

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

		: 15-3675-cv(L); 15-3651-cv; 15-3608-cv;
NML CAPITAL, LTD., <i>et al.</i> ,	:	15-3609-cv; 15-3661-cv; 15-3652-cv;
	:	15-3646-cv; 15-3659-cv; 15-3618-cv;
Plaintiffs-Appellees,	:	15-3622-cv; 15-3626-cv; 15-3682-cv;
	:	15-3628-cv; 15-3656-cv; 15-3715-cv;
and	:	15-3653-cv; 15-3657-cv; 15-3616-cv;
	:	15-3617-cv; 15-3629-cv; 15-3612-cv;
ROSAS DE COHEN, <i>et al.</i> ,	:	15-3624-cv; 15-3645-cv; 15-3625-cv;
	:	15-3640-cv; 15-3713-cv; 15-3643-cv;
Plaintiffs,	:	15-3638-cv; 15-3668-cv; 15-3630-cv;
	:	15-3614-cv; 15-3621-cv; 15-3664-cv;
v.	:	15-3649-cv; 15-3666-cv; 15-3642-cv;
	:	15-3672-cv; 15-3663-cv; 15-3632-cv;
THE REPUBLIC OF ARGENTINA,	:	15-3623-cv; 15-3633-cv; 15-3634-cv;
	:	15-3679-cv; 15-3647-cv; 15-3641-cv;
Defendant-Appellant.	:	15-3648-cv; 15-3660-cv; 15-3670-cv;
	:	15-3678-cv

**MEMORANDUM OF LAW IN OPPOSITION TO
EMERGENCY MOTION FOR LIMITED REMAND PURSUANT TO FRAP 12.1(b)**

The Plaintiffs-Appellees listed on Table A hereto (collectively, “Plaintiffs”), through their attorneys Duane Morris LLP, hereby oppose the emergency motion of the Republic of Argentina (the “Republic” or “Argentina”) for a limited remand pursuant to Federal Rules of Appellate Procedure 12.1(b).¹

Plaintiffs join the Response in Opposition to the Emergency Motion submitted by NML Capital, Ltd., et al. (the “NML Appellees”), Dkt. 79 in No. 15-3675-cv (L),² but write separately

¹ These cases are on appeal with this Court by virtue of the Republic’s appeal of the District Court’s October 30, 2015 Order. The Republic’s initial brief is due today. In the interim, the Republic moved the district court to lift the very same injunctions. Almost contemporaneously with the filing of the instant Motion for Remand, the Republic also filed a motion for extension of time to file its initial brief in the pending appeal. The Republic should not be allowed to retain both options.

² Such Opposition was also submitted on behalf of Aurelius Capital Partners, LP, Aurelius Capital Master, Ltd., Blue Angel Capital I LLC, FFI Fund, Ltd., and FYI Ltd.

to highlight the severe inequities that the Republic's contrived "emergency motion" will have on the undersigned Plaintiffs in particular. In an about-face from its years of intransigence and delay, the Republic now insists on moving at warp speed—indeed, without even pausing to comply with this Court's requirements for an emergency motion—to dismantle carefully constructed injunctions that have been twice affirmed by this Court.

For all of the reasons set forth by the NML Plaintiffs, there is no emergency here—that is, unless this Court remands the action to facilitate the process outlined in the District Court's Rule 62.1 "Indicative Ruling" (which would, among other things, engender a whole new round of appeals). Instead, the Republic's motion for a remand is the latest salvo in a scheme to slice and dice Plaintiffs' claims and create different tiers and classes of Plaintiffs, which approach itself violates the *pari passu* clause of the 1994 Fiscal Agency Agreement ("1994 FAA"), validated by this Court, by subordinating certain bondholders (in this case, those without injunctions and/or judgments) to other bondholders on the same bonds. That the Republic has agreed to settlements with a handful of bondholders and made a vague proposal that it has refused to clarify or negotiate hardly justifies either a granting of this motion or the lifting of injunctions.

As to the undersigned Plaintiffs in particular, granting a remand to allow the District Court to follow through on its Rule 62.1 "Indicative Ruling" would create an untenable situation in which plaintiffs that have a *pari passu* injunction in place are treated differently from those plaintiffs with similarly valid claims that have not yet secured such an injunction—in some cases, due to the District Court's inaction in ruling on pending motions that have been fully-briefed. If the Republic has its way, these Plaintiffs must either settle by February 29 or be left without even the prospect of equitable relief, which has long been recognized in this litigation as

a bedrock protection of Plaintiffs' contractual rights. What is worse, the second of the two conditions precedent outlined by the Republic, and implicitly accepted by the District Court, will leave those Plaintiffs that do not have the same protections of an injunction on all or some of their claims with a classic Hobson's Choice: settling with the Republic by February 29th (on terms set entirely by the Republic), or risk the Republic refusing to settle at all thereafter.

In sum, the Republic seeks not just to create maximum settlement leverage on all Plaintiffs by imposing unilateral terms and setting an arbitrary deadline, but also, to completely cut out of the process those Plaintiffs that do not have money judgments or injunctions covering all of their claims. This new approach, while perhaps different in-kind from years of defiance and delay, is no less unfair to Plaintiffs. The Republic's "emergency motion" for a remand should be denied.

BACKGROUND

On February 19, 2016, the District Court issued an "indicative ruling" pursuant to Federal Rules of Civil Procedure 62.1 (the "February 19 Ruling"), that it would vacate the November 21, 2012 and October 30, 2015 injunctions if two condition precedents are met:

- (1) The Republic repeals all legislative obstacles to settlement with the FAA bondholders, including the Lock Law and the Sovereign Payment Law;
- (2) For all plaintiffs that enter into agreements in principle with the Republic on or before February 29, 2016, the Republic must make full payment in accordance with the specific terms of each such agreement. The Republic must also notify the court once those plaintiffs have all received full payment.

The February 19 Ruling further indicates that the "injunctions will be lifted *automatically* upon fulfillment of these two conditions." (February 19 Ruling, p. 23). (emphasis added).

1. The District Court's Indicative Ruling is Contrary to This Court's Prior Ruling.

The Republic seeks to have some (but not all) appeals returned to the District Court so that the District Court can grant the relief indicated in the February 19 Ruling, *i.e.*, it can automatically lift the existing injunctions that were entered to enforce the *pari passu* clause.

This Court has affirmed such *pari passu* injunctions against the Republic not once, but twice. *See NML Capital, Ltd. v. Republic of Argentina*, 699 F.3d 246, 259-60 (2012) (“*NML I*”); *NML Capital, Ltd. v. Republic of Argentina*, 727 F.3d 230, 238 (2d Cir. 2013) (“*NML II*”). The Court approved the 2012 injunction on the basis that all holders of the Republic's external indebtedness should be treated on the same basis. *See NML I*, 699 F.3d at 259-60. Here, one of the conditions precedent to the lifting of the injunctions, *i.e.*, payment to settling bondholders, contemplates a further violation of the *pari passu* clause. The Republic is, in essence, asking the Court to set aside its ruling as to the meaning of the *pari passu* clause and condone these inequitable payments because the Republic has made a preliminary attempt to resolve its debt problems by entering into settlements with some entities.

Moreover, and as noted above, lifting the injunction will jeopardize the claims of any Plaintiffs who do not accept the Republic's unilateral offer by its arbitrary February 29 deadline. With the injunctions lifted, there will be no barrier to the Republic simply refusing to engage with such Plaintiffs, a profoundly inequitable scenario that undercuts the progress that the Republic has professed to have made. Indeed, it was these very concerns that prompted this Court to conclude that the *pari passu* injunction was necessary in the first place. *See NML I*, 699 F.3d at 262 (stating that it is “clear” that monetary damages are not an effective remedy for the harm suffered by the plaintiffs and recognizing that “Argentina will simply refuse to pay any judgments”). Because the justifications for the injunctions remain, remanding this matter to the

District Court will permit the Republic to use the prospect of a lifted injunction and the looming possibility of never receiving a meaningful settlement overture from the Republic to steamroll creditors who have not settled into accepting the Republic's vague proposal on a rushed timetable.

Even more importantly for the undersigned Plaintiffs, lifting the injunctions would invalidate the *pari passu* clause, and bless the Republic's effort to treat similarly-situated creditors disparately. Specifically, the Republic has proposed to treat those creditors currently holding money judgments or injunctions differently from those creditors that do not yet possess them. *See* Mem. of Law in Support of the Republic's Motion, by Order to Show Cause, To Vacate the Injunctions, No. 1:08-cv-06978-TPG, Dkt. 863 (Feb. 11, 2016) at 9-11 (detailing different "settlement offers" proffered by the Republic, and stipulating a condition precedent that all settlement agreements be made "on or before February 29, 2016"). And, as the District Court's "Indicative Ruling" openly acknowledges, only those creditors that "accept the terms of the Republic's Proposal" by February 29 will "receive the protections incorporated by this ruling—namely, the Republic must pay their settlements in full before the injunctions are lifted." *See* NML Opp. Ex. B at 22. In other words, this hastily-constructed arrangement wholly ignores the plight of those Plaintiffs that do not yet have a judgment or *pari passu* injunction in place.

This Court should not endorse a process that purposefully leaves creditors with billions of dollars in valid claims against the Republic on the outside looking in. Indeed, there is no principled difference between these groups of Plaintiffs, as they are all owed debts under the 1994 FAA, which expressly specifies that all such debts "shall *at all times* rank *pari passu* and without any preference among themselves." Yet, with the imprimatur of the District Court, the Republic would either force parties to simply accept such disparate treatment through a "take-it-

or-leave-it” settlement, hold out hope for a future settlement with no injunction in place to force the Republic’s hand, or just litigate forever—an outcome that the Republic has shown it is prepared to do. Needless to say, none of these scenarios represents a good-faith step forward to resolve these cases.

The February 19 Ruling also seems to forget that the Republic has been found to have violated the *pari passu* clause of the 1994 FAA. By taking away the injunction, the holdout bondholders are left with no remedy for a clear contractual violation, as found by both the district court and this Court. This right without remedy situation is particularly glaring when one considers that the second condition requires payments to bondholders who accept the Republic’s formal Proposal of February 5, 2016 (“Proposal”) before February 29, thus perpetuating the previously found existing wrong. Even more unacceptable is the fact that the Exchange Bondholders, who have already received billions of dollars of payments in violation of the *pari passu* clause, will be allowed to receive more. As noted above, the Proposal itself envisions a three-tier offer to similarly situated bondholders, another *pari passu* violation. The basic inequity of the District Court’s proposed solution, which is contrary to this Court’s stated rationale, is more than enough reason for this Court to refuse to remand the appeal to the District Court.

2. The Bases Upon Which the District Court Issued Its Indicative Ruling Are Clear Error.

The February 19 Ruling is itself fatally flawed for several reasons. The first, and most obvious, is that by making the lifting of the injunctions automatic, the District Court will have inexplicably abdicated its right to review the Republic’s compliance with the two conditions precedent. This is especially critical with regard to the Republic’s repeal of objectionable laws. The Court has left compliance completely in the hands of the Republic with no review of

whether there has in fact been compliance, and no opportunity for any of the plaintiffs to object as to whether compliance has occurred at all.

Further, the District Court required only minimal performance by the Republic. This is a clear error of law, because the “changes” made by the Republic do not carry its burden of persuasion in seeking the lifting of an injunction. *See United States v. Swift & Co.*, 286 U.S. 106, 119 (1932).

* * *

The arguments presented in this Opposition are not intended to be full arguments on the current Injunctions, since it is anticipated that those arguments will be presented on the Republic’s current appeal of the October 30 Injunctions.

CONCLUSION

Based on the foregoing, the Republic of Argentina’s Emergency Motion for Remand Pursuant to Federal Rules of Appellate Procedure 12.1(b) should be denied.

Respectfully Submitted,

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Attorneys for Plaintiffs-Appellees in Table A.

Dated: February 23, 2016

TABLE A**List of Duane Morris Clients**

Name of Plaintiff-Appellee	Case Numbers
Adami, Graziano	15-6312-cv
Agostini, Gianfranco	15-6312-cv
Ampalla, Milena	15-6312-cv
Allan Applestein TTEE FBO DCA Grantor Trust	15-6312-cv
Arcangeli De Felicis, Augusto	15-6312-cv
Bacchiocchi, Antonella	15-6312-cv
Baciucco, Alberto	15-6312-cv
Baciucco, Otello	15-6312-cv
Bagolin, Filippo	15-6312-cv
Bartolozzi, Sara	15-6312-cv
Becker, Anneliese Gunda	15-6312-cv
Belleggia, Serenella	15-6312-cv
Bennati, Giorgio	15-6312-cv
Berardocco, Roberto	15-6312-cv
Berchi, Graziella	15-6312-cv
Berra, Orsolina	15-6312-cv
Bettinelli, Adriano	15-6312-cv
Bettoni, Massimo	15-6312-cv
Bistagnino, Stefano	15-6312-cv
Bistagnino, Giorgio	15-6312-cv
Bonadiman, Graziella	15-6312-cv
Bonazzi, Andrea	15-6312-cv
Bonpensiere, Stefania	15-6312-cv
Borgra, Marco	15-6312-cv
Borgra, Sergio	15-6312-cv
Boscariol, Renata	15-6312-cv
Botti, Emanuele	15-6312-cv

Bretti, Carlo	15-6312-cv
Bretti, Susanna	15-6312-cv
Brioschi, Antonietta Guiseppina	15-6312-cv
Calanca, Marcello	15-6312-cv
Calmasini, Bruno	15-6312-cv
Camato, Italia	15-6312-cv
Capezzera, Giuseppina	15-6312-cv
Capurro, Laura Anna	15-6312-cv
Carbone, Vincenzo	15-6312-cv
Carifin S.A.	15-6312-cv
Carlotta, Giovanni	15-6312-cv
Casalini, Elettra	15-6312-cv
Castagna, Diego	15-6312-cv
Cavalli, Marco	15-6312-cv
Censi, Carmelina	15-6312-cv
Cercato, Gian Francesco	15-6312-cv
Compare, Alberto	15-6312-cv
Connena, Giovanna	15-6312-cv
Consolini, Agostino	15-6312-cv
Consolini, Cesarino	15-6312-cv
Conti, Maria Luigia	15-6312-cv
Corato, Silvana	15-6312-cv
Corsi, Giancarlo Bartolomei	15-6312-cv
Corso, Francesco	15-6312-cv
Corso, Giuseppina	15-6312-cv
Cosci, Laura	15-6312-cv
Cottoni, Angelo	15-6312-cv
Crozzoletto, Monica	15-6312-cv
DaCroce, Graziella	15-6312-cv
Dalbosco, Tarcisia	15-6312-cv
David, Aldo	15-6312-cv
De Francesco, Antonio	15-6312-cv

Kunderfranco, Antonella De Rosa	15-6312-cv
Kunderfranco, Manuela De Rosa	15-6312-cv
Stefano, Eufrosina De	15-6312-cv
Dell'Era, Adriana	15-6312-cv
Farioli, Carlo	15-6312-cv
Ferri, Anna	15-6312-cv
Ferro, Giovanna	15-6312-cv
Foggiato, Francesco	15-6312-cv
Fragonara, Donatella Zanotti	15-6312-cv
Frisinghelli, Rinaldo	15-6312-cv
Fusato, Angiolino	15-6312-cv
Fusato, Gabriele	15-6312-cv
Gaioli, Felicina	15-6312-cv
Gaioli, Maddalena	15-6312-cv
Ganapini, Gian Carlo	15-6312-cv
Ghezzi, Francesco Mauro	15-6312-cv
Giacometti, Mario	15-6312-cv
Giardina, Giovanni	15-6312-cv
Goglia, Celestino	15-6312-cv
Greggio, Giulia	15-6312-cv
Gualandi, Verna	15-6312-cv
Guardincerri, Luisella	15-6312-cv
Guarini, Gianfranco	15-6312-cv
Iallonardo, Raimondo	15-6312-cv
Innovamedica S.P.A.	15-6312-cv
Lenti, Maritza	15-6312-cv
Leoni, Angelo	15-6312-cv
Lisi, Paolo	15-6312-cv
Lorenzi, Ugo	15-6312-cv
Lovati, Sergio	15-6312-cv
Lovero, Fernanda Angela	15-6312-cv
Maiorino, Carmelo	15-6312-cv

Mangano, Claudio	15-6312-cv
Margnelli, Elide	15-6312-cv
De Felicis Arcangli, Carla Marini	15-6312-cv
Marton, Romano	15-6312-cv
Masina, Mirco	15-6312-cv
Massara, Guglielmina	15-6312-cv
Mattioli, Bruna	15-6312-cv
Melchionda, Salvatore	15-6312-cv
Mirco Mirco, Masina	15-6312-cv
Montanari, Simonetta	15-6312-cv
Montino, Giampaolo	15-6312-cv
Morata, Carla	15-6312-cv
Morata, Alessandro	15-6312-cv
Moretto, Maria Rita	15-6312-cv
Mori, Amato	15-6312-cv
Bontempi, Rachele	15-6312-cv
Pappacoda, Bruno	15-6312-cv
Parodi, Sabrina	15-6312-cv
Pelli, Alfredo	15-6312-cv
Pezze, Franco	15-6312-cv
Piacenza, Valerio	15-6312-cv
Piani, Peri Luigi Lucibello	15-6312-cv
Re, Eugenia	15-6312-cv
Regoli, Aleessandra	15-6312-cv
Ricchi, Barbara	15-6312-cv
Robbiati, Maria	15-6312-cv
Rosa, Paola	15-6312-cv
Rosato, Adriano	15-6312-cv
Rossini, Giuseppe Silvio	15-6312-cv
Rossini, Laura	15-6312-cv
Rossini, Raffaele	15-6312-cv
Rossini, Ruggero	15-6312-cv

Rota, Ines	15-6312-cv
Rupprecht, Hilda	15-6312-cv
Sabatelli, Vincenza	15-6312-cv
Salmistraro, Angelina	15-6312-cv
Sasselli, Tiziano	15-6312-cv
Scalvi, Marinella	15-6312-cv
Sergi, Maurizio	15-6312-cv
Staccioli, Simona	15-6312-cv
Stampfli-Rosa, Licia	15-6312-cv
Stefani, Sante	15-6312-cv
Storchi, Anna	15-6312-cv
Bennati, Studio Legale	15-6312-cv
Tielman, Renate	15-6312-cv
Toso, Manuelito	15-6312-cv
Toso, Valeria	15-6312-cv
Trentin, Franco	15-6312-cv
Trentin, Stefania	15-6312-cv
Verna, Martino	15-6312-cv
Vicini, Mario	15-6312-cv
Vitali, Luca	15-6312-cv
Zancaner, Vito	15-6312-cv
Zanichelli, Giovanni	15-6312-cv
Zanichelli, Matteo	15-6312-cv
Arag-A Limited	15-3614-cv
Arag-O Limited	15-3614-cv
Arag-T Limited	15-3614-cv
Arag-V Limited	15-3614-cv
Attestor Master Value Fund LP	15-3628-cv
MCHA Holdings, LLC	15-3663-cv 15-3652-cv 15-3629-cv 15-3641-cv

Trinity Investments Limited	15-3632-cv 15-3624-cv 15-3648-cv 15-3661-cv
White Hawthorne, LLC	15-3647-cv
Claridae Ltd	15-3659-cv
Del Pilar De We Ferrer, Maria	15-3659-cv
Honero Fund I, LLC	15-3660-cv 15-3666-cv
Bybrook Capital Master Fund LP	15-3672-cv 15-3678-cv
Bybrook Capital Hazelton Master Fund LP	15-3672-cv 15-3678-cv
Spinnaker Global Emerging Markets Fund Ltd.	Pari Passu Injunction Not Yet Obtained
Spinnaker Global Special Situations Fund LP	Pari Passu Injunction Not Yet Obtained
White Hawthorne II, LLC	Pari Passu Injunction Not Yet Obtained
Yellow Crane Holdings, LLC	Pari Passu Injunction Not Yet Obtained
Procella Holdings, L.P.	Pari Passu Injunction Not Yet Obtained