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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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3 NML CAPITAL, LTD., et al.,
4 Plaintiffs,

5 v. 08 CV 6978 (TPG)

6 THE REPUBLIC OF ARGENTINA,
7 Defendant.

8 -----x

New York, N.Y.
September 26, 2014
3:05 p.m.

11 Before:

12 HON. THOMAS P. GRIESA,
13 District Judge

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1 THE COURT: This will be at 3:00 Monday. This is the
2 first of two hearings. The hearing today will deal with issues
3 about Citibank and Buenos Aires. The hearing Monday will deal
4 with recent conduct by the Republic of Argentina. The hearing
5 today is brought on by a motion which was served on Monday, an
6 order to show cause was signed.

7 Ms. Wagner, would you like to speak to that motion?

8 MS. WAGNER: I would. Thank you, your Honor.

9 Good afternoon, your Honor.

10 First, we thank the Court for hearing us on an
11 expedited basis. As you know, your Honor, Citibank sought an
12 expedited hearing because it faced serious risk if it could not
13 make the September 30 payment on the Argentine law bonds that
14 it holds for its customers. Plaintiffs have now agreed to
15 consent to that payment.

16 So you may ask, why is it that we are having this
17 hearing today. And with your Honor's permission, I would like
18 to go through a little bit of the history which I think will
19 explain to you why we are --

20 THE COURT: The reason we are having the hearing is,
21 we are not just dealing with the September 30 payment. The
22 question is, is there any problem about Citibank servicing that
23 debt on an ongoing basis. If there was some consent to a
24 September 30 payment, that did not solve the problem. Let's
25 pass that.

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1 MS. WAGNER: Yes, your Honor.

2 And to go to the point, what is the issue relating to
3 Citibank and the Argentine law bonds, just to go through a
4 little of the history, when this motion first came on before
5 your Honor, after the Supreme Court issued a denial of
6 certiorari, the first thing that your Honor did when Citibank
7 brought this motion was to ask the plaintiffs if they would
8 consent to the motion. Obviously, from the very beginning your
9 Honor has understood that Citibank is in a very different
10 position from Bank of New York Mellon, an indenture trustee,
11 and the Argentine law bonds are extremely different from the
12 bonds that are New York law bonds that are governed by an
13 indenture as to which Bank of New York is the indenture
14 trustee.

15 Your Honor has continued to express himself repeatedly
16 that the bonds are very different and that Citibank is very
17 different. Your Honor has said repeatedly, most recently on
18 September 10, as to the bonds that when you were dealing with
19 the injunction, what you have referred to as the major
20 injunction in this case, what I thought I was dealing with was
21 something that was quite different from the bonds dealt with in
22 the large injunction, which are payable in New York, subject to
23 New York law.

24 It's my understanding that what is being dealt with in
25 Argentina are bonds issued in Argentina, specifically subject

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1 to Argentine law. As to Citibank the Court has observed Bank
2 of New York has a completely different relationship to the case
3 versus the Citibank branch in Buenos Aires. Citibank Argentina
4 has to deal with the Republic of Argentina, and most recently
5 you directed the parties.

6 It was my view and still is my view that the Argentine
7 law bonds, issued in Argentina, payable in Argentina, subject
8 to Argentine law, are different from the bonds subject to the
9 February 23 order. And the parties should know that whatever
10 issues there are about Citibank and Argentina, September 30 or
11 December 31, it is the view of the Court that what we are
12 dealing with and what your applications relate to are bonds
13 that are different from the bonds covered by the February 23
14 order.

15 Your Honor, if you go back and look at the motion
16 which was brought by plaintiffs with respect to the February 23
17 order, you will find that that motion was directed very
18 specifically to two series of bonds for which Bank of New York
19 was indenture trustee. You were provided with evidence about
20 those bonds. You were provided no evidence whatsoever about
21 Citibank or about the Argentine law bonds or anything other
22 than the Bank of New York bonds. For that reason, during those
23 hearings you did not consider the difference between Bank of
24 New York Mellon and Citibank or the difference between the Bank
25 of New York bonds and the Citibank bonds.

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1 However, your Honor, as you know, you wrote an opinion
2 in connection with the injunction, the major injunction that
3 was issued at that point, and it was very clear from the
4 opinion that what you were dealing with were the parties that
5 were involved somehow in the contract relating to the Bank of
6 New York bonds. Your Honor's injunction was intended to
7 enforce a contractual obligation. That contractual obligation
8 was based on the fiscal agency agreement which defines external
9 debt and which says that external indebtedness is subject to
10 the pari passu clause. There was not a big discussion in that
11 hearing about whether the Bank of New York bonds were subject
12 to the clause.

13 THE COURT: Let me interrupt you. We have had many
14 sessions on various things in this case and the lawyers have
15 made statements and I've made statements. But we are now at a
16 different stage. We are dealing with the question of
17 Citibank's ongoing right or lack of right to service the
18 Argentine bonds. Now, if we could get to the issues, the legal
19 issues on that and not go back --

20 MS. WAGNER: Certainly, your Honor.

21 THE COURT: And recap a whole lot of things in the
22 past. There are legal issues on that point. I am sure you're
23 ready to address them.

24 MS. WAGNER: Yes, your Honor.

25 There are many legal issues. There are some legal

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1 issues relating to the Argentine law bonds. There are some
2 issues relating to Citibank Argentina. The issues relating to
3 Citibank Argentina is that it is a separate entity. It is
4 located in Buenos Aires. It is a branch bank licensed by
5 Argentina. It is subject to the laws of Argentina. And as a
6 matter of comity it is not appropriate for a U.S. court to
7 issue an order that requires a branch bank in Argentina to
8 violate the law. Applying the injunction of this Court to
9 payments to customers by Citibank Argentina would require that
10 Citibank Argentina violate the law of the country in which it
11 is licensed and would put Citibank Argentina and its employees
12 at great risk. And we have put in evidence before the Court
13 that is undisputed as to these points.

14 So as to Citibank Argentina, the law is that a comity
15 analysis which is now required by the new Gucci case in the
16 Second Circuit would lead you to the conclusion that you can't
17 require those entities to violate Argentine law.

18 I would also make one other point as to Citibank
19 Argentina which does relate to the original injunction, and
20 that is the original injunction was issued to enforce a
21 contract. And the parties who were enjoined did play some role
22 in that contract, which would be the indenture and fiscal
23 agency agreement.

24 Citibank is not a party to either one of those
25 contracts. It plays no role in either one of those contracts.

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1 It is a custodian. It is paid by its customers. It has no
2 contractual relationship with Argentina. It has no contractual
3 relationship under the indenture. It simply holds bonds for
4 customers. And, therefore, it is outside the bounds of the
5 contract which was being enforced in the original injunction.

6 As to Citibank Argentina I would suggest to you, those
7 are two key points. And the other key points that flow from it
8 are also issues of comity, are that Argentina makes payments on
9 the bonds, the Argentine law bonds entirely within Argentina.
10 Payment is made, as a matter of law, by Argentina when payment
11 is made to the CYRL, which is a government entity in Argentina,
12 and then it's passed on to the Caja de Valores, which is
13 another local Argentine entity, neither of which is in any way
14 present in New York.

15 Payment is complete by the time the payment reaches
16 these entities. When Citibank gets the payment, the money
17 belongs to customers. Under Argentine law Citibank has no
18 choice but to pass it on to customers. And if Citibank doesn't
19 pass it on to customers, Citibank will be subject to another
20 doctrine, which is foreign sovereign compulsion.

21 Argentina has made it very clear that it will enforce
22 its banking laws against Argentina. It has suggested that it
23 could take quite serious enforcement action, but there is no
24 question that Argentina, as a sovereign, is entitled to enforce
25 its banking law with respect to a bank licensed in Argentina.

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1 So foreign sovereign compulsion would also be a doctrine that
2 would be relevant to this analysis, and obviously the questions
3 of separate entity, of active state, and sovereign foreign
4 compulsion were not issues that were addressed by anyone in
5 connection with the original injunction because there was
6 nobody in that capacity. Indeed, there was nobody in any
7 custodian capacity. It was rather people involved in the
8 contract for paying the bonds.

9 Then with respect to the Argentine law bonds, your
10 Honor, they are different from the bonds that were addressed in
11 the hearing, the Bank of New York bonds. The bonds are local
12 law bonds. They are governed by Argentine law. Some of them
13 are peso bonds. Some of them are dollar bonds. But they are
14 all local bonds. Some of them were issued in exchanges that
15 took place at the same time as the international exchanges. We
16 know now that many of them were not issued in exchanges. Most
17 of them were not. Most of them were issued independently of
18 any exchange. Those that were issued in the exchanges were
19 exchanged for other domestic debt. There was no exchange of
20 something that was external indebtedness for an Argentine law
21 bond, and there was no Argentine law bond exchange for
22 something that is external indebtedness.

23 Because these bonds, therefore, are not external
24 indebtedness -- they are called domestic foreign currency
25 indebtedness -- they are not subject to the pari passu clause,

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1 which the injunction was intended to enforce. They have no
2 indenture trustee. They were issued pursuant to local laws,
3 local government decrees. The government of Argentina did not
4 submit to jurisdiction in the United States --

5 THE COURT: Can I interrupt you. Maybe you are going
6 to come back to this. You went over very quickly the issue
7 about whether these bonds are subject to the pari passu
8 provision of the 1994 instrument.

9 MS. WAGNER: Yes, your Honor.

10 THE COURT: Are they or are they not?

11 MS. WAGNER: Your Honor, they are not subject to.

12 THE COURT: Why not?

13 MS. WAGNER: They are not because they constitute what
14 is called domestic foreign currency indebtedness. The fiscal
15 agency agreement is the agreement that governs the pari passu
16 obligation. Pursuant to the fiscal agency agreement, external
17 indebtedness is the debt that is subject to the pari passu
18 obligation. External indebtedness is defined to exclude
19 domestic foreign currency indebtedness.

20 So then the question is, what is domestic foreign
21 currency indebtedness? And we have put before you a number of
22 papers that will demonstrate domestic foreign currency
23 indebtedness is either one of several bonds that are identified
24 by name, or it is a bond that was issued in exchange for such a
25 bond, or it is another kind of bond, whether it is Argentine

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1 peso denominated or dollar denominated or some other currency
2 denominated, but issued only in Argentina.

3 THE COURT: You are going a little quickly for me. Go
4 back and I want to ask, again, why are these bonds subject to
5 the 1994 fiscal agency agreement and the pari passu? Just
6 explain that again.

7 MS. WAGNER: Sure, your Honor.

8 The pari passu clause is contained in the fiscal
9 agency agreement.

10 THE COURT: Of 1994?

11 MS. WAGNER: Of 1994. And it imposes the obligation,
12 and I'm just going to read it to you, your Honor. The payment
13 obligations of the Republic under the securities shall at all
14 times rank at least equally with all its other present and
15 future unsecured and unsubordinated external indebtedness, as
16 defined in this agreement.

17 So I just read a quote from the fiscal agency
18 agreement. The fiscal agency agreement then defines external
19 indebtedness to mean obligations of the Republic denominated in
20 a currency other than the lawful currency of the Republic,
21 provided, however, and this is the key proviso, that no
22 domestic foreign currency indebtedness shall constitute
23 external indebtedness. So domestic foreign currency
24 indebtedness is excluded from the indebtedness that is subject
25 to the pari passu clause.

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1 So far is that clear, your Honor? Shall I continue?

2 THE COURT: I'd like that language.

3 MS. WAGNER: It's paragraph 1C of the fiscal agency
4 agreement.

5 THE COURT: The language I see, I don't know how you
6 refer to it as the exception is. From the fiscal agency
7 agreement of 1994 offered exclusively within the Republic of
8 Argentina. Is that what you are talking about?

9 MS. WAGNER: Your Honor, I am talking about the
10 definition of domestic foreign currency indebtedness, which is
11 on page 17 of the fiscal agency agreement. And that includes a
12 series of identified categories of bonds in subparagraph little
13 i. And then it adds to that: Any indebtedness issued in
14 exchange or as a replacement for the indebtedness, referred to
15 in little i above, and three little i: Any other indebtedness
16 payable by its terms or which at the option of the holder
17 thereof may be payable in a currency other than the lawful
18 currency of the Republic of Argentina.

19 THE COURT: This is a definition of what?

20 MS. WAGNER: Domestic foreign currency indebtedness.
21 That's on page 17 of the FAA.

22 THE COURT: Just a minute.

23 I thought I was quoting from that, but maybe you are
24 quoting from a different part of it. Where are you referring
25 to?

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1 MS. WAGNER: Your Honor, if you look towards the
2 middle of it where there is two little i -- first of all, there
3 are a series of categories of bonds. Then two little i says:
4 Anything issued in exchange for those bonds. Three little i:
5 Any other indebtedness, which is offered exclusively within the
6 Republic of Argentina or issued in exchange for indebtedness
7 payable to the lawful currency in the Republic of Argentina.
8 There are a number of different types of bonds.

9 THE COURT: Just a minute.

10 MS. WAGNER: It's a very dense paragraph.

11 THE COURT: I just want to make sure we are focusing
12 on the same language. I'm focusing on that same long paragraph
13 headed domestic foreign currency indebtedness, and I'm talking
14 about or I was referring -- I meant to refer to a provision way
15 down in that paragraph, little ii, and then subparagraph:
16 Offered exclusively within the Republic of Argentina.

17 Are we talking about the same language?

18 MS. WAGNER: We are talking about the same language,
19 your Honor, except I think it's possible that you are limiting
20 your focus to fewer provisions of it than I might focus on.
21 But, yes, we are talking about the same language in the same
22 provision.

23 THE COURT: You go ahead.

24 MS. WAGNER: Your Honor, I think it is clear that if a
25 bond is domestic foreign currency indebtedness, then it is not

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1 external indebtedness and therefore it is not subject to the
2 pari passu clause. We have put evidence before you, your
3 Honor, and the Republic has also put evidence before you that
4 the Argentine law bonds were either obtained because they were
5 offered and exchanged for one of these other local law bonds,
6 or they were offered exclusively in Argentina. There are
7 several different categories. We have put evidence before you
8 that they fall within one of these categories.

9 THE COURT: When were these bonds issued?

10 MS. WAGNER: These bonds were issued at various times,
11 your Honor. Some of them were issued in 2005 in connection
12 with a parallel local exchange. Many of them were issued at
13 other times for other purposes. For example, as we talked
14 about several hearings ago, a lot of them were issued in
15 connection with the Repsol settlement. That was fairly
16 recently. That is one category of them. They are all issued
17 in the same series using the same ISIN numbers.

18 And while we do know how many of them were issued in
19 some form of exchange, we know that most of them were not. And
20 we know that we cannot tell the difference between ones that
21 were and ones that were not. So the Argentine law bonds, in
22 fact, have two distinct characteristics which make them not
23 subject to the injunction. One is the ones that were not
24 issued in any exchange obviously do not fall even within the
25 literal language of the injunction. But, two, domestic foreign

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1 currency indebtedness is not subject to the pari passu clause
2 and, therefore, could not be subject to an injunction issued
3 for the purpose of enforcing the pari passu clause.

4 THE COURT: We have a number of people who may wish to
5 talk. Can you conclude.

6 MS. WAGNER: Certainly, your Honor. I will conclude.

7 I guess what I would conclude, finally, your Honor, is
8 this. The injunction, the major injunction was issued in this
9 case on a record that had only to do with Bank of New York
10 bonds. If plaintiffs wished to enjoin payments on the
11 Argentine law bonds, they need to make the record and they have
12 not done that. However, I would also say that even in the
13 major injunction, the limit of the injunction was on a party
14 that had some contractual connection to the bonds. So, for
15 example, in your Honor's opinion explaining the payments that
16 were intended to be enjoined, your Honor noted at page 10 of
17 that opinion that after the funds got to a depository trust
18 company in New York, the funds are then deposited into
19 financial institutions, apparently banks, which then transfer
20 the funds to their customers, who are the beneficial interest
21 holders in the bonds. Plaintiffs assert that under Rule 65(d),
22 the injunction should bind Argentina, the indenture trustee,
23 the registered holders, and the clearing system. They did not
24 ask that those financial institutions who received the money
25 from the DTC be enjoined, and they were not.

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1 In our situation, your Honor, on the Argentine law
2 bonds, the equivalent of DTC is the Caja de Valores, and your
3 Honor found that in a previous opinion involving Citibank
4 Argentina. We received the money from the Caja de Valores and
5 under your Honor's analysis in this injunction, no matter what
6 else is in the case, we should not be bound by the injunction.

7 Thank you, your Honor.

8 THE COURT: Who wants to speak next.

9 MR. OLSON: Theodore Olson, your Honor, on behalf of
10 NML and the other plaintiffs.

11 A couple of preliminary points.

12 Your injunction which you issued was clear and
13 warranted. It was the subject of repeated hearings and
14 repeated briefings. It's been affirmed as issued by the Second
15 Circuit twice. The Supreme Court refused to hear the case. It
16 has never been modified.

17 What we are here today about is an application by
18 Citibank to modify the injunction that has been affirmed twice
19 by the Second Circuit, which has been opened, an effort by
20 other parties for similar modifications of the injunction and
21 will open the way for Argentina to engage in similar evasions
22 of the order that you've already issued.

23 Our position is that Citibank does not have the right
24 certainly at this time to seek modification of an injunction
25 issued in a case after all that briefing, argument, and appeals

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1 in a case at which it was not a party and which, if it had
2 sought to intervene, or sought to seek modifications of the
3 injunction, should have been done a long time ago, much
4 earlier, and should have been raised before.

5 THE COURT: Why is this seeking a modification of that
6 injunction? And the reason I ask is, that injunction applied
7 to certain bonds. Of course, it had other provisions. But it
8 applied to certain bonds.

9 MR. OLSON: It applied to --

10 THE COURT: It didn't apply to all the bonds issued in
11 the world. And are these not different bonds than the ones
12 covered by that injunction?

13 MR. OLSON: These are not, respectfully, your Honor,
14 different bonds than the bonds covered by the injunction. The
15 injunction was clear. It had to do with exchange bonds. These
16 bonds, as Ms. Wagner acknowledged in the Second Circuit, were
17 exchange bonds. Two of the judges in the Second Circuit during
18 that hearing eight days ago specifically said, the injunction
19 is clear, doesn't it cover. You decided that it did cover
20 these bonds. The judges of the Second Circuit felt that it
21 did. They thought that the injunction was clear. If there is
22 going to be a change in the injunction, it's going to have to
23 be required to be modified. And the implications of that is
24 that other parties are going to come in and say, our bonds are
25 different. They were issued at different times and they are

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1 not subject to the injunction. You are going to have a great
2 deal of litigation. If the injunction is modified, that's
3 going to be an appealable order. It is going to frustrate any
4 possibility of settlement in this case. And it's going to have
5 to be done, your Honor, I respectfully submit, on the basis of
6 a factual record. Ms. Wagner basically said that there are
7 issues, factual issues. There need to be facts were her words,
8 with respect to the Citibank Argentina itself, the nature of
9 that institution, and my clients have sought discovery on this
10 issue and the other issues I'm about to mention. And we have
11 not had the opportunity to do that because Citibank Argentina
12 has rejected any effort to do that. That discovery would focus
13 on the nature of the entity, Citibank Argentina, the nature of
14 these bonds. You've just heard that there are all sorts of
15 bonds here, possibly issued at different times, some of which
16 may be so-called exchange bonds, some of them may not be
17 exchange bonds. We have also heard assertions by Citibank --

18 THE COURT: Look. The bonds that are covered by the
19 injunction, it wasn't some indefinite concept. They are
20 defined. They were a particular kind of bond. And it's not
21 all possible bonds. It's a particular kind of bond that was
22 covered.

23 MR. OLSON: Precisely, your Honor. And it's covered
24 and in clear terms in the injunction that you ordered of
25 exchange bonds --

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1 THE COURT: And they were payable in New York,
2 governed by New York law.

3 MR. OLSON: That is not in the terminology of your
4 injunction, your Honor. It is not in the injunction which the
5 Second Circuit eight days ago thought was clear.

6 THE COURT: The Second Circuit did not issue any
7 opinion.

8 MR. OLSON: No. But the injunction that you issued
9 was issued after numerous hearings, numerous exchanges back and
10 forth between all of the parties. This issue was not raised
11 then and was not raised because the injunction was clear. It
12 applied to bonds that were exchange bonds and what we are
13 talking about today is carving out an exception for certain
14 types of bonds and it's not very clear and it cannot be clear
15 until there is a factual exposition of the record pursuant to
16 the discovery that we sought.

17 What Ms. Wagner has argued here is, they are not
18 subject to the pari passu clause. Your injunction was broader
19 than that. And it wasn't so limited and it was issued in
20 conjunction with a repeated history of Argentina of attempting
21 to evade their responsibilities by engaging in litigation and
22 changing the legislation and threatening to exchange the
23 bond --

24 THE COURT: You are getting into a completely
25 different issue.

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1 MR. OLSON: I am pointing that out, your Honor,
2 because the injunction that you issued was issued in the
3 context of all of that.

4 THE COURT: Look. I've got to tell you that whatever
5 was written by me or the Court of Appeals, it related to the
6 bonds that were issued in 1994 by the Republic and were subject
7 to an exchange or two exchanges in '05 and 2010. But they were
8 the bonds, the bonds that were issued in 1994, and subject to
9 contractual documents pertaining to them, and they were bonds
10 that were payable in New York, subject to U.S. law. They were
11 a particular kind of bond.

12 MR. OLSON: Your Honor, that's correct. But the equal
13 payment provision and the pari passu provision that we have
14 been talking about throughout this litigation talked about
15 providing that those bonds that you just referred to would be
16 put on an equal footing with respect to payment obligations to
17 other external indebtedness issued by Argentina.

18 THE COURT: Look. We have got a very precise issue of
19 law here, which you have just really alluded to. And that is,
20 I don't know whether you meant to describe it the way I'm
21 describing it, but I hope we are in agreement on the issue.
22 There certainly is an issue and you went over this rather
23 quickly. But I've given thought to this before this moment.
24 And that is, the 1994 fiscal agency agreement does indeed have
25 a provision dealing with external indebtedness, right?

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1 MR. OLSON: Yes.

2 THE COURT: And one thing that it says is that any
3 external indebtedness issued by the Republic is subject to the
4 pari passu, right?

5 MR. OLSON: Yes, your Honor.

6 THE COURT: Now, the issue then is quite precise, and
7 that is, do these bonds that we are talking about, the bonds
8 issued in Argentina -- I won't try to define them, although
9 that definition I'm sure we will come back to. Are they
10 external indebtedness calling into play the pari passu clause
11 or are they not such external indebtedness. And that depends
12 on some particular wording of the 1994 fiscal agency agreement.

13 MR. OLSON: Yes, your Honor.

14 THE COURT: Ms. Wagner referred to that and she
15 referred to it, the language which defined domestic foreign
16 currency indebtedness. There is language about bonds offered
17 exclusively within the Republic of Argentina.

18 Can you deal with that language? Because that is
19 really, in my mind, what this is all about.

20 MR. OLSON: Yes, your Honor. May I make this one
21 point. And I would like Mr. Friedman to be allowed to answer
22 specific questions about this.

23 But you are precisely right, in our view, that the
24 question is, are these bonds, the Citibank Argentina bonds,
25 external indebtedness or are they carved out because they are

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1 domestic foreign currency indebtedness.

2 Now, Mr. Friedman will address that, address your
3 specific questions with respect to that. But you heard
4 earlier, there is all kinds of bonds here. You would need a
5 specific factual record to make that determination. We were
6 engaged in an effort to obtain discovery so we could find out
7 about Citibank Argentina, the nature of those bonds when they
8 were issued, how they were payable, and all of those facts
9 which are necessary to make the distinction that you are being
10 asked to make here today. And it will require some change in
11 the injunction. And I think that that will open the door to
12 further efforts --

13 THE COURT: If this language I'm talking about
14 applies, I don't think it requires any change in the injunction
15 at all.

16 MR. OLSON: Certainly we would differ with that, but
17 it certainly will require fact finding with respect to, and we
18 are entitled to conduct that discovery with respect to the
19 difference between these bonds and the other bonds. And if I
20 might yield to Mr. Friedman to specifically, because he's much
21 more familiar than I am with these particular bonds.

22 THE COURT: All right. Fine. Thank you very much.

23 MR. FRIEDMAN: Good afternoon, your Honor. Edward
24 Friedman, Friedman Kaplan Seiler & Adelman, attorneys for
25 plaintiffs, Aurelius and Blue Angel.

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1 I would like to start by directly addressing your
2 Honor's question about domestic foreign currency indebtedness
3 and the provision in the fiscal agency agreement that your
4 Honor was discussing with Ms. Wagner, who is counsel for
5 Citibank.

6 The U.S. dollar denominated Argentine law bonds that
7 are at issue on this motion are external indebtedness, and they
8 are not domestic foreign currency indebtedness, which is carved
9 out of external indebtedness.

10 The reason why these bonds are not domestic foreign
11 currency indebtedness is as follows: And as your Honor
12 discussed with Ms. Wagner, in the definition of DFCI, or
13 domestic foreign currency indebtedness, there are a number of
14 items explaining what constitutes DFCI. None of those items
15 result in the conclusion that these U.S. dollar denominated
16 Argentine law bonds are domestic foreign currency indebtedness.
17 And I can take the items in the definition in any order, your
18 Honor, and maybe it makes sense to start with Roman at I and
19 then conclude with Roman at III, which is one of the items that
20 your Honor was questioning Ms. Wagner about. Would that be
21 okay?

22 THE COURT: Very good. Thank you.

23 MR. FRIEDMAN: Under Roman at I, domestic foreign
24 currency indebtedness consists of certain specifically
25 identified bonds issued by the Republic of Argentina. We can

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1 look at those bonds listed, but it is obvious to everyone that
2 the bonds at issue here were not even in existence at the time
3 of the fiscal agency agreement and thus are clearly not listed
4 in Roman at II.

5 Then we come to Roman at II, which says: DFCI would
6 include any indebtedness issued in exchange or as replacement
7 for the indebtedness referred to in item 1. So we have to
8 consider, your Honor, these.

9 THE COURT: I would think that little ii doesn't
10 apply. Can we just pass that.

11 MR. FRIEDMAN: Sure. And the only reason why I paused
12 on it, there has been, on this motion, an argument by Citibank
13 and by Argentina that little ii does apply. And I believe your
14 Honor is correct, it does not apply here. I'm happy to address
15 that or let them address it first, and I'll turn to item Roman
16 at III. Shall I do that, your Honor?

17 THE COURT: Please.

18 MR. FRIEDMAN: Item III says: Domestic foreign
19 currency indebtedness would be -- it's got two parts, an A and
20 a B. And the A, which is what your Honor was referring to
21 earlier, it's indebtedness offered exclusively within the
22 Republic of Argentina. That's what I would like to talk about.
23 Everybody agrees that item B does not apply here, because these
24 are dollar denominated bonds, not peso bonds.

25 THE COURT: You're focusing on the critical language.

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1 MR. FRIEDMAN: Yes. Are these U.S. denominated
2 Argentine law bonds, were they offered exclusively within the
3 Republic of Argentina. And the answer, your Honor, is, the
4 record shows, these bonds were not offered exclusively in the
5 Republic of Argentina. They were offered pursuant to the same
6 prospectus that offered the New York law, the UK law, and also
7 the Argentine law exchange bonds. The prospectus is part of
8 the record. The prospectus was issued through the SEC in the
9 United States. The bonds were not offered exclusively in
10 Argentina. They were offered pursuant to the same prospectus
11 that in 2005 and 2010 --

12 THE COURT: I would not think that the prospectus
13 governs. I would think it's a matter of fact where these bonds
14 were offered. And, obviously, the factual issue has to be
15 dealt with. But I don't think the prospectus answers the
16 question.

17 MR. FRIEDMAN: As a matter of fact, your Honor, the
18 persons who received the U.S. dollar denominated Argentine law
19 bonds were not located exclusively in Argentina and the bonds
20 were not offered exclusively in Argentina. The eligible bonds
21 for the exchange which resulted in the issuance of these
22 Argentine law bonds, the eligible bonds could be held, were
23 held through accounts at clearing agencies such as Euroclear
24 and Clearstraight. When the holders of bonds participated in
25 the exchange in 2005 and 2010 and received Argentine law dollar

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1 denominated bonds, those exchanges took place outside of
2 Argentina.

3 THE COURT: I'm really not referring to those
4 exchanges because they were exchanges for a different bond.
5 They were exchanges for the 1994 bond. Let's not get that
6 confused.

7 MR. FRIEDMAN: If I may, your Honor, the exchanges
8 were not exclusively for the 1994 bonds. When we look at what
9 your Honor refers to as exchange bonds, the exchanges were
10 offered for --

11 THE COURT: I don't use the term exchange bonds.

12 MR. FRIEDMAN: Your Honor, if I may just step back for
13 a moment, I think it would be very helpful just some put in
14 front of the Court the language from the injunction, the
15 amended February 23 order. What that order says is that the
16 injunction and the equal treatment obligation applies to
17 exchange bonds and, your Honor, in that injunction defines
18 exchange bonds as bonds issued in the 2005 or 2010 exchange.
19 That language --

20 THE COURT: Let me just interrupt you.

21 It is not going to help to get confused, and to
22 prevent confusion let us keep in mind, and I ask you to keep in
23 mind -- and I was the author of the injunction. I have a
24 pretty good idea of what it meant. And that is, we were
25 dealing with the 1994 bonds issued by the Republic, subject to

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1 New York law, payable in New York. That's what we were dealing
2 with.

3 Now, when I was dealing with the exchanges that
4 occurred in 2005 and 2010, I was clearly dealing, as far as I
5 was concerned, as the judge, with exchanges for the 1994 bonds.
6 And let us keep that in mind and not stray from it.

7 MR. FRIEDMAN: May I say, your Honor, that I'm
8 obviously not in a position to address what your Honor had in
9 mind at the time of the issuance of the pari passu injunction,
10 but what I would like to say is that there has been extensive
11 litigation both in the Second Circuit Court of Appeals and in
12 this court, your Honor, concerning the proper interpretation of
13 the words in that injunction. And I would --

14 THE COURT: What litigation are you talking about?

15 MR. FRIEDMAN: I'm referring to the original two
16 appeals to the Second Circuit, when your Honor issued the
17 injunction back in 2012. I'm referring to the ruling by your
18 Honor on July 28 of this year explaining and clarifying the
19 injunction. And then I'm referring to the transcript of the
20 argument before the Second Circuit last week where there was
21 extensive discussion both by counsel that was significant and
22 by the judges on the Second Circuit concerning the words of the
23 injunction and the proper interpretation of those words. And
24 if your Honor would --

25 THE COURT: What was the issue of interpretation?

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1 MR. FRIEDMAN: The issue I'm referring to, your Honor,
2 I would center on your Honor's order just July 28, 2014, less
3 than two months ago, in this case and it's an order that
4 Ms. Wagner did not mention when she was reciting what your
5 Honor has said about the pari passu injunction. In that July
6 28 order, after having heard extensive argument from counsel,
7 your Honor ruled that the U.S. dollar denominated exchange
8 bonds issued under Argentine law are exchange bonds covered by
9 the pari passu injunction. And your Honor may recall that --

10 THE COURT: When did I issue any such ruling?

11 MR. FRIEDMAN: If I may, your Honor, may I grab my
12 binder with that ruling. Because I think it's important, just
13 to be clear, about what is in the record already. This was
14 July 28, 2014. I'm sure your Honor will recall that the
15 conclusion of that order by your Honor was, and I'll just read
16 this short paragraph into the record: However, the Court will
17 only allow this one-time payment on the dollar-denominated
18 exchange bonds after July 30, 2014. The Court will rescind the
19 Citibank order with regard to the dollar-denominated exchange
20 bonds. And then your Honor went on to say: To avoid future
21 confusion, the parties are directed to devise a way to
22 distinguish between the Repsol bonds and the exchange bonds
23 before the next interest payment is due. And I'd like to say a
24 word further about that order, if I may, your Honor.

25 THE COURT: Go ahead, please.

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1 MR. FRIEDMAN: The issue before the Court at the time
2 of that order was whether the U.S. dollar denominated Argentine
3 law bonds were exchange bonds within the meaning of the
4 injunction. And your Honor specifically ruled, and this came
5 up during the argument a few days before, it's reflected in
6 this order. Your Honor ruled that these Argentine law dollar
7 denominated bonds are exchange bonds within the meaning of the
8 injunction.

9 The confusion that arose that is addressed at the end
10 of the paragraph I read is that counsel for Argentina and for
11 Citibank, after the argument on the motion for reconsideration,
12 after the argument, after the briefing, for the first time said
13 to the Court, you know, for some of the Argentine law exchange
14 bonds, there is some confusion because there are bonds that
15 were issued to Repsol with the same ISIN number. And as your
16 Honor knows, an ISIN number is a specific identifying
17 characteristic for a bond.

18 So the situation that your Honor was addressing was,
19 one, the Court ruled that these Argentine law dollar
20 denominated exchange bonds are exchange bonds. But there was
21 an issue that the Court felt should be addressed because when
22 you look at these exchange bonds, there are some other bonds
23 out there trading that were actually not issued in the
24 exchange.

25 THE COURT: Let me interrupt you. Can I have the

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1 February 23 injunction.

2 The February 23, 2012 order, as it's called, or it was
3 amended, was dealing with the 1994 bonds and the exchanges of
4 2005 and 2012 dealing with those bonds.

5 Now, what the February 23, 2012 order meant was that
6 if the Republic sought to make a payment presumably of
7 interest, but sought to make a payment on the bonds that were
8 issued on those exchanges, then there had to be a payment under
9 the pari passu clause.

10 But the record should be crystal clear that the Court
11 was dealing with the 1994 bonds and bonds issued in exchange
12 for the majority of those 1994 bonds.

13 Now, the record supports what I've said. I am the
14 judge on it and that is what I intended and the record supports
15 that.

16 And what is called the injunction was the injunction
17 saying that there could be no payment on those bonds unless
18 there was a recognition of the pari passu for the people who
19 didn't exchange, who had their judgments.

20 Now, no action was taken by the Court. Let me start
21 again. After that injunction was issued, there were certain
22 actions taken by the Republic which required some remedy by me
23 and they are really not relevant to what we are talking about
24 now. The Republic attempted to make a payment of \$500 million,
25 maybe more, and the Court held that that payment could not be

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1 made because it did not deal with the pari passu situation.
2 And so I think about \$500 million was paid into the Bank of New
3 York and may still be there. But, anyway, the Bank of New York
4 acted very responsibly and did not pass that on to bondholders.

5 What I'm getting at is this. When summer came, Karen
6 Wagner, on behalf of Citibank, made an application to the Court
7 or request to the Court for clarification, or whatever you want
8 to call it, about the question of whether Citibank and
9 Argentina would be violating an injunction if they made a July
10 30, 31, whatever it was, interest payment. At that juncture
11 there was not the kind of full briefing and argument that we
12 are now having. The idea was to either clear or not clear an
13 interest payment down in Argentina due at the end of July.
14 Ultimately, the Court said okay to that payment, but made it a
15 one-time thing, the idea being, obviously, the Court knew,
16 everybody knew there would be interest payments due September
17 30 and December 31, et cetera. We didn't attempt to cover all
18 of that.

19 Now, what I hope these fine professional lawyers will
20 understand, and I'm sure you do understand, is that we are now
21 engaged in something far different from what went on in June
22 and July. We are now considering at a depth which was not gone
23 into in July, we are considering the question of whether
24 certain types of bonds issued in Argentina are subject or are
25 not subject to the 1994 fiscal agency agreement and the

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1 requirement of pari passu treatment. And I have to say that it
2 is not really helpful to me and it is not helpful to the case
3 to make all these issues depend on the issue of a particular
4 term in a July 28 order.

5 You focused very heavily on the phrase exchange bonds.
6 It's used a couple of times in the July 28 order. I have to
7 tell you that as the judge in the case, I am not willing to let
8 the whole case depend on the use of that term twice in the July
9 28 order. The issues are bigger, deeper than that. So if you
10 want to rely on that, please don't.

11 MR. FRIEDMAN: I do have more things I'd like to say
12 about the prior orders of this Court, not just the July 28
13 order, but, first, if I may, I would like to offer a practical
14 suggestion.

15 Plaintiffs believe that the issues before the Court
16 today are extremely important, and we appreciate that your
17 Honor is wrestling with those issues. The reason why
18 plaintiffs have proposed a stay as set forth in our proposed
19 order, so as to allow Citibank to process this September 30
20 payment, is so that the parties and your Honor will not have to
21 deal with these important issues on an emergency basis. Your
22 Honor has heard extensive argument about both technical issues
23 and what is DFCI and factual assertions relating to that. Your
24 Honor has heard legal argument, and there is more to come,
25 about the orders entered by your Honor, as well as statements

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1 by counsel before your Honor and before the Second Circuit,
2 statements by the Second Circuit, and I know your Honor will
3 want to give full consideration to these matters because --

4 THE COURT: I want to give full consideration, but I
5 also don't want to complicate this thing beyond all reason.

6 Here is what I have in mind. Let us assume, and I
7 believe the record before me supports this, but I will just
8 assume it for the moment, let us assume that the bonds we are
9 talking about, which the parties have referred to conveniently
10 as Argentine law bonds, let us assume that -- it's not an
11 assumption. They were not issued. Let us assume, in case
12 there is any possible question, let us assume that they were
13 not issued in 1994, as were the bonds that are subject to my
14 injunction. Let us assume that they are payable in Argentina.
15 Let us assume that they are subject to Argentine law.

16 Now, there are certain issues, not an indefinite vast
17 universe of issues, but there are certain issues which flow
18 from that. The prime issue is, despite the description I've
19 given, are they subject in any way to the fiscal agency
20 agreement of 1994. That issue has been raised by the parties
21 and it is an issue, a real issue. But the issue is not
22 indefinite in the things that bear upon it. It is a finite
23 issue.

24 Again, the issue is whether in some way those bonds,
25 as I've described them, are subject to the 1994 fiscal agency

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1 agreement pertaining to the 1994 bonds. And as I understand
2 it, the precise issue is whether a payment of interest on those
3 bonds would invoke the pari passu provision of the 1994 fiscal
4 agency agreement. Judging from the briefing before me and the
5 argument before me, that is the issue now. How is it to be
6 dealt with.

7 MR. FRIEDMAN: Shall I answer that, your Honor?

8 THE COURT: Let me just finish.

9 MR. FRIEDMAN: I'm sorry. I apologize.

10 THE COURT: Of course I'll get back to you.

11 Judging by what has been referred to by Mr. Olsen and
12 by you and in the briefs, to resolve that issue you look to the
13 1994 fiscal agency agreement because if this is external
14 indebtedness of the Republic within the meaning of certain
15 parts of the FAA, then there can be no payment without paying
16 under the pari passu clause. If that is the case, the question
17 is, is that the case? That's the issue. And for that we don't
18 look to 100 sources of information and vast amounts of
19 discovery. We look to a provision which defines domestic
20 foreign currency indebtedness, and we look to what I think was
21 discussed with Mr. Olsen and with you, the provision little
22 iii, which has this language offered exclusively within the
23 Republic of Argentina.

24 We were there, I think, with Mr. Olsen and with you
25 and that's where we ought to be, dealing with the

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1 interpretation of those provisions, because under the clear
2 language of the FAA, if this is external indebtedness and you
3 go no farther, then there can be no payment without taking care
4 of the pari passu. If it is not so, then there can be a
5 payment without dealing with the pari passu. And that's where
6 the issues come. It's the interpretation of those provisions.

7 Do you have anything to add to that subject?

8 MR. FRIEDMAN: Yes, I do, your Honor.

9 THE COURT: The reason I went through all of that is
10 that I ask the lawyers to be very careful when you are dealing
11 with bonds which are really bonds issued in 1994 or exchanges
12 for those bonds. Please keep that clear. They are what they
13 are. They are not something else. Go ahead.

14 MR. FRIEDMAN: With respect to your Honor's question
15 concerning whether these Argentine law bonds are external
16 indebtedness or whether they fall within the carve-out for
17 domestic foreign currency indebtedness, your Honor has focused
18 our attention on item 3 little i, which indicates that domestic
19 foreign currency indebtedness would include indebtedness that
20 was -- I'm sorry, print is a little small -- indebtedness.

21 THE COURT: Offered exclusively within the Republic of
22 Argentina.

23 MR. FRIEDMAN: Offered exclusively within the Republic
24 of Argentina.

25 THE COURT: That's the crucial language.

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1 MR. FRIEDMAN: What I would say as to that, your
2 Honor, is, first, when we look at the documentary record, the
3 documentary record does not indicate that the bonds were
4 offered exclusively in Argentina.

5 THE COURT: What do you mean by documentary record?

6 MR. FRIEDMAN: When I say documentary record, I mean
7 the documents that have been put before the Court with the
8 parties' submissions in connection with this motion. And the
9 documentary record, as an example, includes the prospectus that
10 I mentioned. And if you look at that prospectus, the
11 conclusion one would draw is that these bonds were not offered
12 exclusively within Argentina.

13 Now, I know Citibank and Argentina make the argument
14 that the bonds were offered exclusively in Argentina. That, I
15 would say, is an untested assertion of fact. Were these bonds
16 offered exclusively in Argentina. We see Citibank and
17 Argentina arguing they were. To the extent the Court --

18 THE COURT: Let me interrupt you. I think that taking
19 Mr. Olsen's argument and your argument and the discussion we
20 have all had, we really are now at the issue. And it is the
21 issue of whether these bonds were offered exclusively within
22 the Republic of Argentina. That is a factual issue. And what
23 has been submitted to me by Ms. Wagner and I believe Cleary
24 Gottlieb is what they consider evidence that these were.

25 But if there is a factual issue, then what do you do

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1 about factual issues. You figure out a way to resolve them.
2 And what I would like to hear from you is why you believe there
3 are factual issues. Because I thought from the record before
4 me there were not. Why do you believe there are factual
5 issues?

6 MR. FRIEDMAN: The reason why I believe there are
7 factual issues, your Honor, is that the question of whether
8 bonds were offered exclusively in Argentina will depend on the
9 factual issue of whether the bonds were, in fact, offered
10 exclusively in Argentina. If the bonds were, in fact, offered
11 in other places, then, obviously, they were not offered
12 exclusively in Argentina. So the factual issue is, what is the
13 evidence, what is the historical record about how and where
14 these bonds were offered.

15 THE COURT: I don't understand why you are talking
16 about a historical record. I believe these are not bonds that
17 date back to the War of 1812 or something like that. I think
18 they are a pretty recent creation. Are they not?

19 MR. FRIEDMAN: Your Honor, the bonds in question were
20 offered in the 2005 and 2010 exchanges.

21 THE COURT: You are right. I had forgotten. 2005 and
22 maybe a little later. But, please, I have to tell you right
23 now, I do not believe there is any merit in saying to the idea
24 that those bonds were part of the exchange of 2005 and 2010
25 which had to do exclusively with the 1994 bonds.

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1 MR. FRIEDMAN: Your Honor, may I just say one thing?

2 THE COURT: Yes.

3 MR. FRIEDMAN: In the argument before your Honor on
4 July 22, counsel for Citibank conceded and acknowledged that
5 these Argentine law dollar denominated bonds were, in fact,
6 offered in the 2005 and 2010 exchanges and that these dollar
7 denominated bonds were thus within the definition of exchange
8 bonds in your Honor's injunction. There is no doubt that
9 these --

10 THE COURT: Can I interrupt you. I was the author of
11 the injunction and I had no such intention.

12 MR. FRIEDMAN: I understand your Honor has said that.

13 THE COURT: I don't mean to be so brusque with you.

14 MR. FRIEDMAN: Shall I continue?

15 THE COURT: What I'm trying to do at this hearing, and
16 I tried to do it the other day, I realize that some confusion
17 has come into the record and some of it undoubtedly has been by
18 my usage of words and so forth. I want to get rid of that
19 confusion and go from here on, from beginning here at least on
20 an unconfused record, and I want to say to you that it is clear
21 to me that there are certain bonds that were involved in the
22 1994 offering. There were certain bonds that were produced as
23 a result of the exchange related to that bond issue, and then
24 there are other bonds. Please do not confuse them.

25 MR. FRIEDMAN: May I continue, your Honor?

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1 THE COURT: Yes.

2 MR. FRIEDMAN: What I would submit is that we are
3 dealing with important legal and factual issues. One example
4 of a legal issue that I believe your Honor will want to
5 consider is what your Honor has just stated as to your Honor's
6 intent at the time the injunction was issued and how that
7 intent relates to the words of the injunction. And we have the
8 factual issue that I've mentioned concerning whether the
9 offering of these Argentine law bonds was exclusively in
10 Argentina.

11 And what I would respectfully submit is that because
12 plaintiffs have voluntarily agreed to a stay that would enable
13 Citibank to make the September 30 payment, there is no
14 emergency and no urgency before your Honor. And there are
15 important issues that I cannot emphasize how important they are
16 to the meaning and ongoing enforcement of the injunction. And
17 it's because these issues are so important that the plaintiffs
18 have said, we will acquiesce and not object and allow the Court
19 to enter an order permitting the September 30 payment, and then
20 we know the parties will have time to develop the record and
21 present to the Court whatever is appropriate, and the Court
22 will not be under time pressure to decide these issues. And I
23 would respectfully ask that your Honor allow the parties to do
24 that. Because we have agreed to the stay, because we have
25 submitted an order that would enable your Honor to memorialize

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1 that, there is no urgency. And these are very important
2 issues.

3 I would just, if I may, as just one example of some of
4 the legal issues, when Citibank contended in the Second Circuit
5 that your Honor's July 28 order should be reversed, Judge
6 Parker said that he does not even know how Citibank could
7 seriously argue that the Argentine bonds aren't covered by the
8 injunction. I just mention that, your Honor, as one example.

9 THE COURT: The Second Circuit, including Judge
10 Parker, did not come down with a ruling. It doesn't help me a
11 lot to hear about colloquy.

12 MR. FRIEDMAN: Your Honor, if I may, yes and no. The
13 Second Circuit last week did come down with a ruling in that
14 the Second Circuit dismissed the appeal because -- this is in
15 their order -- because your Honor's July 28 order clarifying
16 that the injunction applies to the Argentine law bonds was, in
17 the view of the Second Circuit, in their order --

18 THE COURT: You are going beyond their language.

19 MR. FRIEDMAN: If I may, your Honor, the Second
20 Circuit said the July 28 order was a clarification and not a
21 modification of the injunction. That was their language.

22 I appreciate your Honor wants to focus on certain
23 issues. Of course, I respect that. I'm really trying to make
24 the point that there are important issues and there is no
25 emergency because the plaintiffs have agreed to the stay that

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1 Citibank wants and, therefore, we are requesting that your
2 Honor allow the parties an opportunity to develop the record so
3 that the Court can make a decision without this emergency
4 hanging over everybody's heads. It's because of the importance
5 of this and the urgent desire on the part of the plaintiffs to
6 allow the record to be developed, the Court to consider all the
7 issues, that we have proposed and are prepared to agree to the
8 stay. That's our request, your Honor.

9 THE COURT: It's a fair request. What do the other
10 parties say to that?

11 MS. WAGNER: Your Honor, may I be heard for another
12 minute?

13 THE COURT: Please.

14 MS. WAGNER: Your Honor, of course, we agree that
15 complicated issues should not be decided under emergent
16 conditions. I would suggest that what you have heard today is
17 that plaintiffs agree that they did not make a record before
18 you in connection with the injunction, and I think your Honor
19 agrees as well that the injunction applies to the Argentine law
20 bonds.

21 Given that, the plaintiffs are entirely welcome to
22 make that record if they want. But it is not appropriate right
23 now to apply that injunction to Citibank and to the Argentine
24 law bonds.

25 So what I would suggest to the Court is this. I

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1 believe that we can show you, I believe your Honor's focus on
2 the fiscal agency --

3 THE COURT: I did not know anybody was suggesting that
4 my injunction of February 23 applied to these new bonds. I
5 didn't know anybody was suggesting that.

6 MS. WAGNER: I believe that is the suggestion, your
7 Honor, and I would respectfully submit that what we need to do
8 here is leave the injunction where it is, agree that it does
9 not apply to the Citibank and the Argentine law bonds.
10 Plaintiffs then can make a motion to have a new injunction.
11 They can explain why the Argentine law bonds should be subject
12 to the pari passu clause if they can. We believe they cannot
13 make that showing because we believe you could not get an
14 Argentine law bond by tendering a bond that was issued under
15 the fiscal agency agreement. So we don't think they can make
16 that showing.

17 Our suggestion would be, your Honor, to vacate the
18 restriction on Citibank and the Argentine law bonds that they
19 insist you intended in July of 2014, to reinstate the
20 clarification order that says the original injunction does not
21 apply. Then we can all go and have discovery and they can make
22 a motion and they can explain to the Court why it is they think
23 an injunction should apply to Argentine law bonds and to a
24 custodian such as Citibank, who is not in any way connected to
25 any relevant contract.

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1 So my suggestion, your Honor, is that I adopt the
2 suggestion that we should take the pressure off and we should
3 have discovery and plaintiffs should do whatever they wish to
4 do. But they are not entitled to have an injunction hanging
5 over Citibank's head when they acknowledge themselves they
6 cannot prove that the bonds that we hold are subject to the
7 pari passu clause. That would be my suggestion, your Honor.

8 MR. FRIEDMAN: Your Honor, may I be heard briefly?

9 THE COURT: Sure.

10 MR. FRIEDMAN: We absolutely do not acknowledge what
11 Ms. Wagner says we acknowledge. We believe, so the record is
12 clear, that your Honor's original injunction, as your Honor has
13 ruled on July 28, as the Second Circuit judges have said, as
14 the plain terms of that injunction state, we believe it applies
15 to the Argentine law bonds. And I appreciate Ms. Wagner
16 disagrees, I appreciate that your Honor has stated that the
17 Court had in mind a different intention at the time in 2012.
18 But these are important issues. And the way to deal with
19 important issues is not to start by vacating the injunction or
20 modifying the injunction or changing the injunction in any way.
21 There are orders in place now and the whole point of our
22 agreeing to a stay is to ensure that Citibank is in no way
23 prejudiced, that Citibank is able to process the payment that
24 it says it wants to make. And what that means is that the
25 issue does not become live or urgent again, your Honor, until

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1 December.

2 And the whole point of the stay is to enable the Court
3 and the parties to consider these issues without being in court
4 on the second day of Rosh Hashanah, on a Friday afternoon,
5 after a few days of briefing without the Court and the parties
6 having the time to devote what is appropriate and, I would
7 submit, necessary for the consideration of this important issue
8 when there is no emergency and no time pressure in fact.

9 THE COURT: Anyone else wish to be heard?

10 MR. OLSON: May I, your Honor?

11 THE COURT: Sure.

12 MR. OLSON: Thank you, your Honor. I'll be very, very
13 brief.

14 I think that you put and expressed precisely what the
15 issue is. The pari passu clause required that the payment
16 obligations of the Republic, under the securities pursuant to
17 the fiscal agency agreement of 1994, be treated equally with
18 all present and future unsecured and an unsubordinated external
19 indebtedness. That is what your injunction covered, external
20 indebtedness with respect to that pari passu provision of the
21 fiscal agency agreement of 1994. The term external
22 indebtedness is explained in the fiscal agency agreement, and
23 you are correct, in our submission, that if these bonds are the
24 type of bonds that are exempted under the provisions that we
25 have been talking about here today, that is to say, offered

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1 exclusively within Argentina, then they may not be covered by
2 your injunction. They wouldn't be covered by the pari passu
3 clause, the equal treatment provision. We addressed precisely
4 this point on the brief that we submitted to you on pages 16,
5 17, and so forth, the brief with respect to, we demonstrate
6 that these bonds were not offered exclusively within Argentina,
7 and we provide evidence to that.

8 However, the record is not complete because we were
9 not permitted to conduct discovery with respect to that very
10 issue. And so, as Mr. Friedman points out, the stay takes care
11 of Citibank into the future. We have time to fully brief
12 properly with appropriate discovery the factual issue that you
13 put your finger on. There is no reason to do it any other way.
14 Because it is important to all the parties that are involved in
15 this long dispute. And the issues are serious and very, very
16 important. And that is a proper appropriate judicious way to
17 handle this issue.

18 THE COURT: Anyone else?

19 MR. VASSOS: John Vassos from Morgan Lewis & Bockius
20 on behalf of Clear Stream.

21 We have not seen the proposed order regarding the
22 stay. Clear Stream, like Euroclear, JP Morgan Chase, one of
23 the downstream parties, we would just ask that it be clear that
24 to the extent Citibank can pass the money on to us, that we be
25 allowed to pass the money on to our customers in kind.

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1 MR. FRIEDMAN: Your Honor, I can respond to that, if I
2 may.

3 THE COURT: Please.

4 MR. FRIEDMAN: The proposed order does specifically
5 provide and permit that the downstream recipients from
6 Citibank, such as Euroclear and Clear Stream, can process the
7 payment. We don't specifically refer to Euroclear and Clear
8 Stream, because we explicitly refer --

9 THE COURT: Where is the proposed order?

10 MR. FRIEDMAN: May I hand it up, your Honor?

11 THE COURT: Yes.

12 MR. FRIEDMAN: It's just one paragraph.

13 THE COURT: Did I interrupt you?

14 MR. VASSOS: Your Honor, no. I just stated my
15 question. Mr. Friedman has answered it frankly to my
16 satisfaction. I'm comfortable with his representation on the
17 record. I don't need to waste the Court's time and read the
18 order. I think the issue is probably clear, assuming the order
19 he has put before your Honor you will sign.

20 THE COURT: Ms. Wagner.

21 MS. WAGNER: Thank you, your Honor.

22 Your Honor, just to state it again, I don't think it's
23 appropriate to keep an injunction on Citibank when the parties,
24 the plaintiffs who moved for the injunction agree that they
25 need discovery about it. So I would respectfully ask you to

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1 vacate the Citibank injunction and reinstate the order that
2 says your earlier injunction does not apply to us, and then the
3 plaintiffs can move to get an injunction that will apply to us.

4 And if your Honor is otherwise inclined to just issue
5 a stay, then I would respectfully request a stay that would
6 cover the period of time during which any appeal would be taken
7 from your Honor's ruling on the merits. But I would
8 respectfully say that they have not made a case for keeping the
9 injunction on Citibank. And there is no reason to keep it on
10 Citibank and, therefore, it should be vacated and they should
11 be put to the proof of explaining why the injunction should be
12 applied either to Citibank or to the Argentine law bonds, and
13 those I would submit to you are different questions. Thank
14 you, your Honor.

15 MR. LEVI: Howard Levi nor nonparty JP Morgan Chase.

16 Just the same concern expressed by Mr. Vassos for
17 Clear Stream, namely, whether there is a vacatur or there is a
18 stay, whatever occurs, we just want the order issued by the
19 Court clear that the downstream parties from Citibank and the
20 payment chain are free to receive and pay the payment that they
21 get. I think that plaintiff's counsel has submitted an order
22 where he says it provides for that. We just want to make clear
23 whether it's plaintiff's order that's adopted or the order that
24 Citibank has asked for. In either event, it's clear that the
25 downstream parties are taken care of in that manner.

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1 THE COURT: Thank you very much.

2 I think Ms. Wagner has a pretty important point and
3 that is this. If there is to be an injunction against
4 Citibank, then there has to be a proper record supporting such
5 an injunction, and the Court has to clearly issue that
6 injunction.

7 Let me say this. The order that I entered in the
8 summer was intended to be simply a temporary way to hold things
9 in place. But as far as an injunction is concerned, there is
10 one injunction and that is the September 23. That is the only
11 injunction in place that applies, as I've said numerous times
12 this afternoon, only to the 1994 bonds and the bonds that were
13 issued in exchange for those bonds in 2005, 2010. That's what
14 that injunction applies to.

15 Now, what happened this summer was not a motion by
16 anybody to enjoin Citibank, and certainly Citibank was not
17 enjoined by the original injunction. But there was no motion
18 to enjoin Citibank this summer. There was a request to see
19 what the Court would say about whether a certain payment being
20 proposed would violate the injunction, and I allowed the
21 payment. I followed it up with an order that it be a one-time
22 thing and we would come back. But none of that involves the
23 issuance of an injunction against Citibank.

24 There has been a reference this afternoon to all the
25 important issues. Well, that's very interesting and I don't

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1 mean to take that lightly. But it's not clear to me how all
2 those important issues arise. Issues generally don't arise
3 unless there is a motion or some kind of an application to the
4 Court, other kind of an application.

5 Let's take a short break and we will try to conclude
6 promptly after that. We will take a short break.

7 (Recess)

8 THE COURT: I'd like to know, go through the parties
9 here know who consents to and who would object to the proposed
10 order submitted by the plaintiffs. Obviously, the plaintiffs
11 submitted it, so you agree with it.

12 MR. OLSON: Yes, your Honor.

13 THE COURT: Let's go to other parties.

14 Ms. Wagner, do you agree to it or not or object to it?

15 MS. WAGNER: I object to it, your Honor.

16 THE COURT: Let's see who else. Does the Republic
17 want to say whether they agree or object?

18 MR. BOCCUZZI: Carmine Boccuzzi from Cleary Gottlieb.

19 The Republic agrees with the position stated by
20 Citibank.

21 THE COURT: Do you agree with this proposed --

22 MR. BOCCUZZI: We object to plaintiffs and we think
23 that what Citibank, Ms. Wagner presented, was the better way of
24 proceeding.

25 THE COURT: I didn't understand.

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1 MS. WAGNER: Just to be clear, your Honor, that's what
2 I meant is, there should be no injunction and, therefore, no
3 need for a stay.

4 MR. VASSOS: Your Honor, we take no position as to the
5 issue that Ms. Wagner raises. To the extent that the Court
6 decides to sign this order, the question is, are we okay with
7 it. We would be okay with the order. Again, we take no
8 position on whether the order should be signed or if
9 Ms. Wagner's request should be granted.

10 THE COURT: Anybody else want to state whether you
11 consent or object?

12 MR. LEVI: Your Honor.

13 THE COURT: I'm talking about the proposed plaintiff's
14 order.

15 MR. LEVI: We likewise do not take a position on the
16 order. To the extent your Honor is going to enter it, it
17 contains language regarding downstream recipients that is
18 acceptable to us.

19 THE COURT: It what?

20 MR. LEVI: It contains language regarding downstream
21 recipients and clear stream ask be addressed, and we see it's
22 addressed in this order. We otherwise don't take a position on
23 whether this particular order should be entered or not.

24 THE COURT: I'm not clear what you are saying about
25 the downstream situation.

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1 MR. LEVI: In other words, if Citi is free to make the
2 payment, then the payment flows to downstream recipients in the
3 payment chain.

4 THE COURT: Right.

5 MR. LEVI: My client, which is a nonparty, JP Morgan
6 Chase Bank, maintains accounts that it expects will receive
7 monies downstream from the Citi payment. And so we just want
8 whatever order is issued by the Court, for it to be clear that
9 the various downstream recipients, Clear Stream, JP Morgan,
10 others, are free, also, to receive and to pay over these
11 monies.

12 THE COURT: Isn't this language sufficient if I sign
13 it: Further allow Citibank's downstream recipients to receive
14 and process their respective portions of such payment. Isn't
15 that clear enough?

16 MR. LEVI: It is. That language is acceptable.

17 THE COURT: Anyone else want to object or consent to
18 this?

19 I will sign the order proposed by the plaintiffs and I
20 am going to read it. It will take a minute. But the record
21 ought to be clear and people who are here ought to hear this.

22 At the request of the plaintiffs, in order to allow
23 the parties and nonparty Citibank the time necessary to present
24 a sufficient record and legal argument to resolve the issues
25 presented by Citibank's September 23, 2014 motion by order to

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1 show cause to vacate the Court's July 28, 2014 order or to
2 modify the injunction contained in that order, or for a stay of
3 that order, the Court will defer the hearing on the motion
4 scheduled for September 26, 2014 and enlarge the briefing
5 schedule to dates to be set and will allow Citibank to process
6 the September 30, 2014 interest payment, approximately \$5
7 million, that it receives on the U.S. dollar denominated
8 Argentine law bonds, ISIN, then ARARGEO3EO97, and ARARGEO3G704,
9 and will further allow Citibank's downstream recipients to
10 receive and process their respective portions of such payment.

11 The Court will now sign that order.

12 Now, the further processes must proceed very promptly.
13 Whatever discovery is to be taken, whatever inquiry or
14 investigation, the Court sets 30 days as a time within which
15 that has to be done. That is tight, but we do not want to be
16 back here over and over when interest payments are due. This
17 phase of the litigation must be concluded promptly. Obviously,
18 when the discovery is concluded within 30 days, there will be,
19 as contemplated by this order, briefing and there will be a
20 hearing on the ongoing permanent situation about Citibank.
21 That concludes the proceedings for today. Thank you.

22 MS. WAGNER: Your Honor, may I be heard for a minute?

23 THE COURT: Ms. Wagner, I didn't hear you.

24 MS. WAGNER: Your Honor, if I may just ask a
25 clarifying question, if I may use that term.

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1 I believe that your Honor had indicated before on the
2 record that the injunction of February 23 does not apply to
3 Citibank at the moment and that your Honor's intention was that
4 plaintiffs would make a motion to address how they intend to
5 make an application for an injunction that would apply to
6 Citibank and the Argentine law bonds. I just want to make sure
7 that my understanding of that is correct.

8 THE COURT: Say that again. I'm not clear what you
9 are saying.

10 MS. WAGNER: I had understood your Honor to say a
11 short time ago that the major injunction of February 23 does
12 not apply to Citibank's payments on Argentine law bonds, and
13 that it would be appropriate for plaintiffs to make a motion to
14 indicate how they intend to support a claim that an injunction
15 should be applied to Citibank. I just wanted to understand
16 whether it is the case, as I understand, that the major
17 injunction does not apply to payments by Citibank Argentina on
18 the Argentine law bonds.

19 MR. FRIEDMAN: May I respond to that, your Honor?

20 THE COURT: Sure.

21 MR. FRIEDMAN: I think the Court has been clear that
22 there is a stay in effect that will allow the parties time to
23 present the legal arguments and the factual arguments and
24 develop the record, and the Court made very clear that it's not
25 making rulings today about the scope of the injunction. That

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1 was the whole point of the order that your Honor signed. And I
2 believe the question from Citibank's counsel is out of order
3 after your Honor issued an order and closed the proceedings.

4 THE COURT: She is not out of order.

5 MR. OLSON: I was simply going to say something very
6 much along the same line; that is, what was just requested
7 seems squarely inconsistent with the order that you just issued
8 to allow the parties to conduct discovery and brief these
9 issues and have a hearing to resolve this very question.

10 THE COURT: That's exactly right.

11 Let me say this. At a session like this I do not sit
12 here mum and I have a give and take with the lawyers. But as
13 far as a ruling, as far as a ruling, I have not made a ruling
14 today and will not make a ruling until the record is complete
15 and the briefing is finished and that is not today.

16 We are adjourned. Thank you.

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