No. 12-1494

IN THE

Supreme Court of the United States

REPUBLIC OF ARGENTINA,

Petitioner,

—v.—

NML CAPITAL, LTD., ET AL.

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE REPUBLIC OF FRANCE AS *AMICUS CURIAE* IN SUPPORT OF THE REPUBLIC OF ARGENTINA'S PETITION FOR A WRIT OF CERTIORARI

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INTEREST OF THE *AMICUS CURIAE*[1]

As an active and prominent participant in the financial community, the Republic of France has a substantial interest in issues surrounding international financial stability and global sovereign lending markets.

In its decision of October 26, 2012, the United States Court of Appeals for the Second Circuit held that the Republic of Argentina's decision to pay only holders of the exchange bonds it issued but not holders of its old bonds (among which are the plaintiffs) constituted a breach of the *pari passu* clause contained in the Republic's 1994 Fiscal Agency Agreement (the "FAA"). It further affirmed the grant of an injunction providing that whenever Argentina pays any amount due under the terms of the exchange bonds, it must concurrently, or in advance, make a "ratable payment" to the plaintiffs in respect of the old bonds. This decision is based on an erroneous understanding of the meaning of *pari passu* clauses and contradicts the well-settled mainstream market understanding that *pari passu* clauses do not covenant that all payments will be made by a borrower ratably with the borrower's other unsubordinated

[1] Pursuant to Rules 37.2 and 37.6, counsel of record for all parties received timely notice of *amicus curiae*'s intention to file this brief. *Amicus curiae* files this brief with the written consent of all parties, and copies of the parties' consent letters are being filed herewith. *Amicus* and its counsel state that none of the parties to this case nor their counsel authored this brief in whole or in part, and that no person other than *amicus* or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

debts, but rather that such clauses provide protection against legal subordination of claims.

In upholding the injunction, the Court of Appeals rendered a decision threatening international financial stability:

First, France has extensive experience in sovereign debt-related issues through its active participation in the Paris Club, an informal group of sovereign creditors that deals with the restructuring of official debt, *i.e.*, intergovernmental debt.[2] Although it does not speak here on behalf of the Paris Club, France, as a long-standing and active member, has participated in the development and application of the Paris Club's principles guiding orderly sovereign restructurings since 1956.[3] France accordingly wishes to draw the Court's attention to the adverse consequences that the Court of Appeals' decision will have in this regard. As the decision effectively grants a veto

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[2] The Paris Club is comprised of nineteen permanent member states, which, in addition to the United States and France, include Australia, Austria, Belgium, Canada, Denmark, Finland, Germany, Ireland, Italy, Japan, The Netherlands, Norway, the Russian Federation, Spain, Sweden, Switzerland, and the United Kingdom. Other official sector creditors may also actively participate in Paris Club negotiations, subject to the agreement of permanent members and of the sovereign debtor. The International Monetary Fund ("IMF") and the World Bank are represented at the Paris Club's monthly meetings and participate in negotiations as observers.

[3] Since 1956, the Paris Club has reached 429 agreements with ninety sovereign debtors for a total amount of more than $570 billion of restructured sovereign debt. *See* Club De Paris, http://www.clubdeparis.org (last visited July 23, 2013).

right to hold-out creditors over both a sovereign's voluntary restructuring and over future payments on restructured obligations, it will have a destabilizing effect on a sovereign debtor's ability to engage in orderly and negotiated debt restructuring as a means of last resort to prevent default when the sovereign's debt has been deemed unsustainable.

Second, in addition to the policy concerns outlined above, France has a practical concern with the effects of the Court of Appeals' decision. As one of the largest sovereign lenders in the international financial system, France has substantial exposure to sovereign borrowers, and particularly to developing countries as part of its official development aid program. The Court of Appeals' decision will undoubtedly have a deleterious effect on the ability of borrower states to honor their financial commitments to lenders, including France, as well as on the practicability of negotiated debt crisis resolution.

France strongly supports the fair treatment of creditors by borrowers and it does not intervene in support of Argentina's repayment decisions. Nonetheless, because the Court of Appeals' decision threatens wider societal and economic harm, France supports Argentina's petition for a writ of *certiorari*. The Court of Appeals' decision warrants review by this Court.

SUMMARY OF THE ARGUMENT

In its petition, Argentina states that the Court of Appeals' decision raises issues that are of critical importance to sovereigns and their creditors, including creditors that hold restructured sovereign debt. *See* Petition for Writ of Certiorari at 17. This brief is respectfully submitted to explain why France believes that analysis to be correct, and to outline for this Court the harmful impacts that the Court of Appeals' decision could have on sovereign debt markets.

As an initial matter, the injunctive remedy affirmed by the Court of Appeals conflicts with the fundamental tenets of equity jurisprudence. Injunctive relief is not available when the plaintiff has an adequate remedy at law and, as such, injunctive relief cannot be used to compel payment of a debt. Any perceived difficulty of enforcing judgments against sovereign debtors provides no exception to these principles.

This Court has also firmly established that a federal court may not grant injunctive relief unless it first considers the effect on the public interest. The Court of Appeals simply failed to consider the wide-ranging and significant harms to various public interests caused by the injunctive remedy at issue. Indeed, the inordinate leverage given to hold-out creditors by this remedy will have a truly global impact.

This injunctive remedy threatens to disrupt the orderly restructuring of a distressed sovereign's debt. As an active participant in the Paris Club, France has extensive experience in the sovereign debt restructuring process and with the complex balancing of interests of sovereign lenders, bank lenders, bondholders and the sovereign debtor in this process. This injunctive remedy threatens to disturb the balance of such interests that has been achieved through a voluntary and orderly restructuring process, which takes place entirely outside of any sovereign bankruptcy context.

This balance is disturbed by the powerful incentive that the injunctive remedy provides for private creditors to forgo participation in voluntary restructuring in order to enforce full payment of their debt against an already distressed sovereign debtor. The Court of Appeals' decision will inevitably lead to an increase in the number of hold-out creditors and specifically "vulture funds" that will seek to leverage the Court of Appeals' decision in future restructurings. Other creditors such as sovereign and bank lenders that would have otherwise participated in the restructuring process may then choose not to as long as any payment on the restructured debt could be conditioned on a ratable payment to the hold-out creditors and vulture funds. Such lenders may also, as a result, be less willing to extend loans to sovereign debtors in the first place.

Finally, although the Court of Appeals assumed that the threat posed by the injunctive remedy would no longer be relevant in light of collective action clauses included in newly issued sovereign bonds, France respectfully submits that such clauses cannot and will not resolve the significant harms outlined above.

ARGUMENT

I. THE COURT OF APPEALS' AFFIRMANCE OF AN INJUNCTION DESIGNED TO COMPEL PAYMENT OF PAST-DUE SOVEREIGN DEBT DEVIATED FROM FUNDAMENTAL TENETS OF EQUITY JURISPRUDENCE

As this Court has long held, it is a fundamental doctrine of equity jurisprudence that injunctive relief is unavailable when the plaintiff has an adequate remedy at law. *See, e.g., Morales v. Trans World Airlines, Inc.,* 504 U.S. 374, 381 (1992) (citing *O'Shea v. Littleton*, 414 U.S. 488, 499 (1974); *Younger v. Harris*, 401 U.S. 37, 43-44 (1971)). For that reason, it is equally well-established that injunctive relief is unavailable to compel payment of a debt. *See Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 210-11 (2002).

The Court of Appeals essentially crafted an exception to these fundamental tenets, based on a perceived difficulty of enforcing judgments against sovereign debtors. *NML Capital, Ltd. v. Argentina,* 699 F.3d 246, 262-63 (2d Cir. 2012). It did so, moreover, without considering the harm its decision would cause to the sovereign debt markets.

In doing so, the Court of Appeals erred. This Court has repeatedly held that a federal court must consider the public interest before it exercises its injunctive authority. *See Salazar v. Buono*, 130 S. Ct. 1803, 1816 (2010) ("An injunction is an exercise of a court's equitable authority, to be ordered only after taking into account all of the circumstances that bear on the need for prospective relief. . . . Equitable relief is not granted as a matter of course, and a court should be particularly cautious when contemplating relief that implicates public interests.") (citations omitted); *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) ("In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction."); *Harrisonville v. W.S. Dickey Clay Mfg. Co.*, 289 U.S. 334, 338 (1933) ("Where an important public interest would be prejudiced, the reasons for denying the injunction may be compelling.").

As demonstrated below, in addition to overlooking the above-referenced principles of equity jurisprudence, the Court of Appeals' decision overlooked the public harm that will result from making injunctive relief readily available to a sovereign debtor's hold-out creditors.

II. THE DECISION OF THE COURT OF APPEALS THREATENS WIDER PUBLIC INTERESTS

A. The Court Of Appeals' Decision Will Have A Global Impact

This case is not only about the named plaintiffs and Argentina. To the contrary, the Court of Appeals' decision, if upheld, will have a global impact.

Pari passu clauses such as the one set out in the FAA appear in virtually all sovereign bonds and in all loans made to sovereigns, whether on a syndicated or bilateral basis. These clauses are, in effect, boilerplate provisions in most sovereign financing agreements.

Moreover, New York law is so widely utilized in global finance that it is no exaggeration to characterize it as an international public utility. New York law applies in the large majority of outstanding emerging market sovereign bonds, followed by English law. *See* Udaibir S. Das et al., *Sovereign Debt Restructurings 1950-2010: Literature Survey, Data, and Stylized Facts*, International Monetary Fund Working Paper No. 12/203 (August 2012) at 41, *available at* http://www.imf.org/external/pubs/ft/wp/2012/wp12203.pdf. For example, as of March 2009, New York law was the governing law applying to emerging market sovereign bonds in a total outstanding amount of $272 billion, out of a total of $411 billion, representing 435 issuances out of a total of 631 issuances. *Id.* Thus, New York law plays a substantial role in sovereign borrowing in many parts of the world, including in many of the large emerging markets and among low-income borrowers.

As a result, the Court of Appeals' decision will constitute a precedent in numerous cases involving alleged breaches of *pari passu* clauses and New York law.

In fact, the reach of the Court of Appeals' decision is so wide that it may also impact creditors whose bonds are *not* governed by New York law. If, for example, a sovereign borrower has bonds governed by New York law and also has bonds governed by another foreign law, then, following the Court of Appeals' decision, a court could condition payments of bonds governed by the foreign law upon the making of ratable payments on the New York law governed bonds. The rights of investors holding bonds governed by a different law would thereby be affected by the injunctive remedy upheld by the Court of Appeals on the basis of a New York law-governed contract to which such investors are not a party.

This decision may also impact official bilateral loans contracted by a sovereign if it has a mix of bond, bank and official bilateral borrowing—as do many sovereigns. *See* The World Bank, *International Debt Statistics 2013* (2013) at 24-29, *available at* http://data.worldbank.org/sites/default/files/ids-2013.pdf. The mere existence of a New York law-governed bond among a sovereign's borrowing structure may expose payments under its loans to the Court of Appeals' injunctive remedy if the bonds include a common *pari passu* clause that links the ranking of payments on loans and bonds within the scope of the sovereign's external indebtedness.

In light of the reach that its decision will have and the considerable amounts of money involved internationally, the Court of Appeals should have addressed the public interest implications of its decision; yet the court did not adequately do so, resulting in a ruling that may exacerbate sovereign debt crises and in turn threaten international financial stability.

B. The Court Of Appeals' Decision Jeopardizes The Ability Of Sovereign Debtors To Achieve Orderly And Negotiated Restructurings Of Their External Debt

1. The Court Of Appeals' Decision Creates Disincentives For Creditors To Participate In Orderly Debt Restructurings

The Court of Appeals' decision, if it stands, will raise significant obstacles to good-faith negotiations and voluntary sovereign debt restructurings precisely because it grants disproportionate power to a small group of hold-out bondholders, to the detriment of the majority of bondholders, in the event of a sovereign debt crisis. For instance, in this case, less than ten percent of Argentina's pre-2001 foreign bonds are held by the plaintiffs, while approximately ninety-two percent of Argentina's bondholders participated in its two exchange offers. *See NML Capital,* 699 F.3d at 253.

Often, once a sovereign borrower is known to be in financial difficulty, distressed debt investors purchase bonds from their original holders, either shortly before or after the debt restructuring takes place. In the instant case, the Court of Appeals noted that plaintiffs had bought their defaulted bonds as recently as June 2010, *i.e.*, almost nine years after Argentina's default. *See id.* at 251.

Some of these investors, known as "vulture funds," purchase distressed sovereign debt obligations in the secondary markets at deep discount to their face value with the intent of blocking voluntary restructuring of particular classes of debt obligations and also blocking broader debt restructuring carried out through cooperative processes as a means of last resort to restore debt sustainability.[4] They deliberately adopt a non-cooperative stance during the restructuring process by bringing enforcement actions or seeking out-of-court settlements on their claims.

Although this behavior should be discouraged, it is decidedly encouraged and rewarded by the injunctive remedy affirmed by the Court of Appeals. Prior to the Court of Appeals' decision, the leverage of hold-out creditors over sovereigns' restructuring efforts had indeed been limited. International Monetary Fund, *Sovereign Debt Restructuring–Recent Developments and Implications for the Fund's Legal and Policy Framework* (April 26, 2013) at 31, *available at* http://www.imf.org/external/np/pp/eng/2013/042613.pdf (hereinafter, the "IMF Report"). However, the Court of Appeals has now granted hold-out creditors a powerful means of extracting full payment on the un-restructured debt of the borrower.

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4 *See generally* Julian Schumacher et al., *Sovereign Defaults in Court: The Rise of Creditor Litigation 1976-2010* (2013) at 3, *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2189997 ("Vulture" funds have accounted for nearly ninety percent of all cases in sovereign debt litigation, and are "particularly likely to initiate legal disputes against Highly Indebted Poor Countries (HIPCs). Of the twenty cases filed against HIPCs, thirteen were filed by 'vultures.'").

If the sovereign borrower is to avoid breaching the injunction of a U.S. court, it must pay whatever is demanded by hold-out creditors. Hold-out creditors thus have the leverage of seeking the injunctive remedy affirmed by the Court of Appeals and thereby blocking payments due to other creditors who voluntarily took part in the restructuring, to the detriment of the interests of the sovereign debtor and of those other creditors. *Id.*; *see also* Horatia Muir Watt, *Private International Law Beyond the Schism,* 2(3) Transnational Legal Theory (2011) 347-427 (discussing the disruptive effect on sovereign funding of a private international law framework that empowers vulture fund hold-out creditors to seek enforcement against debtor states on the basis of erroneous interpretations of *pari passu* clauses as ratable payment clauses, without political accountability); Das et al., at 50 (describing vulture funds).

The legal enforcement advantages conferred to creditors who refuse any restructuring effort, no matter how small their holding of un-restructured debt, are potentially enormous. Private creditors other than the hold-out creditors, who otherwise would be prepared to accede to a restructuring, may be discouraged from participating if they believe that hold-out creditors may block payments on the debtors' restructured obligations and may thus choose to refrain from participating in the restructuring.

2. The Court Of Appeals' Decision Threatens The Ad Hoc Sovereign Debt Restructuring Process And Has Wide Implications For Inter-Creditor Equity

There is no international bankruptcy law to guide the restructuring of a distressed sovereign, as there is for a corporation, and the mechanisms of *ad hoc* sovereign debt restructurings have evolved based on accepted practices among participants. Broadly, these participants are sovereign lenders (primarily in the context of the Paris Club), bank lenders (often working through organized creditor committees, and referred to as the London Club) and bondholders. Modern sovereign restructuring depends on coordination, close dialogue and fair negotiations among all creditors and the sovereign debtor.

The Paris Club is a pivotal actor in orderly sovereign debt crisis resolution. Its restructuring framework provides each participating creditor State with guidelines that form the basis of subsequent legally binding bilateral agreements. Notably, Paris Club agreements include a "comparability of treatment" clause, which aims specifically to ensure balanced treatment of the sovereign's debt and fair burden-sharing among *all* external creditors—sovereign lenders, bank lenders and bondholders. As a general rule, the principle of comparability of treatment incorporated in the Paris Club agreements is a crucial touchstone for catalyzing the effective coordination of private creditors and thereby enabling effective, fair and orderly restructurings that will allow the sovereign to attain its objective of debt sustainability and meet payment obligations to all its cooperating creditors. Furthermore, as a matter of equality of treatment, this clause is designed to ensure that claims of taxpayers in the lender countries—for example, U.S. or French taxpayers—are not subordinated to those of other, private-sector creditors. Crucially, it facilitates fair burden-sharing among sovereign creditors.

If private creditors are incentivized not to participate in sovereign debt restructuring, bilateral official creditors—and, therefore, their taxpayers—will bear an outsized share of the resulting debt relief burden. As a result, sovereign lenders will be less willing to grant debt relief, resulting in adverse consequences on broader official sector participation in aiding low-income countries in economic distress.

As is clear from the above, the Court of Appeals' empowerment of hold-out creditors through injunctive relief, if upheld, will represent a strong disincentive to any future sovereign debt restructurings: it will have a chilling effect on creditors' willingness to grant concessions in order to facilitate voluntary and negotiated debt restructurings as a means of last resort. The Court of Appeals' decision threatens the ability of concerned creditors and borrowers to address a sovereign debt crisis and consequently, to limit risks to the international financial system.

C. The Court Of Appeals' Decision Also Threatens Sovereign Lending, Particularly Development Aid In The Form Of Loans To Developing Countries

Although private funding, notably in the form of bonds, is a growing source of financing for sovereigns, financing *by* sovereigns remains a large component of international financial flows, and is of particular relevance for the most vulnerable countries, notably for the 72 countries eligible to use the concessional financing window of the IMF.[5] While private funding for the most vulnerable countries amounted to less than 10% of the total external public and publicly-guaranteed debt stock of these countries as of 2011, bilateral sovereign loans accounted for close to 40%. In addition, sovereign bilateral disbursements represent a steady share of new external financing for these countries, at more than 35% of total disbursements in 2011.[6]

France is a major participant in this funding market and ranks among the largest lenders to low-income countries.[7] France and its lending

[5] *See* International Monetary Fund, *Eligibility To Use The Fund's Facilities For Concessional Financing* (March 15, 2013), *available at* http://www.imf.org/external/np/pp/eng/2013/031813a.pdf.

[6] Percentages calculated based on data available at World Bank, World Development Indicators, *available at* http://databank.worldbank.org (last visited July 22, 2013).

[7] As of December 31, 2011, France had a total exposure of EUR 7 billion (including outstanding principal, overdue amounts, and penalty interest but excluding guarantees not called) to the 72 countries eligible to use the IMF's concessional financing window. As of the same date, France's

entities make lending decisions on the assumption that loans extended will be repaid by the borrower. In line with customary banking practice, France assesses the probability of default and loss given default in connection with these loans. Expectations relating to any restructuring that might arise in the future are based on an assumed orderly sovereign debt restructuring, in the context of an appropriate international forum, including the Paris Club, just as expectations relating to a private borrower would be assessed in light of corporate bankruptcy law.

The injunctive remedy upheld by the Court of Appeals, if it stands, will increase significantly the risk of default on bilateral sovereign loans extended by sovereign lenders, including France.

As a prominent official bilateral lender to sovereigns, France is concerned about the effects of granting unintended rights to hold-out creditors in sovereign debt restructuring, such as the right to block payments on restructured debt obligations, irrespective of the governing law of the restructured obligation.[8]

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total exposure to more than 100 sovereign debtors amounted to EUR 36 billion. *See* Encours des créances de la France sur les États étrangers au 31 décembre 2011, http://www.tresor.economie.gouv.fr/5597_Encours-des-creances-de-la-France-sur-les-Etats-etrangers-au-31-decembre-2011 (last visited July 22, 2013).

[8] The injunctive remedy upheld by the Court of Appeals has already been relied upon by plaintiffs in other pending cases. *See*, *e.g.*, Memorandum of Law of The Export-Import Bank of the Republic of China in Opposition to

For France, as well as other sovereign lenders, the effects of the Court of Appeals' decision could have a major impact on its policy of development aid in the form of loans. The heightened risk of default on bilateral sovereign loans extended by France, as a result of impediments to orderly sovereign restructuring, would adversely affect the external financing of sovereign borrowers, and of low-income countries in particular. Indeed, this heightened risk of default could lead to a reduction in international capital flows as a result of negative incentives for foreign lenders to extend new loans, and to an increase in the cost for borrowers of external loans driven by a higher cost of risk.

D. Contrary To The Court Of Appeals' View, Collective Action Clauses Do Not Ameliorate The Problems Created By Its Ruling

The Court of Appeals mistakenly determined that collective action clauses "effectively eliminate the possibility of 'holdout' litigation," and that, therefore, the deleterious effects of its decision would not impact future sovereign restructurings because most sovereign bonds now contain such clauses. *See NML Capital*, 699 F.3d at 264. To the contrary, the Court of Appeals' decision actually empowers hold-out creditors to threaten orderly sovereign debt restructurings, notwithstanding

Grenada's Motion for Judgment on the Pleadings Dismissing Plaintiff's Complaint and in Support of Ex-Im Bank's Cross-Motion for Judgment on the Pleadings, at 14, 23, *Export-Import Bank of the Republic of China v. Grenada*, Case No. 13 Civ. 1450 (HB) (S.D.N.Y. May 9, 2013) (ECF No. 18).

the prevalence of collective action clauses in international bond issues.

Collective action clauses allow a defined majority of holders of a bond series to bind other holders of that series to a restructuring of that series. In a limited number of cases, aggregation clauses—allowing a defined majority of holders to bind *all* holders of bonds issued by a sovereign and not just one series of bonds—may be included.

The Court of Appeals was incorrect to surmise that the problem of hold-out creditors is resolved by collective action clauses, and that, in this respect, "it is highly unlikely that in the future sovereigns will find themselves in Argentina's predicament." *NML Capital*, 699 F.3d at 264.

First, collective action clauses are not universal in sovereign bonds. Even if the clauses were universal in recently issued bonds, older classes of bonds would still exist without the benefits of such clause.

Second, the collective action clauses in most international bonds do not have aggregation clauses and therefore, hold-out creditors can buy up small issues to block a resolution of a defined class of instruments. IMF Report at 28.

Third, collective action clauses have had mixed results in past restructurings and may therefore offer significantly less contractual certainty than posited by the Court of Appeals. *See* Jeromin Zettelmeyer et al., *The Greek Debt Exchange: An Autopsy* (September 11, 2012) at 26, 33-34, *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2144932; Das et al., at 44-45. In some restructurings, collective action clauses did not prevent serious hold-out problems. *See, e.g.*, Das et al., at 45 (noting the cases of Dominica in 2004 and Argentina in 2005). Thus, a collaborative process among different classes of creditors—bank, state and bondholders—remains crucial for successful restructurings.

The largest-ever sovereign debt restructuring, of Greek public debt in 2012, has been cited by respondents as an example where hold-out creditors did not have a detrimental effect on voluntary restructuring.[9] This is not accurate, as free-rider, hold-out creditors actually blocked the restructuring of certain classes of Greece's external debt. Of thirty-six bonds governed by foreign (English) law containing collective action clauses that were eligible to participate in the debt exchange, only seventeen bonds were able to be successfully restructured using collective action clauses. IMF Report at 28. Hold-out creditors prevented the operation of the collective action clauses in the remaining bonds, amounting to approximately EUR 6.5 billion in un-restructured claims, or thirty percent of the total value of bonds governed by foreign law. *Id.*

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[9] *See* Joint Response Brief of Plaintiffs-Appellees NML Capital, Ltd. and Olifant Fund, Ltd. at 39, *NML Capital, Ltd. v. Republic of Argentina*, No. 12-0105-cv(L) (2d Cir. Jan. 25, 2013) (ECF No. 821), 2013 WL 388621 at *39. *But see* Zettelmeyer et al., at 26 (discussing the limitations of using bond-by-bond collective action clauses, as well as the importance of having a stock of debt governed by domestic law, which can unilaterally be used to change the terms of such bonds).

Thus, the injunctive remedy affirmed by the Court of Appeals constitutes a strong disincentive for bondholders to participate in restructuring, if the creditor is holding a New York law-governed bond and can seek full payment with the aid of an injunction, and the Court of Appeals was incorrect in its view that collective action clauses ameliorate the problem.

CONCLUSION

For the foregoing reasons, the petition for a writ of *certiorari* should be granted and the Court of Appeals' decision should be reversed.

Respectfully submitted,

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