

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NML CAPITAL, LTD.,

Plaintiff, 08 Civ. 6978 (TPG)
-against- 09 Civ. 1707 (TPG)
09 Civ. 1708 (TPG)

THE REPUBLIC OF ARGENTINA,

Defendant.

-----X
AURELIUS CAPITAL MASTER, LTD. and
ACP MASTER, LTD.,

Plaintiffs, 09 Civ. 8757 (TPG)
-against- 09 Civ. 10620 (TPG)

THE REPUBLIC OF ARGENTINA,

Defendant.

-----X
AURELIUS OPPORTUNITIES FUND II, LLC
and AURELIUS CAPITAL MASTER, LTD.,

Plaintiffs, 10 Civ. 1602 (TPG)
-against- 10 Civ. 3507 (TPG)
10 Civ. 3970 (TPG)
10 Civ. 8339 (TPG)

THE REPUBLIC OF ARGENTINA,

Defendant.

-----X
BLUE ANGEL CAPITAL I LLC,

Plaintiff, 10 Civ. 4101 (TPG)
-against- 10 Civ. 4782 (TPG)

THE REPUBLIC OF ARGENTINA,

Defendant.

-----X

*(captions continue on
following page)*

**DECLARATION OF FABIEN DEBARRE IN SUPPORT OF
EURO BONDHOLDERS' MOTION FOR CLARIFICATION**

-----X
OLIFANT FUND, LTD.,

Plaintiff, 10 Civ. 9587 (TPG)
-against-
THE REPUBLIC OF ARGENTINA,

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

Plaintiff, 10 Civ. 5338 (TPG)
-against-
THE REPUBLIC OF ARGENTINA,

Defendant.
-----X

Pursuant to 28 U.S.C. § 1746, I, Fabien Debarre, declare under penalty of perjury under the laws of the United States of America that the following is true and correct :

1. I am Managing Director and General Counsel of Euroclear SA/NV (hereinafter, “Euroclear”), the parent company of Euroclear Bank SA/NV (hereinafter, “Euroclear Bank”) located in Brussels, Belgium. I act as the General Counsel for both Euroclear and Euroclear Bank. I am charged with defining the strategy of the Euroclear Group’s Legal Divison and planning, organizing, controlling and coordinating the activities in order to achieve the short and long term objectives of Euroclear Group. In this capacity, I am very familiar with Euroclear Bank’s business operations and with the laws and regulations applicable to Euroclear Bank and the Euroclear System.¹

¹ Euroclear, Euroclear Bank and related entities are referred to herein as the “Euroclear Group.” The system for settlement and related securities services which is operated by the Euroclear Group is referred to herein as the “Euroclear System”.

2. On June 29, 2014, the Euro Bondholders filed an emergency Motion for Clarification of the orders entered by the United States District Court for the Southern District of New York, District Court Judge Thomas P. Griesa, on November 21, 2012 (hereinafter, “**the Amended February 23, 2012 Orders**”), regarding the application of the Amended February 23, 2012 Orders to the Exchange Bonds which were issued by Argentina in 2005 and 2010 and which are euro-denominated (hereinafter, “**the Euro Bonds**”).

3. The Amended February 23, 2012 Orders enjoin Argentina from making further payment on its Exchange Bonds until it concurrently or in advance makes a ratable payment to NML, which holds Original Bonds issued by Argentina. The Amended February 23, 2012 Orders state that the “*Participants*” in the flow of payment on the Exchange Bonds involved in the litigation “*shall be bound by the terms of this order as provided by Rule 65(d)(2) and prohibited from aiding and abetting any violation of this order (...)*” (page 5).

4. Euroclear Bank is specifically named in the Amended February 23, 2012 Orders as a “Participant”. The Amended February 23, 2012 Orders define indeed “*Participants*” to include “*the clearing corporations and systems, depositaries, operators of clearing systems, and settlement agents for the Exchange Bonds (including, but not limited to (...)* [Euroclear Bank]) (page 6).

5. I am submitting this declaration in support of the Euro Bondholders’ motion for clarification.

6. This declaration is being submitted without concession or waiver of any of Euroclear Bank’s rights.

7. In this declaration, I will present Euroclear Bank and describe the Euroclear System it handles. I will also describe the Belgian law protecting the Euroclear System. I will moreover explain Euroclear Bank's role in the payment process for the Euro Bonds and why, subject to certain reservations, Euroclear Bank supports the Euro Bondholders' emergency Motion for Clarification.

PRESENTATION OF EUROCLEAR BANK

8. Euroclear Bank is a user-owned and user-governed commercial bank incorporated in Belgium. It is regulated by the National Bank of Belgium and the Financial Services and Markets Authority and has its registered office in Belgium, at B-1210 Brussels, Boulevard du Roi Albert II, 1. Euroclear Bank conducts no banking operations in the United States. It maintains a representative office in New York, for client relationship and support purposes.

9. Euroclear Bank is a member of the Euroclear Group, which is one of the world's largest providers of domestic and cross-border settlement and related services for bonds, equity, Exchange Traded Funds and other securities. Euroclear Bank's main business is to operate the securities settlement system known as the Euroclear System.

10. Euroclear Bank, through the Euroclear System, provides to its clients – which are called “Participants” – settlement and related securities services for cross-border transactions involving domestic and international bonds, equities, investment funds and derivatives. The Participants in the Euroclear System are major financial institutions located in more than 90 countries.

11. The Participants deposit, for their own account or for the account of third

parties (their own clients) financial instruments in securities clearance accounts opened on Euroclear Bank's books, in its capacity of custodian. The securities settlement system operated by Euroclear Bank enables purchases, sales and other transfers of financial instruments to take place without requiring physical move: the operation is performed by crediting or debiting the securities clearance account which is held by the concerned financial intermediary (the Participant) at Euroclear Bank.

12. To every securities clearance account, a cash account is linked. The cash accounts are used for the payments related to securities or settlement of securities which have to be performed by or for a Participant (for instance interest or sale price payments).

13. In short, Euroclear Bank facilitates the clearance and settlement of securities transactions through electronic book-entry changes in its Participants' accounts.

14. As a custodian of securities on behalf of its Participants, Euroclear Bank receives income and redemption payments from third parties appointed by issuers and then credits such amounts to its Participants. Euroclear Bank does not act on behalf of securities issuers. Its contractual obligations are solely to its Participants.

BELGIAN LAW PROTECTING THE EUROCLEAR SYSTEM

15. The financial instruments which are held in accounts maintained at Euroclear Bank are subject to a protective regime enshrined in the Belgian Royal Decree nr. 62 of November 10, 1967, coordinated on January 27, 2004, on the deposit of fungible financial instruments and the settlement of transactions in those instruments (hereinafter, "**the Royal Decree nr. 62**"). Because of the importance of the Euroclear System on the international and national financial markets, the Euroclear System is moreover recognized and protected by the Belgian Act of April 28, 1999, implementing the European Directive 98/26/EC of May 19, 1998,

on settlement finality in payment and securities settlement systems (hereinafter, “**the Finality Act**”). Euroclear Bank is the settlement agent and the operator of the Euroclear System.

16. Article 9 of the Finality Act provides:

“Any cash settlement account maintained with the operator of a system or with a cash settlement agent, as well as any cash transfer, through a Belgian or foreign credit institution, to be credited to such cash settlement account, cannot be attached, put under sequestration or otherwise blocked by any means by a participant (other than the operator or the settlement agent), a counterpart or a third party” [Euroclear Bank’s translation].

17. This provision establishes a protection for the systems falling within the scope of the Finality Act (among others, the Euroclear System), by prohibiting attachments, sequestrations or other blocking measures of a cash settlement account held in those systems or of a cash transfer. Article 9 does not constitute an implementation of the Directive 98/26/EC, but results from an amendment to the Finality Act made by the Belgian legislature in 2004. This provision finds its source in the Belgian “Nicaragua case”, which is very similar to the NML v. Argentina case, and which can be summarized as follows.

18. In July 2003, an interest payment on bonds issued by the Republic of Nicaragua was stopped by a Belgian lower court order served on Euroclear Bank at the request of LNC Investments, which claimed that such interest payment was a breach of the *pari passu* provision in the governing documentation for such bonds. That court order prevented Euroclear Bank from accepting or making any payments in respect of Nicaragua bonds. On appeal, the Brussels Court of Appeal reversed the court order in March 2004 and released Euroclear Bank from the blocking measures. The Court of Appeal found that Euroclear Bank was a third party to the loan agreement between Nicaragua Republic and its lenders (including the *pari passu* provision) and that, in such capacity, Euroclear Bank could not be forced to comply with any contractual obligation to treat debtors equally. Following the Nicaragua case, the Finality Act

was amended to prevent and prohibit any future blocking measures imposed on the Euroclear System.

19. The purpose of this prohibition against attachment, sequestration or other blocking measures of a cash settlement account or any cash transfer to be credited to such account is to avoid any impediment to the proper functioning of payment or settlement systems and hence to safeguard the credibility and the liquidity of national and international financial markets.

20. Article 9 of the Finality Act provides a protection for the Euroclear System. This provision does not impose any obligations on Euroclear Bank, which is, in its capacity of “operator and settlement agent”, expressly excluded from its scope of application. Hence, Euroclear Bank is not subject to the prohibition of blocking of cash accounts and cash transfers imposed by Article 9 of the Finality Act, but all other parties are subject to this prohibition. In other words, Euroclear Bank is not prohibited from blocking an account, but all other interested parties are prohibited from doing so. There are no exceptions to this prohibition and it clearly invalidates a court-ordered blocking of an account at the behest of bondholders who are purporting to enforce a pari passu provision. There can be no doubt that Article 9 of the Finality Act was intended to invalidate such a blocking order because that is the exact type of blocking order that was issued in the situation involving Nicaraguan bonds that led to the enactment of Article 9.

ROLE OF EUROCLEAR BANK IN THE PAYMENT PROCESS FOR THE EURO BONDS

21. Some of the Participants in the Euroclear System hold the Euro Bonds

issued by Argentina which are at issue in the NML v. Argentina case. They keep those bonds in securities clearance accounts at Euroclear Bank in Belgium. Euroclear Bank receives payments on Euro Bonds on behalf of its Participants, and credits these payments in the cash accounts held in the Euroclear System by the concerned Participants.

22. On November 16, 2012, Kevin F. Binnie, Vice President of the Bank of New York Mellon New York (hereinafter, “**BNYM New York**”) filed with the United States District Court for the Southern District of New York a declaration explaining the payment process of funds related to the Exchange Bonds. According to this declaration, BNYM New York, trustee, serves as the paying agent for exclusive benefit of the holders of the Bonds.

23. In his declaration, Kevin Binnie describes as follows the payment process for the Euro Bonds which are held in the Euroclear System (pages 3 and 4):

- (1) Argentina transfers funds to a Euro deposit account opened in the name of BNYM New York at Banco Central de la Republica de Argentina. Kevin Binnie adds that, as required by the Trust Indenture, and the Luxembourg Stock Exchange, BNYM New York appointed Bank of New York Mellon Luxembourg (hereinafter, “**BNYM Luxembourg**”) as the nominal “trustee paying agent” with respect to the Euro Bonds;
- (2) The funds deposited in BNYM New York’s account at Banco Central de la Republica de Argentina are transferred to a Deutsche Bank account in Frankfurt, Germany, opened in the name of The Bank of New York Mellon, Brussels branch (hereinafter, “**BNYM Brussels**”);
- (3) At the direction of BNYM New York, the funds are transferred from the Deutsche Bank to Euroclear Bank in Belgium (or Clearstream, in Luxembourg);
- (4) Euroclear Bank credits the accounts of its Participants which hold the Euro Bonds to which the payment relates with the funds it received.

24. The Euro Bondholders rely on the declaration by Kevin F. Binnie to state

that, contrary to what NML claims, the entire payment process for the Euro Bonds never enters the US and it involves only banks and other financial institutions.

25. It is not for Euroclear Bank to express an opinion on the different steps of the payment process of funds related to the Euro Bonds it holds in its books on behalf of its Participants, as Euroclear Bank intervenes only at the end of the payment flow.

26. Euroclear Bank can however confirm that, according to its system's records, its cash account opened in Target2² is credited by the London branch of the Bank of New York Mellon (hereinafter, "BNYM London") with the funds related to the Euro Bonds which are held in its books. Upon receipt of the funds in Target 2, Euroclear Bank credits the cash accounts its Participants hold in its books in Belgium with the amount corresponding to the Euro Bonds they hold in their securities accounts.

**SUPPORT OF EURO BONDHOLDERS' EMERGENCY
MOTION OF CLARIFICATION**

27. In their memorandum of law in support of their emergency Motion for Clarification, the Euro Bondholders state that the United States District Court for the Southern District of New York should clarify that the Amended February 23, 2012 Orders do not apply to foreign third parties, including Euroclear Bank, that process payments on the Euro Bonds.

28. In support of their Motion for Clarification, the Euro Bondholders claim, in substance, that the foreign third parties that process payments on the Euro Bonds (including

²Target 2 is the real-time gross settlement (RTGS) system owned and operated by the Eurosystem (the Eurosystem, which comprises the European Central Bank and the national central banks of the Member States whose currency is the euro, is the monetary authority of the euro area). Target stands for "Trans-European Automated Real-time Gross settlement Express Transfer system".

Euroclear Bank) are beyond the jurisdiction of the United States' Courts, because those foreign third parties are all established abroad and because payments on the Euro Bonds do not pass through the United States. The Euro Bondholders invoke moreover, in support of their motion, that the Amended February 23, 2012 Orders would restrict certain foreign third parties from fulfilling their contractual or legal duties on foreign soil, under foreign law.

29. Subject to the express reservations mentioned below, I generally agree, on behalf of Euroclear Bank, with the Euro Bondholders' allegations, and I support their Motion for Clarification.

30. Some of the allegations contained in the Euro Bondholders' Motion for Clarification are however stated incorrectly.

31. According to the Euro Bondholders, "*if this Court does not clarify that [the Amended February 23, 2012 Orders] do not apply to the parties who process payment on the Euro Bonds, the substantial holdings of the Euro Bondholders will be at risk and the foreign third parties that process Euro Bonds payments may be subject to significant liability overseas*" (page 4, end of second para., emphasizes added) ; that "*Belgian (...) law render[s] unenforceable any court orders purporting to restrain clearing systems from their duty to process payments (...)*" (page 15, second para., emphasizes added) ; and that "*if interpreted to cover the foreign third parties processing payments on the Euro Bonds, [the Amended Orders] would inappropriately attempt to forbid Euroclear [Bank] (...) from satisfying [its] legal obligations under foreign law (...)* This, in turn, will make it impossible for [Euroclear Bank] to comply simultaneously with [the Amended Orders] and with their contractual obligations under governing foreign law, and would result in [Euroclear Bank] being subject to additional

litigation and inconsistent judgments (page 16, third para., emphasizes added).

32. However, as stated above, Belgian law, in particular Article 9 of the Finality Act, does not impose any duty or obligation to Euroclear Bank to process payments it would receive for another third party in the payment process. Article 9 of the Finality Act only establishes a protection for the Euroclear System, with the aim of preventing and prohibiting any attachments, sequestrations or other blocking measures of a cash settlement account or a cash transfer, by a Participant in the Euroclear System, a counterpart or a third party. As mentioned above, the prohibition of Article 9 does not apply to Euroclear Bank.

33. Also, Euroclear Bank has no contractual relationship with Argentina, as issuer of the Euro Bonds, or with the Euro Bondholders.

34. Its contractual obligations are solely to its Participants, on behalf of which it receives payment on the Euro Bonds. Under normal circumstances, Euroclear Bank has a contractual obligation to transfer to its Participants any payment it receives in relation to securities held in the Euroclear System such as the Euro Bonds. However, there are exceptions to this contractual obligation. In particular, the contract between Euroclear Bank and its Participants allows Euroclear Bank not to make such transfer if a court order prohibits it to do so.

35. Subject to this clarification, what is true, however, is that the Amended February 23, 2012 Orders are in direct conflict with Belgian law and contravene the protection of the Euroclear System implemented by Article 9 of the Finality Act. As stated above, indeed, Article 9 of the Finality Act prevents and prohibits any blocking measures affecting a cash settlement account or a cash transfer. Considering the objective pursued by this provision –

namely to avoid any impediment to the proper functioning of payment or settlement systems and hence to safeguard the credibility and the liquidity of national and international financial markets – Article 9 should be regarded as a rule of Belgian international public policy.

36. The implementation of the Amended February 23, 2012 Orders on the terms set by this Court would likely lead to a direct violation of this rule of Belgian law to the extent that Euroclear Bank would be prohibited from receiving cash payments in relation to the Euro Bonds from its correspondents and from crediting the cash so received to its Participants' cash settlement accounts. The prohibition contained in this Order therefore falls within the scope of the prohibition of attachments, sequestrations or other blocking measures affecting cash settlement accounts set out in Article 9 of the Finality Act.

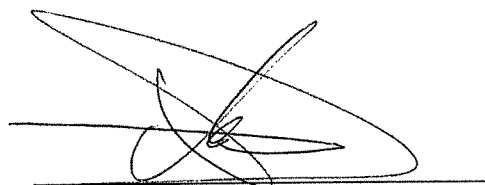
37. In the interest of comity, this Court should not permit any action which would interrupt or impair the smooth functioning of the bond markets upon which so many governments and investors over the world rely so heavily, nor should it impose restrictions with an effect in Belgium which are directly contrary to Belgian international public policy.

CONCLUSION

For the reasons stated above, I submit to the United States District Court for the Southern District of New York that the Motion for Clarification should be granted and that this Court should clarify that the Amended February 23, 2012 Orders do not apply to foreign third parties, such as Euroclear Bank, that process payments on the Euro Bonds.

I am available to respond to any question of this Court or to provide a further submission if requested by this Court.

Dated: July 9th, 2014
Brussels, Belgium



Fabien Debarre