

E9AMREPC

1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

2  
3 NML CAPITAL, LTD., et al.,

3  
4 Plaintiffs,

4  
5 v. 08 CV 6978 (TPG)

5  
6 THE REPUBLIC OF ARGENTINA,

6  
7 Defendant.

7  
8 -----x

8  
9 New York, N.Y.  
9 September 10, 2014  
10 2:35 p.m.

11 Before:

11  
12 HON. THOMAS P. GRIESA,

12  
13 District Judge

14 A P P E A R A N C E S

15 QUINN EMANUEL URQUHART & SULLIVAN

15 Attorneys for Plaintiff NML Capital, Ltd.

16 BY: KEVIN S. REED

16  
17 DECHERT LLP

17 Attorneys for Plaintiff NML Capital, Ltd.

18 BY: ROBERT A. COHEN

18  
19 FRIEDMAN KAPLAN SEILER & ADELMAN LLP

19 Attorneys for Interested Parties Aurelius Capital Partners  
20 and Blue Angel

20 BY: EDWARD A. FRIEDMAN

21

22

23

24

25

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

E9AMREPC

1 APPEARANCES (Cont'd)

2 DAVIS POLK & WARDWELL LLP

2 Attorneys for Citibank

3 BY: KAREN E. WAGNER

3 MATTHEW ROLAND

4 LINDSEY KNAPP  
4 JAMES KERR

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

3

E9AMREPC

1 THE COURT: Who would like to lead off?

2 MR. REED: Good afternoon, your Honor. Kevin Reed  
3 from Quinn Emanuel. Together with Mr. Cohen of the Dechert  
4 firm I represent NML Capital, Ltd. Mr. Cohen has a conflict  
5 with respect to the matter that's going to be presented today.

6 THE COURT: Can you go back to the lecturn?

7 MR. REED: I will.

8 Your Honor, we are here today on NML's motion by order  
9 to show cause to compel Citibank to comply with the subpoena  
10 that we issued on August 15. The subpoena, as I'll explain a  
11 bit later, calls for production of what we consider to be a  
12 relatively narrow and limited set of information, documents and  
13 a deposition relating to communications and documents generated  
14 during the period from just June 16 of this year forward  
15 concerning payments on a set of U.S. dollar denominated  
16 Argentine law exchange bonds and, in particular, threats that  
17 Citibank has maintained Argentina has conveyed to it in an  
18 effort to compel Argentina to make payment on those bonds in  
19 violation of the terms of this Court's equal treatment order.

20 If you'll indulge me I wanted to give the Court a bit  
21 of background, set a timeline that leads up to the subpoena  
22 because I think it's relevant to the arguments we are going to  
23 make today.

24 On June 27, in response to a motion for clarification  
25 filed by Citibank, your Honor issued an order holding that the

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

E9AMREPC

1 equal treatment order that you had previously issued did not  
2 prohibit payment on certain Argentine law bonds, both peso  
3 denominated and U.S. dollar denominated for exchange bonds.

4 NML filed a motion for reconsideration of that June 27  
5 order. And on July 28 of this year, your Honor issued an order  
6 holding that after July 30, Citibank will be barred by the  
7 Court's equal treatment order from making payments on U.S.  
8 dollar denominated exchange bonds issued under Argentine law  
9 unless Argentina complies with the equal treatment order.

10 Citibank appealed that order and on August 5 filed a  
11 motion in the Second Circuit to expedite the appeal in which it  
12 stated that if Citibank Argentina does not make payment, both  
13 the bank and its employees will be at grave risk for civil  
14 regulatory and criminal liability; in essence, telling the  
15 Second Circuit, if we are forced to comply with this Court's  
16 orders, Argentina has told us we will suffer great penalties.

17 THE COURT: Can we back up a little bit. In my view,  
18 and I think this is reflected in whatever I said, this was a  
19 narrow issue, not an issue about the whole injunction and the  
20 whole payment. This was a narrow issue about bonds that were  
21 issued in Argentina specifically under their terms subject to  
22 Argentine law, right?

23 MR. REED: Yes, your Honor.

24 THE COURT: And I believe that I held that it would be  
25 no violation of any injunction in our court for a payment to be

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

E9AMREPC

1 made, a one-time payment to be made, right?

2 MR. REED: Yes, your Honor.

3 THE COURT: And that's as far as I went, right?

4 MR. REED: That's correct, your Honor, in the July 28  
5 order.

6 THE COURT: Did I issue subsequent orders?

7 MR. REED: No, your Honor. Your July 28 order  
8 essentially said, we are going to make a one-time exception to  
9 the equal treatment order to permit Citibank to make a payment  
10 on U.S. dollar denominated Argentine law exchange bonds. But  
11 after July 30, those bonds will be considered within the equal  
12 treatment order and no such payments may be made unless  
13 Argentina complies with its rateable payment obligation.

14 THE COURT: I think that's a fair description.

15 You go ahead.

16 MR. REED: Argentina appealed that order, as did  
17 Citibank. And Citibank then filed a motion to the Second  
18 Circuit to expedite its appeal because there is a payment due  
19 on September 30. And Citibank's position in the Second  
20 Circuit, which Ms. Wagner I'm sure will expound on in greater  
21 detail, but a key element of their position was, if we comply  
22 with this Court's injunction and do not make payment on  
23 September 30, we face grave sanctions from Argentina. They

24 filed that motion on August 5. The very next day they receive  
25 a letter from the secretary of finance in Argentina as if to  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

6

E9AMREPC

1 confirm what they are saying in which the secretary of finance  
2 demands that Argentina make payment on September 30.

3 THE COURT: Say that again.

4 MR. REED: In a letter that the secretary of finance  
5 of Argentina sent to Citibank on August 6, the Argentine  
6 secretary of finance first demanded that Citibank make payment  
7 on the exchange bonds in violation of this Court's order on  
8 September 30 and demanded that Citibank respond within 48  
9 hours, confirming that it would, in fact, make the payment.

10 Then on August 11, Citibank responds to Argentina in a  
11 letter which it put before the Second Circuit through a 28(j)  
12 letter. And in essence what Citibank said is, we will, in  
13 fact, make the payment on September 30. We recognize that is  
14 our obligation under Argentine law. And we will make that  
15 payment, the implication being notwithstanding our obligation  
16 under this Court's order not to do so.

17 So this chain of events gave rise to a concern on the  
18 part of NML that Argentina was engaging in an effort to evade  
19 this Court's orders by coercing and pressuring Citibank and  
20 potentially others, for all we know, to assist Argentina in  
21 making payments on exchange bonds without rateable payments  
22 being made to NML and other plaintiffs in clear violation of  
23 this Court's orders.

24 So on August 15, NML served a subpoena on Citibank  
25 that seeks expedited and limited discovery and, in particular,  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

7

E9AMREPC

1 it seeks documents and a deposition on four discrete topics  
2 covering the period from June 16 forward.

3 Those topics: First, communications with Argentina,  
4 between Citibank and Argentina relating to payments on these  
5 Argentine law exchange bonds; second, any communications  
6 Citibank has with Argentina relating to the motion that it made  
7 to clarify that resulted in the June 27 order, the order where  
8 your Honor initially said, payments on these Argentine law  
9 bonds were permitted. We have asked them to produce any  
10 communications they have with Argentina relating to the motion  
11 for reconsideration that NML filed which resulted in your  
12 Honor's ruling that Citibank was not, in fact, permitted to  
13 make payments on U.S. dollars.

14 THE COURT: Can you keep your voice up a little more.

15 MR. REED: The third category we sought was  
16 information relating to communications between Citibank and  
17 Argentina that relate to the motion that NML filed for  
18 reconsideration of your Honor's June 27 order, and that motion  
19 for reconsideration resulted in the order on July 28 where your

20 Honor indicated that payments on the U.S. dollar denominated  
21 exchange bonds would not be permitted after July 30.

22 And, finally, and this may be the core of it, we asked  
23 for any documents, communications, et cetera, relating to any  
24 demands, threats, inducements, conveyed to Citibank by  
25 Argentina to cause it to make a payment on the U.S. dollar

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

8

E9AMREPC

1 denominated Argentine --

2 THE COURT: You really have to keep your voice up.

3 I'm not catching --

4 MR. REED: I apologize. Hold on one second.

5 The fourth category of documents that we seek. Is  
6 that better?

7 THE COURT: Thank you very much. That's good.

8 MR. REED: I apologize, your Honor.

9 The core of it, the fourth category of documents that  
10 we seek are documents that go to any inducements, demands,  
11 requests, threats conveyed by Argentina to Citibank to induce  
12 Citibank to make payment on September 30 on the U.S. dollar  
13 denominated exchange bonds governed by Argentine law.

14 Now, in serving the subpoena our aim was both to  
15 understand and document Argentina's effort to evade this  
16 court's orders through intimidation by third parties like  
17 Citibank so we can figure out how to combat it and, if  
18 necessary, seek the relief from the Court. That issue was  
19 crystallized and the reason we sought expedited discovery and  
20 ultimately an order to show cause, it was crystallized by  
21 Argentina's threats to Citi in relation to this payment that's  
22 coming up on September 30.

23 But it was bigger than just that. First, there are  
24 parties other than Citibank who are due to make payments on  
25 September 30 and, if compelled by Argentina, may do so in

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

9

E9AMREPC

1 violation of this Court's order.

2 THE COURT: What is the last thing you are saying?

3 MR. REED: The subpoena initially was designed to  
4 capture and combat what seemed to be a clear effort by  
5 Argentina to coerce Citibank to make a payment on the exchange  
6 bonds on September 30. That was what motivated us to serve the  
7 subpoena, to seek expedited discovery, and to try and move this  
8 quickly.

9 But I want to make clear that the Court understands  
10 that the issue is bigger than that in that there are parties  
11 other than Citibank who, if compelled to, might make payments  
12 on exchange bonds on September 30, such as Bank of New York.  
13 And, beyond that, we are concerned --

14 THE COURT: I don't know why you get into Bank of New  
15 York. Bank of New York has a completely different relationship

16 to this case versus the Citibank branch in Buenos Aires.

17 MR. REED: I take your point, your Honor. The point  
18 I'm really trying to make is not specific to Bank of New York.  
19 It's really more that if, in fact, Argentina is engaged in an  
20 effort to compel Citibank as a third party to make payments in  
21 violation of this Court's equal treatment order, it may well be  
22 engaged in or planning to engage in a campaign to coerce other  
23 third parties into making such payments. If that's the case,  
24 we need to know. We need to know the details of it, we need to  
25 know how they are doing it, we need to know what they are

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

10

E9AMREPC

1 saying to people, we need to know how they are conveying it, so  
2 that we can figure out how to combat that strategy including,  
3 if necessary, by seeking relief from this Court.

4 Somewhat to our surprise, Citibank responded to our  
5 subpoena seeking information on the threats that it supposedly  
6 had been getting from Argentina and communications that it had  
7 with Argentina regarding payments on the exchange bonds with  
8 this kitchen sink list of objections and a refusal to produce  
9 any documents. And I say we were somewhat surprised because  
10 given Citibank's claim that it was, in essence, being coerced  
11 into violating this Court's order, it was our expectation that  
12 Citibank would welcome the opportunity to make a full record of  
13 the threats and the coercions that it was facing if for no  
14 other reason than to defend itself against a contempt charge.  
15 Instead, Citibank simply refuses to produce anything. And so  
16 as required by the Court's rules and practices, we had a meet  
17 and confer with Citi's counsel, and they adhered to that  
18 position, that they would not produce anything.

19 The only thing to come out of the meet and confer was  
20 a representation by Citibank that the only -- and I'm quoting  
21 it now -- the only written communication from the Republic of  
22 Argentina to Citibank Argentina regarding the September 30  
23 payment on the Argentine law bonds is the letter dated August  
24 6, 2014 from Finance Secretary Lopez of which you are already  
25 aware. And what they are referring to there is a letter I

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

11

E9AMREPC

1 referenced earlier that the secretary sent to Citibank  
2 demanding that they make the payment on September 30.

3 Now, the representation that we got was obviously  
4 carefully word and crafted and perhaps intended to suggest that  
5 we already had all the relevant information, but, in fact, it  
6 makes clear that we may well not. It doesn't address whether  
7 there are any written communications from Citibank to  
8 Argentina, as opposed to the other way. It doesn't address  
9 whether there were any --

10 THE COURT: I am going to interrupt you, and I'm sure  
11 Ms. Wagner will have something to say.

12 The basic injunction of this Court is the injunction  
13 of September 23, I guess, 2012 as amended, something like that.  
14 And I want to say this as a little bit of background for where  
15 I'm going. It deals with the exchange bonds as a whole. It  
16 provides conditions under which payments can be made on those  
17 bonds of interest, et cetera. It deals, also, of course, with  
18 the parties who did not exchange and who held and still hold  
19 their judgments and it deals with the pari passu concept  
20 creating a relationship between those two forms of  
21 indebtedness.

22 Now, the basic procedures for the bonds issued in the  
23 last century, \$100 billion or so, those procedures were  
24 established by contract. They provided for processing of  
25 default claims and so forth in New York. The Bank of New York

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

12

E9AMREPC

1 Mellon was appointed indenture trustee and all that was set up  
2 and is reflected in the amended September 23 order.

3 Now, what the applications of this summer presented  
4 was something aside from all of that, in my view. It dealt  
5 with bonds issued in Argentina, subject to Argentine law,  
6 something completely different from the bonds dealt with in the  
7 September 23 order.

8 Now, I ruled what I ruled in respect to those  
9 particular bonds, and I think you've summarized it. It's on  
10 the record. But what I was dealing with, and the proceedings  
11 this summer was bonds issued in Argentina expressly subject to  
12 Argentine law, something completely different from what was  
13 covered in the injunction, the major injunction of September  
14 23, I guess, of 2012.

15 The reason I go into this is this. I made a ruling.  
16 That ruling is now before the Court of Appeals. But it dealt  
17 with what was due on those Argentine bonds as of July 30. Am I  
18 right?

19 MR. REED: Yes, your Honor.

20 THE COURT: Now, obviously, from what you say, and I'm  
21 sure the correspondence bears this out, there will be another  
22 date, September 30, when the issue will come up again about  
23 payment by Citibank on those bonds issued in Argentina.

24 The problem I have with your application, I have not  
25 heard from the other side, but I just want to address you right

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

13

E9AMREPC

1 now, there are obviously problems in the relationship between  
2 Citibank and the Republic of Argentina as to those Argentina  
3 law bonds.

4 Ms. Wagner, there are issues, right?

5 MS. WAGNER: Yes, your Honor.

6 THE COURT: We will come back to you.

7 I don't know how long the particular issues will go on

8 and I don't know how Citibank is literally dealing with the  
9 Republic of Argentina. I made a ruling as to what was due on  
10 July 30 and that ruling went no farther. And the issue at that  
11 time had a peculiarity. There was some mixup on the recording  
12 made by Citibank of what was due on those Argentine bonds and  
13 what was due on obligations to Repsol, and the Citibank  
14 recording system had that mixed up. Hopefully, that will get  
15 resolved, but I made a ruling about a one-time payment.

16 I would hope that this issue about the Argentine bonds  
17 does not go on forever, and I would also hope that as long as  
18 it goes on, there can be some reasonable negotiation between  
19 Citibank and the Republic of Argentina. Whether those issues  
20 are complicated or not complicated, I don't know sitting here.

21 But what I'm leading up to is this. Citibank and  
22 Argentina has to deal with the Republic of Argentina. They  
23 have to deal with them. Citibank has a branch down there and  
24 they are the issues which we have talked about.

25 I should wait and hear from Ms. Wagner, but I will  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

14

E9AMREPC

1 just anticipate. I'm concerned that if I grant NML's request  
2 for a very extensive discovery, I'm injecting something into  
3 the process in Argentina that will make it more difficult  
4 rather than less difficult for the dealings to occur.

5 I'd like to now interrupt you. Thank you very much.  
6 I'll get back to you.

7 Can I hear from Ms. Wagner.

8 MS. WAGNER: Good afternoon, your Honor. You are, of  
9 course, exactly right that Citibank Argentina faces very  
10 specific and unique issues when dealing with Argentina because  
11 it is a branch bank in Argentina.

12 But I would suggest to you, your Honor, that you need  
13 not deal with any of these issues today. What is before you  
14 today is a request for discovery for the purpose of enlarging  
15 the record in the Court of Appeals.

16 THE COURT: I never do this. Could you keep your  
17 voice down a little bit. It's roaring up here.

18 MS. WAGNER: Your Honor, that's never happened to me  
19 before, ever. That's very exciting.

20 We are dealing here, your Honor, with a request to  
21 provide discovery for the purpose of enlarging the record  
22 before the Second Circuit. There is no case cited by  
23 plaintiffs and there is none that we have found which permits  
24 this Court to order discovery so that the Second Circuit's  
25 record can be changed.

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

15

E9AMREPC

1 So I would suggest to your Honor, for that reason  
2 alone this motion can be denied today and we can carry on with  
3 the way we are carrying on. Citibank is in a very unique



4 position, Citibank Argentina. Citibank Argentina has appealed  
5 from this Court's order because we do face conflicting  
6 obligations. We made that point when we moved for  
7 clarification, which was almost a year and a half ago. This is  
8 not new. We put in expert declarations at that time that said,  
9 this is going to be a problem and we could be subject to  
10 various kinds of risk.

11 What happened very recently was that Argentina's  
12 finance minister sent us a letter that basically said, yes, you  
13 are at that kind of risk. For that reason we asked the Second  
14 Circuit to please expedite the appeal from your Honor's order,  
15 and we are arguing, of course, in the Second Circuit that we  
16 should be treated differently and we should not be subject to  
17 this injunction.

18 Now, your Honor, if it turns out that the Court of  
19 Appeals agrees with us, then none of this is going to be  
20 relevant anymore. It won't matter what the negotiations or  
21 whatever is going on between Citibank Argentina and Argentina.  
22 If they rule in our favor, this whole issue goes away.

23 I think, your Honor, because you've expressed this to  
24 us before, you have not in the past thought that it was your  
25 role to do something with respect to your order when an appeal

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

16

E9AMREPC

1 was pending. So I would suggest to your Honor that you would  
2 be in a perfectly reasonable position today to just deny this  
3 discovery request, and the Court of Appeals is likely to rule,  
4 I think, before September 30, and then we will all know where  
5 we stand and we can all figure out what to do next. But there  
6 is no reason in the law or in the facts or any other reason for  
7 you to proceed now to allow discovery for the purpose of  
8 enlarging the appellate record.

9 The other point I would make to you, your Honor, is I  
10 think you've been pretty straightforward that you think people  
11 should be talking about settlement. Plaintiffs have now  
12 suggested to you that one of the Citibank and Argentina's  
13 executives, who was in New York for the purpose of meeting with  
14 banks to talk about a potential settlement, for that reason,  
15 should be subject to a subpoena so that he can testify about  
16 these issues. That will, of course, chill any possibility of  
17 this sort of discussion going forward and it certainly will  
18 create difficulties between Citibank Argentina and Argentina.  
19 All of that is also entirely unnecessary. It's irrelevant to  
20 anything before this Court at this moment and it cannot be put  
21 before the Second Circuit.

22 So for that reason as well I think that the  
23 application here for the discovery, which your Honor is quite  
24 right, would be very sensitive and should not be pursued, it  
25 should be denied because there is no reason on earth to be

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

17

E9AMREPC

1 doing this right now, right before the Second Circuit rules.

2 Your Honor, that is basically our position on this motion.

3 THE COURT: Can you remain where you are. Let me ask  
4 a few questions of Mr. Reed. Could you go back there.

5 What proceeding is going on in the district court that  
6 all this discovery would relate to?

7 MR. REED: Your Honor, that does get to the heart of  
8 it. And what it relates to is this Court's ongoing effort to  
9 police and ensure compliance with the equal treatment order.

10 We are not here seeking to harass Citibank. In fact, we  
11 thought, perhaps naively, that we might be helping Citibank  
12 with this application by exposing efforts by Argentina to evade  
13 the Court's orders by coercing third parties into making  
14 payments that are prohibited by them.

15 And whatever happens with the appeal on the Second  
16 Circuit, whatever the Second Circuit decides as to the July 28  
17 order, this Court still is charged with the responsibility of  
18 enforcing its injunction, requiring Argentina to make rateable  
19 payments when it makes payments on the exchange bonds. And if  
20 what Argentina is planning, which is essentially what Citibank  
21 is claiming is going on here, if what Argentina is planning is  
22 to secure an ability to make payments in violation of this  
23 Court's order by coercing third parties such as Citibank to  
24 facilitate such payments, that goes to the heart of the  
25 injunction, whether it's going to have any value at all.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

18

E9AMREPC

1 If they get away with what they have done here,  
2 compelling and threatening Citibank to make a payment by  
3 threatening to pull its license, threatening to jail its  
4 officials, if Citibank is to be believed and statements are to  
5 be taken at face value, if Citibank gets away with that here,  
6 that's a first crack in the dam. As these other payments come  
7 due --

8 THE COURT: I don't see that. Here is what I have in  
9 mind. The basic provisions that this Court is dealing with  
10 relate to what stems from the original bond issues back at the  
11 turn of the century and specifically relate to the exchanges  
12 that were made on those bonds by many bondholders in '07 and  
13 2010 and then the handling of the people who did not exchange  
14 under the pari passu clause. That's what this Court is dealing  
15 with. And it's all in New York because it was contractually  
16 agreed by the Republic that all this would be in New York.

17 Now, there have been efforts by the Republic to avoid  
18 the effect of the Court's injunction and those efforts have  
19 been dealt with as they came up, and I have issued rulings  
20 forbidding certain actions. But all that relates to what I'll  
21 call the bulk of the bonds, and the record shows what I'm  
22 talking about.

23 What I'm saying now is not meant to restate any  
24 rulings I made this summer or discuss what's before the Court

E9AMREPC

1 of large-scale threat that I think you are talking about to the  
2 structure of the bonds in a large sense. What I see and what I  
3 thought I was dealing with was something that was quite  
4 different from the bonds dealt with in the large injunction,  
5 which are payable in New York subject to New York law, et  
6 cetera or United States law. It is my understanding that what  
7 is being dealt with in Argentina are bonds issued in Argentina  
8 specifically subject to Argentine law, and I had to deal with  
9 the question of what obligations Citibank did or did not have  
10 because the application came before me this summer and that's  
11 all now before the Court of Appeals.

12 What I'm trying to get at is that I really don't see  
13 whatever goes on between Citibank and Argentina and the  
14 Republic of Argentina in respect to these particular bonds. I  
15 don't see that having a wide effect. I think you're talking  
16 about a possible wide effect and I really don't see that.

17 MR. REED: Your Honor, if I may, I guess I would  
18 respond in two ways. First, just so that it's abundantly  
19 clear, the bonds that we are discussing here, although they  
20 were issued in Argentina under Argentine law, are exchange  
21 bonds governed by the court's injunction. Citibank doesn't  
22 dispute that.

23 So in a micro sense, what we are dealing with here,  
24 according to Citibank, is an effort by Argentina to compel a  
25 payment on exchange bonds that is prohibited by this Court's  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

E9AMREPC

1 injunction. And even if you look at simply that issue in and  
2 of itself, it is our view that the Court ought not to  
3 countenance that and, at a minimum, ought to permit discovery  
4 so that we can see whether, in fact, Argentina is making  
5 threats to compel a third party to violate this Court's order.

6 That issue alone, we think, justifies the discovery  
7 that we seek so that we can ascertain whether Citibank is  
8 engaged in a blatant and naked effort to circumvent and evade  
9 this Court's order through intimidation.

10 The second thing, we do believe that there may well be  
11 a wider effect. Because if they get away with it here, they  
12 may be planning to do it elsewhere. And whether it's in  
13 Argentina with a small set of bonds and they get away with it  
14 and it stays that, or whether it goes to a wider effect, where  
15 it begins to affect the vast bulk of the bonds issued in the  
16 United States, nobody can know.

17 That's why NML has an interest in ascertaining what  
18 Argentina is claiming, how they are executing it, and how it  
19 may affect it. Because what we know for certain is that  
20 Argentina will do anything in its power to avoid complying with

21 this Court's orders and judgments.

22 And what we also know from past experience, the only  
23 way that NML and other plaintiffs can be in a position where  
24 they can hope to combat that is to know what's happening as  
25 soon as possible and in as much detail as possible so that we  
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

21

E9AMREPC

1 can plan countermeasures to assist the Court in enforcing these  
2 orders, and that's why we think this discovery is critical.

3 THE COURT: Ms. Wagner.

4 MS. WAGNER: Your Honor, we, of course, agree with  
5 you. The issue that was before you that we brought before you  
6 and that is now in the Court of Appeals is addressed to the  
7 unique situation facing Citibank Argentina with respect to  
8 these Argentine law bonds that are issued in Argentina and  
9 payable in Argentina and, frankly, we now know and we had  
10 advised the Court that some of them are not exchange bonds,  
11 probably not quite a lot of them. That's not an issue for  
12 today.

13 The point is, that question as to whether Citibank  
14 Argentina, given its status, and the Argentine law bonds, as a  
15 matter of law, should be subjected to this Court's injunction.  
16 And your Honor is quite right. It's a very defined group, not  
17 only of bonds, but also one entity, Citibank Argentina. The  
18 Court of Appeals will decide, it's not a question of anybody  
19 getting away with anything. The Court of Appeals will decide  
20 whether or not, as a matter of law, Citibank Argentina should  
21 be bound by this, and we will decide very soon.

22 And if the Court decides that there is a legal reason  
23 why Citibank Argentina should not be bound by this ruling, then  
24 all of this discovery would be completely irrelevant anyway.

25 It's not a question of people getting away with  
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

22

E9AMREPC

1 anything. It is a question of what is the scope of the  
2 injunction and is Citibank Argentina and are these bonds  
3 included. We will find out very shortly what the Court of  
4 Appeals thinks, and if this whole effort is to suggest that it  
5 is Argentina that's being policed, then I suppose that  
6 Argentina could be the target of some discovery requests. The  
7 only requests have been made of Citibank and it is obvious that  
8 it puts Citibank in a very complicated position.

9 Your Honor, we would suggest, given the pendency of  
10 the appeal, and when they came to your Honor to get the order  
11 to show cause to ask for this discovery, there was not one word  
12 mentioned about anything other than Citibank and Citibank  
13 Argentina and the need to supplement the record on appeal.  
14 They didn't come to you saying, we are worried there is going  
15 to be a whole mass evasion of your order. They were very  
16 laser-focused on Citibank's appeal.

17 Citibank should now have its appeal heard and decided  
18 and their discovery is just totally irrelevant to anything  
19 pending in this Court, and obviously there is no procedure for  
20 getting discovery in the Court of Appeals.

21 THE COURT: Thank you.

22 What we have before the Court are subpoenas, right?

23 MR. REED: Yes, your Honor. You have a motion to  
24 compel compliance with the subpoena that NML issued to  
25 Citibank.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

23

E9AMREPC

1 MS. WAGNER: And a motion to quash.

2 THE COURT: What I have done in the past as issues  
3 have come up is to deal with specific issues which have been  
4 presented, and there have been several. Those issues have been  
5 created by actions taken by the Republic, at least some of  
6 them, and I've made rulings. And the latest ruling that I made  
7 was this summer and that is before the Court of Appeals now.

8 I do not deny that there may be conduct, there may be  
9 warnings, there may be information which could indicate that  
10 there might be efforts by the Republic of Argentina to get  
11 Citibank to do what might be in violation of this Court's order  
12 or orders. I put all this in terms of might because I really  
13 don't have facts showing that in any definite way, and I don't  
14 think the NML claims that there are such facts right now.

15 MR. REED: In fact, your Honor, we do. And you have  
16 the letter submitted by Citibank itself to the Court of Appeals  
17 in which Argentina demands that they violate this Court's  
18 order.

19 THE COURT: I stand corrected. Thank you.

20 My point really is that this Court should take no  
21 action at this time while the appeal is pending before the  
22 Court of Appeals. It almost goes without saying what the Court  
23 of Appeals does will have an effect upon the kind of issues we  
24 are discussing here and, therefore, this Court reserves  
25 decision on issues about discovery, the issues about the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

24

E9AMREPC

1 subpoenas. The Court reserves decision and the Court will take  
2 no action pending all of us learning, as we will shortly, what  
3 the Court of Appeals does following the argument on September  
4 18. That's where the Court stands now. Thank you.

5 MS. WAGNER: Thank you, your Honor.

6 MR. REED: Thank you, your Honor.

7 o0o

8

9

10

11

12

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300