

November 9, 2012

Don't Cry for Me Argentine Bondholders: Breaking News

In view of the broad interest clients have expressed in our note and update analyzing the Second Circuit's October 26, 2012 decision construing the Pari Passu Clause in Argentina's defaulted bonds and remanding the matter back to the District Court for further consideration of the appropriate injunctive relief, we are publishing this breaking news to alert our clients about today's hearing in this fast-moving process. (See "*Don't Cry for Me Argentine Bondholders: the Second Circuit Decides NML Capital v. Argentina*" (October 29, 2012 and update on November 6, 2012)).

Late this morning Judge Griesa convened a hearing in a packed courtroom. He set a briefing schedule that concludes with a reply brief due on November 19, which suggests that he may issue new injunctions before Thanksgiving. That prospect is reinforced by statements indicating that he believes plaintiffs are entitled to money from Argentina's payments to Exchange Bondholders in December. Judge Griesa did not reconcile that timing with review of his new injunctions by the Second Circuit.

Judge Griesa ordered the hearing to address how *NML Capital, Ltd. et al. v. The Republic of Argentina* would proceed on remand from the Second Circuit. Citing recent media reports suggesting that Argentina would refuse to make any payments to holders of its repudiated debt, Judge Griesa spoke at length on Argentina's obligations to respect the judgments of the Court and of the Second Circuit. Stating that Argentina's failure to honor past judgments was already "beginning to be viewed very negatively," the judge affirmed that "our courts are not helpless" and that "steps can be taken" to sanction non-compliance with court orders. In addition, Judge Griesa requested an affidavit from Argentina affirming that it would comply with the Court's injunction.

Despite the fact that his stay orders expired on issuance of the Second Circuit's mandate on October 26, 2012, Judge Griesa declined to find that his stays were no longer effect. He stated that the stays would remain in place and that he would entertain applications to continue or dissolve the stays when he issued his decision on remand. Rejecting a request for a longer, more definite stay, Judge Griesa stated emphatically that plaintiffs were entitled to money, as both he and the Second Circuit had recognized, and that some money was due to them from the payments Argentina is scheduled to make in December.

Judge Griesa ordered the parties to file briefs on the following schedule:

- plaintiffs' brief is due on November 13,
- the Republic's opposition is due on November 16, and
- plaintiffs' reply is due on November 19.

No hearing was scheduled, but Judge Griesa left open the possibility that he would hear argument. Judge Griesa said that he would make every effort to expedite his decision.

This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

If you wish to receive more information on the topics covered in this publication, you may contact your regular Shearman & Sterling contact person or any of the following:

Henry Weisburg
New York
+1.212.848.4193
hweisburg@shearman.com

Antonia E. Stolper
New York
+1.212.848.5009
astolper@shearman.com

Stephen J. Marzen
Washington, DC
+1.202.508.8174
smarzen@shearman.com