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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 NML CAPITAL, LTD.,
4 Plaintiff,

5 v. 14 Civ. 8601 (TPG)

6 THE REPUBLIC OF ARGENTINA,
7 Defendant. Argument on Motion for
8 Partial Summary Judgment

8 -----x

9 New York, N.Y.
10 May 29, 2015
2:15 p.m.

11 Before:

12 HON. THOMAS P. GRIESA

13 District Judge

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SPEAKERS

18

19 DECHERT LLP
Attorneys for Plaintiffs
20 BY: ROBERT A. COHEN

21 PROSKAUER ROSE LLP
Attorneys for Seijas and other class plaintiffs
22 BY: JENNIFER R. SCULLION

23

24 CLEARY GOTTLIEB STEEN & HAMILTON LLP
Attorneys for Defendant
25 BY: CARMINE D. BOCCUZZI, JR.

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1 (Case called)

2 THE COURT: Who wants to speak for the motion?

3 MR. COHEN: Good afternoon, your Honor. Robert Cohen
4 from Dechert appearing on behalf of NML Capital and the 34
5 other actions that have motions pending before the Court today
6 who have given me permission to speak on their behalf.

7 The plaintiffs who have motions pending are all
8 holders of bonds issued pursuant to the 1994 fiscal agency
9 agreement. That is the agreement that contains the pari passu
10 clause that led to the pari passu injunction that we have been
11 dealing with for the past several years.

12 The motions before your Honor seek a ruling that
13 Argentina has violated the pari passu clause and the
14 obligations it has to these plaintiffs just as it has violated
15 the obligations to the smaller group of plaintiffs who now have
16 pari passu injunctions.

17 It is almost a year since the Supreme Court denied
18 Argentina's second petition for certiorari and the pari passu
19 injunction became effective, and it is almost a year since your
20 Honor appointed Special Master Pollack to oversee settlement
21 discussions.

22 It was the hope of all the plaintiffs who are here
23 today, and I know it was your Honor's hope, that those
24 developments would have resulted in a resolution of all of
25 these matters. Unfortunately, that hasn't happened. And while

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1 we encourage Argentina to negotiate, until they are willing to
2 do so, all of these plaintiffs must continue to press for their
3 legal rights. That's what brings us here today.

4 What we seek is an extension of the pari passu ruling
5 to the plaintiffs' in the additional actions. They are all
6 holders of the same bonds under the same agreement that
7 resulted in the pari passu ruling, so there is absolutely no
8 reason why they shouldn't be entitled to the same finding that
9 their rights have been violated.

10 To state the obvious, Argentina is now precluded from
11 contesting what the pari passu clause means. That has been
12 clearly resolved. But Argentina makes an argument, and it only
13 applies to some of the motions that are before your Honor, that
14 in the cases in which plaintiffs already have money judgments,
15 they should be precluded by res judicata or something called
16 the merger doctrine from pursuing claims for pari passu relief
17 that are in the contract.

18 Argentina is wrong. As our briefs lay out in great
19 detail, res judicata and its subspecies merger do not bar
20 someone who has a contract who gets a money judgment from
21 reaching back and seeking claims under another provision of
22 that contract where the proof that relates to the second claim
23 is entirely different from that which was involved in the
24 resolution of the money judgment claim.

25 In these cases, the money judgment claim needed to be

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1 resolved based solely on a finding that the plaintiffs held
2 bonds and Argentina failed to pay them. That happened in 2001.
3 In order to resolve the pari passu claim, the Court needed to
4 interpret the claim, it needed to find that the claim as
5 interpreted had been violated, and it had to come up with the
6 appropriate resolution of that.

7 None of the proof with respect to the pari passu claim
8 overlaps with what was resolved in the money claim. Res
9 judicata and merger do not serve to bar a plaintiff in these
10 circumstances.

11 This reasoning, your Honor, was confirmed recently in
12 a strikingly similar case here in the Southern District. It
13 was a case involving the country of Grenada. Grenada was
14 represented by Cleary Gottlieb. A creditor who had gotten a
15 judgment on sovereign bonds seven years earlier, later moved
16 for pari passu relief. Grenada argued that that claim was
17 barred by the money judgment claim that that creditor had
18 gotten on that same contract. The judge rejected that
19 argument, saying the proof was completely different and
20 therefore there was no bar.

21 Plaintiffs are not asking today for an injunction. We
22 are not asking that the relief for the violation be determined
23 today. We ask that that be reserved for future proceedings.
24 The only thing plaintiffs are asking for today is a
25 determination that their rights under the pari passu clause in

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1 the same contract, under the same bonds as have already been
2 determined applies to them.

3 We believe that if you grant that relief, it will
4 confirm that the universe of plaintiffs who are entitled to
5 relief is much broader than the narrower group that had
6 previously gotten pari passu relief. It will allow the special
7 master, should Argentina determine that it is interested in
8 talking about resolution, to have the plaintiffs or
9 substantially all of the plaintiffs who are before your Honor
10 in the Southern District of New York in the same room with
11 equivalent rights, and it will certainly promote the resolution
12 of this dispute.

13 But if Argentina chooses not to negotiate, these
14 plaintiffs are entitled to have their rights confirmed, and
15 that's what we ask for at this point.

16 THE COURT: Let me ask you this. The current
17 injunction which embodies the concept of the pari passu. That
18 is on behalf of how many people?

19 MR. COHEN: 13 plaintiffs, 13 actions.

20 THE COURT: 13 actions, all right. What is sought
21 today pertains to how many actions?

22 MR. COHEN: 36 additional actions and over 500
23 individual plaintiffs.

24 THE COURT: 36 actions. I don't think that quite
25 takes care of all the pending actions, but it is all the

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1 actions that you and others who are working with you represent,
2 right?

3 MR. COHEN: Other plaintiffs who have 1994 bonds. It
4 does not include some plaintiffs who have bonds issued under
5 other instruments. They may ask for similar relief in the next
6 phase. But it is a substantial, very substantial, portion of
7 the actions pending before your Honor, both in number and in
8 dollar amount.

9 THE COURT: Thank you.

10 Who else would like to speak?

11 MS. SCULLION: Jennifer Scullion for the Seijas
12 plaintiff classes.

13 THE COURT: All right.

14 MS. SCULLION: Your Honor, you asked which actions
15 would be at issue here today. We would ask the same relief.

16 THE COURT: Your name again, please?

17 MS. SCULLION: Jennifer Scullion for the eight
18 plaintiff classes referred to as the Seijas classes. Your
19 Honor, you certified holder classes or modified certification
20 last April for those classes.

21 THE COURT: I'm having a little trouble hearing you.

22 MS. SCULLION: Sure. Is that better?

23 THE COURT: Yes. Start over, please.

24 MS. SCULLION: Jennifer Scullion for the eight
25 plaintiff classes known as the Seijas classes. Your Honor

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1 modified the class definition for those classes last April to
2 be holder classes. Last July we filed motions for pari passu
3 relief. We filed those motions as motions for preliminary
4 injunctions. They were held in abeyance.

5 At this time, as we have informed counsel for the
6 republic, we are prepared to convert those to seek exactly the
7 same relief as Mr. Cohen's clients and the parties he is
8 speaking for. So we are not seeking injunctive relief. We are
9 not trying to get out ahead of anybody. But we could also want
10 a declaration of a violation of pari passu with respect to the
11 plaintiff classes.

12 THE COURT: Procedurally, what do you need to do?

13 MS. SCULLION: We can convert the motions for a
14 preliminary injunction, which have been on file since last
15 summer, to motions for partial summary judgment seeking exactly
16 the same relief as the other motions pending before you.

17 THE COURT: You are prepared to do that?

18 MS. SCULLION: Yes. We move orally today to do that.
19 We are prepared to file a formal motion if your Honor so
20 desires. I don't think it is required, but we can do that.

21 THE COURT: I think the record should be very clear.
22 A formal motion would be in order. When would you file that?

23 MS. SCULLION: We can file that next week. Your
24 Honor, would you like me to address the substance of the
25 motion? There is one difference between our motions.

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1 THE COURT: Please do.

2 MS. SCULLION: One of our plaintiff classes called the
3 Azza class, A-Z-Z-A, sued with respect to bonds that were
4 issued under the 1993 FAA, not the 1994 FAA. Argentina argued
5 that because they were issued under the 1993 FAA, they were not
6 entitled to pari passu protection.

7 However, your Honor, we have shown in our reply
8 papers, at pages 2 and 3, that in fact in the prospectuses that
9 were issued with respect to those bonds -- and these are the
10 8-3/8 bonds due on December 20, 2003, in the Azza case -- it
11 was indicated that in fact those bonds did have exactly the
12 same pari passu protection as had been established in the NML
13 case in the Second Circuit. We believe that those funds as
14 well should have the same exact protection and violation should
15 be found with respect to the Azza class.

16 THE COURT: You have that argument in your motion,
17 right?

18 MS. SCULLION: We do. It's in the reply brief. It's
19 at pages 2 and 3, which refer to Exhibits A and B, which are
20 the original prospectus for those bonds and a follow-on
21 prospectus. They quote and cite the language in which the
22 underwriters, with Argentina's approval, indicated that these
23 bonds in fact had the same pari passu protection as was found
24 in NML.

25 Your Honor, if you have any other questions, I'd be

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1 happy to answer them at this time.

2 THE COURT: I'm sure this is in the papers, but I have
3 dealt with these cases for many years and I have perennially in
4 my mind and in I suppose other things that have been written
5 referred to the 1994 fiscal agency agreement. You are
6 referring to something else, right?

7 MS. SCULLION: That's correct, your Honor. For one of
8 the other 8 classes, the Azza class, I'm referring to the 1993
9 fiscal agency agreement.

10 THE COURT: That's one case, right?

11 MS. SCULLION: Only one case. The other seven are
12 1994.

13 THE COURT: I assume all your cases have been
14 consolidated, right?

15 MS. SCULLION: They have not been formally
16 consolidated. Of course, they are all pending before your
17 Honor.

18 Your Honor, I apologize, I did misspeak just now.
19 There is one other of our actions that is not under the 1994
20 FAA, and that is the Chorny action, C-H-O-R-N-Y. That is under
21 the 1992 floating rate bond exchange agreement. Your Honor, I
22 point that out to make it clear that it is not in the 1994 FAA.
23 But Argentina did not dispute in its opposition to our motions
24 that the 1992 FRB, floating rate bond, exchange agreement does
25 in fact include the pari passu protection. The only instrument

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1 they contested pari passu was for the 1993 fiscal agency
2 agreement, which we addressed in our reply papers.

3 THE COURT: Even the actions under a '93 or '92
4 agreement, there is no question about the jurisdiction of the
5 Court, right? That's never been challenged?

6 MS. SCULLION: No, your Honor, it has not.

7 THE COURT: If there are common issues arising under
8 the '93 or the '92 agreements, no one has said that they can't
9 be handled as part of this overall tax, right?

10 MS. SCULLION: You are correct, your Honor, Argentina
11 has not contested your Honor's jurisdiction over those cases.
12 In fact, those cases had previously gone to judgment. The
13 judgments were vacated. So, we have no judgments in existence
14 right now. But that's never been an issue.

15 THE COURT: Very good. Thank you very much.

16 MR. BOCCUZZI: Good afternoon, your Honor. Carmine
17 Boccuzzi of Cleary Gottlieb for the Republic of Argentina.

18 To give a sense of the scale, what we are talking
19 about today are motions of the me-too group, approximately 34
20 to 36 actions. We are talking about 523 plaintiffs and a total
21 of about \$5.2 billion in claims and judgments. The amount of
22 judgments that are represented here are about 5.2 billion.
23 Those are held in 19 actions by about 495 plaintiffs. So these
24 are plaintiffs who are money judgment holders who are seeking
25 to have summary judgment in their favor on the pari passu

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1 question.

2 The defenses we mount and we explain in our brief are
3 threefold, your Honor. First, res judicata. Res judicata is
4 meant to bar successive actions on the same or related set of
5 transactions. These motions continue to be about what we have
6 been litigating about for years and are at the heart of the
7 money judgment actions, and that is Argentina's failure to pay
8 on the FAA bonds.

9 If you look at the case that was cited by Mr. Cohen,
10 the Grenada case, there Judge Baer did not apply res judicata
11 because he said the facts that laid the groundwork for the pari
12 passu claim were not in existence when the money judgment
13 action was brought, and the plaintiff essentially couldn't
14 bring the claim.

15 Here, at least 3.8 billion of these claimants with
16 judgments brought their actions after the lock law and when the
17 first payment on the exchange bonds was being made or had been
18 made. These folks could have brought these claims as part of
19 their initial action, and they didn't do that.

20 The standard for res judicata in New York and federal
21 courts is is it a claim that was brought or could have been
22 brought in the first action. Since we are talking about claims
23 that are essentially for nonpayment, that means these claims
24 could have been brought and should have been brought by these
25 judgment holders in round one and they are precluded from doing

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1 it now.

2 THE COURT: The pari passu argument was not raised by
3 anybody until around 2010 or 2011, isn't that right?

4 MR. BOCCUZZI: In October 2010 it was brought by NML
5 in their prejudgment actions.

6 THE COURT: That meant that several years of
7 litigation, with judgments and various things occurring, went
8 by and the pari passu argument was raised somewhat late in the
9 game as to anybody. But the Court didn't say it's too late.
10 It didn't apply laches. I don't know whether anybody argued
11 that. The argument was really dealt with on its merits both in
12 this court and the Court of Appeals, although it was raised
13 somewhat late. Does that not have some significance in the
14 application of what you are talking about?

15 MR. BOCCUZZI: Your Honor, this was the defense of
16 laches made, but it was raised in the context of the prejudg-
17 ment claims of pari passu that were brought in suits where no
18 judgment had been attained. We had pending actions by Mr.
19 Cohen and some of the other plaintiffs. They had no judgment.
20 They were seeking to get summary judgment and they raised the
21 pari passu claim. And we did raise as a defense to their
22 getting an injunction the defense of laches.

23 THE COURT: I had forgotten that.

24 MR. BOCCUZZI: That, of course, is a defense in the
25 injunctive context, and it is a defense in a litigation where

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1 res judicata was otherwise not an issue because there were no
2 judgments. Plaintiffs very carefully raised the pari passu
3 theory only in prejudgment actions because they knew that this
4 was a potential issue. I think they were trying to have the
5 issue of pari passu and the appropriateness of an injunction
6 for pari passu dealt with on those terms and not have to deal
7 with this predicate issue for judgment holders that this was a
8 res judicata --

9 THE COURT: Go over that again. What you just
10 discussed, go over that again.

11 MR. BOCCUZZI: I was just saying that plaintiffs made
12 the strategic choice when they raised the pari passu claim to
13 raise it in prejudgment actions so that they didn't have to
14 have this issue that we are talking about today be a threshold
15 issue. I think what they wanted to do was just to focus the
16 Court on pari passu and their ability or not, you ruled they
17 could, to get an injunction on the pari passu clause without
18 having to deal with this issue that we are now dealing with
19 today.

20 Now for the first time the plaintiffs have teed up
21 motions for summary judgment on the pari passu clause in cases
22 where plaintiffs have a money judgment. So, in cases when
23 plaintiffs have litigated and prevailed that there has been a
24 breach, a breach based on nonpayment by the Republic of
25 Argentina of these FAA bonds, they are now going back and

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1 saying we now want to have another claim brought in, the pari
2 passu claim, even though we have already litigated our breach
3 claims in these actions to judgment.

4 Our position is, your Honor, that under the law of res
5 judicata they can't do that. Res judicata focuses on the
6 transaction, a series of events or related events. Clearly,
7 all this goes back to the nonpayment. If you read their new
8 complaints, your Honor, they say very clearly the lock law was
9 passed in February 2005, Argentina started a few months
10 afterwards to pay the exchange debt, that was a violation of
11 the pari passu clause, that was all known to everybody as early
12 as 2005.

13 At least \$3.8 billion of what is in the court today
14 are folks who brought their claim after that happened. They
15 knew, and they could have sought pari passu at that time, and
16 they didn't. That has consequences in terms of their ability
17 now to claim pari passu in those post-judgment cases.

18 The related doctrine to this is the doctrine of
19 merger. Merger is recognized in both federal and state law.
20 It's like res judicata except it applies in the context of
21 breach of contract claims. There the theory is that if you
22 have a claim for damages and you sue on the bond or the note or
23 the loan and you get a judgment, the underlying contract then
24 merges in that judgment.

25 The plaintiffs reject this as outdated, ancient New

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1 York law. But we have cited the Westinghouse Credit case,
2 which is a 2004 Second Circuit case that articulates that exact
3 principle. It says the general rule under New York and federal
4 law is that a debt created by contract merges with a judgment
5 entered on that contract so that the contract debt is
6 extinguished and only the judgment debt survives.

7 We see how this plays out practically. For example,
8 many of these bonds have interest rates that are 8, 10, 12
9 percent, the FAA bonds. You are entitled to get that until you
10 get a judgment. When you get a judgment, then you are entitled
11 to the lower, post-judgment interest rate.

12 The Westinghouse case dealt with a bond or a loan, it
13 was a debt instrument, and the plaintiff said, I still haven't
14 gotten paid, the instrument says that I get paid this interest
15 rate, this higher interest rate until I'm satisfied. The
16 Second Circuit rejected that. They cited the merger doctrine.
17 They said no, now what you are proceeding on, what your legal
18 right are based on, is the judgment that you obtained.

19 The same issue comes up here. They have their money
20 judgments. NML is in fact relying on those money judgments.
21 They are currently trying to tie up and freeze diplomatic
22 assets of the Republic of Argentina located in Europe. They
23 have been benefiting from that judgment and using that judgment
24 and acting pursuant to the rights conferred by that judgment.
25 Now they can't go back to what is essentially a covenant in the

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1 contract they litigated and say now I have this covenant.

2 Their contract doesn't have a pari passu covenant in it.

3 That also brings us back, importantly, to the language

4 of the FAA, the bond they are suing on. If you look at that

5 bond, first of all, the pari passu clause talks about

6 securities ranking equally. It does not talk about judgments.

7 The FAA, when it wants to refer to judgments, refers to

8 judgments and specifically refers to judgments in the context

9 of waiver of immunity over assets for asset execution. So, the

10 FAA knows when to refer to judgments and make provisions

11 applicable to judgments.

12 The Second Circuit teaches us that if you want certain

13 provisions to survive past a judgment, then you say that in

14 your contract. Nothing in this contract talks about covenants,

15 these covenants surviving past a judgment. That is another

16 reason why. People with judgments, they don't have the

17 ability, the legal right under the FAA, to invoke the pari

18 passu provision, because it is inconsistent.

19 The few cases where a court looks through the judgment

20 back to the underlying bond are cases where the plaintiff was

21 trying to enforce or have jurisdiction. In our case those

22 provisions remain. We are not saying they can't be in this

23 court. We have been litigating section 1610 and its limitation

24 on those enforcement rights. No one is trying to rip those out

25 of the FAA.

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1 So, you have to measure their rights by the underlying
2 agreement even if you look past the judgments that they have
3 obtained.

4 Those are our three main points as to why judgment
5 holders, the vast majority of the folks seeking this relief
6 today from your Honor, as I said I think about 5.2 billion,
7 should not get this relief they are seeking. They are not
8 entitled to summary judgment under these black letter
9 principles.

10 As for the remainder, the prejudgment folks are about
11 700 million in principal, I believe. With interest, it's two
12 or three times that represented here. As for all of these
13 folks, post-judgment or prejudgment, I don't think summary
14 judgment at this time would help matters.

15 As we have seen, the pari passu injunctions have
16 proven to be a very powerful weapon. It has given people to
17 date who have \$1.4 billion in claims the ability to demand full
18 payment at the expense of exchange bondholders getting any
19 payment on their exchange debt. Adding to that would only add
20 to the litigation we are already seeing. We see litigation
21 going on now in Europe by the exchange bondholders. We have
22 seen financial intermediaries like Citibank drawn into it.

23 I just don't think that giving this relief in this
24 broader context is going to help matters. The republic would
25 like to try to resolve things, but right now it's dealing with

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1 the 1.4 billion and another 5.2 billion, demanding more.
2 Giving that additional much larger universe the power to veto
3 any agreement to demand full payment I think would be very
4 destructive of any possible efforts on that score.

5 THE COURT: Thank you very much.

6 Anybody else?

7 MR. COHEN: May I respond, your Honor?

8 THE COURT: Certainly.

9 MR. COHEN: Your Honor, Mr. Boccuzzi tries to portray
10 the pari passu claims as merely another way of seeking a money
11 judgment enforcement. As your Honor knows, the Second Circuit
12 clearly held that the money judgments and the claims for money
13 were an inadequate remedy in these cases and therefore we were
14 entitled to the injunction compelling pari passu relief. If a
15 money judgment was a sufficient remedy, we would not have been
16 entitled to the injunction. That's why the court saw it as a
17 very different animal than simply pursuing the breach for a
18 money judgment.

19 More importantly, your Honor, I think, the pari passu
20 violations are continuing violations. Since this Court issued
21 its injunction and since the Supreme Court denied cert.,
22 Argentina continues to violate the pari passu right by
23 attempting to make payments on the bonds, by extending the
24 moratorium on payment and adopting other laws that violate our
25 rights. Each one of those actions is a new violation of rights

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1 under the pari passu clause. So they can't be foreclosed by a
2 prior money judgment.

3 The Westinghouse case that Mr. Boccuzzi cites really
4 stands for the proposition that if you get a judgment on a
5 money claim, on a debt claim, it's the post-judgment interest
6 rate that prevails rather than the contract rate. I don't
7 think that tells us very much about what is at interest here.

8 A simple example, your Honor, of why a contract with
9 at least two provisions can't be foreclosed by a judgment on
10 the money claim would be if you had a contract, for example,
11 that said you will pay me money in a particular event and you
12 also will not compete with me for a particular term. If you
13 don't pay me the money and I sue and I get a money judgment, it
14 can't be that if you later compete with me I can't go back and
15 ask for relief on the noncompete clause.

16 So, there is no concept of merger or res judicata that
17 bars very different claims that arise out of different facts,
18 that don't require the same proof as the first action, the
19 money judgment claim. That is the situation we are here in
20 today.

21 Your Honor, I think this notion that adding more
22 plaintiffs with pari passu rights somehow is going to change
23 Argentina's attitude toward resolution deserves the same
24 respect as the earlier suggestions that Argentina was going to
25 negotiate a settlement. If it happens, it would be wonderful.

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1 But until they do, I think we have to have the rule of law
2 prevail, and these partial summary judgments must be entered.

3 Thank you, your Honor.

4 THE COURT: Refresh my memory. What is the practical
5 effect of the pari passu application.

6 MR. COHEN: The current application? It would be a
7 finding in each of the pending cases that the plaintiffs'
8 rights under the pari passu clause had been violated by
9 Argentina's conduct. We will come back to your Honor with
10 request for appropriate relief.

11 THE COURT: I know you will come back. But tell me
12 about that. That's the effect of my question. What is the
13 practical effect of doing what you seek today?

14 MR. COHEN: It tells Argentina that it must deal with
15 all of these plaintiffs, they have rights with respect to pari
16 passu and they can't simply ignore them, they can't continue to
17 pay or attempt to pay other bondholders without dealing with
18 them.

19 THE COURT: You mean the exchanges, for instance?

20 MR. COHEN: The exchanges, for example, your Honor.
21 Exactly how that formula is going to work and exactly what your
22 Honor is going to decide are the equities when we get to that
23 phase are to come. But these people have waited a long time to
24 be at the table and to be recognized to have pari passu rights
25 that are the same as the small group of plaintiffs who have

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1 obtained them. There is no doubt that they are entitled to it
2 under the same bonds, and Argentina isn't negotiating, so it is
3 appropriate to validate their claim.

4 THE COURT: Without recognizing the pari passu
5 concept, people who have not engaged in an exchange with
6 Argentina have their judgments or other rights, right?

7 MR. COHEN: That's right, your Honor.

8 THE COURT: But the effect of the pari passu is that
9 if Argentina seeks to make a payment of, say, interest on its
10 exchange bonds, they have to do that only in connection with
11 applying the pari passu clause, which means that they have to
12 recognize the people who have not exchanged, right?

13 MR. COHEN: That's right, your Honor. Although, right
14 now there is an injunction that applies only to those 13 cases
15 that we have talked about earlier. Argentina under the present
16 injunction must only recognize the rights of those 13
17 plaintiffs and pay them rateably should they decide to pay the
18 exchanges.

19 THE COURT: That is the effect of pari passu.

20 MR. COHEN: Right.

21 THE COURT: If the current motion is granted, it would
22 expand that 13 to include all the cases now pending?

23 MR. COHEN: All of the 36 cases who have sought this
24 relief.

25 THE COURT: That's the essence of today's motion?

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1 MR. COHEN: Yes, your Honor.

2 THE COURT: Anyone else?

3 MR. BOCCUZZI: Your Honor, just a couple of things.

4 THE COURT: Please.

5 MR. BOCCUZZI: One, I misspoke and I wanted to address
6 a few points. I misspoke when I referenced the amount of
7 prejudgment principal that's represented today by the motions.
8 I said 700 million. It's 70 million, seven-zero. With
9 interest it's probably two or three times that. So the vast
10 amount of the claims here, the majority, are the post-judgment
11 folks about whom we were talking earlier in my argument.

12 As to Ms. Scullion, her folks are also prejudgment. I
13 understand that she will be filing now a motion, because her
14 pending motion asks for something different. I would like the
15 ability to respond to it. My response would probably be by and
16 large the response I put in, but I would like to rereview her
17 papers.

18 She is right that the 1993 FAA is one of the series of
19 bonds and one of her classes does not have a pari passu clause.
20 We have briefed that, but I would like to review that, because
21 her original motion was for an injunction, not for summary
22 judgment.

23 THE COURT: All right, you can do that.

24 MR. BOCCUZZI: One other thing on res judicata. When
25 you look at the cases, they talk about the claims, can they be

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1 brought together, the proof that all these claims -- whether it
2 is pari passu or failure to pay, it's all about failure to
3 pay -- can be brought together, the 40 complaints that have
4 been filed since last June by various plaintiffs, prejudgment
5 and post-judgment, they assert both money damages claims for
6 default and also pari passu for their claim that we defaulted
7 by violating the pari passu clause.

8 The way these cases proceeded shows that what's
9 happening now. Had people wanted to bring the claim in 2005,
10 they could have done it. That's the test for res judicata.

11 As a practical matter, we now have these injunctions.
12 We have 1.4 billion of claims saying we get paid everything or
13 exchangers get nothing. Adding another 5.2 billion to that
14 will only be a further harmful effect. That's why we also
15 think a step down that road isn't necessary apart from all the
16 defenses that we discussed earlier today.

17 THE COURT: Thank you. Decision is reserved.

18 I do want to say this further word. We are dealing
19 with large amounts of money. But negotiations and settlements
20 have occurred before where large amounts of money are involved,
21 and that can occur again. The Court, of course, cannot order a
22 settlement. But I want to say in this courtroom before this
23 entire group that the way to ultimately resolve this litigation
24 must come through settlement. Unless the republic wants to pay
25 100 percent of the judgments, which the republic doesn't

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1 indicate that it will do, then there has to be a settlement.

2 We have a very able special master, Daniel Pollack,
3 who has been appointed with the specific purpose to assist
4 that. I want to say before everybody in the courtroom that it
5 is very important that all parties, including the republic,
6 participate in settlement negotiations.

7 Thank you very much.

8 (Adjourned)

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