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

7 v. 03 Civ. 8845 (TPG)
8 05 Civ. 2434 (TPG)
9 06 Civ. 6466 (TPG)
10 07 Civ. 1910 (TPG)
11 07 Civ. 2690 (TPG)
12 07 Civ. 6563 (TPG)
13 08 Civ. 2541 (TPG)
14 08 Civ. 3302 (TPG)
15 08 Civ. 6978 (TPG)
16 09 Civ. 1707 (TPG)
17 09 Civ. 1708 (TPG)

18 THE REPUBLIC OF ARGENTINA,
19
20 Defendant.

21 -----x
22 AURELIUS CAPITAL PARTNERS, LP
23 and AURELIUS CAPITAL MASTER,
24 LTD.,

25 Plaintiff,

v. 07 Civ. 2715 (TPG)
07 Civ. 11327 (TPG)

THE REPUBLIC OF ARGENTINA,
Defendant.

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BLUE ANGEL CAPITAL I LLC,

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Plaintiff,

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v.

07 Civ. 2693 (TPG)

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10 Civ. 4101 (TPG)

10 Civ. 4782 (TPG)

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THE REPUBLIC OF ARGENTINA,

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Defendant.

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AURELIUS CAPITAL MASTER, LTD.

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and ACP MASTER, LTD.,

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Plaintiffs,

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v.

09 Civ. 8757 (TPG)

09 Civ. 10620 (TPG)

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THE REPUBLIC OF ARGENTINA,

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Defendant.

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AURELIUS OPPORTUNITIES FUND

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II, LLC and AURELIUS CAPITAL

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MASTER, LTD.,

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Plaintiffs,

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v.

10 Civ. 1602 (TPG)

10 Civ. 3507 (TPG)

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THE REPUBLIC OF ARGENTINA,

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Defendant.

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AURELIUS CAPITAL MASTER, LTD.
2 and AURELIUS OPPORTUNITIES
FUND II LLC,

3 Plaintiffs,

4 v. 10 Civ. 3970 (TPG)
5 10 Civ. 8339 (TPG)

6 THE REPUBLIC OF ARGENTINA,
7 Defendant.

8 -----x
New York, N.Y.
December 17, 2015
9 1:30 p.m.

10 Before:

11 HON. THOMAS P. GRIESA,
12 District Judge

13 APPEARANCES

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Securities, Inc.
24 BY: KENNETH CARUSSO

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GREGORY P. FEIT

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1 THE DEPUTY CLERK: Oral argument on motions in the
2 matter of NML Capital Ltd. versus Republic of Argentina and
3 associated cases.

4 All parties are present, your Honor.

5 THE COURT: Sit down everybody, please.

6 Since a lot has to be done by me today and tomorrow
7 before the Christmas week, I'm going to ask that you adhere to
8 certain time requirements, and I think you've been advised of
9 this, but I think we're starting fairly close to 1:30, and I'd
10 like to have the people speaking for the motion speak for 45
11 minutes, people on the other side for 45 minutes. That's an
12 hour and a half. That will take us until 3:00. I think that
13 that should be enough argument.

14 Let's proceed.

15 MR. FRIEDMAN: Good afternoon, your Honor. May it
16 please the Court. I am Edward Friedman with the firm of
17 Friedman Kaplan Seiler & Adelman. We represent the Aurelius
18 and Blue Angel plaintiffs.

19 Today I'm speaking on behalf of all the plaintiffs who
20 have filed the motions to compel that are before your Honor,
21 including the NML plaintiffs.

22 I will try to be brief. I intend to speak for less
23 than 45 minutes, and if it is okay with your Honor, I would
24 like to reserve a few minutes to respond after the various
25 lawyers for the banks have spoken.

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1 THE COURT: That sounds good.

2 MR. FRIEDMAN: This is plaintiffs' motion to compel
3 discovery. We are seeking to compel three banks, nonparties,
4 to produce documents. The documents requested are directly
5 relevant to the central issue of fact in the amended
6 complaints. These are the complaints that your Honor allowed
7 plaintiffs to file when the Court granted plaintiffs' motions
8 to amend in July, 2015, just a few months ago.

9 The issue in these complaints is whether new bonds,
10 bonds issued by the Republic after the pari passu injunction
11 had been issued and after the injunction had been affirmed by
12 the Second Circuit, the issue is whether these new bonds are
13 external indebtedness, as we plaintiffs state in our amended
14 complaints, or whether the bonds were offered exclusively in
15 Argentina, which is what the Republic contends. That is the
16 central issue of fact in the amended complaints.

17 The banks, the three banks here today who are opposing
18 our motion to compel, these banks were involved with Argentina
19 in offering and selling the new bonds that are at issue in the
20 amended complaints. The banks have documents and information
21 relevant to the central issue in these amended complaints. The
22 discovery at issue is necessary for the parties and the Court
23 to have a complete record regarding where the bonds were
24 offered and the Republic's involvement in the planning and the
25 structuring of the offerings. These are the matters that are

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1 directly relevant to establishing that the bonds are external
2 indebtedness and that they were not, in fact, offered
3 exclusively in Argentina.

4 The subpoenas that plaintiffs served on these banks
5 were narrowly tailored to address the key issues in dispute in
6 the amended complaints. The banks have advanced a variety of
7 arguments to try to avoid producing the relevant information
8 that they have.

9 Two of the three banks, that's Deutsche Bank and
10 another bank, which is known by the initials BBVA, these two
11 banks say that this Court lacks jurisdiction to enforce the
12 subpoenas, even though these two banks, Deutsche Bank and BBVA,
13 have major operations in New York, including senior bankers in
14 New York who were involved in the actions and communications as
15 to which discovery is sought.

16 These banks also say Argentinian law precludes their
17 compliance with the subpoenas, but that is incorrect for many
18 reasons, including this Court has previously rejected arguments
19 by banks that discovery should be limited by Argentinian law.
20 In any event, the banks have not shown that any of the
21 requested documents are actually covered by the Argentinian law
22 that they cite.

23 The banks also argue that, if they are required to
24 comply with the subpoenas, as we believe they clearly should
25 be, they argue that they should be allowed to produce documents

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1 in a manner that they describe as attorneys' eyes only. This
2 is something that makes absolutely no sense in this kind of
3 case with these documents.

4 This is not a lawsuit between Coke and Pepsi where the
5 discovery would divulge secret formulas. Here, the discovery
6 involves historical purchases of securities that trade in the
7 open market. If there is anything at all sensitive in the
8 information being produced, it is more than amply protected by
9 the confidentiality orders this Court has already entered in
10 these cases. These are the confidentiality orders that have
11 governed production of confidential information in these cases
12 for years.

13 I'm not going to address the banks' arguments in any
14 great detail, your Honor. Everything is covered in the papers.
15 I would just like to say a few more things.

16 One, the banks' claim of burden should be rejected out
17 of hand. The banks could have produced all the responsive
18 information in far less time with far less effort than they
19 have devoted to fighting these subpoenas. There's just no
20 reason for these nonparty banks to be fighting the subpoenas.
21 These are major banks which, as third parties, respond to
22 subpoenas all the time.

23 What is involved here, the discovery we are requesting
24 here, relates to the offering of these new bonds which occurred
25 during a discrete period of time, less than one year, and

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1 principally involved a small number of bankers at each of these
2 three banks. The relevant files of these individuals can be
3 readily searched and complete relevant information provided
4 without undue burden.

5 I would also like to say, your Honor, that we had an
6 extensive meet and confer process over several months to try to
7 resolve the matters in dispute, but we were not able to do so,
8 and that is why this motion is necessary.

9 Undoubtedly, your Honor will hear from the banks that
10 they already produced some documents relating to these bond
11 offerings. That is true, they did produce some documents.
12 Indeed, your Honor previously ordered Deutsche Bank and JP
13 Morgan to produce certain documents, but not the documents that
14 are at issue right now.

15 This motion to compel is about ensuring that the
16 parties and the Court will have a complete record of the
17 offering process for these new bonds so that the issues in the
18 amended complaint can be decided by the Court on a full record.
19 It is not for the third party banks to selectively produce
20 information. It is not for the banks to say they will produce
21 some of the relevant information but not all.

22 Plaintiffs and the Court should have complete
23 information about the offering process -- where the bonds were
24 offered, not just, for example, where certain major purchasers
25 may have been located -- as well as complete information, to

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1 the extent the banks have it, about Argentina's involvement
2 with the banks in the offerings.

3 It is also important to note that a bank or any entity
4 served with a subpoena is required to produce documents in its
5 possession, custody, or control. I would emphasize "control".

6 As this Court has previously ruled, where these banks
7 with major New York operations also control subsidiaries
8 outside New York, including in Argentina, the responsive
9 documents that the banks have within their control, whether in
10 Argentina or other places, must be produced, not just documents
11 that they have in New York.

12 In sum, your Honor, we submit the banks should be
13 ordered to produce the documents in their control that are
14 responsive to the subpoenas; the documents relating to the
15 offering and sale of these bonds, the structuring of the
16 offering, including the banks' communications with the Republic
17 about these matters.

18 These are banks who were involved with the Republic in
19 the international offer and sale of these bonds, whereas here,
20 the Republic is arguing in the case, nonetheless, that the
21 offering was exclusively in Argentina.

22 The banks should be required to produce the relevant
23 information they have so the Court will have a complete record
24 of the facts and can then be in a position to decide the claims
25 in the amended complaints.

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1 Thank you. Unless your Honor has questions, I'll sit
2 down and, as I say, try to reserve a few minutes to respond.

3 THE COURT: You said, and I'm sure this was the case,
4 that you tried to work this out on a voluntary basis. What was
5 the holdup?

6 MR. FRIEDMAN: I would say, your Honor, there were two
7 big issues that were the holdup. One is, the banks said that
8 they would not produce documents from their offices or
9 subsidiaries outside of New York. That's a very important
10 issue as to which we need a ruling from the Court that, where
11 these banks are subject to the jurisdiction of the Court, they
12 are obligated to produce documents within their control, even
13 if those documents are in Argentina or some other place.
14 That's one issue that was the holdup that's an issue presented
15 for your Honor to decided to.

16 The other major issue that is the holdup is the
17 insistence of the banks that they produce information
18 attorneys' eyes only, meaning that the plaintiffs themselves,
19 who obviously work very closely with their lawyers in these
20 cases, but the banks would have it that the plaintiffs are not
21 allowed to see the documents produced. We think there's
22 absolutely no basis or precedent for that in these cases.

23 THE COURT: Thank you.

24 MR. FRIEDMAN: Thank you, your Honor.

25 THE COURT: The banks?

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1 MS. WEISS: Good afternoon, your Honor. My name is
2 Andrea Weiss. I represent JP Morgan and the various
3 subpoena-related JPMorgan entities.

4 We've heard a lot about the banks. I am representing
5 one bank and will speak to the issues regarding that bank.
6 JPMorgan has not raised a personal jurisdiction issue.

7 Your Honor, this is not a case where JPMorgan has
8 refused to produce documents. To the extent that you may have
9 been led this afternoon to think otherwise, that impression is
10 completely wrong.

11 JPMorgan has produced hundreds of documents on these
12 so-called new bonds. I will call them by their name because I
13 think it's easier. We're talking about the BONAR bonds,
14 specifically BONAR 2024.

15 We have produced hundreds and hundreds of documents.
16 And not only that, your Honor, we have produced, in February, a
17 high-level managerial employee for a deposition about these
18 bonds, and he was deposed and deposed and deposed. He was
19 deposed for six hours. He was asked question after question
20 after question about them, and he answered. It is just really
21 extraordinary that Mr. Friedman could stand up here and not
22 mention that.

23 JPMorgan has given the plaintiffs the documents and
24 the testimony relevant to the question that Mr. Friedman told
25 you today is the question in the case. The question that the

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1 plaintiffs need to prove, according to them, is where were
2 these BONAR bonds offered? The plaintiffs say that the bonds
3 were marketed and sold outside of Argentina, and they say that
4 this leads to the legal conclusion that the bonds were offered
5 outside Argentina.

6 The plaintiffs represent to the Court that Argentina
7 disagrees. They say that Argentina takes the position that
8 these bonds were offered locally within Argentina.

9 THE COURT: Wait. Step back a bit. Repeat what
10 you've just gone through.

11 MS. WEISS: Sure, your Honor, be happy to.

12 According to Mr. Friedman today, and according to his
13 papers, the plaintiffs say that they need to prove that these
14 new bonds, the BONARs, were offered outside of Argentina. They
15 say that is the issue in the case. They say that Argentina
16 takes a different position; that the bonds were offered locally
17 within Argentina.

18 The question for the Court, the legal question that
19 your Honor will ultimately decide, based on the facts, is where
20 were the bonds offered? That's a legal question.

21 What they need to know, what the parties need to know,
22 is the mechanics of these transactions. JPMorgan can't tell
23 anybody where the bonds were offered. JPMorgan can give
24 information, to the extent it has it, about the mechanics of
25 the transactions it was involved in. Then the parties will

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1 present the evidence of the mechanics, and your Honor will
2 decide where the bonds were offered.

3 The plaintiffs don't argue otherwise. We have given
4 them this information, and they do not say that we have not.
5 You did not hear Mr. Friedman say there's a key piece of
6 evidence that is being withheld from us.

7 The plaintiffs are making a different argument. They
8 are saying, "We need to have from JPMorgan every last piece of
9 paper from every single person in the entire world who may have
10 touched any aspect of this transaction." And more, they are
11 saying, "We are entitled to have this from JPMorgan without
12 even asking the Republic for it."

13 THE COURT: Wait. What was the last thing you said?

14 MS. WEISS: They are saying that we can demand a
15 nonparty ransack its files, spend tens of thousands of dollars
16 to produce cumulative information, because they already have
17 the information from us and elsewhere, and they haven't even
18 asked their adversary to produce it.

19 The Republic was involved in these transactions.
20 Mr. Friedman has not said either here or in his papers that he
21 ever asked a party to give it to him.

22 Your Honor, the plaintiffs are just not entitled to
23 this. It is just not the law that the plaintiffs may burden a
24 nonparty with this type of unlimited discovery demand, and that
25 is particularly the case when they haven't even asked their

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1 adversary for it.

2 Rule 45 of the Federal Rules of Civil Procedure tells
3 these plaintiffs, in no uncertain terms, you plaintiffs must
4 take care not to burden a nonparty. The plaintiffs ignore
5 that.

6 THE COURT: Let me get Rule 45.

7 MS. WEISS: Rule 45(d)(1).

8 THE COURT: Go ahead.

9 MS. WEISS: Your Honor, do you have the rule?

10 THE COURT: Yes, I do.

11 MS. WEISS: Rule 45 puts that obligation on them.

12 They have ignored it by refusing to compromise. Rule 45
13 requires the Court to enforce that burden, and the Court should
14 enforce that duty that they have, because they will not --

15 THE COURT: The duty to do what?

16 MS. WEISS: The duty not to impose an undue burden on
17 JPMorgan by demanding that it produce absolutely every document
18 in its possession when, number one, JPMorgan has already given
19 them the information they need, two, they haven't sought it
20 from a party.

21 Your Honor, I would like to talk a little bit about
22 the details that Mr. Friedman has ignored, because with a
23 discovery dispute, the devil is typically in the details, and
24 I'd like to explain to you why you should quash the subpoena,
25 at least in part.

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1 This is what the plaintiffs have asked for on these
2 BONAR bonds. They have asked for documents in four separate
3 transactions. I'm going to split the four transactions into
4 two parts.

5 In two of the four transactions, JPMorgan had a
6 significant role. In these two transactions, JPMorgan has
7 produced documents and given testimony.

8 In the other two transactions, JPMorgan essentially
9 did nothing. In one transaction, it did absolutely nothing.
10 It did not participate, and we're being told, "Search your
11 files anyway." In another transaction, it had a very, very
12 minor role, and it has offered to produce that document.

13 If you allow me, I would just like to briefly go
14 through these.

15 The first transaction is what we call the Repsol
16 transaction. This was a transaction in the spring of 2004.
17 Argentina gave Repsol these BONAR bonds in settlement of a
18 legal claim, and JPMorgan resold them internationally.

19 The plaintiffs come here and say, "JPMorgan hasn't
20 given us everything." First of all, the plaintiffs already
21 have it. In their brief, they set forth the entire structure
22 of this transaction, including that these bonds were sold
23 internationally. They have documents from other people,
24 JPMorgan has given them that evidence, and JPMorgan has agreed
25 to give them additional evidence. JPMorgan has agreed to give

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1 them the actual trade tickets that will show them exactly where
2 in the world these bonds were sold.

3 That is their case. They need to know the mechanics
4 of the transaction. We have it, we'll give it to them. "No
5 good," they say. Search every email. Search everybody who
6 touched all over the world. Spend tens of thousands of dollars
7 doing this." For what? How does it advance the ball?

8 The second transaction that JPMorgan was involved in
9 didn't even take place. It was a contemplated transaction in
10 February of 2015. They have had discovery ad nauseam on this
11 February transaction, your Honor.

12 THE COURT: The second is what?

13 MS. WEISS: The February, 2015 transaction. That is
14 the second transaction that JPMorgan actually had a significant
15 role in. It didn't occur. It was contemplated, there were
16 discussions, there were emails, didn't occur.

17 This is what they got the six-hour deposition on.
18 They got the man who was critically involved in this
19 transaction. They questioned him for six hours, they got
20 hundreds of documents, and they got documents about Repsol,
21 too. They got documents about other transactions, too. What
22 else do they need? They haven't told you. That's because they
23 can't identify anything. "Give us everything." That's their
24 position.

25 They have got high level confidential information from

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1 JPMorgan on that transaction. There's nothing about that
2 transaction, I believe, that JPMorgan knows that they don't
3 know. Still, they demand more.

4 Now let me talk about the two transactions that are
5 nothings.

6 THE COURT: The third and fourth transactions.

7 MS. WEISS: The third and fourth transactions.

8 Let me go to April of this year, April of 2015. There
9 was an auction of these BONAR bonds. JPMorgan did not
10 participate. Did not participate. We have told them, JPMorgan
11 was not a participant. They have not shown the Court any
12 evidence that JPMorgan was a participant.

13 They want us to search. What do they want us to
14 search? Nobody at JPMorgan could swear that nobody ever spoke
15 about this transaction, that there's not a stray email. But we
16 were not involved, why should we be forced to make discovery?

17 Then the last transaction, which we had a very minimal
18 role in, was a December, 2014 auction. We placed an order for
19 one client, and we said we'd give them transaction data.

20 Your Honor, this is what the case is about. I
21 apologize for burdening you with this, but really, the devil is
22 in the details. I want to talk briefly about the standards
23 here.

24 Plaintiffs argue relevance. Yes, relevance is very
25 broad. We agree with that. But relevance is only half of your

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1 equation, your Honor. This is the equation. It is relevance
2 versus the real need for the information. It's relevance
3 versus burden. When the additional information that they seek
4 has minimal relevance beyond what they already have or is
5 cumulative on the issues where we have already given them
6 information, the equation is like this. The equation is the
7 burden is here, the relevance is here, and the subpoena should
8 be quashed.

9 You did not hear Mr. Friedman identify any document
10 that he needs. He knows what we have because he had a big
11 deposition and he's got hundreds of documents already. He
12 hasn't identified it because he can't.

13 Rule 26 of the Federal Rules of Civil Procedure
14 prohibits duplicative and cumulative discovery. That's what
15 this is. I defy Mr. Friedman to say what he needs that he
16 doesn't have.

17 Rule 45 says not a nonparty. You have a duty, you
18 have a duty not to burden a nonparty.

19 Why have they not gone to the Republic for this
20 information? They want JPMorgan's communications with the
21 Republic. Except for one transaction, there were no
22 communications with the Republic. But why not go to the
23 Republic? They're a party. They don't tell you why.

24 If you read their brief, they'll say, "Well, the
25 Republic has been difficult in the past." That is not an

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1 excuse not to ask them now. When the Republic has been
2 recalcitrant in the past, this Court has penalized the
3 Republic, confined facts against the Republic. You could do it
4 again.

5 Perhaps most importantly, the Republic is different
6 today. Whatever the Republic did a month ago, there's a new
7 government. The public reports are the new government wants to
8 resolve this. They should be going to the Republic in the
9 first instance. They should see if they can resolve this case.
10 If they can't, and if they want to test the Republic's good
11 faith, they should say, "Then give us the documents." And only
12 if the Republic doesn't have them should they be coming to us,
13 because otherwise, it is an enormous burden on us.

14 THE COURT: Let me interrupt you. What I get out of
15 your presentation is that your client -- and it's Morgan,
16 right?

17 MS. WEISS: Yes, your Honor.

18 THE COURT: -- that Morgan has, according to you,
19 engaged in a substantial amount of cooperative disclosure. Am
20 I correct?

21 MS. WEISS: That is correct, your Honor. Not --

22 THE COURT: Okay. Let me continue.

23 I haven't heard from other parties, but I want to
24 address you. I asked what was the holdup, what was the hangup,
25 if you want to put it that way, with respect to negotiations.

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1 I think you responded, did you not? Or did Mr. Friedman?

2 MS. WEISS: I have not responded yet. Mr. Friedman
3 responded.

4 THE COURT: Okay. There were negotiations.

5 MS. WEISS: There were, your Honor.

6 THE COURT: Why did they not succeed?

7 MS. WEISS: Your Honor, we thought they were
8 successful. We were in the middle of them when the plaintiffs
9 unilaterally called them off. We made substantial movement,
10 and I'll give you an example.

11 We had offered to provide these Repsol trade tickets,
12 which will show the plaintiffs exactly where these bonds were
13 sold. We had wanted to redact out the names and pricing
14 information, the names of JPMorgan's clients, and also the
15 pricing, because this is highly confidential information to
16 JPMorgan's clients.

17 I am sure that these clients are potential competitors
18 of the plaintiffs, and I will wager that the plaintiffs don't
19 go around giving out their versions of this information that
20 they wanted JPMorgan to give out.

21 But the plaintiffs insisted that they must -- that
22 they must have the names. So we ultimately agreed to provide
23 the names, and we asked to do so subject to an attorneys' eyes
24 only protective order, because there is no reason the clients
25 need this competitive information. The Second Circuit has

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1 recognized that, in civil cases, parties enter these attorneys'
2 eyes only protective orders all of the time. So they
3 absolutely refused, and that was one thing.

4 In addition, although Mr. Friedman has not today said
5 that he's missing any documents, the plaintiffs were insisting
6 that we produce every single document, and do an expensive,
7 extensive email review beyond what they have already done and
8 beyond that lengthy deposition.

9 He didn't ask for that today, so maybe they've changed
10 their mind, and maybe they will accept what we have agreed to
11 produce, and the Court will decide about the protective order.

12 But that's how I see it, your Honor, that they wanted
13 more than we were willing to give them, because we thought we
14 had more than satisfied our burden.

15 The law is clear that they should be going to the
16 Republic in the first instance.

17 THE COURT: Mr. Friedman, I want to go back to you.
18 Repeat what you said as to why the negotiations broke down.

19 MR. FRIEDMAN: Right. The negotiations broke down, in
20 part, because of the insistence by JPMorgan and other banks
21 that they would produce certain information only attorney's
22 eyes only so that the information would not be available to our
23 clients to consult with us.

24 In addition, as JPMorgan's lawyer has acknowledged,
25 there are lines that JPMorgan is attempting to draw that are

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1 not proper in preventing plaintiffs from obtaining relevant
2 information.

3 THE COURT: What lines? Why did the negotiations
4 break down? That's my question. You answered it earlier, I
5 just want to ask you to repeat that, please.

6 MR. FRIEDMAN: Sorry, your Honor.

7 One was the attorneys' eyes only issue that caused the
8 negotiations to break down. The other was the insistence on
9 the part of Deutsche Bank and BBVA -- not JPMorgan -- Deutsche
10 Bank and BBVA that they would not produce documents from their
11 offices and subsidiaries outside New York.

12 THE COURT: All right.

13 MR. FRIEDMAN: That's what I said.

14 THE COURT: All right. My reaction to the two very
15 good speakers thus far is this. If we all sat down in a room
16 and talked this out, it would be settled. It's the kind of
17 thing that cries out for settlement.

18 Now, the issue about not producing documents located
19 in Argentina is a little different, but even that probably
20 could be worked out.

21 There's a fair amount of precedent, including
22 something that I wrote, about that issue. What I'm trying to
23 get at is that most of what you're talking about, what the two
24 of you have talked about, is very practical issues which, if I
25 sat down in the room with you, it would be worked out probably

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1 in a half an hour.

2 Now, I appointed a special master, Dan Pollock, an
3 eminent attorney. I appointed him to assist in settling this
4 matter. Certainly, settlement could include steps along the
5 way to the final outcome. It is inconceivable to me that the
6 issues here cannot be worked out in a settlement, and not a
7 settlement that takes four months to arrive at, but a
8 settlement that could take a day or a day and a half.

9 If there's a settlement that has an advantage, it
10 represents some degree of cooperation, some degree of meeting
11 of the minds. It has a huge advantage.

12 I have a recommendation. I want to talk to
13 Mr. Pollock about this. I have a recommendation in mind, and
14 that is that you all get together with the special master and
15 work these problems out. If there is some issue of law that
16 remains after the work of trying to settle, then I'll decide
17 the issue of law. But the idea that I reserve decision after
18 hearing a full set of arguments of the kind that had been made
19 very ably so far, and that I sit down and write a decision
20 about that, it doesn't seem to me that that makes a lot of
21 sense.

22 I would like to recess now. I want to talk to
23 Mr. Pollock a bit, and I want you all to consider whether you
24 could just figure out a way very soon to work out a settlement.

25 What I've heard about the issues that prevented

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1 settlement wasn't very convincing to me as to being issues that
2 prevent a settlement. I want to talk to the special master and
3 come back to you, and I think that the most productive way to
4 proceed is to go on with your efforts to settle and conclude
5 those efforts.

6 I'll take a recess.

7 (Recess)

8 THE COURT: Let me say right away the following:

9 On conferring with Daniel Pollock during our recess, I
10 am withdrawing my suggestion that this motion be added to the
11 responsibilities he has. That would not be appropriate.

12 Let's finish. I think I've heard from the plaintiffs'
13 side, I've heard from the attorney from Morgan, let's go and
14 hear from the others, please.

15 MR. ZIMMERMAN: Good afternoon, your Honor. Philippe
16 Zimmerman, Moses & Singer, for the Deutsche Bank entities.

17 THE COURT: Very good.

18 MR. ZIMMERMAN: To return to the questions your Honor
19 was asking shortly before the break of what the holdup was.
20 Initially, I wanted to state that Deutsche Bank entities are in
21 a substantially similar position to JPMorgan in some respects.
22 The DB entities have responded to dozens of subpoenas.

23 THE COURT: Could you speak a little louder and a
24 little slower?

25 MR. ZIMMERMAN: Certainly, your Honor.

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1 The DB entities have received and responded to dozens
2 of subpoenas in the context of this case, produced thousands of
3 documents, had a witness sit for a deposition, and
4 cooperatively proceeded throughout discovery.

5 The question of what was the holdup here as to why
6 this motion was brought is a question which the Deutsche Bank
7 entities don't truly have an answer to, because Mr. Friedman
8 identified two particular holdups, which we will discuss a
9 little more detail in a moment, your Honor.

10 Allow me to discuss exactly where we were in the
11 process. The parties, the Deutsche Bank entities, and frankly,
12 the other banks, were meeting and conferring with plaintiffs'
13 counsel. And much like JPMorgan, we believe substantial
14 progress was being made.

15 Low and behold, this motion was filed without telling
16 us we were at an impasse, without, as required by this Court's
17 rules and your Honor's rules, that a premotion letter was
18 filed. No notice was provided to the Court which would have
19 provided exactly the opportunity we believe your Honor was
20 suggesting would have been done with Mr. Pollock or perhaps a
21 magistrate judge to attempt to resolve any issues which were
22 preventing an agreement.

23 THE COURT: Mr. Pollock would not be involved in this,
24 so I don't want a misunderstanding.

25 MR. ZIMMERMAN: I apologize.

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1 The point being, a magistrate, or your Honor, or some
2 other individual might well have been helpful and not
3 necessitated the need to impose on the Court with the motion
4 brought by the plaintiffs and the cross motion for a protective
5 order brought by the nonparty banks here.

6 If the premotion letter had been filed, and this Court
7 had been aware of the facts which we have presented in detail
8 in our opposition and cross motion brief, which I would
9 respectfully refer your Honor to for the full details, but
10 proposals were made by each of the nonparty banks as to exactly
11 what they were prepared to produce as part of an ongoing
12 process. These were initial productions which, if the
13 plaintiffs felt they were insufficient and did not provide them
14 with the information they were requesting, they could ask for
15 supplemental production.

16 Again, to be perfectly clear, there was never a point
17 at which the Deutsche Bank entities or, to my knowledge, the
18 other entities here, the other banks said, "No, we are not
19 giving you information you're requesting." Rather, what the
20 Deutsche Bank entities did, as did the other banks here, was
21 say, "We understand and appreciate that your focus is the
22 question of whether the BONAR 2024s are external indebtedness
23 or not." And in order to do that, the issue was, were these
24 bonds offered outside of Argentina. We understood and
25 appreciated that, and we have previously produced substantial

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1 information directly relevant to that issue.

2 In fact, if one looks at the pleadings filed by the
3 plaintiffs in various matters, more specifically their motion
4 here has a litany of facts they say which conclusively
5 demonstrated, I believe they would have argued, that the BONAR
6 2024s are external indebtedness.

7 They point to information obtained from the Deutsche
8 Bank entities and JPMorgan. They say effectively, "We already
9 have the evidence." Nonetheless, they come before this Court
10 today and say, "We need more. We need to burden these
11 nonparties with substantial additional discovery."

12 The Deutsche Bank entities are prepared to provide
13 additional information, but we think that these requests, their
14 demands need to be taken in stages here.

15 To be more clear, we have specifically identified 11
16 different areas of production we are prepared to proceed with.
17 I apologize --

18 THE COURT: Wait a minute. You let your voice drop.
19 I want to hear everything you say. What did you just say?

20 MR. ZIMMERMAN: The Deutsche Bank entities proposed
21 producing 11 different areas, categories of information and
22 documents to the plaintiffs as an initial stage in the
23 production process, with the suggestion being, if those
24 productions were insufficient, come back to us.

25 We believe the information we are proposing to give to

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1 you would reserve all questions you have as to what information
2 the Deutsche Bank entities have related to what they identify
3 as the key issue of whether or not the BONAR 2024s are external
4 indebtedness.

5 The point here is, these motions are premature. The
6 parties were working together, the production process should
7 have proceeded. They didn't proceed for simply one reason;
8 plaintiffs were unwilling to cooperate and work with the
9 nonparty banks, they decided instead to bring this motion.

10 To be clear -- and I apologize, this will take a few
11 moments -- I want to take you through the specific areas that
12 the Deutsche Bank entities agreed to produce.

13 One, the Deutsche Bank entities agreed to produce --
14 they were going to identify by location the top five purchasers
15 on whose behalf successful bids were made by DB SA, which is DB
16 Argentina -- it's Deutsche Bank's Argentina affiliate -- where
17 bids were made on behalf of the client of DB AG London. Those
18 entities were going to be identified by location, which would
19 permit the plaintiffs to know where the offers were being made
20 from. Where these entities were from, which they claim is, I
21 believe, a critical issue. The identity of these
22 individuals -- and we'll get back to this in a moment -- of the
23 AEO redaction issue is not material to the question of where
24 these bonds were being offered, or how they were being -- or by
25 whom they were being purchased, or, as Ms. Weiss explained, the

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1 mechanism.

2 In addition, related to those five largest purchasers,
3 the DB entities were prepared to produce all communications
4 between the Deutsche Bank entities and those entities. That
5 means emails, Bloomberg chats, whatever other communications
6 and correspondence we possessed.

7 In addition to the location, the Deutsche Bank
8 entities were prepared to provide the amounts of the bids that
9 were made, those five largest successful purchases, at the
10 April auction. Your Honor will recall, Ms. Weiss discussed the
11 four different time periods.

12 And that was only the first category of documents the
13 DB entities were prepared to produce.

14 Second, they are prepared to provide examples of the
15 information regarding the BONAR 2024 bonds auction that were
16 forwarded by salespeople for the DB entities to other parties.
17 It's obviously -- every communication to every nonparty that
18 Deutsche Bank made, it's impossible to locate everything of
19 that sort. However, the DB entities were prepared to say, "We
20 sent a notice from the salespeople. There's an Exhibit No. 20
21 included in, I believe, Mr. Farris' declaration in support of
22 this paper, which is simply a notice which was sent along
23 saying, hey, FYI, Argentina is having an auction." That was
24 the full -- but communication of that sort would be provided to
25 the extent they exist.

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1 Three, they were going to provide information
2 reflecting the DB entities' understanding of the flow of funds
3 related to any of the offerings that occurred. That
4 information has previously been produced in the context of
5 communications I personally had with counsel for plaintiff.
6 They accepted that in connection with the April offering, they
7 never came to ask for more information beyond what we had
8 provided, and when they asked for additional information, at
9 that time we provided additional information, but that has been
10 communicated and we would provide any additional information
11 that we possess related to that issue.

12 Next, information possessed by the DB entities related
13 to the structuring of the offerings or auctions that occurred.
14 The entities were prepared to produce that. The DB entities
15 were prepared to provide documents reflecting governance of
16 offerings or auctions, including any contracts, notes, decrees,
17 big boy letters, and solicitation materials.

18 Next, the DB entities were prepared to produce -- and
19 are prepared, I should say, with respect to each of these.
20 This remains the DB entities' position that it's appropriate to
21 proceed in this manner -- the DB entities were prepared to
22 identify the exchanges through which the bonds were traded and
23 the entities that played a role in clearing the bonds.

24 Next, the DB entities were prepared to provide
25 information concerning the method and/or the process by which

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1 payments of the principal or interest due on the BONAR 2024
2 bonds would be paid. The information we possessed, we were
3 prepared to produce.

4 Those areas were based on review of the document
5 demands and the statements by plaintiffs as to what their
6 critical interests were related to those demands.

7 Next, once we made that proposal -- and I specifically
8 articulated that proposal to representatives of NML, Aurelius,
9 and Olifant -- they came back and identified a few more things
10 they were interested in. They wanted the identity of the
11 custodians that that DB would be speaking to or from whom
12 information was obtained. We said, "Yes. We'll give you that,
13 too."

14 Next, they said they wanted the locates of all bidders
15 who participated in the April BONAR 2024 auctions. "Okay,
16 we'll give you the locations. No names, but we'll give you the
17 locations."

18 Next, they wanted all communications between the
19 Republic and the Deutsche Bank entities regarding the BONAR
20 2024s. We said, "Fine, we'll give you that, too." Still, not
21 enough. There was further communication then, not between
22 counsel but between representatives of NML and Deutsche Bank,
23 and they identified additional information; namely, documents
24 or other information identifying clients that were solicited or
25 otherwise contacted regarding the April auction, and

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1 communications between Deutsche Bank SA and Deutsche Bank AG
2 regarding the auctions.

3 Again, the DB entities proposed producing all of that,
4 that lengthy list. I apologize for taking the time to read it
5 to your Honor, it's in our papers, as well. What was the
6 response? "Not enough. That doesn't do it."

7 Again, we explained, "Take the production, review it.
8 If it doesn't answer what you're looking for, come back to us,
9 tell us what's missing. Tell us what information is actually
10 relevant to what you're asking for to your claimed interest of
11 where the BONA 2024s were offered." Nope. What the response
12 was, no more words, it was their filing the instant motion.

13 It's hard to stand here before you, your Honor, and
14 answer how there is a holdup when our response was, "Let us
15 give you all of this information, which would be collected at
16 substantial time and expense by Deutsche Bank, and if it's not
17 enough, come back to us." But the plaintiffs were unwilling to
18 accept that. They were unwilling to accept, effectively, a
19 victory of getting the information they say they need.

20 Again, as mentioned shortly ago, they claimed to
21 already have the information they need concerning the BONA
22 2024s. To quote from their brief at page 2 in this matter,
23 their moving brief, they said in their amended complaint they,
24 "pleaded detailed and specific allegations demonstrating that
25 the BONA 2024s bonds were offered and sold to investors

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1 throughout the world." Their point is, they've already got the
2 evidence, and they've already been able to show it to you, and
3 we're saying we're going to give you the additional information
4 we have that you think might be relevant, but we can't do
5 everything you're asking for. See if what we're offering you
6 is acceptable, whether that will materially advance the ball
7 here so that we can hopefully resolve this issue. They were
8 unwilling to proceed in that manner. Instead, this motion was
9 filed.

10 Simply put, this motion's premature, your Honor.
11 Regrettably, your Honor's special master is not inclined to
12 assist, but on behalf of Deutsche Bank entities, we believe
13 referring this matter to the magistrate judge to assist in
14 potentially resolving any issues here would be helpful and
15 appropriate rather than subjecting parties to a lengthy process
16 here of production, where it's not appropriate or necessary,
17 when the bank nonparty banks are prepared and willing to give
18 the plaintiffs the information they possess that is relevant.

19 There are a couple of other issues I'd like to touch
20 upon very quickly. First, and these relate specifically to the
21 two, what Mr. Friedman characterized as, holdups here.

22 One, AEO and redacted information. As Ms. Weiss
23 explained, the information they asked for includes information
24 which reflects proprietary trading information of customers of
25 the bank. The initial proposal of the DB entities was, "We'll

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1 give you the numbers, we'll give you the location of these
2 entities, we just don't want to share their names. You
3 shouldn't have the trading names and strategies. Redacted
4 information with the location would meet your needs."

5 They came back and said, "No, that's not enough. We
6 need to know who the parties are." What the DB entities
7 said -- and interestingly enough, I believe JPMorgan and BBVA
8 essentially ended up in the same place -- all of this
9 independently in this context was, "We'll give it to you, AEO,
10 attorneys' eyes only. Don't share it with your clients because
11 they're competitors."

12 The attorneys need to see it, they can see the
13 information. There have been instances in this case where,
14 regrettably, the sufficiency of the confidentiality orders have
15 been -- their effectiveness has been questionable, as detailed
16 in a July 14th letter to the Court, and mentioned at times in
17 the briefs submitted here. There are true concerns as to
18 whether or not information has been truly treated as
19 confidential.

20 Indeed, Olifant was provided information by NML or
21 Aurelius which they used in connection with their motion for
22 leave to amend, which was subject to a confidentiality order.
23 Olifant was not a party to those earlier subpoenas. Clearly,
24 the material was shared in violation of the confidentiality
25 orders.

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1 That's not why we're here today fighting about that
2 issue, but we are interested in maintaining the confidentiality
3 and the appropriate proprietary aspect of the information of
4 the DB entities' clients, its customers. There's no good
5 reason why plaintiffs themselves, as opposed to their counsel,
6 require access to this information.

7 The next issue to discuss, your Honor, is the second
8 matter that Mr. Friedman says, which is that the DB entities
9 have refused to produce information from overseas.

10 Unfortunately, that's not true. It's simply untrue.
11 They have produced substantial information from London and
12 elsewhere. It is true the DB entities have said they are
13 unable to produce documents from Argentina, but we have never
14 said we will not produce information from overseas, from
15 anywhere outside of the United States.

16 The plaintiffs know that. In fact, their papers
17 acknowledge that they received information from outside the
18 United States from the DB entities in an earlier production.

19 But moving on to the question of Argentina. DB SA,
20 the Deutsche Bank Argentinian affiliate.

21 As to the issue of jurisdiction, rather than all of
22 the nonparties' counsel discussing the same issue, I'm going to
23 not discuss jurisdiction, and Mr. Carusso, BBVA's counsel, will
24 address that issue.

25 I would, however, like to discuss the issue of comity,

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1 which is the requisite analysis here as to, if this Court
2 determines it has jurisdiction and is going to consider whether
3 it is going to direct BBVA's Argentine affiliates and DB SA,
4 Deutsche Bank's Argentine affiliate, to produce information in
5 its possession.

6 In this Circuit, there have been seven factors that
7 have been identified as necessary to consider in the comity
8 analysis. Essentially, the question is, if this Court is going
9 to direct an Argentine company in violation of Argentine law to
10 produce information in response to subpoena -- and to be clear,
11 the only evidence before this Court concerning Argentine law is
12 the declaration of Bernardo Iriberry admitted by DB and BBVA.

13 The plaintiffs have submitted no evidence concerning
14 Argentine law, and Dr. Iriberry's declaration clearly states
15 that the production of the requested information would violate
16 Argentine law. In particular, he talked of personal data, bank
17 secrecy, and securities laws.

18 I'll make this very quick, and I apologize for the
19 length of this, but again, the seven factors on comity, your
20 Honor.

21 One, the importance of the requested information to
22 the litigation. Plaintiffs have repeatedly argued to this
23 Court, both in their motion for leave to amend and even on this
24 motion, on their motion here, that they already have the
25 evidence showing that the BONA 2024s are external indebtedness.

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1 If they already have that information, how important can this
2 information be that they're seeking from Argentina?

3 Second, the banks, including, in particular, the DB
4 entities, are prepared to provide substantial information in
5 their possession related to the issue.

6 Third, any information concerning whether or not the
7 BONA 2024s were offered outside of Argentina would logically be
8 primarily located outside of Argentina, not in the possession
9 of the Argentine entities. So the material that the DB
10 entities, which are all located outside of Argentina, would
11 produce are likely to be the relevant material to the question
12 plaintiffs contend they need to look into.

13 Second, the degree of specificity of the requests,
14 putting aside plaintiffs' self-serving characterization of the
15 subpoenas as narrowly drawn. They ask for all information
16 related to any offerings, potential offerings, offerings,
17 anything related in any way to the BONA 2024s. It's not
18 narrowly tailored. In fact, we've attempted to discuss with
19 them tailoring, and they've never agreed to modify their
20 subpoena in any way, but saying to us, "We want all information
21 concerning any communications of anything having to do with
22 this BONAR," as discussed also by Ms. Weiss, hardly is narrowly
23 tailored.

24 Next, the third factor, whether information at issue
25 originates from within the United States. The information

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1 they're looking for is in the possession of DB SA. If the
2 material originated here in the U.S., presumably, the DB
3 entities who have been subpoenaed here would possess that.
4 There's no reason to believe any of that information in
5 Argentina originates from here in the United States.

6 Next, the availability of alternative means to secure
7 the information. As Ms. Weiss noted, Argentina is a party to
8 this case. Plaintiffs certainly should be seeking that
9 information from Argentina first before placing an undue burden
10 on a nonparty, including subjecting them potentially to
11 penalties in Argentina.

12 Next, under Argentine law, they could seek this
13 information making an appropriate request under the Hague
14 Convention. No such request has ever been made. No attempt to
15 make it has been made. There is no indication, to my
16 knowledge, that the Argentine judiciary would not fully and
17 fairly consider any such demand.

18 Next is the balance of national interest. While, yes,
19 certainly, it's important for this Court to ensure that parties
20 can conduct discovery, when balanced against a sovereign
21 nation's right to enforce its rules and laws concerning data
22 privacy, bank secrecy, and securities law, in particular in a
23 case such as this one where the plaintiffs have access to
24 substantial information from other sources and, indeed,
25 apparently already possess much of the very same information

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1 they seek, how and why they would say that balance, that
2 interest is heavier, supporting, directing entities to seek the
3 production of documents in Argentina in violation of Argentine
4 law is problematic, to say the least.

5 Hardship of compliance is the next factor. Applying
6 the two factors identified by Judge McMahon of this court in CE
7 International versus SA Minerals, the DB entities are
8 nonparties, and DB SA is potentially subject to punishment.
9 Both of those compel against disclosure.

10 Lastly, good faith. We respectfully submit there can
11 be no question that the DB entities have proceeded in good
12 faith here, your Honor. They've produced thousands of pages of
13 documents. They've reviewed tens of thousands of documents in
14 response to subpoenas. We've made proposals to provide
15 information. I have provided personally information on behalf
16 of the bank to plaintiffs' counsel concerning information of
17 interest to them. The DB entities, which are neutral
18 nonparties here, they're not parties to these actions, have
19 acted in good faith to facilitate discovery and the process
20 here. Seeking to have them effectively punished by compelling
21 them to engage in this type of discovery is unjust.

22 Unless the Court has any questions, I have nothing
23 further, your Honor.

24 THE COURT: Thank you very much.

25 Anything else from the banks?

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1 MR. CARUSSO: I'm sorry, your Honor.

2 THE COURT: Who else is speaking for the banks?

3 MR. CARUSSO: My name is Kenneth Carusso, and I'm
4 going to speak on behalf of my client, BBVA, the Spanish bank.

5 THE COURT: Go ahead.

6 MR. CARUSSO: May it please the Court, I would like to
7 address two sets of issues, if I can put it that way; first,
8 the practical issues here, and then second, the legal issues.

9 With respect to the practical issues, I want to agree
10 completely with your Honor that this dispute can and should be
11 settled. I was quite surprised when this motion was filed,
12 because I thought we were well on our way to a negotiated
13 agreement. I want to urge your Honor to follow through on your
14 recommendation to appoint some neutral --

15 THE COURT: Let's use "resolve" rather than "settled".
16 "Settled" has some associations with the litigation. If you
17 don't mind a little change in terminology, let's say
18 "resolved".

19 MR. CARUSSO: I don't mind at all.

20 THE COURT: You can go ahead now.

21 MR. CARUSSO: I do think this discovery dispute should
22 be resolved, and I think that, in the presence of a neutral --
23 I know Mr. Pollock can't or doesn't want to serve -- but there
24 are plenty of lawyers who can be special master, and we have
25 plenty of very able magistrate judges in this courthouse. In

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1 the presence of a neutral, I believe that this dispute will be
2 resolved post haste, because the plaintiffs and everybody else
3 in the room will have some inducements to compromise.

4 As your Honor asked earlier, what was the holdup?
5 That's a very good question, and I'm going to tell your Honor
6 what the holdup was, from my point of view at least, and that
7 was the plaintiffs' counsels' refusal to compromise.

8 Your Honor has heard that the banks wanted to redact
9 certain emails and other documents in order to remove the names
10 of the customers and clients with whom our personnel were
11 having conversations. Such redactions are perfectly legitimate
12 and perfectly commonplace in this courthouse every day.

13 Plaintiff said, "No. No redactions, that's not
14 enough. We have to have the names." I said, "Why?" They
15 said, "Well, we need to know where these bonds were marketed
16 and offered." So I said, "Okay. If you need to know where, I
17 can satisfy your theory of the case, you can show where these
18 bonds were marketed outside Argentina, inside Argentina, I will
19 tell you the countries. We will disclose the countries in
20 which these customers/clients were working." "No, that's not
21 enough, either. That's not enough. We need not only the
22 countries, but we also need the names." "Well, okay." I then
23 proposed, "Well, we'll give you the names, but let's
24 compromise. Drop your request for the offshore documents from
25 Argentina." "No, no, not enough. Won't compromise. We need

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1 the names, the countries, and the offshore documents."

2 Your Honor, the simple answer to your question, what
3 was the holdup, is the plaintiffs' refusal to make any
4 compromises. I feel very strongly about that, as your Honor
5 might infer from this particular presentation that I'm making.

6 I urge your Honor to follow through with the
7 recommendation with which BBVA wholly concurs to appoint a
8 neutral to try to resolve this dispute.

9 I think that that is my view on the practical issues,
10 now let me discuss some of the legal issues.

11 Plaintiff's counsel, I believe, made some statements
12 which are overbroad. He said that my client's position is that
13 the Court lacks jurisdiction. The statement is overbroad.

14 I believe that the parties agree that the Court lacks
15 general jurisdiction over my client. My client is incorporated
16 in Spain, it has its principal place of business in Spain, it
17 is not at home -- and that's a term of art now after the
18 Daimler case -- it is not at home in New York, and therefore,
19 it is not subject to this Court's general jurisdiction. That's
20 agreed, I believe, certainly to law.

21 Second, we concede that BBVA is subject to this
22 Court's specific jurisdiction. We operate a branch here;
23 obviously, we are subject to this Court's specific
24 jurisdiction. That is why we have produced every document that
25 we have in the New York branch that is responsive to this

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1 subpoena. There's one category of documents that we agreed to
2 produce and haven't produced yet, but upon that, we will have
3 produced everything that we have in the New York branch in
4 response to this subpoena.

5 I'm going to suggest to your Honor that not only is it
6 impractical for the plaintiffs to suggest that they refuse to
7 compromise and want more, but it's unlawful. That we have a
8 constitutional right to stand on that principle and say we've
9 produced everything that was within the jurisdiction of the
10 Southern District of New York, and we are not going to produce
11 documents or information over which the Court does not have
12 jurisdiction.

13 Plaintiff's counsel said that the banks were involved
14 with Argentina in offering the bonds. The statement is
15 insupportable. Excuse me. The record does not support that
16 statement with respect to BBVA. Our production shows that the
17 New York branch of BBVA, which is the entity over which this
18 Court has jurisdiction, was not involved.

19 Our documents -- which we produced and which I know
20 your Honor doesn't want to pour over, but a special master or
21 magistrate judge probably would -- one of these documents that
22 they rely on proves exactly the opposite of their position and
23 proves my position. This is a conversation, electronic email
24 conversation between two BBVA personnel.

25 One says, "I'm trying to work with our guys in

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1 Argentina to find out if there's a way for clients to
2 participate," and then another BBVA person asks, "The customers
3 want to know -- they're asking whether we can help them
4 understand what the wording means, "bonds to be auctioned
5 direct to investors without banks acting as intermediaries,
6 said the Economy Minister Axel Kiciloff" -- excuse me, I don't
7 know how to pronounce his name -- "what does it mean?" And the
8 BBVA person writes back and says, "Actually, they have to go
9 through local intermediaries who are registered locally." My
10 client personnel referred his colleagues to the process within
11 Argentina.

12 This doesn't show that these bonds were offered
13 outside Argentina. First of all, it doesn't show they were
14 offered at all, but secondly, the reference is my client
15 personnel saying, "You've got to go to Argentina."

16 So I don't think the Court has -- excuse me, not that
17 I don't think -- I urge the Court to conclude that it doesn't
18 have sufficient jurisdiction to urge production of documents
19 that are outside the New York forum.

20 The document requests, under the due process clause,
21 must pass the relatedness test. One of the elements of due
22 process is that the request for production be related to the
23 bank's forum activities. These requests for production about
24 what happened in Argentina involving an Argentinian company
25 that is an affiliate of BBVA, separate company from BBVA, the

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1 subpoena recipient, are not related to the activities of the
2 branch here in New York.

3 If your Honor would just give me one moment to examine
4 my notes, please.

5 I would conclude that portion of my remarks by
6 repeating that the New York branch has made a full production
7 of documents for everything in New York that's responsive to
8 the subpoena, and it shows that we had no involvement at all in
9 handling customer bids, in dealing with these bonds at all.

10 To the extent there was anything in Argentina that was
11 done, the plaintiffs can and should go there.

12 I will close with this conclusion, if your Honor
13 please.

14 In its answer to the amended complaint, the Republic
15 of Argentina stated that in April, 2015, the Republic offered
16 and issued approximately 1.4 billion of BONAR 24s exclusively
17 in Argentina to Argentine entities, including to Deutsche Bank
18 SA and BBVA, Banco Frances SA.

19 Well, if the Republic has that information, why don't
20 the plaintiffs ask the Republic for it? No muss, no fuss,
21 plaintiffs can get the information from the Republic without
22 causing my client to violate the foreign law of Argentina.

23 This is just another example of the overreach that's
24 going on here, Judge. The case should be settled, and the
25 plaintiffs should go use the least burdensome method of asking

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1 the Republic itself for information that the Republic obviously
2 already admits that it has. Yet they come to us. And again,
3 it's the opportunity to get the information without violating
4 foreign law.

5 Just give me one moment, your Honor. Counsel wants to
6 talk to me for a moment.

7 THE COURT: Of course.

8 (Pause)

9 MR. CARUSSO: I've been asked to say that the other
10 banks, Deutsche Bank and JPMorgan, also concur with BBVA in
11 urging your Honor to appoint a neutral to resolve this
12 discovery dispute.

13 Thank you, your Honor. Do you have any questions?
14 Otherwise, I'll sit down

15 THE COURT: Thank you very much.

16 MR. CARUSSO: Thank you.

17 MR. FRIEDMAN: Your Honor, may I respond briefly?

18 THE COURT: Of course.

19 MR. FRIEDMAN: First of all, your Honor, I did say
20 when I started that the banks had produced some documents. I'd
21 like to be clear about why we have this dispute and why we are
22 in court.

23 This is not a premature motion. We spent
24 approximately four months from the time the subpoenas were
25 served in May of 2015 until October when we filed the motions.

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1 Plaintiffs have always been prepared to be reasonable.

2 The simple way to be reasonable on both sides with
3 this kind of dispute is to identify the parties, the persons at
4 the banks who were involved in these matters, and then simply
5 search the files and the emails of those people. That's the
6 way it's always done. Plaintiffs have always been prepared to
7 be reasonable in that regard.

8 Instead, what we are hearing from the banks is
9 actually a way of slicing and dicing what should be a complete
10 production that, in all likelihood, would impose more burdens
11 on banks by requiring them to search for information and then
12 not produce certain information that would be relevant.

13 For example, when we talk about the production of
14 relevant information, we're talking about an offering process
15 here, your Honor. When Deutsche Bank says, for example, "We'll
16 produce information about the top five customers who purchased
17 bonds," that's a slice of the information about the offering
18 process, because there undoubtedly are many offerees, many
19 parties with whom Deutsche Bank communicated who did not
20 purchase bonds.

21 Your Honor has made clear with respect to this very
22 issue about external indebtedness and offered exclusively in
23 Argentina, this is a question of fact. Your Honor does not
24 want to hear -- you've made this clear before -- your Honor
25 does not want to hear the legal arguments without having a

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1 complete factual record. That is what we are trying to do.

2 Second, there is a significant legal issue for your
3 Honor to decide, because you've heard from Deutsche Bank and
4 from BBVA that they believe that your Honor's jurisdiction does
5 not extend to compelling the production of documents from the
6 Argentine subsidiaries and offices of these entities. It's an
7 important issue. Your Honor has decided it before.

8 I will say, as to the last comments by counsel for
9 BBVA, he neglects to mention that, in the one recent decision
10 in this district dealing with the New York courts' jurisdiction
11 over this Spanish bank -- and I'm referring to the Vera case
12 that is in the parties' papers -- the Southern District of New
13 York ruled that the courts have general jurisdiction over BBVA.
14 That was the ruling.

15 We have submitted that your Honor does not have to
16 reach that issue because here, the BBVA New York office and
17 personnel were involved in communications at issue related to
18 this offering.

19 Counsel for BBVA misspoke when he referred to the
20 New York branch as the entity over which the Court has
21 jurisdiction. That is legally incorrect. The entity is BBVA.
22 The courts in this Circuit and the Second Circuit itself have
23 been clear that, when it comes to subpoena enforcement, there's
24 no separate entity rule. A branch is not an entity. This
25 Court has jurisdiction over the Deutsche Bank party, the BBVA

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1 party, and those banks can and should be required to produce
2 their documents whether the documents are in New York or in the
3 hands of subsidiaries of the banks that are controlled in
4 Argentina.

5 I'd also like to say that the various lawyers for the
6 banks accuse plaintiffs of insisting on too much information,
7 like names of customers. Well, the fact is, your Honor, we're
8 dealing with a situation where the offering was structured with
9 conduits. The whole point, the whole reason we have this issue
10 is because the Republic argues that the initial agents or
11 purchasers were located in Argentina.

12 So in dealing with the conduit theory, which of course
13 we think is legally meritless, it's not enough for the bank to
14 say somebody in such and such a country bought a bond. We are
15 trying to develop, as the Court has made clear should be
16 developed, the complete information about how this offering was
17 structured. The burden, any burden can be totally alleviated
18 by the bank's reasonable agreement with the plaintiffs on
19 custodians whose files will be searched and reasonable search
20 terms.

21 We've always been prepared to do that. We're prepared
22 to do that now. What we're not prepared to do, your Honor, is
23 have the banks dictate the information that they say is
24 relevant. It's not for the third parties to say you only need
25 information about the top five customers. You only need

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1 information about the country where someone was located.
2 That's not the way discovery works in this district, your
3 Honor.

4 Thank you very much.

5 THE COURT: Let me ask you this. Have the three banks
6 produced substantial information?

7 MR. FRIEDMAN: The three banks have produced
8 information previously, your Honor, yes.

9 THE COURT: Well, okay. I don't know what is meant by
10 previously.

11 MR. FRIEDMAN: I mean, yes, your Honor, they have
12 produced information. We are in dispute about the information
13 they have not produced.

14 THE COURT: I understand. All right. Thank you very
15 much.

16 MR. FRIEDMAN: Thank you, your Honor.

17 MS. WEISS: Your Honor, may I be heard briefly in
18 reply?

19 THE COURT: Of course you may.

20 MS. WEISS: Very briefly, your Honor. If you are
21 going to decide this motion instead of sending it to a
22 neutral -- which all the banks support, the banks support you
23 sending it to a neutral -- if you're going to decide it, the
24 decision should be at least go to Argentina first. Go to the
25 party first. Don't burden a nonparty until you have gone to

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1 the party. They have not gone to the party. They have not
2 told the Court they have gone to the party. That should be
3 number one.

4 THE COURT: Wait. Are you saying I should travel to
5 Argentina?

6 MS. WEISS: No, but the plaintiffs should. They
7 should get this information from their adversary first. If
8 their adversary won't produce it, they can apply for sanctions.
9 Only if the adversary doesn't have it should they be heard to
10 burden a nonparty. That's number one.

11 Number two. You asked Mr. Friedman if we gave
12 substantial information. The deposition is in the record, your
13 Honor. You can read what we gave them. And hundreds of
14 documents, too. This is the ideal case for a magistrate to
15 decide was it enough. Do they need more.

16 I'm requesting, and I believe it's on behalf of all
17 the banks, don't leave it to the plaintiffs to say how much
18 they want. You need a neutral in this case. None of the banks
19 have been able to negotiate any reasonable compromise, and it
20 is not for want of trying.

21 If you're not going to send them to Argentina first,
22 then please, your Honor, appoint a neutral. You won't need to
23 write an opinion, this matter will be resolved.

24 Thank you for hearing me again.

25 MR. FRIEDMAN: Your Honor, one small point, if I may?

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1 THE COURT: Go ahead.

2 MR. FRIEDMAN: I thought the banks knew this, but I
3 will say it. Plaintiffs, of course, are pursuing discovery
4 from Argentina. Your Honor knows that is a slow and often
5 unproductive process. There is no rule in this Circuit or
6 elsewhere that third party discovery may not go forward until
7 sanctions, et cetera, have been imposed on a party.

8 These are important issues reflected in the amended
9 complaint that will ultimately be presented to your Honor.

10 Thank you.

11 THE COURT: Is there somebody else?

12 MR. ZIMMERMAN: Yes, your Honor. Very briefly on
13 behalf of the Deutsche Bank entities.

14 I just want to make clear that the Deutsche Bank
15 entities are not attempting to dictate to plaintiffs what
16 information is being provided.

17 THE COURT: Slower and a little louder.

18 MR. ZIMMERMAN: The Deutsche Bank entities are not
19 attempting to dictate to plaintiffs what information is to be
20 provided. Rather, the Deutsche Bank entities have listened to
21 the plaintiffs, heard them identify the issue of primary
22 concern, which is whether or not the BONA 2024s are external
23 indebtedness and have attempted to identify the information
24 that's been requested that's responsive.

25 They would propose producing it if we don't go to a

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1 neutral, which is an approach we certainly endorse, as well,
2 and if plaintiffs find that production unsatisfactory, there
3 would be a supplemental discussion. It was not take it or
4 leave it from the banks' perspective, certainly the DB
5 entities, it was let's begin the process.

6 But we frankly agree that the process with the neutral
7 would be much more in everyone's interest at this stage.

8 THE COURT: What was the last point you made?

9 MR. ZIMMERMAN: We would fully support the statements
10 by counsel for BBVA and JPMorgan that proceeding with a neutral
11 to facilitate this discovery would be in everyone's interest.

12 MR. CARUSSO: Your Honor, please. Mr. Carusso again
13 with a brief rebuttal.

14 Your Honor asked whether the banks had produced
15 substantial information, and with respect to -- I should say on
16 behalf of BBVA, I must answer that, yes, absolutely. We
17 produced everything that we have in the New York branch in
18 response to this subpoena, and that is a substantial amount of
19 information.

20 Now, plaintiff's counsel made the point that it's not
21 merely the branch that is subject to the Court's jurisdiction,
22 but BBVA, the overall entity. That is, of course, correct, but
23 the question then is, what kind of jurisdiction?

24 Now, counsel suggested that BBVA is subject to general
25 jurisdiction. This contention surprises me, because we briefed

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1 the point showing that the Court does not have general
2 jurisdiction, and the plaintiffs didn't even bother to reply to
3 that in their reply papers, so I thought that was out of the
4 case.

5 If it's not and the plaintiffs want to reinject it and
6 cite Judge Hellerstein's Vera case, that, very briefly, Judge
7 Hellerstein relied on a section of the banking law, section
8 200, subdivision 3, under which, "A foreign bank must appoint
9 the New York regulator as the bank's agent upon whom all
10 processed in any action or proceeding against the bank on a
11 cause of action arising out of a transaction with its New York
12 branch may be served."

13 That language says, first of all, that the bank must
14 consent to a mechanism of service of process, not personal
15 jurisdiction. But let's pass on beyond that, and let's assume
16 that this also means that there's a consent to jurisdiction.

17 I repeat the issue then is, fine, what kind of
18 jurisdiction? I suggest very clearly that the plain language
19 of the statute gives the Court specific jurisdiction, not
20 general jurisdiction, because the service is with respect to a
21 cause of action arising out of a transaction with the New York
22 branch, and the "arising out of" language is the classic
23 language of specific jurisdiction.

24 I suggest that to hold otherwise would violate the due
25 process clause, because it would undermine the Daimler case,

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1 which we've discussed earlier.

2 With respect to the Vera case, I have said directly,
3 and therefore can say indirectly, most respectfully to Judge
4 Hellerstein, that he's overlooked the statutory language. I
5 would suggest that if your Honor is indeed going to reach these
6 jurisdictional issues, the general jurisdiction issue should
7 rather clearly be decided in the bank's favor, and then the
8 specific jurisdiction issue, again, I say we've produced
9 everything that's related and the foreign entity that's in
10 Argentina, Banco Frances SA is not subject to this Court's
11 jurisdiction.

12 Thank you, Judge.

13 THE COURT: All right. The litigation involving NML
14 and others against the Republic of Argentina has been going on
15 a very long time. I've sat in this courtroom over years on
16 various issues about this litigation. It is time to work
17 towards a conclusion. It is time.

18 Subpoenas were served on three banks. There are
19 motions pertaining to those subpoenas, and I'm reserving
20 decision. I certainly will not decide those matters this
21 afternoon from the bench. Decision is reserved.

22 There is a suggestion, which apparently has pretty
23 good consensus, that a neutral party, such as a magistrate
24 judge or maybe an outside attorney, be appointed to deal with
25 the issues which have been discussed today about what is

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1 required to be done by the three banks in response to requests
2 for information from those three banks.

3 It may very well be that that is a good idea to have
4 some neutral party or magistrate judge or an outside lawyer be
5 appointed to do that. The obvious thought is that that would
6 be helpful to the Court. Well, maybe it would be, but I'm
7 always a little suspicious of ideas that would be helpful to
8 the Court, because what it can involve is to have these
9 activities undertaken and people appointed, and it inevitably
10 increases the expense of the litigation and can indeed increase
11 the duties of the Court in the long run.

12 That is okay if it's necessary, but I want to give any
13 such idea very careful consideration before doing it; that is,
14 the idea of appointing some neutral party to deal with the
15 discovery issues which have been discussed.

16 Let us remember that the discovery issues which have
17 been discussed here relate to three banks. They don't relate
18 to the defendant, they relate to three banks which have been
19 subpoenaed. The banks are not defendants, they are independent
20 banks, and they have been subpoenaed.

21 The only reason for my remarks now is to try to put
22 some emphasis on the need to work towards as prompt a
23 conclusion of this litigation as possible. That probably won't
24 be terribly prompt, but we should make some attempt in that
25 direction.

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1 I want to say to you that, whatever step I take -- and
2 I've heard some very good recommendations, and I respect those
3 recommendations -- but whatever step I take is really with a
4 view of assisting in drawing this litigation to a conclusion.

5 I'm reserving decision on the motions that are before
6 me, but I am directing that the parties and the banks continue
7 their effort and make every effort to resolve by agreement the
8 issues that are presented. What I've heard from the very
9 interesting remarks made today, I've heard about issues that
10 are continually resolved by some voluntary resolution. And
11 there's absolutely no reason that that cannot be done here with
12 respect to whatever issues there are about these banks, and
13 there's no reason that that cannot be done very, very promptly.
14 I will have my office be in touch with the lawyers to check on
15 what is going on, because things should move promptly. That
16 concludes our hearing. Thank you all very much. You all did a
17 very good job and thank you.

18 (Adjourned)

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