IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NML CAPITAL, LTD., AURELIUS CAPITAL MASTER, LTD., ACP MASTER, LTD., BLUE ANGEL CAPITAL I LLC, AURELIUS OPPORTUNITIES FUND II, LLC, PABLO ALBERTO VARELA, LILA INES BURGUENO, MIRTA SUSANA DIEGUEZ, MARIA EVANGELINA CARBALLO, LEANDRO DANIEL POMILIO, SUSANA AZQUERRETA, CARMEN IRMA LAVORATO, CESAR RUBEN VAZQUEZ, NORMA HAYDEE GINES, MARTA AZUCENA VAZQUEZ, OLIFANT FUND, LTD.,

Plaintiffs-Appellees,

v.

THE REPUBLIC OF ARGENTINA,

Defendant-Appellant,

BANK OF NEW YORK MELLON, as Indenture Trustee, EXCHANGE BONDHOLDER GROUP, FINTECH ADVISORY INC.,

Non-Party Appellants,

EURO BONDHOLDERS, ICE CANYON LLC

Intervenors.

Nos. 12-105-cv (L), 12-109-cv (CON), 12-111-cv (CON), 12-157-cv (CON), 12-158-cv (CON), 12-163-cv (CON), 12-164-cv (CON), 12-170-cv (CON), 12-176-cv (CON), 12-185-cv (CON), 12-189-cv (CON), 12-214-cv (CON), 12-909-cv (CON), 12-914-cv (CON), 12-916-cv (CON), 12-919-cv (CON), 12-920-cv (CON), 12-923-cv (CON), 12-924-cv (CON), 12-926-cv (CON), 12-939-cv (CON), 12-943-cv (CON), 12-951-cv (CON), 12-968-cv (CON), 12-971-cv (CON), 12-4694-cv (CON), 12-4829 (CON), 12-4865-cv (CON)

EURO BONDHOLDERS' OPPOSITION TO APPELLEES' MOTION TO VACATE THE STAY

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PRELIMINARY STATEMENT

On August 23, 2013, this Court affirmed the district court's injunctions that enjoin the Republic of Argentina (the "Republic") from paying its Exchange Bondholders unless it concurrently pays the holdout bondholders, which include Appellees. In that same decision, this Court held—*sua sponte*—that "in view of the nature of the issues presented, we will stay enforcement of the injunctions pending resolution of a timely petition to the Supreme Court for a writ of *certiorari*." *NML Capital, Ltd. v Republic of Argentina*, 727 F.3d 230, 238 (2d Cir. 2013) (the "August 23 Decision").

Nothing has changed since August 23 that warrants vacatur of the stay. Although the Supreme Court denied the Republic's pre-judgment petition for a writ of *certiorari*, that decision was widely expected and has no bearing on the Republic's forthcoming petition that it will file in the next few months now that judgment has been entered. Moreover, there has been no change in circumstances to disturb this Court's determination that good cause exists for a stay. In fact, since the August 23 Decision, the Republic has exhibited good faith by continuing to engage in the appellate process and by lifting the "Lock Law" and reopening the 2010 exchange to the holdouts in an effort to resolve this case.

Appellees now urge this Court to vacate its own stay based solely on a vague remark in one of President Kirchner's speeches that Appellees claim indicates that the Republic intends to evade the district court's March 5, 2012 order (the "Anti-Evasion Order") during the stay by changing the payment process on its Exchange Bonds. The Republic, however, has since reiterated to the district court that it has "no plans" to violate the Anti-Evasion Order, and there is no evidence that the Republic is engaged in a plan to do so. In any event, this Court is well-aware of the Republic's prior statements regarding whether it will comply with court orders—and specifically noted some of those statements *before* issuing the stay.

Litigation concerning the Republic's 2001 default has been going on for over ten years, involves billions of dollars of securities held around the world, raises significant issues related to sovereign immunity and the global economy, and could lead to the Republic defaulting on its debt. In a few short months, the Republic will file its final petition for a writ of *certiorari* and the Supreme Court will decide whether to hear this case. One way or another, this case will end in the very near future, and this Court should keep the stay in place to allow for an orderly resolution of the case. Appellees cannot show how they will be harmed by the continuation of the stay, but lifting it at the eleventh hour could have dire consequences, not only for the Republic, but also for the Exchange Bondholders

that hold billions of dollars of the Republic's debt. Appellees' motion to vacate the stay should be denied.

ARGUMENT

A stay pending the filing of a petition for a writ of *certiorari* should be granted where "the petition will present a substantial question and there is good cause for a stay." *Books v. City of Elkhart, Indiana*, 239 F.3d 826, 827 (7th Cir. 2001) (citing Fed. R. App. P. 41(d)(2)(A)). Once a Court of Appeals has granted a stay, it should not be vacated unless the Court abused its discretion. *See Commodity Futures Trading Comm'n v. British Am. Commodity Options Corp.*, 434 U.S. 1316, 1319 (1997) (Marshall, J., in chambers) ("Since the Court of Appeals was quite familiar with this case, having rendered a thorough decision on the merits, its determination that stays were warranted is deserving of great weight, and should be overturned only if the court can be said to have abused its discretion.").

I. THE REPUBLIC'S PETITION FOR *CERTIORARI* PRESENTS A SUBSTANTIAL QUESTION

In the August 23 Decision, this Court held that the stay was warranted "in view of the nature of the issues presented." August 23 Decision, 727 F.3d at 238. In other words, this Court recognized that the Republic's petition for a writ of *certiorari* presents a substantial question, and thus stayed the injunctions until the Supreme Court can decide whether to hear the case. That is entirely correct.

There are many reasons why it is likely that the Supreme Court will grant *certiorari* and reverse the injunctions. For example, this Court's decisions have created a circuit split with the Fifth and D.C. Circuits regarding whether courts can use an injunction to achieve what it cannot through attachment under the Foreign Sovereign Immunities Act of 1976 ("FSIA").[1] Moreover, the injunctions conflict with clear Supreme Court precedent that equitable relief is not available to compel a contractual obligation to pay money,[2] s*ee Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 210-11 (2002), and, as the Euro Bondholders have repeatedly argued, improperly enjoin foreign entities from fulfilling foreign legal obligations on foreign soil. This case also warrants review by the Supreme Court

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[1] *See Janvey v. Libyan Inv. Auth.*, 478 F. App'x 233, 236 (5th Cir. 2012) (holding that "the FSIA's prohibition on 'attachment[s]' of property belonging to a foreign sovereign prevented the district court from entering a preliminary injunction"); *Atwood Turnkey Drilling, Inc. v. Petroleo Brasileiro, S.A.*, 875 F.2d 1174, 1177 (5th Cir. 1989) (holding that property is immune under the FSIA where "the purpose of [an] injunction is to secure the payment of a judgment"); *Phoenix Consulting Inc. v. Republic of Angola*, 172 F.3d 920, at *1 (D.C. Cir. 1998) (affirming denial of preliminary injunction because it would have been "in effect a prejudgment attachment in violation of the [FSIA]").

[2] This Court held that injunctive relief was appropriate here because "plaintiffs have no adequate remedy at law." August 23 Decision, 727 F.3d at 241. Recent developments, however, have illustrated that is not true. At a hearing on September 25, 2013, counsel for NML stated that plaintiffs "may be able to have access to $40 billion" in an account held by Banco Central de la Republica Argentina ("BRCA") if they can show that it is an alter ego of the Republic, and the district court then denied BCRA's motion to dismiss. *See* Declaration of Craig A. Batchelor ("Batchelor Decl."), Ex. A at 11, 33.

because it threatens future sovereign debt restructurings—a concern that has been voiced numerous times by the United States and others.

Appellees argue that the likelihood of the Supreme Court granting *certiorari* has now decreased because the Supreme Court recently denied the Republic's pre-judgment petition for a writ of *certiorari*. App. Br. at 17-18. That is incorrect. This Court specifically noted that the Republic filed its first petition "notwithstanding that . . . no final order had yet issued in this case," and issued the stay pending "a *timely* petition to the Supreme Court." August 23 Decision, 727 F.3d at 238 and n.6 (emphasis added). It is not uncommon for the Supreme Court to deny petitions for a writ of *certiorari* made before final judgment has been rendered, and such denials do not amount to a ruling on the merits. *See, e.g.*, *Mount Soledad Mem'l Ass'n v. Trunk*, 132 S. Ct. 2535, 2536 (2012) (denying interlocutory petition before final judgment); E. Gressman, K. Geller, S. Shapiro, T. Bishop, & E. Hartnett, Supreme Court Practice 280 (9th ed. 2007) (noting that the Supreme Court ordinarily should not issue a writ of *certiorari* on an interlocutory order). As *Reuters* aptly noted when the first petition was denied: "Considering that Argentina can make all the same legal points in its next petition to the Supreme Court as it did in the one rejected on Monday, local analysts said it was reasonable that the high court was reluctant to enter the legal imbroglio while lower court appeals are still unresolved." Batchelor Decl Ex. B.

This Court found that the "nature of the issues presented" in this case warranted a stay. The Supreme Court's denial of the Republic's first petition does not affect that finding.

II. APPELLEES HAVE NOT DEMONSTRATED THAT THERE IS NO LONGER GOOD CAUSE FOR A STAY.

A. There is No Evidence that the Republic is Planning to Evade the Injunction.

In its August 23 Decision, this Court found good cause to issue the stay, even with full awareness of the Republic's past statements regarding compliance with court orders. Prior to issuing the stay, this Court noted that the Republic stated that it would not "'voluntarily obey' the district court's injunctions, even if those injunctions were upheld by this Court . . . [and that] Argentina's official have publicly and repeatedly announced their intention to defy any rulings of this Court and the district court with which they disagree." August 23 Decision, 727 F.3d at 238. Yet almost immediately after recounting those statements, this Court issued the stay. *Id*.

Appellees contend that one of President Kirchner's recent remarks in a speech alters this Court's analysis of whether good cause exists for the stay. Appellees are wrong. The statement made by President Kirchner is too vague and unspecified to indicate that the Republic is engaged in any kind of plan to violate the Anti-Evasion Order, and the Republic has subsequently disavowed that it is

working on such a plan.[3] At most, that statement is merely equivalent to the Republic's prior statements—that this Court identified, and discounted, when issuing the stay. There was nothing in President Kirchner's speech that shifts the calculus of whether good cause exists for a stay.

Moreover, Appellees fail to note that President Kirchner's remark was made during a time when there was some uncertainty regarding whether the so-called "Anti-Evasion Order" was still in effect. That order states that "the Republic shall not *during the pendency of the appeal to the Second Circuit* take any action to evade the directives of [the injunctions], . . . including without limitation, altering or amending the payment processes or specific transfer mechanisms by which it makes payments on the Exchange Bonds." Batchelor Decl. Ex. C at ¶ 2 (emphasis added). After the August 23 Decision, there was some ambiguity regarding whether the appeal was still "pending" in this Court and thus the Anti-Evasion Order was in effect. That is why Appellees sought a declaration from the district

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[3] Appellees claim that the Republic's plan is to "reroute Exchange Bond payments through new agents beyond the jurisdiction of the U.S. Courts," which apparently would allow the Republic to evade the injunction. App. Br. at 15. Of course, as the Euro Bondholders have argued repeatedly in this appeal, *payments on the Republic's Euro Bonds are already made entirely outside of the U.S. through foreign entities*. Appellees have apparently now conceded that the injunctions should not apply to payments made entirely through agents outside of the U.S., which means that the injunctions should not apply to the Euro Bonds.

court that the Anti-Evasion Order "has been and remains continuously in full force and effect." *See* Batchelor Decl. Ex. D at ¶ 1.

Appellees have obtained the relief they sought from the district court, which ordered that the Anti-Evasion Order remain in effect and that implementation of certain plans to change the payment process on the bonds would violate that order.[4] *See id*. The district court's October 3, 2013 order, coupled with the Republic's subsequent statement that it has "no plans" to violate the Anti-Evasion Order, fully protects Appellees and undermines their arguments for vacating the stay. The Republic is prohibited from changing the payment process on the Exchange Bonds while its petition for a writ of *certiorari* is considered, and it has clearly stated that it has no plans to do that.

Indeed, it would be foolish for the Republic to violate the Anti-Evasion Order, because doing so likely would destroy any chance that the Supreme Court would hear its appeal, much less decide it in the Republic's favor. The Republic's recent actions, however, demonstrate that it is acting in good faith. For example, the Republic continues to seek appellate relief, despite its string of unfavorable results. On September 6, 2013, the Republic filed a petition for rehearing and rehearing en banc in this Court, and it has publicly stated that it will pursue its

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[4] Because Appellees sought this relief surreptitiously by submitting undocketed letters to the district court, interested third parties had no notice and no chance to intervene.

appeal to the Supreme Court. According to press reports, the Republic recently retained former Solicitor General Paul Clement, one of the most well-regarded Supreme Court practitioners in the country, to work on its Supreme Court appeal. Batchelor Decl. Ex. E. The Republic would not be devoting its time and resources to the appellate process if it was planning simultaneously to undermine those efforts by violating the district court's orders.

The Republic also has demonstrated its good faith by passing a law to lift the so-called "Lock Law" and indefinitely reopen its 2010 exchange to the holdout bondholders, including Appellees. Batchelor Decl. Ex. F. That decision shows the Republic's willingness to seek consensual resolution of holdouts' claims and is "part of Argentina's less defiant approach to holdout creditors." *Id*.

B. Maintaining the Stay Will Not Harm Appellees, But Vacating the Stay Will Cause Irreparable Harm to the Republic and Others

According to Appellees, the only potential harm caused by the stay is that it allegedly gives the Republic more time to "implement its plot." App. Br. at 15. That is not the type of concrete harm necessary to lift the stay. Moreover, the Anti-Evasion Order has been in place since March 2012. The Republic has obeyed the order since that time and has stated that it will continue to do so. If the Republic actually takes steps to violate the Anti-Evasion Order, Appellees can move this Court to vacate the stay and seek relief from the district court at that time. Maintaining the stay for a few more months will not harm Appellees at all.

On the other hand, vacating the stay will subject the Republic and certain third parties to irreparable harm. As an initial matter, the Republic, the Exchange Bondholder Group, and Fintech have each filed motions for rehearing and rehearing en banc that should be resolved before the injunctions go into effect. Also, many third parties, including the Euro Bondholders, challenged on appeal the application of the injunctions to third parties. This Court rejected those arguments, in part, on the ground that they could be raised in the district court at the appropriate time. *See* August 23 Decision, 727 F.3d at 242-44. If the stay is vacated, the district court will be flooded with applications for clarification from third parties while the Supreme Court is simultaneously considering the case. That could lead to inconsistent rulings and disrupt the orderly adjudication of the case. Finally, vacating the stay could lead to the Republic defaulting on its $24 billion of dollars of Exchange Bonds, harming the citizens of that country, wiping out the value of investors' holdings, and sending shockwaves around the global economy. All of these potential harms weigh in favor of maintaining the stay.

CONCLUSION

For the foregoing reasons, the Euro Bondholders respectfully request that this Court deny Appellees' Motion to Vacate the Stay.

October 25, 2013

Respectfully submitted,

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THE REPUBLIC OF ARGENTINA,

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DECLARATION OF CRAIG A. BATCHELOR

I, CRAIG A. BATCHELOR, hereby declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am an associate in the law firm of Latham & Watkins LLP, counsel to the Euro Bondholders in the above matter.

2. I respectfully submit this declaration in support of the Euro Bondholders' Opposition to Appellees' Motion to Vacate the Stay.

3. Attached as Exhibit A is a true and correct copy of the transcript of the September 25, 2013 hearing in *NML Capital, Ltd. et al., v. Republic of Argentina*, 06 Civ. 7792 (TPG) (S.D.N.Y. Sept. 25, 2013).

4. Attached as Exhibit B is a true and correct copy of a *Reuters* article entitled "U.S. Supreme Court won't hear Argentina bond dispute appeal," by Lawrence Hurley and Hugh Bronstein, dated October 7, 2013.

5. Attached as Exhibit C is a true and correct copy of the district court's March 5, 2012 order (the "Anti-Evasion Order").

6. Attached as Exhibit D is a true and correct copy of the district court's October 3, 2013 order.

7. Attached as Exhibit E is a true and correct copy of a *New York Post* article entitled "Argentina sics ex-Solicitor Gen. on Singer," by Michelle Celarier, dated October 22, 2013.

8. Attached as Exhibit F is a true and correct copy of a *Reuters* article entitled "Argentina's Senate approves reopened debt swap in goodwill gesture," dated September 4, 2013.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
October 25, 2013

Craig A. Batchelor

EXHIBIT A

D9pgnmlc

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
NML CAPITAL, LTD., et al.,
Plaintiffs,
v. 06 CV 7792 (TPG)
THE REPUBLIC OF ARGENTINA,
Defendants.
----------x
New York, N.Y.
September 25, 2013
3:10 p.m.

BEFORE:
HON. THOMAS P. GRIESA,
District Judge

APPEARANCES

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(Case called)

THE COURT: This revisits some issues we've had, so I'm not going to handle the argument in the usual way. The presentation by the plaintiffs is very powerful, to say the least.

It builds on an earlier decision which I rendered when we were dealing with possible attachment or execution of money at the federal reserve. And I held at that time that BCRA was the alter ego for the purpose of dealing with that fund. The Court of Appeals reversed, but did not really reverse in any sense to any degree what I had said about the alter ego issue. Now there is more information relevant to the alter ego issue which the plaintiffs have brought up.

The problem is whether it is appropriate to enter a declaratory judgment. I'm looking now at the plaintiff's brief, page 33: Declaratory relief will resolve the ongoing dispute between plaintiffs and defendants regarding whether BCRA can be held liable for the republic's debts to plaintiffs.

At page 34: There is no doubt that declaratory relief would serve a useful purpose in settling the legal relations at issue and in affording relief from the controversy giving rise to this proceeding. It would confirm and reduce to a final judgment this Court's prior ruling on the issue of whether BCRA can be held liable for the republic's debts to plaintiffs.

Now, I don't recall that we have had some ongoing

controversy about whether BCRA would be liable for the debts of the republic. We had the one issue about the fund at the Federal Reserve Bank, but we haven't been having an ongoing issue about whether BCRA would be liable for the republic's debts to the plaintiffs. Have we? I don't know of such ongoing controversy.

MR. COHEN: You're absolutely correct that in the context of an attachment, your Honor found that BCRA is the alter ego of Argentina.

THE COURT: Either go to the lecturn or keep seated because the microphones don't reach too well.

MR. COHEN: It's Robert Cohen from Dechert for NML Capital.

In the context of the attachment, you found that BCRA was the alter ego of Argentina. The benefit of a declaratory judgment will be that that issue will be resolved for once and for all; that is, the assets.

THE COURT: For once and for all to take care of what issues?

MR. COHEN: Finding assets that we can enforce against. We would like to be able to have a judgment that holds BCRA liable for the judgments entered against Argentina that we may enforce as a judgment if we find assets anywhere.

THE COURT: Before this third-amended complaint, I've never been asked to hold that BCRA is liable in a general way

for the debts of the republic to these plaintiffs.

I don't think I've even ever been asked to do that before.

MR. COHEN: That would be the consequence of an alter ego finding; that is, the alter ego will be the same as Argentina and its assets will be available as a general proposition for the debts of Argentina.

THE COURT: This just jumps way too fast too far.

MR. COHEN: Actually, this was in our first complaint as an allegation. A request for relief in our very first complaint was that you enter a money judgment. It was, in fact, your Honor's suggestion that we break that out as a separate cause of action, that we ask for a money judgment against BCRA as a consequence of the declaration that they are one.

This goes back to 2005/2006, your Honor. And the first time we sought to attach assets at BCRA was on the basis that there had been an announcement that Argentina was going to use funds at BCRA to repay the IMF loan. And we brought an ex parte attachment proceeding.

THE COURT: But that was about the fund at the federal reserve, right?

MR. COHEN: Yes. And we said the evidence that we'll be able to present to you will show such complete domination and control.

THE COURT: I know that, but the thing is, that related to an attempt to attach or execute upon a very specific fund and that was the money, a hundred million dollars or so, at the Federal Reserve Bank.

MR. COHEN: Yes.

THE COURT: Maybe it was pleaded, and it doesn't make a lot of difference, but I have never really had any litigation about the broader issue of whether BCRA would be liable in a general way for the debts of the republic to the plaintiffs.

In my view and, obviously, it's true as a matter of fact, it's a very different matter to deal with a specific fund, and we had a lot of evidence about that fund, what it was and so forth. It was evidence about that fund.

The question of whether the BCRA in a general way is liable for the debts of the republic, I've never made any holding about that, and I really have never even had a litigation, I don't think, and I could be forgetting something, but I don't think I really had the issue come up and really be discussed among us about a general liability.

MR. COHEN: I'll put it in context, your Honor.

When we did that attachment action and filed our complaint, one of the first amended complaints had a cause of action, a separate cause of action, asking for a money judgment. That response to that motion, that complaint, was deferred. We kept extending the time to deal with the issue of

that complaint until after the Second Circuit resolved the attachment of the assets that your Honor was focusing on.

Always in the background was the ultimate issue of alter ego. And, your Honor, when you focused on the assets that we were seeking to attach, one of the things that you needed to address was, is BCRA the alter ego of Argentina. Because if it's not, I don't even have to worry about whether that asset is being used for commercial activity and all the other issues.

So, the finding that BCRA was, in fact, the alter ego was a predicate to get to the analysis of the assets at question. And it was what the Second Circuit focused on, these assets.

THE COURT: You're not really getting my question. I held, and still believe it is correct, although the Court of Appeals reversed me on another point, but I believe it is correct to say and I think it was correct to say that BCRA was the alter ego of the republic for the purpose of dealing with that particular fund.

I want you to focus on this: In my view, and I think it's transparent, that is to say, BCRA was the alter ego of the republic in order to deal with that particular fund; it goes way beyond that to say that BCRA is liable in a general way for the debts of the republic.

MR. COHEN: All we are asking for, your Honor, is for

you not to dismiss the complaint but to allow us to persuade you that BCRA is, in fact, for all purposes the alter ego. That's not a ruling you need to make today.

All you need to do today is say we pled enough to survive any motion to dismiss and we have jurisdiction. And then we'll get on with proving the merits of the case. We're not moving for summary judgment today; we're not asking you to find that ultimate conclusion today.

THE COURT: I really have a question of whether there is a cause of action here for declaratory relief. Maybe you just don't want to address it. I don't know.

But the thing is, it seems to me on this motion to dismiss, I'm looking at page 33 of your brief, "Declaratory relief will resolve the ongoing dispute between plaintiffs and defendants regarding whether BCRA can be held liable for the republic's debts to plaintiffs."

That's in your own brief.

MR. COHEN: And that means liable in a general sense as the alter ego for the debts that are owed to us by the republic. That's the question.

MR. RIVKIN: David Rivkin representing EM Limited, the other plaintiff. Let me put those statements in context.

THE COURT: Please. That's fine.

MR. RIVKIN: As Mr. Cohen said, we're not asking you today to issue a declaratory judgment that they are liable for

all the debts going forward.

We have properly pled an alter ego complaint. We have pled a complaint that has jurisdiction. We have pled the facts that show that. The language on which you have focused was in response to an argument that BCRA made in their motion to dismiss.

That motion said the Court should exercise its discretion under the declaratory judgment act to decline jurisdiction and dismiss the complaint, and then it went on to say an alter ego declaration would neither serve a useful purpose nor finalize the controversy or offer relief from uncertainty.

First of all, BCRA recognizes that this is a discretionary act on your part.

THE COURT: You're not getting my question at all.

MR. RIVKIN: I think I am. We have pled a declaratory judgment act. They are asking you to decline jurisdiction on a discretionary basis because they think ultimately, it might not serve any purpose.

THE COURT: You're not really addressing my question at all. Now, I have a question, and that is, whether there is a purpose to be served, within the meaning of the declaratory judgment statute, a purpose to be served to have declaratory relief. And to say that all that's going on is a motion to dismiss and so forth, of course.

But the question before me is, is this a meritorious claim, and I don't think either of you want to really address that.

MR. COHEN: I can tell you what we would do if we get to declaratory judgment and how would it help us.

THE COURT: Yes.

MR. COHEN: What are we going to do practically with the declaratory judgment or the money judgment that we have asked for?

Your Honor has allowed us to have discovery into the assets of BCRA. Let's assume that we can find that BCRA has deposits at the Federal Reserve Bank in California. I want to take my judgment that they are liable to me for the amounts that are owed under the bonds, go to California and attach that account without having to go through an alter ego proceeding in California.

Another example, your Honor, you may remember BIS, the Bank for International Settlements in Geneva where Argentina moved its money to BCRA's account there. We tried to take discovery and your Honor declined to give it to us because you didn't think you have jurisdiction over BCIS, but you said you would be willing to help us if that came up again.

BIS has immunity from attachment, its own immunity. It has told our counsel in Switzerland and it's in the record that if --

THE COURT: What is BIS?

MR. COHEN: It's the Bank for International Settlement. It's sort of the central bank for central banks. It's where central banks deposit money.

THE COURT: It's not Argentine.

MR. COHEN: No. It's in Switzerland. It's an international organization. And Argentina has deposited essentially all of its reserves at the BIS disproportionate to any other central bank. It has moved its money there because it enjoys it thinks immunity from attachment. The immunity belongs to BIS itself under Swiss law. BIS can't be sued unless it allows itself to be sued.

It has said the reason it's not willing to allow us to reach those funds is because BCRA is separate from Argentina and Argentina is our debtor.

THE COURT: Say that again.

MR. COHEN: It has said it will not --

THE COURT: Who has said?

MR. COHEN: The Bank for International Settlements, BIS, when we tried to attach funds there, it asserted its immunity.

THE COURT: Did you bring a proceeding in Switzerland?

MR. COHEN: We did, your Honor. It asserted its immunity, and that immunity was upheld. But it said the reason that it asserted that immunity was because BCRA, in its view,

was separate from Argentina; and BCRA, the Central Bank of Argentina, had the account at BIS. So, BIS was not going to let anyone attach it. It wasn't the same entity.

THE COURT: But the proceeding you brought in Switzerland was against whom?

MR. COHEN: Argentina on the basis that the money in the account at BIS belonged to Argentina; on the basis that both it was its money and it was the alter ego of BCRA.

THE COURT: I take it that the actual deposit was in the name of BCRA.

MR. COHEN: That's correct. It was on that basis that BIS declined to waive its own immunity and allow the proceeding to go ahead but indicated that if there was reason to believe that if BCRA was in fact one and the same with Argentina, it might look at it differently. I'm not representing to the Court that it will, but we have reason to believe it might. And that suggests that we may be able to have access to $40 billion that's on deposit at the BIS. If we can take to BIS a declaration from this Court that, in this Court's view, BCRA is in fact the alter ego of Argentina, that's one very practical example.

That example gets repeated when I suggest that BCRA has money on deposit at other places around the world. We know at one time they had funds on deposit in Germany, Euro dollar deposits, Euro deposits. If we could go to Germany and argue

that they're the alter ego, we might be able to attach those assets.

Now, declarations from lawyers in England and France and Germany have been submitted in support of the motion to dismiss to suggest that it's a waste of time; we can't do that. My representation to the Court is each one of those declarations is equivocal in some important respect.

It's the lawyers' view that a court would probably do something or it was unlikely it would do something. We would like to take the declaratory judgment and a money judgment to Frankfurt and argue that the alter ego ruling should be recognized there and that we should have access to those funds. Those are the practical ways in which we would be able to take advantage of a judgment against BCRA. It's not purely hypothetical.

MR. RIVKIN: If I may just add one other thing. The purpose of the declaratory judgment act, of course, since you're asking why a declaratory judgment, is so that we don't need to relitigate the issue. That's why you ask for a declaratory judgment when there's an ongoing controversy so the same issue doesn't need to be relitigated every place whether we find assets in California or Switzerland or otherwise.

As Robert said, having this declaratory judgment settles that ongoing dispute between us and BCRA about whether they are the alter ego. Otherwise, we have to litigate it in

the context of particular assets over and over again, and we've seen how long it can take to litigate that.

What we're asking you to do and the reason why parties ask for declaratory judgments is to have a ruling on the issue that can then be used to resolve future issues.

MR. NEUHAUS: May I be heard.

THE COURT: Can I question the lawyer for BCRA.

MR. NEUHAUS: That's me. Joseph Neuhaus from Sullivan & Cromwell.

THE COURT: I know this is in the record, but just refresh my memory. What does BCRA do?

MR. NEUHAUS: It's the Central Bank of Argentina.

THE COURT: As the central bank, again, what does it do?

MR. NEUHAUS: It's a separate instrumentality that engages in all kinds of activities, supervising the stock market, it engages in foreign exchange trading to maintain the value of the currency and a whole lot of other activities that central banks traditionally do.

If I may respond to what was just said.

THE COURT: Can you just continue with my question for a moment.

MR. NEUHAUS: Sure.

THE COURT: You see, what has happened in this litigation, there's been a lot of evidence of certain things

that BCRA does, but what I'm really trying to get beyond that and you're responding, but can you just elaborate on what you've just said a little bit.

MR. NEUHAUS: There is in the record this statute of the charter of the central bank which lists all of its duties and they include all kinds of duties. It's very much like what the fed does here. It's a little bit broader because they have a jurisdiction over the banking system generally.

THE COURT: You mean in Argentina.

MR. NEUHAUS: In Argentina.

For example, banks have to post reserves to secure their foreign exchange and that's posted with the central bank. They do supervise, as I said, the stock exchange. They do engage in trading to maintain the currency. There's a whole host of activities.

THE COURT: Are you indicating that local banks have deposits at the central bank?

MR. NEUHAUS: Yes, local banks do have deposits. They have a requirement that they post certain reserves to secure their own holdings of foreign exchange. That's just one of many functions.

THE COURT: Please don't read the statute.

MR. NEUHAUS: I won't. I'm just trying to remind myself of some of the functions.

THE COURT: What does the central bank disburse money

for? In other words, they take in certain entities' deposit money with them. What do they disburse money for?

MR. NEUHAUS: For example, those entities may reduce their reserves, the banks may reduce their reserves and a central bank would, of course, disburse that money. The bank would also use foreign exchange, let's say they have dollar reserves, they would use those funds to buy pesos. If it was in the bank's view necessary to maintain the value of the currency, they would pull pesos out of the market and they would use dollars, for example, to buy the pesos in the Argentine market.

It's one of the things central banks do to maintain the value of the currency every day.

THE COURT: I think that's one of the kinds of things the Court of Appeals referred to.

MR. NEUHAUS: Yes. They do print money. They also issue debt, domestic debt.

THE COURT: In what way do they print money? Do they buy?

MR. NEUHAUS: They're responsible for the supply of pesos in the Argentine economy. It's a whole host of central banking functions that are engaged in by all central banks around the world.

I'm not sure whether that's responsive to your questions.

THE COURT: It is.

MR. NEUHAUS: A declaratory judgment, if I might just address a little bit of what was said, it's not intended to be a stepping stone to other litigation. A declaratory judgment is supposed to end litigation. So, the concept that you go and get a declaratory judgment in order then to take it somewhere else is not how declaratory judgments are supposed to work. If they were to work that way, it wouldn't make any sense.

In this case, for example, they haven't found any assets in the United States that are attachable. They're not likely to find any assets anywhere in the world that are attachable because central bank immunity around the world in most countries, and certainly in all the countries they mentioned, is much stronger than in the United States, and that's what the evidence here says. And they haven't offered any evidence, any declarations, anything that suggests otherwise in this record. So, the BIS's immunity is absolute; it is not subject to attachment except under a treaty that creates the BIS.

So, the concept that you could ever take a declaratory judgment from the United States and go elsewhere and get somebody to recognize it in order to allow attachment of funds is completely fanciful and speculative.

THE COURT: The problem that exists in this case is what I'll call irregularities. What you have is something that

I hope would not exist with England or Germany, and that is a republic which will not pay its just debts. And what you further have is what I would call irregular usage of the central bank, whether irregular is the best word, but I think everybody knows what I'm talking about.

This is what I talked about in my original decision. It's what is talked about in the complaint here, and that is, this is not the bank of England; it's not the Federal Reserve Bank of the United States. It is a bank which is the central bank of a country that will not pay its contractual just debts as reflected in a very recent Court of Appeals decision, which I'm sure you have read.

Then what you have, in addition to what I'm sure is very regular, very legitimate central bank functions which you've described very well, what you have is the use of the central bank in ways that I have described in an earlier decision and I describe here.

What you have is a problem that would not exist if all were regular and all were honest which is what you would like to be talking about, but it doesn't exist here. And that's the problem of the Court. It doesn't exist.

You've got a dishonest situation in the republic, and dishonesty basically is what has been found by our Court of Appeals. To say that it should be treated in the regular way, of course, you'd argue that, but we don't have a regular

situation, and that's my problem.

MR. NEUHAUS: May I. When I mentioned Germany and England and so forth, I wasn't trying to compare the activities of the Central Bank of Argentina.

THE COURT: When it happens in Germany and England, probably things are pretty regular, but they are not regular in Argentina. They are not regular.

MR. NEUHAUS: I was trying to make a different point. I'm sorry if I was unclear.

I was just responding to the point that they could take a declaratory judgment from this Court and go to England and attach assets.

THE COURT: I know.

MR. NEUHAUS: Okay.

THE COURT: Maybe that's the point you were making, but I'm talking about a different point.

MR. NEUHAUS: At this stage on a motion to dismiss, your Honor, the question I think is the one that you posed, which is, is this an appropriate case for a declaratory judgment.

We submit, and we think that the record indicates, that there is no way that a declaratory judgment would in fact resolve anything.

If a declaratory judgment is needed to obtain an attachment in England or in Switzerland, bring the attachment,

you bring the action where the assets are.

And one reason for that, your Honor, is that a declaratory judgment here --

THE COURT: You see, what you're talking about, of course, it's correct, but what the Court is faced with is that for 11 years or so because of the refusal of the republic to pay its contractual just debts, the plaintiffs have been seeking ways to recover. They're seeking ways to recover against somebody who owes them a lot of money and won't pay. And it's been going on since 11 or 12 years.

The thing is that there is some merit to the idea that a finding by this Court confirming what I have already found would be of legitimate use to the plaintiffs here in their ongoing effort to recover on their very large judgments.

MR. NEUHAUS: May I respond on that.

THE COURT: Yes.

MR. NEUHAUS: As your Honor said a few minutes ago, your Honor addressed alter ego in the context of a particular fund.

Your Honor has not, as far as I know, ever held that BCRA is liable for all the debts of the republic which is the declaration that they're seeking, in a general way, which would require a very expensive inquiry into the republic's control over the day-to-day activities across the waterfront.

THE COURT: Let me just say very quickly, I don't buy

the idea that BCRA is liable for all the debts of the republic.
MR. NEUHAUS: That is the declaration they're seeking; that is the cause of action they're seeking.
THE COURT: What Mr. Cohen spoke of is something that would be more specific. And it is certainly conceivable that the plaintiffs could find some deposit or some asset of BCRA which would legitimately be available to help satisfy the unpaid judgment debt.
MR. NEUHAUS: And if they do, your Honor, then they bring an alter ego action.
THE COURT: The thing is, let us suppose they find something in California or the Cayman Islands or somewhere. So, they go to the court in California or the Cayman Islands or Spain or wherever, and they sue BCRA. Then they say BCRA, this asset, this account should be available to help pay the judgment debt because the judgment debt, of course, is the debt of Argentina, but for the purpose of dealing with this asset, you should consider BCRA the alter ego of the republic.
That's really what I did with the federal reserve situation; and the Court of Appeals didn't disturb it for that reason. But the thing is, what the plaintiffs are saying is, they should have available to them the findings of this Court memorialized in a formal way so that they don't have to go around and start anew this idea of the alter ego situation.
In other words, right now what exists is my finding

and holding in the federal reserve situation which is not now a formal judgment. They're trying to get a formal declaration which they can say represents the formal declaration of the Southern District of New York. They'd like to have it embodied in a judgment, in a declaration which doesn't exist right now.

MR. NEUHAUS: Your Honor, that's a very different beast than what they have now because there's been no trial. There's been no evidence. Everything was based on newspaper articles. So, you're talking about an immense proceeding to examine individuals.

THE COURT: I don't think it's such an immense proceeding at all.

MR. NEUHAUS: Your Honor, you have to get testimony.

THE COURT: What would be so immense about it?

MR. NEUHAUS: They challenge decisions about whether to increase reserves at a particular time. We have offered evidence in our papers here that says that was in response to a fluctuation in exchange rates. They say it was at the command of the president at that time.

THE COURT: All they're saying is we ask the Court not to dismiss this case.

Actually, they're not asking at this moment for a judgment. Right?

MR. COHEN: That's correct.

MR. NEUHAUS: That's correct. This is a motion to

dismiss.

THE COURT: And you're opposing the motion to dismiss, but you're not asking for an affirmative judgment on this motion.

MR. COHEN: That's correct, just to be able to pursue the action; that's all we're asking for.

MR. RIVKIN: And obtain the discovery to prove the points that Mr. Neuhaus says we can't prove. Once again, Argentina is trying to cut us off from the legitimate processes of these courts to inquire into their actions.

THE COURT: Trying to cut off what?

MR. RIVKIN: Trying to cut off discovery, trying to cut off an inquiry. Mr. Neuhaus raises a specter of a trial on the alter ego action.

THE COURT: I'm sorry. I missed your name.

MR. RIVKIN: David Rivkin, again, for EML.

My point was, what Mr. Neuhaus was saying by trying to raise a false specter, as you said, of a massive trial on the alter ego issue is, once again, cut us off from the legitimate processes of this Court.

We have a right to be able to pursue our claim that it's an alter ego and producing the evidence and convincing you of that finding eventually and to enter a different kind of declaratory judgment. But what Mr. Neuhaus is saying is we're not going to be able to prove it. It's going to be a big

trial. That's not what one decides on a motion to dismiss.

MR. NEUHAUS: The reason I was mentioning that is that is why declaratory judgments are not used to set up findings that can be used in other proceedings. Declaratory judgments are supposed to end litigation, end disputes.

MR. COHEN: Can I respond to that one point?

THE COURT: What you really will not reckon with is the peculiar circumstances of this litigation. What you've said might apply to some simple, straight-forward litigation, but this is not what we have here.

You are now entering into the arena, and you've been here before, of a very unusual litigation which is caused by the republic. The extraordinary length and difficulty of all of this is caused by the republic's failure, intentional failure, to pay its just debts.

We don't have a standard, simple, straight-forward, nice, easy kind of litigation that you're talking about. We've got a different animal.

Now, let me ask this: Is there anything in the Foreign Sovereign Immunities Act which requires dismissal of this action, Mr. Cohen?

MR. COHEN: No, your Honor.

MR. NEUHAUS: I take it that's a question more to me.

THE COURT: I'll take an answer from anybody.

MR. NEUHAUS: The answer is yes, your Honor. The

Foreign Sovereign Immunities Act does not permit this action to go forward. They have to find an exception to the immunity of the central bank.

They have argued two exceptions, your Honor: One is waiver by the republic, not by the central bank; and the other is commercial activities that are the basis, they claim, of the alter ego action.

On the first, waiver, your Honor, the Second Circuit in its opinion in this case in 2011 squarely held that the republic's waiver does not extend to the BCRA, even assuming that the alter ego was established.

THE COURT: That was in applying 1611.

MR. COHEN: 1611.

MR. NEUHAUS: But the Second Circuit in that decision very clearly relied on waiver decisions from 1605, the section that's at issue here, so the test is the same. Just because you're an alter ego does not mean that the waiver that the republic gave in 1994, long before any alter ego relationship is said to have arisen, applies to the bank.

The cases that they rely on in this case are all cases in which the controlled entity was acting as an agent in giving the waiver, in doing the activity at issue. That's not the case here.

Here, the alter ego evidence starts in 2001 when all the turnover in directors and the governors of the bank is

alleged to have started. The waiver was given in 1994. The waiver is not a product of control by the republic on these allegations.

The Second Circuit didn't say because they're an alter ego, the republic's waiver applies to the bank. The Second Circuit said, no, the waiver doesn't mention the bank; therefore, it doesn't apply. And there's been no waiver of immunity under the Foreign Sovereign Immunities Act. So, the waiver, your Honor, doesn't work.

The second basis that they argue for jurisdiction under the Foreign Sovereign Immunities Act is that the commercial activity in the United States is the heart of the alter ego claims. The Second Circuit requires a very close connection between what they call the gravamen of the complaint and the activities in the United States.

The gravamen of the complaint in this case is the alleged control by Argentina of the bank, and again, across the waterfront, across the entirety of its activities because that's the test, that you have to have an overarching, day-to-day control test.

So, the gravamen of the complaint is all about the control exercised by Argentina over the bank, and all of that happens in Argentina. All of the alleged direction to accumulate reserves or the directions alleged to lend money to Argentina, all of that, the directions all occur in Argentina.

You can't just say, well, there's some link into the United States. There are other circuits that say as long as one element of the cause of action occurs in the United States, that is enough. The Second Circuit has expressly rejected those cases. They rely on those cases from the Eighth and Ninth Circuits, but the Second Circuit in a case called Kensington v. Congo says no, it has to be the gravamen of the complaint.

THE COURT: Mr. Cohen, just start at the beginning. The Foreign Sovereign Immunities Act exists.

MR. COHEN: Yes, your Honor.

THE COURT: BCRA is a foreign entity within the meaning of the Foreign Sovereign Immunities Act.

MR. COHEN: Yes.

THE COURT: There's a special part of the statute that deals with central banks, but aside from that, obviously, the Republic of Argentina is a foreign sovereign within the meaning of the Act.

MR. COHEN: Yes.

THE COURT: The BCRA is a foreign sovereign within the meaning of the Act. Just start at the basics.

How is there jurisdiction to bring this action against the BCRA? Go to the basics.

MR. COHEN: Two grounds, your Honor. Jurisdiction immunity was waived in the FAA by Argentina. And if BCRA is

the alter ego of Argentina, that waiver applies to BCRA. Now, that's law that has been around for a long time. In fact, the Kensington case that they cite which was before Judge Preska, which I and Cleary were both involved in, found exactly that; that a waiver by the sovereign waives the immunity for its alter ego instrumentality. And in that case, the Court found that the state-owned oil company was the alter ego and that the waiver in the applicable documents of immunity from jurisdiction under the FSIA applied to that alter ego.

What Mr. Neuhaus is arguing is that that law has been completely upset by the Second Circuit's ruling with respect to the attachment.

Your Honor was exactly right: All the Second Circuit said was if you're applying 1611, we're going to look for an explicit waiver with respect to central bank assets. It doesn't matter if it's alter ego. It doesn't matter if it's Argentina's money. If it's used as a monetary authority, as a central bank, and it's in the name of Argentina --

THE COURT: You're not now suing under 1611.

MR. COHEN: Not at all, your Honor.

THE COURT: You're suing under the basic.

MR. COHEN: Jurisdiction, waiver, breach of contract and they're liable for it.

THE COURT: The Section being 1605.

MR. COHEN: 1605, your Honor.

Our second theory is that they have, the BCRA itself, has engaged in commercial activity in this district, and it has done that -- the gravamen argument, the nature of our claim, the alter ego claim, I'm sorry, the declaratory judgment claim has to arise out of the activity in the jurisdiction is exactly right.

In the case that he cites, Kensington, the reason why the court, the Second Circuit found that there wasn't commercial activity here was because there was nothing that the contract at issue there had to do with New York.

THE COURT: Start again. I was looking at it.

MR. COHEN: Sure.

THE COURT: Start at the commercial activity discussion again.

MR. COHEN: Yes. The argument that Mr. Neuhaus has made is that under the case called Kensington, the Second Circuit found that the connection between this jurisdiction and the claimed wrong was not close enough. There wasn't enough in New York to allow the commercial-activity-in-New-York exception to apply and that's because there were oil transactions happening around the world but not enough in New York.

Here, we have a claim for a breach of a fiscal agency agreement governed by New York law, subject to jurisdiction in New York, payable in New York, payable by a fiscal agent in New York that is being breached, and payment to us is due in New

York.

The gravamen of our complaint is that they should be liable for that debt, the debt that results from the breach of the contract that is focused in New York.

THE COURT: The commercial activity by the republic.

MR. COHEN: By BCRA in New York. BCRA is acting in New York to gather dollars that are used to repay debt to others and not to us, and now, in violation of the contract --

THE COURT: Where is it in the record that BCRA is acting in New York? Where is that in the record?

MR. COHEN: The account at the Federal Reserve Bank, your Honor. They have had that account for forever and they have it today. And they still use it to gather dollars and remit it to the BIS.

They have an account at the Federal Reserve Bank, and they say that it's crucial that they have that account. You may remember back in 2010 we had an attachment again and they said we can't do our business through BIS in Switzerland; we need to have this account in New York in order to function.

So, there's no doubt that they are acting in New York and that it's crucial to the way they function. They need to be able to move dollars on a regular basis in order to function.

So, the connection between our case, the gravamen of our claim, is that those activities by BCRA are crucial to the

perpetration of the fraud or injustice that is the alter ego claim that we are asking you to decide.

We have jurisdiction, both on the waiver of immunity that's imputed to BCRA and on BCRA's activities in this jurisdiction which are the gravamen of our complaint. So, there's no doubt, in our view, that there is no basis to argue that there is any FSIA immunity that applies here.

THE COURT: I'm looking at 1605 now. 1605(a)(1) is about waiver. 1605(2) is about commercial activity.

MR. COHEN: We rely on both of those, your Honor.

You'll notice that in 1605(a)(1) which talks about waiver, it says either explicitly or implicitly. That's very different than the explicit waiver that is required under 1611 and in certain other sections. So, the jurisdictional waiver can be implicit and has been interpreted to be applicable to entities that are found to be alter egos of the sovereign.

THE COURT: The thing that still concerns me, I mentioned this at the outset, and it still concerns me about the plaintiffs' position, is that a general declaration of alter ego could really have effects or implications beyond what I would intend.

Here's what I'm talking about: I believe that there could be some account or some assets of the BCRA which would be legitimately attached or executed on to satisfy the judgment debts here; and, on the other hand, the idea that BCRA is in a

general way liable for the debts of the republic goes way too far.

There certainly have been what I'll call irregularities in the dealings between the republic and BCRA, but everything is not irregular. BCRA has legitimate functions as far as the money supply of Argentina and so forth. And the assets of BCRA in a general way cannot, in my view, be said to be applicable to the judgment debts of plaintiffs here.

But in view of the way the republic uses BCRA in what I'll call an irregular way, the kind of thing I've talked about in an earlier decision and you have enlarged upon in your pleading here, it seems to me that there could very well be some account or some asset which would legitimately apply to the judgment debt here.

This arises, to some extent, from the way that the republic uses BCRA in a way that departs from the way the Bank of England would be used, or the Central Bank of Germany would be used. The republic does not do things in a regular way.

What I'm going to do this afternoon is to deny the motions to dismiss the third-amended complaint. I believe there is jurisdiction in the way Mr. Cohen describes jurisdiction which makes it appropriate to entertain the action; and considering the provisions of the Foreign Sovereign Immunities Act, I believe that there is an implied waiver here and I believe there's commercial activity so that the

provisions of 28 U.S.C. 1605(a)(1) and (a)(2) are applicable.

This really is, denying a motion to dismiss, exactly what would emerge from a litigation that has problems. The plaintiffs' position has problems, as I've indicated. But I think those problems do not require the dismissal of the action.

And I want to repeat something which I'm sure I've said maybe more than once this afternoon; and that is, we don't have a republic which is acting in a normal way as far as its debts. We don't have a situation there is a completely regular dealing between the republic and BCRA the way that I'm sure would exist with the Bank of England or the Central Bank of Germany or France or certainly with the Federal Reserve Bank. We don't have that. We have irregularities.

The reason that I believe the action should be held open is I think there is a very legitimate claim by the plaintiffs here that for certain purposes BCRA is the alter ego of the republic.

In the papers before me, the plaintiffs have made a very powerful case of that, and I so held in my earlier decision, and that holding was not what was disturbed by the Court of Appeals. So, there's a very good case of alter ego.

I believe that the Court should entertain the idea that it would be desirable to have this Court with its experience in this case and its background in this case make

some kind of a formal ruling of alter ego which could be legitimately used in a proceeding in another state or a foreign country so that the plaintiffs do not have to go to the other state or the foreign country and start in again, once again, and maybe more than once again with this presentation about alter ego.

The motion to dismiss the action is denied. And that's all we can do this afternoon. I'm sure that we'll schedule further proceedings in an appropriate way.

Thank you.

(Adjourned)

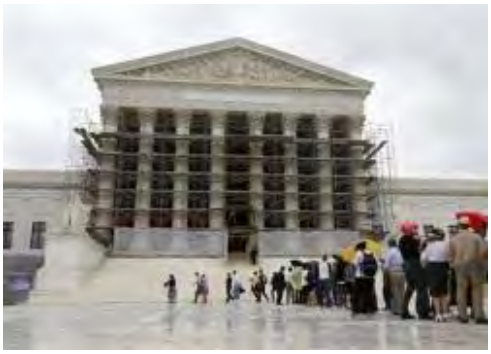
EXHIBIT B

» Print

U.S. Supreme Court won't hear Argentina bond dispute appeal

Mon, Oct 7 2013

By Lawrence Hurley and Hugh Bronstein



WASHINGTON/BUENOS AIRES (Reuters) - The U.S. Supreme Court on Monday declined to hear a preliminary appeal filed by Argentina over its battle with hedge funds that refused to take part in two debt restructurings stemming from the country's catastrophic 2002 default.

While not good news for President Cristina Fernandez, the court's decision did not alter a lower U.S. court's stay on a ruling ordering Argentina to pay the funds 100 cents on the dollar for the defaulted paper they hold.

Funds that reject the lower payments offered by Argentina's restructured bonds and demand full repayment of original debt totaling $1.3 billion have filed suits that have bounced around U.S. federal courts for more than a decade and could continue without final resolution for another year.

World markets are watching the case for the implications it might have on future sovereign debt restructurings. The International Monetary Fund has voiced fear that if Argentina is forced to pay the holdouts, it would make it more difficult for cash-strapped countries to re-negotiate their bond obligations.

Market reaction to the Supreme Court announcement was muted, with economists stressing the importance of the maintenance of the stay. Argentina's sovereign risk spread tightened 7 basis points to 998 over safe-haven U.S. Treasuries while the rest of JP Morgan's Emerging Market Bond Index Plus was flat at 344 basis points, indicating that Argentina remains the biggest default risk in the market.

"The Supreme Court's decision to not hear our appeal during this session does not change anything," Finance Secretary Adrian Cosentino said in a statement, citing litigation pending in lower U.S. courts, which could lead to another request for high court review next year.

Considering that Argentina can make all the same legal points in its next petition to the Supreme Court as it did in the one rejected on Monday, local analysts said it was reasonable that the high court was reluctant to enter the legal imbroglio while lower court appeals are still unresolved.

"It's the logical outcome," said Buenos Aires-based economist Guillermo Nielsen, who as finance secretary helped push through Argentina's debt restructuring in 2005.

FERNANDEZ SIDELINED

Fernandez is to be operated on Tuesday for a cerebral hematoma, taking her out of action in the midst of the court battle and three weeks before a key mid-term election that will determine the clout she enjoys in Congress during her final two years in office.

Fernandez vows never to pay the holdouts, whom she derides as "vultures" for picking over the bones of the 2002 default, which pushed millions of middle class Argentines into poverty.

The refusal to pay the holdouts in the face of a final U.S. court order to do so could pave the way for another default, as Argentina would be blocked from paying the holders of restructured bonds as well.

Easily re-elected in 2011 on promises of more government intervention into Latin America's No. 3 economy, Fernandez has seen her popularity wane due to high inflation and confidence-sapping foreign exchange controls meant to halt capital flight.

END GAME

Monday's Supreme Court ruling means it will not at this time review an October 2012 decision by the 2nd U.S. Circuit Court of Appeals in New York in which the court said the Argentine government had broken a contractual obligation to treat bondholders equally.

The Supreme Court's refusal to get involved means litigation in lower courts continues, with Argentina able to seek high court review again at a later date when there is a final ruling in the appeals court.

In August, that court issued another ruling, upholding a lower court's order that Argentina pay the bondholders $1.3 billion. The court stayed its decision pending possible Supreme Court review. Argentina also has asked the appeals court to reconsider its decision.

"If the stay is maintained, the likelihood of a technical default is low, at least in the near term," said Ignacio Labaqui, who analyses Argentina for Medley global Advisors.

The case's end-game has meanwhile shifted to the political arena in Buenos Aires, where the ailing Fernandez is in the twilight of her second term and faces a likely poor showing by her candidates in the October 27 mid-term election, said Gary Kleiman, of emerging markets consultancy Kleiman International.

"With these judicial and political power setbacks, a compromise solution to the long holdout saga involving at least indirect negotiations could finally be on the horizon," he said.

In two restructurings, in 2005 and 2010, creditors holding around 93 percent of Argentina's debt agreed to participate in debt swaps that gave them 25 cents to 29 cents on the dollar.

But bondholders led by hedge funds NML Capital Ltd, a unit of Paul Singer's Elliott Management Corp, and Aurelius Capital Management went to court, seeking payment in full.

The case before the Supreme Court was Argentina v. NML Capital, 12-1494.

(Additional reporting by Walter Bianchi in Buenos Aires; Editing by Howard Goller, Nick Zieminski, Dan Grebler and Andrew Hay)

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NML CAPITAL, LTD.,

Plaintiff,

- against -

THE REPUBLIC OF ARGENTINA,

Defendant.

No. 08 Civ. 6978 (TPG)
No. 09 Civ. 1707 (TPG)
No. 09 Civ. 1708 (TPG)

AURELIUS CAPITAL MASTER, LTD. and ACP MASTER, LTD.,

Plaintiffs,

- against -

THE REPUBLIC OF ARGENTINA,

Defendant.

No. 09 Civ. 8757 (TPG)
No. 09 Civ. 10620 (TPG)

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

Plaintiffs,

- against -

THE REPUBLIC OF ARGENTINA,

Defendant.

No. 10 Civ. 1602 (TPG)
No. 10 Civ. 3507 (TPG)

(captions continue on following pages)

~~[PROPOSED]~~ ORDER PURSUANT TO FRCP 62(C)

AURELIUS CAPITAL MASTER, LTD. and AURELIUS OPPORTUNITIES FUND II, LLC,	:	
	:	No. 10 Civ. 3970 (TPG)
Plaintiffs,	:	No. 10 Civ. 8339 (TPG)
- against -	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	
BLUE ANGEL CAPITAL I LLC,	:	
	:	No. 10 Civ. 4101 (TPG)
Plaintiff,	:	No. 10 Civ. 4782 (TPG)
- against -	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	
PABLO ALBERTO VARELA, et al.,	:	
	:	No. 10 Civ. 5338 (TPG)
Plaintiffs,	:	
- against -	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	

OLIFANT FUND, LTD.,	:	
	:	No. 10 Civ. 9587 (TPG)
Plaintiff,	:	
- against -	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	

WHEREAS, in Orders dated December 7, 2011, and December 13, 2011, this Court found that, under Paragraph 1(c) of the 1994 Fiscal Agency Agreement ("FAA"), the Republic is "required . . . at all times to rank its payment obligations pursuant to Plaintiffs' Bonds at least equally with all the Republic's other present and future unsecured and unsubordinated External Indebtedness."

WHEREAS, in its December 7, 2011 and December 13, 2011 Orders, this Court granted partial summary judgment to Plaintiffs on their claims that the Republic has breached, and continues to breach, its obligations under Paragraph 1(c) of the FAA by, among other things, "ma[king] payments currently due under the Exchange Bonds, while persisting in its refusal to satisfy its payment obligations currently due under Plaintiffs' bonds."[1]

WHEREAS, in Orders dated February 23, 2012 entered in the above-captioned actions (the "February 23, 2012 Orders"), this Court granted Plaintiffs' motion for equitable

[1] The "Exchange Bonds" refer to bonds or other securities issued by the Republic pursuant to its 2005 and 2010 exchange offers.

relief as a remedy for such violations of the FAA pursuant to Rule 65(d) of the Federal Rules of Civil Procedure and the Court's inherent equitable powers.[2]

And WHEREAS the Republic intends to appeal the February 23, 2012 Orders and all underlying and/or associated orders to the U.S. Court of Appeals for the Second Circuit, and has moved for a stay of the February 23, 2012 Orders during the pendency of such appeal,

It is HEREBY ORDERED that:

1. Pursuant to Rule 62(c) of the Federal Rules of Civil Procedure, the effect of the February 23, 2012 Orders is stayed until the U.S. Court of Appeals for the Second Circuit has issued its mandate disposing of the Republic's appeal of the February 23, 2012 Orders.

2. To secure Plaintiffs' rights during the pendency of the Republic's appeals of the February 23, 2012 Orders to the Second Circuit, it is ordered that the Republic shall not during the pendency of the appeal to the Second Circuit take any action to evade the directives of the February 23, 2012 Orders in the event they are affirmed, render them ineffective in the event they are affirmed, or diminish the Court's ability to supervise compliance with the February 23, 2012 Orders in the event they are affirmed, including without limitation, altering or amending the processes or specific transfer mechanisms by which it makes payments on the Exchange Bonds, without prior approval of the Court.

3. With consent of the Plaintiffs and on terms agreeable to the parties, the Republic shall file a motion in the Second Circuit requesting that the court of appeals accord the Republic's forthcoming appeal of the February 23, 2012 Orders expedited treatment in accordance with a schedule agreed upon by the parties.

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[2] The Court granted to Olifant Fund, Ltd. the relief that it granted to the plaintiffs in the other above-captioned actions in a single order, dated February 23, 2012.

4. This Court shall retain jurisdiction to monitor and enforce this ORDER, and, on notice to the parties, to modify, amend, or extend it as justice requires to achieve its equitable purposes and to account for materially changed circumstances, including any failure by the Republic to abide by Paragraph (2) herein.

Dated: New York, New York
March 5, 2012

Thomas P. Griesa
U.S. District Judge

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NML CAPITAL, LTD.,	:	08 Civ. 6978 (TPG)
	:	09 Civ. 1707 (TPG)
Plaintiff,	:	09 Civ. 1708 (TPG)
v.	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	
AURELIUS CAPITAL MASTER, LTD. and ACP MASTER, LTD.,	:	09 Civ. 8757 (TPG)
	:	09 Civ. 10620 (TPG)
Plaintiffs,	:	
v.	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	
AURELIUS OPPORTUNITIES FUND II, LLC and AURELIUS CAPITAL MASTER, LTD.,	:	10 Civ. 1602 (TPG)
	:	10 Civ. 3507 (TPG)
Plaintiffs,	:	
v.	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	
	:	**(captions continued on next page)**

[PROPOSED] ORDER

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AURELIUS CAPITAL MASTER, LTD. and AURELIUS OPPORTUNITIES FUND II, LLC,	:	10 Civ. 3970 (TPG) 10 Civ. 8339 (TPG)
Plaintiffs,	:	
v.	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	
BLUE ANGEL CAPITAL I LLC,	:	
Plaintiff,	:	10 Civ. 4101 (TPG) 10 Civ. 4782 (TPG)
v.	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	
OLIFANT FUND, LTD.,	:	
Plaintiff,	:	10 Civ. 9587 (TPG)
v.	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	
PABLO ALBERTO VARELA, et al.,	:	
Plaintiff,	:	10 Civ. 5338 (TPG)
v.	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	

WHEREAS, in Orders dated December 7, 2011, and December 13, 2011, this Court found that, under Paragraph 1(c) of the 1994 Fiscal Agency Agreement ("FAA"), the Republic of Argentina (the "Republic") is "required . . . at all times to rank its payment obligations pursuant to Plaintiffs' Bonds at least equally with all the Republic's other present and future unsecured and unsubordinated External Indebtedness."

WHEREAS, in its December 7, 2011 and December 13, 2011 Orders, this Court granted partial summary judgment to Plaintiffs on their claims that the Republic has breached, and continues to breach, its obligations under Paragraph 1(c) of the FAA by, among other things, "ma[king] payments currently due under the Exchange Bonds, while persisting in its refusal to satisfy its payment obligations currently due under Plaintiffs' bonds."[1]

WHEREAS, in Orders dated February 23, 2012 entered in the above-captioned actions (the "February 23 Orders"), this Court granted Plaintiffs' motions for equitable relief as a remedy for such violations of the FAA pursuant to Rule 65(d) of the Federal Rules of Civil Procedure and the Court's inherent equitable powers.[2]

WHEREAS, in an Order dated March 5, 2012 (the "March 5 Order"), the Court stayed the February 23 Orders pending appeal, and also enjoined the Republic as follows (the "Anti-Evasion Injunction"):

> [T]he Republic shall not during the pendency of the appeal to the Second Circuit take any action to evade the directives of the February 23, 2012 Orders in the event they are affirmed, render them ineffective in the event they are affirmed, or diminish the

[1] The term "Exchange Bonds," as in the Amended February 23 Orders, refers to the bonds or other obligations issued pursuant to the Republic's 2005 or 2010 Exchange Offers, or any subsequent exchange of or substitution for the 2005 and 2010 Exchange Offers that may occur in the future.

[2] The Court granted to Olifant Fund, Ltd. the relief that it granted to the plaintiffs in the other above-captioned actions in a single order, dated February 23, 2012.

> Court's ability to supervise compliance with the February 23, 2012 Orders in the event they are affirmed, including without limitation, altering or amending the processes or specific transfer mechanisms by which it makes payments on the Exchange Bonds, without prior approval of the Court.
>
> ...
>
> This Court shall retain jurisdiction to monitor and enforce this ORDER, and, on notice to the parties, to modify, amend, or extend it as justice requires to achieve its equitable purposes and account for materially changed circumstances, including any failure by the Republic to abide by Paragraph (2) herein.

WHEREAS, in an Opinion dated October 26, 2012 (the "October 26 Opinion"), the United States Court of Appeals for the Second Circuit affirmed the February 23, 2012 Orders in part and remanded in part "for such proceedings as are necessary to address the operation of the payment formula and the Injunctions' application to third parties and intermediary banks."

WHEREAS, following this Court's request for an affidavit ensuring that the Anti-Evasion Injunction would be complied with notwithstanding contrary statements to the press, the Republic submitted the Declaration of Francisco Guillermo Eggers, the Republic's Director of the National Bureau of Public Credit of the Ministry of Economy and Public Finance, dated November 16, 2012, representing "that the Republic has complied, is complying, and will comply with the terms of the March 5 Stay Order."

WHEREAS, the Court resolved the issues remanded for clarification by the Second Circuit in an Opinion, dated November 21, 2012 and an "Amended February 23 Order," dated November 21, 2012, entered in each of the above-referenced actions.

WHEREAS, in an "Order Concerning The March 5, 2012 Order," dated November 21, 2012, the Court vacated the clause staying enforcement of its injunction pending appeal, but left in place its injunction prohibiting Argentina from taking any action to evade the injunction.

WHEREAS, in an Order dated November 28, 2012, the Second Circuit ordered "that the November 21, 2012 orders of the district court entered in relation to this matter are all stayed pending further order of [the Second Circuit]," but did not stay the March 5 Order.

WHEREAS, on June 24, 2013, the Republic filed a petition for a writ of certiorari with respect to the October 26 Opinion.

WHEREAS, in an Opinion dated August 23, 2013 (the "August 23 Opinion"), the Second Circuit affirmed the Amended February 23 Orders, but stayed enforcement of the Amended February 23 Orders pending the resolution of a petition for a writ of certiorari.

WHEREAS, the August 23, 2013 opinion noted that "Argentina's officials have publicly and repeatedly announced their intention to defy any rulings of this Court and the district court with which they disagree." *NML Capital, Ltd. v. Republic of Argentina*, No. 12-105, 2013 WL 4487563, at *1 (2d Cir. Aug. 23, 2013).

AND WHEREAS, on August 26, 2013, the President of Argentina, Cristina Fernández de Kirchner, announced in a nationally-televised address that the Republic will establish procedures allowing holders of Exchange Bonds to replace these instruments with nearly identical instruments that are payable within the Republic, in an apparent attempt to evade the directives of the Amended February 23 Orders.

IT IS HEREBY:

1. DECLARED that the Anti-Evasion Injunction of the March 5 Order has been and remains continuously in full force and effect.

2. ORDERED that the Republic shall not—either directly or through any representative, agent, instrumentality, political subdivision, or other person or entity acting on behalf of the Republic—take any action to attempt to evade the purposes and directives of the

Amended February 23 Orders, attempt to render those Orders ineffective, or attempt to diminish the Court's ability to supervise compliance with the Amended February 23 Orders, including without limitation, altering or amending the processes or specific transfer mechanisms by which it makes payments on the Exchange Bonds, without prior approval of the Court. This paragraph shall remain in effect during the pendency of any petition to the United States Supreme Court for a writ of certiorari with respect to the October 26 Opinion or the August 23 Opinion, any proceeding on the merits in the United States Supreme Court, and any proceedings on remand, unless a further order of the Court states otherwise.

3. DECLARED that for the avoidance of doubt (i) the implementation of the plan to allow Exchange Bonds to be exchanged for securities or similar instruments payable in Argentina, which was announced by President Fernández de Kirchner in her speech of August 26, 2013, (ii) implementation of any functionally equivalent or reasonably similar plan, or (iii) any step towards implementing (including without limitation the formulation or design of) such a plan or a functionally equivalent or reasonably similar plan, each would violate the Anti-Evasion Injunction of the March 5 Order and Paragraph 2 of this ORDER.

4. ORDERED that with respect to any plan or proposal that may have the purpose, effect or intent, either directly or indirectly, of violating the Anti-Evasion Injunction or Paragraph 2 of this ORDER, including without limitation the measures described in Paragraph 3 of this ORDER, or which may be deemed by a reasonable person to have such purpose, effect or intent, the Republic shall disclose to Plaintiffs, within five business days of the entry of this ORDER, the existence and content of any communications between the Republic (or any representative, agent, instrumentality, political subdivision, or other person or entity acting on behalf of the Republic) and: (i) any holders of beneficial interests in the Exchange Bonds or any

registered owners of the Exchange Bonds; (ii) any trustee, indenture trustee, paying agent, trustee paying agent, transfer agent, or any agent under the relevant indenture and global notes for the Exchange Bonds; (iii) any registrar, clearing corporations and systems, operators of clearing systems, settlement agents, depositary, depositary participant or custodian for the Exchange Bonds; (iv) any banking, financial, trust or custodial institution and any coordinator, manager, solicitation agent, tender or exchange agent, or financial advisor; (v) any United States or international regulator or government entity; or (vi) any agent, representative, or other person acting on behalf of the persons identified in parts (i), (ii), (iii), (iv), or (v) of this paragraph. For the avoidance of doubt, this disclosure shall include the identity of all parties to the communication, the date and nature of the communication, a detailed description of the content of the communication, and any documents or records constituting or associated with the communication (including without limitation any e-mails, attachments, facsimile transmissions, or other written materials). To the extent that any such communications come into existence after the date of this ORDER, such communications shall be disclosed to the Court and to Plaintiffs' respective counsel within five business days of the sending or receipt of such communications.

5. This Court shall retain jurisdiction to monitor and enforce this ORDER, and, on notice to the parties, to modify, amend, or extend it as justice requires to achieve its equitable purposes and to account for materially changed circumstances, including any failure by the Republic to abide by the terms of the ORDER.

Dated: New York, New York
~~September __, 2013~~
Oct. 3, 2013

Thomas P. Griesa
U.S. District Judge

EXHIBIT E

Argentina **sics ex-Solicitor Gen. on Singer**

The New York Post
October 22, 2013 Tuesday

Section: All Editions; Pg. 30

Length: 157 words

Byline: Michelle Celarier

Body

Former Solicitor General Paul Clement has been hired by Argentina to press its case against Paul Singer's Elliott Management, according to Argentine press reports.

Earlier this month, the US Supreme Court denied Argentina's first request to review an appeals-court decision that could force the South American country to pay $1.3 billion to certain creditors including Elliott.

Clement, who worked in the Bush administration between 2004 and 2008, is expected to help Argentina present its second petition to the Supreme Court to review its appeal.

"The perception is that his experience may increase the chances of the [Supreme Court] asking the current Solicitor General for an opinion and [improve] the chances that the case is subsequently taken up by the court," said JPMorgan analyst Vladimir Werning.

Clement - whose hiring was reported by Telam, Argentina's state- run news agency - did not return a call for comment.

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Organization: SUPREME COURT OF THE UNITED STATES (91%)

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Load-Date: October 22, 2013

EXHIBIT F

» Print

Argentina's Senate approves reopened debt swap in goodwill gesture

Wed, Sep 4 2013

BUENOS AIRES, Sept 4 (Reuters) - Argentina's Senate voted Wednesday to indefinitely open a bond swap of defaulted debt as part of a bid to signal the country's eagerness to accommodate "holdout" creditors ahead of a review by the U.S. Supreme Court.

The government of President Cristina Fernandez said last week that it was reopening a bond exchange after a U.S. court ruled it was unfairly excluding holdout hedge funds that rejected restructuring plans in the past.

The 2nd U.S. Circuit Court of Appeals in New York issued a stay delaying implementation of its order to pay holdout creditors $1.33 billion pending a review by the U.S. Supreme Court, which starts its new term in October.

Argentina has refused to pay holdouts unless they accept the same terms used in its last exchange in 2010.

Around 93 percent of creditors accepted restructurings in 2005 and 2010 that gave them less than 30 cents on the dollar, while holdouts have fought for the full amount in the courts.

The new debt swap will apply the same terms as those of Argentina's 2010 exchange.

Apart from being open-ended to encourage creditors to opt in without deadline pressure, the new swap will also offer bonds governed by foreign law, a government source told Reuters on Friday - part of Argentina's less defiant approach to holdout creditors it calls "vulture funds."

The legislation, approved 58-8 by the Senate late on Wednesday, is expected to be passed into law by the House of Representatives in coming weeks.

The defaulted debt swap will be the country's third in less than a decade as it continues to struggle with the legal and economic fallout of lingering unpaid debt in the market after its record $100 billion default in 2002.

If Argentina refuses to pay the holdouts in full, U.S. courts could block payment overseas to bondholders who opted to restructure in the past - potentially triggering another debt crisis and undermining a recovery in South America's third-biggest economy.