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

5 v. 14 CV 8601 (TPG)

6 THE REPUBLIC OF ARGENTINA,
7 Defendant.

8 -----x

New York, N.Y.
October 28, 2015
2:08 p.m.

10 Before:

11 HON. THOMAS P. GRIESA,
12 District Judge

13 APPEARANCES

14 DECHERT, LLP
15 Attorneys for Plaintiff
16 BY: ROBERT A. COHEN

17 CLEARY GOTTLIEB
Attorneys for Defendant
18 BY: CARMINE D. BOCCUZZI, JR.

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1 THE DEPUTY CLERK: Oral argument in matters of NML
2 Capital Ltd. v. The Republic of Argentina and related cases.
3 All parties present, your Honor.

4 THE COURT: Sit down please everybody.

5 Who wants to start and speak in favor of the motion?
6 And it will be a good idea to use the lectern, please.

7 MR. COHEN: Thank you. Good afternoon, your Honor.
8 Robert Cohen from Dechert on behalf of plaintiff NML Capital.
9 I don't represent all of the plaintiffs in the 48 other actions
10 with motions pending before the Court today, but they have
11 given me permission to speak on their behalf.

12 Four years ago, in just 13 actions, your Honor
13 determined that Argentina breached the pari passu clause in the
14 1994 fiscal agency agreement. Your Honor determined that
15 specific performance in the form of what we have come to call
16 the pari passu injunction was the appropriate remedy for
17 Argentina's violations. That ruling was twice affirmed by the
18 Second Circuit, and the Supreme Court denied certiorari twice.

19 THE COURT: That was the injunction, right?

20 MR. COHEN: Yes, your Honor. Actually, it was the
21 whole package, the finding of liability and the injunction that
22 was awarded to remedy the breach.

23 The issue before your Honor is whether the plaintiffs
24 before you today, all of whom hold Argentine bonds issued under
25 the 1994 fiscal agency agreement, are entitled to the same pari

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1 passu injunction. I submit the answer is yes.

2 Just to remind your Honor, all of the plaintiffs that
3 are here today moved for partial summary judgment to establish
4 that Argentina had breached the pari passu clause as to them,
5 and in June your Honor granted partial summary judgment to most
6 of the plaintiffs here today. And last week, in 15 additional
7 cases, your Honor granted partial summary judgment on liability
8 to these plaintiffs.

9 So the only thing that's left to decide in all of
10 these actions is whether these additional plaintiffs are
11 entitled to the same pari passu injunction as was issued in the
12 original 13 cases. The pari passu injunction requires the
13 equal treatment of holders of bonds issued under the 1994 FAA
14 fiscal agency agreement with holders of bonds issued in the
15 2005 and 2010 exchanges. We call the holders of those bonds
16 the exchangers.

17 If Argentina chooses to pay the exchangers 100 percent
18 of what Argentina owes the exchangers or 75 percent of what it
19 owes them or 20 percent of what it owes them at any particular
20 time, the only obligation that the injunction imposes on
21 Argentina is that it pay the 1994 FAA bond holders in the same
22 proportion of what they are owed. If Argentina pays nothing to
23 the exchangers, then it need not pay anything to the 1994 bond
24 holders.

25 Issuing the proposed pari passu injunction here will

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1 ensure basic fairness. It would put these plaintiffs on equal
2 footing with the plaintiffs who now benefit from the pari passu
3 injunction. All creditors holding the same bonds with the same
4 rights under the pari passu clause are entitled to have the
5 same remedy to protect against Argentina's ongoing violative
6 conduct.

7 THE COURT: Let me ask you this. The parties that you
8 now represent, did they buy their bonds pursuant to the 1994
9 fiscal agency agreement, did all of them do that?

10 MR. COHEN: Yes, your Honor.

11 THE COURT: Okay. Go ahead.

12 MR. COHEN: Let me dispense with the standard that the
13 Court should apply in deciding whether to issue this remedy.
14 The requirements for specific performance relief, which is what
15 we seek, I think are easily met. Argentina's brief does not
16 even dispute that its violations of the pari passu clause are
17 causing plaintiffs irreparable injury for which there's no
18 adequate remedy at law. Argentina has already failed to
19 satisfy the many money judgments that have been entered against
20 it, and the plaintiffs' efforts to enforce those judgments have
21 been unsuccessful.

22 THE COURT: I want to interrupt you and let you come
23 back. But the parties who are now parties -- I'll put it this
24 way -- parties to the injunction, now, they didn't come to be
25 that way by any motion for specific performance. How did they

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1 get their rights and standing?

2 MR. COHEN: Your Honor, they all hold bonds issued
3 under the 1994 fiscal agency agreement. They all originally
4 sued to recover money for the failure to pay. After the
5 Supreme Court declined the petitions for certiorari in the 13
6 original cases, those plaintiffs, along with my client in the
7 actions in which we didn't yet have judgments or in which we
8 did have judgments, commenced new actions. And the cause of
9 action that's included in the new complaint asks for relief
10 under the pari passu clause. So we have new actions under a
11 different clause of the 1994 FAA agreement.

12 THE COURT: Say that again.

13 MR. COHEN: We have new actions pending in all of the
14 cases that are now before you seeking this relief, new actions
15 meaning actions that are separate from the actions in which
16 money judgments are pending or have been granted, at least in
17 most of the cases.

18 THE COURT: I guess I may be asking the same question,
19 but let me just go into this further.

20 MR. COHEN: Sure.

21 THE COURT: What we sometimes refer to as the 2012
22 injunction, if my memory is right, the main point of that was
23 to declare as a matter of law the rights of those plaintiffs
24 under the pari passu provision; am I right?

25 MR. COHEN: Yes, your Honor.

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1 THE COURT: Okay. And that came about, if my memory
2 is right, by virtue of a motion or motions in existing cases,
3 right?

4 MR. COHEN: Yes, your Honor. We amended the complaint
5 and made motions on the amended count in the original
6 complaints, yes. We had actions pending for money judgments.
7 We amended those complaints to add a count seeking relief under
8 the pari passu clause. We were granted leave to amend. We
9 filed the amended complaint, and then we moved for summary
10 judgment on liability and for relief in the form of the pari
11 passu injunction.

12 THE COURT: Okay. I don't want to quibble with you,
13 but I want to be clear about procedure.

14 MR. COHEN: Yes, sir.

15 THE COURT: What you have just described did not
16 literally, in express terms, involve actions for specific
17 performance; am I right?

18 MR. COHEN: No, your Honor. They asked for specific
19 performance in the form of the pari passu injunction. We asked
20 for the Court to find that there was a breach of the pari passu
21 clause, and to remedy that breach, the Court should issue
22 specific performance in the form of a pari passu injunction.

23 THE COURT: Now let me interrupt you. What I'm asking
24 about now probably doesn't make a lot of difference, but it's
25 still something in my mind. What is before the Court today are

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1 actions labeled literally, expressly, actions for specific
2 performance, right?

3 MR. COHEN: Motions for specific performance, yes.

4 THE COURT: Motions. Fair enough.

5 With regard to the actions that were before the Court
6 at the earlier time, were there motions labeled motions for
7 specific performance?

8 MR. COHEN: Yes, your Honor.

9 THE COURT: Okay. The reason I ask is I had not
10 remembered that particular label, and not that it makes a huge
11 amount of difference, but I still wanted to ask about it.

12 But, in other words, are you doing now what you did at
13 the earlier time?

14 MR. COHEN: Almost exactly the same. Let me explain
15 what happened the first time.

16 THE COURT: Okay.

17 MR. COHEN: The first time we moved for, in one
18 motion, for a finding that Argentina had breached the pari
19 passu clause and that the Court issue a specific performance
20 injunction, a pari passu injunction. The Court granted the
21 motion for breach and decided and denied the motion for relief
22 because the Court wanted to consider the appropriate relief
23 with respect to the injunction. And a few months later, your
24 Honor granted the injunction. But it was one motion the first
25 time. This time, we decided to break it into two.

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1 THE COURT: Let me interrupt you. Is it correct --
2 obviously, if I've done it once, I want to know about it. But
3 is it correct that at the earlier time there were motions in
4 existing cases, which motions asked for specific performance of
5 the pari passu clause?

6 MR. COHEN: That's exactly right, your Honor.

7 THE COURT: Okay. Now, is it then correct that the
8 present application you make involves the same kind of actions
9 involving bonds and the 1994 FAA?

10 MR. COHEN: Yes, your Honor.

11 THE COURT: And are you now seeking to do what you did
12 then in requesting specific performance?

13 MR. COHEN: Yes, we are, your Honor.

14 THE COURT: Are there any new issues of substance or
15 is it simply a matter of taking the same kind of actions and
16 giving the same kind of remedy?

17 MR. COHEN: That's our position, your Honor. I was
18 going to address the three arguments that Argentina makes in
19 opposition to our motion, none of which I think is of merit.
20 But we think it is, essentially, it is the same motion, and all
21 of the equities and all of the law applies precisely the same
22 way as it did in the 13 actions.

23 THE COURT: All right. Why don't you address the
24 opposition arguments if you wish to do so now.

25 MR. COHEN: Yes. Argentina makes just three arguments

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1 in opposition to these motions. First, it argues that it
2 cannot possibly comply with the proposed injunction because
3 plaintiffs' claims here involve a larger amount of defaulted
4 debt than was involved in the 13 original motions.

5 THE COURT: Say that again.

6 MR. COHEN: Argentina claims that it cannot possibly
7 comply with a pari passu injunction here because the amount of
8 debt that the plaintiffs hold is much larger than was held by
9 the plaintiffs in the 13 original cases. And the response to
10 that, your Honor, is Argentina is simply wrong. It can comply
11 with the injunction because the injunction only requires that
12 if Argentina chooses to pay the exchangers, Argentina must make
13 a ratable payment to the plaintiffs.

14 And let me read to you from the Second Circuit which
15 explained how this injunction works and why the argument about
16 inability to pay really is of no merit. The Second Circuit
17 said in explaining how the injunction works, for example,
18 Argentina can pay all amounts owed to its exchange bondholders
19 provided it does the same for its defaulted bondholders --
20 meaning the FAA bond holders -- or it can decide to make
21 partial payments to the exchange bondholders, as long as it
22 pays a proportionate amount to the holders of the defaulted
23 bonds. Neither of these options would violate the injunctions.
24 The injunctions do not require Argentina to pay any bondholder
25 any amount of money.

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1 THE COURT: What was the last statement you made --
2 repeat that.

3 MR. COHEN: The injunctions do not require Argentina
4 to pay any bondholder any amount of money.

5 THE COURT: Go ahead.

6 MR. COHEN: So the issue of whether Argentina can
7 afford to pay some amount when the injunction does not require
8 it to pay anything is misplaced and should be rejected.

9 Argentina also uses this argument to suggest that
10 giving all the plaintiffs here the same pari passu injunction
11 would prejudice the exchangers because the republic might not
12 be able to pay all of what is owed to the exchangers and also
13 to the FAA bondholders. Again, Argentina is arguing that its
14 supposed inability to pay in full, which it doesn't have the
15 obligation to do, will cause a default on the exchange bonds.

16 Your Honor, the prospect of a default on the exchange
17 bonds, that is, a default to the exchangers, the people who
18 took the 2005 and 2010 exchanges, is a horse that's already
19 left the barn. When the Supreme Court denied cert and the pari
20 passu injunction became effective, Argentina chose to default
21 on the exchange bonds. So the idea that granting this
22 injunction is going to create some new harm for the exchangers
23 makes no sense.

24 And all of the horrors that we have heard about if
25 the injunction is granted, Argentina will be flung into some

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1 desperate financial situation and be back to the circumstances
2 in 2001 which we heard when the Court was considering granting
3 the original injunction, of course, have not come to pass. So
4 there's no equity that suggests that this additional injunction
5 for the plaintiffs, who hold the same bonds as the original 13
6 plaintiffs do, is inequitable in any sense.

7 Again, the Second Circuit considered this argument and
8 it said this type of harm, harm threatened to third parties by
9 a party subject to an injunction who avows not to obey it, does
10 not make an otherwise lawful injunction inequitable. We are
11 unwilling to permit Argentina's threats to punish third parties
12 to dictate the availability or terms of relief under Rule 65.

13 So we've been down this road before. Your Honor
14 rejected this notion. And the Second Circuit, in strong
15 language, I think, affirmed your Honor.

16 THE COURT: I'm a little unclear about this issue or
17 nonissue, whatever it is, about third parties. I just don't
18 recall this enough, so can you go into that a little bit,
19 please.

20 MR. COHEN: Certainly, your Honor. In balancing the
21 equities that the Court undertook in deciding whether or not to
22 grant the pari passu injunction, the Court took into
23 consideration what the effect might be on third parties --
24 primarily, the exchange bondholders, and to some extent the
25 citizens of Argentina. And your Honor concluded and the Second

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1 Circuit affirmed that the impact on the exchangers was not as
2 important, if you will, as enforcing the rights of the 13
3 plaintiffs that were before you.

4 The way the injunction worked, it was up to Argentina
5 to do the right thing, and if they chose not to, that was not
6 going to influence the Court, nor the Second Circuit, in
7 deciding that it wasn't going to grant an injunction that the
8 law required.

9 THE COURT: Go ahead.

10 MR. COHEN: Argentina also fails to note that the
11 Second Circuit and your Honor considered that the exchangers
12 had been put on notice that their rights under the exchange
13 bonds might not be enforceable if the holders of the 1994 FAA
14 bonds attempted to enforce their rights.

15 What the Second Circuit said in that regard is
16 Argentina's contention that the injunctions are unfair to
17 exchange bondholders is all the less persuasive because before
18 accepting the exchange offers, they were expressly warned by
19 Argentina in the accompanying prospectus that there could be no
20 assurance that litigation over the FAA bonds would not
21 interfere with payments under the exchange bonds. Under these
22 circumstances we conclude that the amended injunctions have no
23 inequitable effect on exchange bondholders and find no abuse of
24 discretion.

25 So this goes to the interest of third parties, your

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1 Honor, particularly the exchangers, and whether the issuance of
2 an injunction is somehow inequitable because of the impact on
3 those parties.

4 I'd also like to mention, your Honor, that Argentina's
5 assertions that it can't pay, even though there's no obligation
6 under the injunction to pay anything, need to be taken with a
7 grain of salt. Argentina is what they call a G20 nation, which
8 means it's among the 20 major economies in the world. It has
9 repeatedly demonstrated its ability to make substantial
10 payments to other creditors, including a payment of \$6 billion
11 this month to bondholder creditors, the settlement with Repsol
12 in February of last year for \$5 billion.

13 THE COURT: I want to interrupt you. Go back over
14 that. The 6 billion refers to what, please?

15 MR. COHEN: To bonds not covered by the pari passu
16 injunction. Bonds that were not --

17 THE COURT: What happened as to them?

18 MR. COHEN: They matured and they were paid by
19 Argentina.

20 THE COURT: In what amount?

21 MR. COHEN: \$6 billion.

22 THE COURT: Other bonds besides the 1994 FAA bonds,
23 right?

24 MR. COHEN: Yes.

25 THE COURT: All right.

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1 MR. COHEN: They settled with Repsol for about
2 \$5 billion. In February of 2014 and in May of 2014, they
3 settled with the Paris Club, which is a group of nations that
4 lent money to Argentina, and they repaid that debt, over
5 \$9 billion.

6 In any event, Argentina can comply with the proposed
7 injunctions without paying plaintiffs in full. It can comply
8 without paying anything at all. It only needs to treat the FAA
9 bondholders equally with the exchangers.

10 Next Argentina points to a nonbinding United Nations
11 general assembly resolution to suggest that compelling
12 Argentina to live up to its promise made in the pari passu
13 clause would violate international law. Your Honor, the United
14 States did not vote in favor of that resolution. It does not
15 carry the force of law. And, most importantly, it has no
16 bearing on whether the pari passu clause is specifically
17 enforceable. But even if it did, your Honor, Argentina,
18 through its egregious behavior with respect to the FAA
19 bondholders, does not even meet the threshold requirements set
20 out in that resolution.

21 And Argentina also tries to reargue the meaning of the
22 pari passu clause by citing writings of some authorities who
23 are critical of this Court's and the Second Circuit's
24 interpretation of the pari passu clause, and I don't think I'll
25 spend any time responding to those arguments.

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1 Finally, Argentina argues that the Foreign Sovereign
2 Immunities Act prohibits the proposed injunctions with respect
3 to those actions in which money judgments have already been
4 granted. Some of the motions before your Honor are made in
5 actions where money judgments have been granted, and about 20
6 of the motions before your Honor today are in actions where
7 money judgments have not been granted.

8 THE COURT: Start again. Go back a sentence or two
9 and go over that again.

10 MR. COHEN: Argentina takes the position that the
11 Foreign Sovereign Immunities Act prohibits the granting before
12 the pari passu injunction in actions where money judgments have
13 been granted. They argue that the pari passu injunction is, in
14 effect, a judgment enforcement device. And I'll explain why
15 they're wrong, but I just wanted to point out that about 20 of
16 the actions before your Honor are prejudgment cases where this
17 argument doesn't even apply. This only applies to the cases
18 that are before you today where money judgments have been
19 granted.

20 They point to Section 1609 of the Foreign Sovereign
21 Immunities Act which concerns immunity from attachment, arrest,
22 and execution of a sovereign's property. The answer to that
23 argument is the same as the answer that was given in the first
24 13 cases, that the injunctions do not attach, arrest, or
25 execute on any property. The requested injunction requires

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1 Argentina to pay plaintiffs if it decides to make payments to
2 the exchangers. Argentina does not have to pay anything to
3 comply with the injunction. And if the republic does choose to
4 pay, it can use whatever assets it likes to do so.

5 As the Second Circuit said in response to this very
6 same argument: Because compliance with the injunctions would
7 not deprive Argentina of control over any property, they do not
8 operate as attachments of foreign property prohibited by the
9 FSIA. That's exactly the same argument they're trying to make
10 today.

11 Your Honor, as we've said, all the plaintiffs who are
12 here before you today are seeking to be put on equal footing
13 with the plaintiffs who already have *pari passu* injunctions.
14 They should have the same rights under the *pari passu* clause,
15 and they should have the same relief. The republic should not
16 be able to discriminate among its 1994 FAA bondholders if and
17 when it decides it wants to resolve these actions.

18 You know, we've had a litany of reasons why these
19 cases can't be resolved over the years. Argentina couldn't
20 negotiate a settlement because the granting of the 13 original
21 *pari passu* injunctions would make it impossible to do so. And
22 we had the RUFO clause that was an impediment to settlement.
23 And when that clause expired at the end of 2014, of course, no
24 settlement discussions followed.

25 Granting these injunctions, when and if Argentina is

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1 willing to engage in settlement discussions, will facilitate
2 those discussions rather than disrupt them. With the help of
3 the special master and with the coordination of all of the
4 plaintiffs who have been willing to coordinate their efforts
5 before the Court to make the granting of these injunctions as
6 simple and efficient as possible, we believe that if and when
7 Argentina is minded to sit and talk about resolution, having
8 these injunctions in place will be a plus and not a minus.

9 Thank you, your Honor.

10 THE COURT: All right. On the defense side, please.

11 MR. BOCCUZZI: Thank you, your Honor. Good afternoon,
12 your Honor. Carmine Boccuzzi from Cleary Gottlieb for the
13 Republic of Argentina.

14 What we are dealing with today are these "me too"
15 motions which are brought on behalf of approximately 530
16 plaintiffs and, in total, it implicates approximately
17 \$6.1 billion in claims and judgments. While Mr. Cohen is right
18 that approximately 20 of the actions we're talking about are
19 post judgment, the dollar amount of the judgments held by
20 plaintiffs that we're talking about today are approximately
21 \$5.3 billion.

22 So, in other words, of the amount of money before your
23 Honor, the vast majority today is in the form of post judgment
24 plaintiffs, approximately 500 of them, and the amount of those
25 judgments is approximately \$5.3 billion. And that's

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1 significant because of the last argument which Mr. Cohen
2 referenced that we're making, which is the one I'll start with,
3 which is an issue that was not before the Second Circuit and
4 that is the applicability of the FSIA and its limitations on
5 execution and process on a sovereign in the context of
6 judgments.

7 The cases in the 13 actions that Mr. Cohen was
8 referencing and you were discussing, those are all prejudgment
9 cases. These cases now, the majority of them in terms of
10 dollar amount, the 5.3 billion, are post judgment. And to be
11 clear, what plaintiffs are seeking in the proposed order they
12 gave to your Honor, the injunction, is to coerce payment on
13 those judgments.

14 And if you look at Section 2(b) of the proposed order,
15 that specifically includes in the definition of a ratable
16 payment the money that Argentina must pay to plaintiffs post
17 judgment interest. So we're clearly talking about judgments.

18 THE COURT: Just a minute. You're referring to a
19 proposed order, right?

20 MR. BOCCUZZI: Yes, your Honor.

21 THE COURT: Okay.

22 MR. BOCCUZZI: It's on page 5 of the proposed order in
23 paragraph 2(b), they define ratable payment to include pre- and
24 post judgment interest.

25 So we're talking about judgments and we're talking

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1 about judgment enforcement. And the case law is very clear
2 that to enforce a judgment, you go through Rule 69. And the
3 law of this court in many cases we've litigated concerning
4 execution, enforcement of a judgment means we're talking about
5 Section 1609 and 1610 of the FSIA. That, of course, limits the
6 plaintiffs to property of the foreign state, here, Argentina,
7 in the United States.

8 THE COURT: Just a minute.

9 MR. BOCCUZZI: Yes, your Honor.

10 THE COURT: I've got the proposed order before me and
11 I'm looking at page 5. Paragraph A starts out, "whenever
12 Argentina pays." I don't see any language in this document
13 that in and of itself requires Argentina to pay.

14 MR. BOCCUZZI: Reading the rest of the paragraph it
15 says, Argentina shall concurrently in advance make a ratable
16 payment. And the next paragraph talks about what the ratable
17 payment includes.

18 THE COURT: You're ignoring the all important
19 introduction "whenever Argentina pays" and that's the idea. I
20 don't understand there to be any order proposed by the
21 plaintiffs which in and of itself requires Argentina to pay or
22 levies on property of Argentina. The idea is if or whenever
23 Argentina pays, there has to be the honoring of the pari passu
24 clause. But your argument, it seems to me, started out with
25 the idea that the plaintiffs are seeking an order which

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1 literally in and of itself, here and now, says Argentina must
2 pay. I don't see it.

3 MR. BOCCUZZI: But let's look at it, your Honor. Two
4 points on that. The net result is if Argentina is not paying
5 the plaintiffs on their judgment, they are restrained from
6 paying the exchange bondholders. So that's a restraint on
7 payment by the republic.

8 THE COURT: There's no doubt of that, of course. But
9 that's different from ordering Argentina to pay something.

10 MR. BOCCUZZI: But then on the other side of it, the
11 way the injunction works is if Argentina is not paying the
12 plaintiffs, then it may not pay the exchange bondholders.
13 Because of the 13 existing injunctions or the injunctions that
14 exist in the 13 cases, those exchange bondholders are not
15 getting paid money now.

16 THE COURT: That's because of the pari passu clause.

17 MR. BOCCUZZI: But the effect of this order, if that's
18 already happening, then this order that they're asking you to
19 put in effect on behalf of billions of dollars of more claims
20 and judgments, that would bring the pari passu injunction
21 universe up to \$8 billion, is clearly meant to do nothing other
22 than to coerce Argentina into paying these plaintiffs or else
23 why would they need it. They keep saying we're happy if we
24 don't get paid as long as nobody else is getting their money.
25 Well, the exchange bondholders are not getting their money

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1 because of the injunctions that are in place already.

2 So clearly piling on with another \$6 billion of
3 injunctions is meant to accomplish one end apart from the
4 restraint point and that is to coerce payment the way the
5 classic turnover order in the context of a post judgment
6 proceeding would do in any other case.

7 THE COURT: What is a classic turnover order?

8 MR. BOCCUZZI: A turnover order is when you get a
9 judgment against someone, then you're allowed to serve them or
10 entities that hold their property with a turnover order saying
11 property of the judgment debtor must now be turned over to
12 satisfy my judgment. And turnover orders have been held by
13 this Court and the Second Circuit and other courts to be
14 subject to the limitations of the Foreign Sovereign Immunities
15 Act because they're an execution device.

16 So when they say and they give you an order that the
17 thrust and the purpose of which is to coerce payment by
18 Argentina to turn over that money and they reference the
19 reserves, they reference other interests and property that
20 Argentina has outside the United States, all in an effort to
21 say there's money there that can be turned over, they're
22 implicating the Foreign Sovereign Immunities Act.

23 The Second Circuit didn't have that issue before them.
24 They didn't have because they didn't have post judgment cases.
25 And they didn't have a situation where because of existing

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1 injunctions, quote/unquote equality, as plaintiffs see it, was
2 in effect, i.e., nobody was receiving money. And now they're
3 coming along, they're saying nobody is receiving money. Well,
4 give us more injunctions.

5 The only effect of those injunctions can be, the aim
6 and intent would be to coerce payment by the republic in the
7 context of holders of \$5 billion plus of judgments. So that's
8 why our argument is that in the context of those motions for
9 those post judgment plaintiffs, there is a limitation by the
10 FSIA that prevents the entry of these injunctions.

11 The second point that we wanted to make is about the
12 ability to comply with the order. And, again, this is
13 interesting because we have submitted to your Honor -- and no
14 one disputes this -- in the Hanley declaration, Exhibit C, we
15 have a black line of their proposed order against the existing
16 injunctions. In the existing injunctions, there was a finding
17 that your Honor made that Argentina had the financial
18 wherewithal to pay the plaintiffs in the 13 actions the
19 \$1.4 billion or so and satisfy their other obligations.

20 Now in the context of these new motions where we're
21 talking about the additional 6 billion plus, which would get
22 the number up to 8 billion total, they've stricken that
23 language from the order they gave to your Honor. So they're
24 not proposing a finding that in the context of these new dollar
25 amounts, another \$6 billion of injunctions, that the Court make

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1 a finding that there's financial wherewithal to make this
2 payment, this payment in full that they're demanding.

3 And it's not enough for Mr. Cohen to say, well, you
4 can pay 15 percent to the exchange bondholders and 15 percent
5 to the plaintiffs. That doesn't solve the issue. That causes
6 a default in the exchange debt and that just increases the
7 litigation that's before your Honor.

8 They're clearly saying as a matter of specific
9 performance, they need to be paid in full plus post judgment
10 interest on their claims and judgments before the Court. And
11 the case law is clear that this is not something --

12 THE COURT: That is not what they're saying, not at
13 all. They're saying if Argentina pays the exchangers, if
14 Argentina pays the exchangers, Argentina has to comply with a
15 contractual clause, the pari passu clause. But the important
16 thing is if. They're not asking me to act as if this is an
17 ordinary judgment which gets executed on, not at all.

18 MR. BOCCUZZI: But again, your Honor, in this context
19 of if, and they throw out just pay some, don't pay anything,
20 again, we're in this situation where the exchange bondholders
21 are not getting money, so what is the purpose for these
22 additional injunctions. Again, I would argue it's to coerce
23 payment in full.

24 Even if it's to coerce a settlement -- and we cite
25 cases in our brief that discuss that it's not proper just to

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1 enter an order that's otherwise not justified as a matter of
2 law to coerce a settlement. But even if it's there to coerce a
3 settlement, this will only complicate it because everybody who
4 has a pari passu injunction has the right to veto what anybody
5 else gets if that person feels that they want more. That's the
6 situation that they have created, your Honor. They said the
7 exchange bondholders agree to what they got, we don't like
8 that, we want more, they don't get paid unless we get paid what
9 we want.

10 Now we have additional people saying we want that
11 power too. So if some plaintiffs who hold FAA bonds want to
12 reach a resolution and they're not happy with it, they can stop
13 that as well. So adding this in the context of existing
14 injunctions doesn't help the situation and that's why our last
15 point about the public interest, we don't think it's served by
16 adding to this.

17 But I also think this point is important in thinking
18 about the requirement that specific performance orders have to
19 be orders that can be complied with, and I think this is just a
20 bridge too far when we're talking about a number that gets us
21 up to \$8 billion of prejudgment interest, post judgment
22 interest, and principal that all these additional hundreds of
23 plaintiffs are asking for.

24 And then finally on the public interest point, we do
25 make the point that, again, it's just spreading this veto power

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1 among hundreds of more plaintiffs. It's complicating, if there
2 ever is going to be a resolution, how that can happen. And
3 it's also, again, your Honor, making it unfair for Argentina,
4 for the exchange bondholders, when the purpose of this is just
5 to coerce payment. And as we've explained, that creates those
6 other problems under both the FSIA and the law of specific
7 performance.

8 THE COURT: Look, there's a judge here. The judge has
9 no intention of coercing payment. The judge has no intention
10 of coercing a settlement. Those are concepts that you have
11 introduced and you know that that really isn't true.

12 There are certain legal rights. There are limitations
13 on those legal rights. And I've been sitting on this case for
14 a long time and the plaintiffs have come in not once and not
15 twice with theories of how they can recover and they generally
16 lost because they were trying, but it wasn't successful.

17 So the litigation has gone on for a very long time.
18 Hopefully there will be a settlement. But there's nothing I
19 can coerce or have any desire to coerce, not the slightest
20 desire.

21 Go ahead. Finish up what you have.

22 MR. BOCCUZZI: On that point, your Honor, just on the
23 coercion point -- and then I'll be done unless you have further
24 questions -- that's exactly how the plaintiffs framed these
25 injunctions when they presented them to you back before we were

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1 up in the Second Circuit. They said, your Honor, enter these
2 orders and then Argentina will have to pay. They said
3 Argentina will have to pay because it won't want to go into
4 default to the exchange bondholders. So it was specifically --
5 and I recognize there's a judge here and I'm not casting any
6 aspersions on your Honor.

7 THE COURT: I know.

8 MR. BOCCUZZI: But the plaintiffs particularly see
9 this. And in the past before, when we tried to raise the pari
10 passu issue for your Honor back in the context of the first
11 exchange offer, they were explicit about saying this is a super
12 judgment enforcement mechanism. So it's always been about
13 making there be a payment on the judgments.

14 To avoid the issues, the legal issues that we've
15 raised both back in May and the one we're raising now, they
16 carefully just pick their prejudgment cases to bring their
17 original motions in. But now we're back to talking about post
18 judgment actions, and so the issues that I've raised are
19 relevant for this Court's consideration and were not considered
20 previously by the Second Circuit.

21 But I also think the coercion point is really
22 unavoidable in the context of how they frame them and how
23 they've tried to use them. This is meant to put pressure on
24 the republic to pay them and it has this collateral effect of
25 injuring the third party bondholders and that's our public

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1 interest point.

2 And since this is about payment on the bonds in the
3 context of orders, whereas we've seen, it started with 13
4 actions. We're now up to 40 something actions. There are
5 other plaintiffs out there. Everybody who piles in and gets
6 this right can use it to veto a settlement and say no, you
7 can't pay plaintiff X, Y, and Z unless you pay me, X plus an
8 additional amount that I will only take and I will coerce you
9 to pay if you want to pay those other folks. So that's how
10 they have operated.

11 And, again, since we have injunctions in place, the
12 question becomes why are they insisting on this additional
13 amount. And my submission to your Honor is that it is this
14 issue of coercing a payment in full to them and to others and
15 it creates these problems as we've outlined in our papers and
16 I've just done today.

17 Thank you.

18 THE COURT: Anything else?

19 MR. COHEN: I'll just respond very briefly, your
20 Honor. I don't think we've heard anything new from
21 Mr. Boccuzzi in his response. I just note that it comes a
22 little hollow for counsel from Argentina to use an argument
23 that if we are at the settlement stage and there's a plaintiff
24 who wants more than some other plaintiffs, that that's a reason
25 not to grant these injunctions. We are so far away from any

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1 indication that we're going to have a settlement discussion
2 that I think it's absurd to deny us the relief here because
3 someday, somehow, perhaps Argentina will negotiate with us. We
4 hope that happens, but that's not a reason not to grant the
5 injunction. Thank you.

6 THE COURT: I want to just briefly address the
7 suggestion of coercion. What we have are contracts. We have
8 the initial overriding contract, the fiscal agency agreement of
9 1994. That is the basic governing document. It's not a
10 document of coercion. It is a contract entered into by the
11 Republic of Argentina and other parties who have functions
12 under the contract. That is what this case has always been
13 about and always will be about. Contracts have certain terms.
14 They have certain requirements. Those requirements are not
15 generally labeled as coercion. They are contractual terms, and
16 that's all we have here. That is the beginning and the end of
17 it.

18 Now, I think the attorneys have completed what they
19 wish to say and we are going to adjourn in a moment. But I
20 would like to close by referring to something that I may have
21 very well referred to earlier but I want to go into it now and
22 that is to remind the parties of something, indeed, that I did
23 go into earlier, but which I regard as holding true today.

24 We are dealing with large amounts of money. But
25 negotiations and settlements have occurred before where large

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1 amounts of money and difficult issues are involved and that can
2 certainly occur now and in the further course of the work in
3 this case. The Court, of course, cannot order a settlement.
4 But I want to say in this courtroom before the entire group
5 here that the way to ultimately resolve this litigation must
6 come through settlement. Unless the republic is willing and
7 able to pay 100 percent of the judgments and the amounts due to
8 plaintiffs, unless the republic wants to pay a hundred percent
9 on the judgments, which the republic does not indicate that it
10 will do, then there must be a settlement.

11 I have appointed a very able attorney as special
12 master. His name, as you know, is Daniel Pollack, and he has
13 been appointed under an order specifically requesting him and
14 directing him, indeed, to assist in obtaining a settlement of
15 this long running litigation.

16 I want to say before everybody in this courtroom that
17 it is very important that the parties, including the republic,
18 participate in settlement negotiations. And I will assume that
19 what may have gone on in the past about declining to
20 participate in such negotiations, I have to assume that on this
21 late date in this very lengthy litigation that that attitude is
22 over with and that the interested parties, all of them, will
23 participate in settlement negotiations.

24 That concludes our session. Thank you all very much.
25 Decision on the motion before me is reserved.

