I expect the parties and the lawyers to work really
3 continuously. There isn't a lot of time. This isn't two years
4 ago. It's today. The best thing we can do is to adjourn this
5 court session, which has been very helpful. Everybody who has
6 spoken has been helpful.

7 Mr. Pollack is up here in front. I will ask you now
8 what you would suggest as far as the mechanics at the moment.
9 Could you please address that and speak to the group, Mr.
10 Pollack.

11 MR. POLLACK: Thank you, your Honor. I would suggest
12 that we meet promptly at 10 a.m. and that representatives of
13 the parties and the lawyers both be present.

14 THE COURT: 10 a.m. tomorrow at your office?

15 MR. POLLACK: Correct.

16 THE COURT: We are adjourned. Thank you.

17 (Adjourned)
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