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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2 -----x
NML CAPITAL, LTD.,

3 Plaintiff, 08-CV-6978 (TPG)
4 09-CV-1707 (TPG)
5 v. 09-CV-1708 (TPG)
6 09-CV-8757 (TPG)
7 09-CV-10620 (TPG)
8 THE REPUBLIC OF ARGENTINA, 10-CV-1602 (TPG)
9 Defendant. 10-CV-3507 (TPG)
10-CV-3970 (TPG)
10-CV-8339 (TPG)
10-CV-4101 (TPG)
10-CV-4782 (TPG)
10-CV-9587 (TPG)
10-CV-5338 (TPG)

11 -----x
12 New York, N.Y.
March 3, 2015
2:15 p.m.

13 Before:

14 HON. THOMAS P. GRIESA,
15 District Judge

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1 (Case called)

2 THE COURT: We really are taking up where we left off
3 last time. I will assume that the people who are arguing today
4 will have in mind where we left off and what needs to be done
5 to follow up.

6 Who would like to start?

7 MS. WAGNER: Your Honor, Karen Wagner for Citibank.

8 THE COURT: All right.

9 MS. WAGNER: Good afternoon.

10 THE COURT: It would help if you go back to the
11 microphone.

12 MS. WAGNER: Yes. Good afternoon, your Honor. Can
13 you hear me?

14 THE COURT: Yes, I certainly can.

15 MS. WAGNER: Excellent. Thank you.

16 As you know, we represent Citibank and we are here, as
17 your Honor has pointed out, at another hearing on Citibank's
18 motion basically for a ruling that your Honor's major
19 injunction does not apply to Citibank and does not apply to the
20 Argentine law bonds.

21 At the last hearing, the parties were directed --

22 THE COURT: Would you raise the issue, please?

23 MS. WAGNER: The issue is whether the injunction that
24 was issued by the court in 2012 applies to Argentine law bonds
25 and/or applies to payments by Citibank Argentina and whether

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1 any injunction could apply.

2 At the last hearing, your Honor, you directed the
3 parties to create a record that would fill out the facts that
4 are relevant to analysis of this motion. As you know, it was
5 originally scheduled for a 30-day time period in which we would
6 create the record, and that extended some time longer. During
7 that time period, your Honor, I think all of the parties have
8 worked hard to analyze the available information and, I believe
9 that the record is now quite full.

10 Your Honor, it is now clear, I believe, that the
11 Argentine law bonds, that is bonds governed by Argentine law
12 that are located in Argentina and payable in Argentina, are not
13 external indebtedness. They are not subject to the Pari Passu
14 clause, they are not and cannot be subjected to any kind of
15 injunctive relief based on the fiscal agency agreement, which
16 is the basis of your Honor's original injunction.
17 Independently, your Honor, that is our first point today.

18 Our second point is that the injunction that your
19 Honor issued never applied to entities such as Citibank, which
20 is Citibank Argentina, which is a custodian that has no role to
21 play in the functioning of the fiscal agency agreement and
22 payments on bonds relevant to that agreement.

23 Our third point, your Honor, which is one you have
24 heard before, is that your Honor is required to undertake a
25 comity analysis when Citibank Argentina advises you that

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1 compliance with your injunction would cause Citibank to violate
2 the law of the jurisdiction in which it is licensed. We will
3 argue today that comity does not permit the issuance of any
4 such an injunction.

5 Your Honor, with your permission, I will start with
6 the first point, which is that the Argentine law bonds held by
7 Citibank in custody are not subject to the injunction and are
8 not subject to the Pari Passu clause. As you, I am sure, are
9 more than aware, the parties have offered you a great detail of
10 paper. The plaintiffs have offered you a large pile of paper
11 which is intended to demonstrate to you that the bonds by which
12 we speak, the Argentine law bonds, were "not offered
13 exclusively in Argentina."

14 In fact, your Honor, the information that has been put
15 before you by the plaintiffs is disclosure information
16 disclosing how the Republic's exchange offers were going to be
17 conducted, disclosing the nature of the bonds that would be
18 provided in the exchange, disclosing how tenders were to be
19 made and how acceptances were to occur. But the facts that
20 these disclosures were made in many different jurisdictions,
21 which is what plaintiffs are telling you and which we don't
22 dispute, the fact of those disclosures has nothing to do with
23 the question under the fiscal agency agreement, which is
24 whether the bonds that we are speaking about, the Argentine law
25 bonds, whether they were offered exclusively in Argentina.

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1 Your Honor, while the fact of the filing of these
2 disclosure documents does not, I think, advance that analysis,
3 what does advance it is the content of the documents. The
4 content of the documents tells you clearly and without any kind
5 of contradiction that the bonds representing the indebtedness
6 of the Republic are located only in one place. They are
7 located exclusively at the CRYL in Argentina.

8 The documents also tell you that if you want to get an
9 interest in one of those bonds, you must get the interest
10 through CRYL, and you can do that through a number of
11 intermediaries, but it has to have an account and a connection
12 with CRYL. There is no other way to get these bonds.

13 Therefore, your Honor, we believe that the plaintiffs,
14 who have the burden of proving that they are entitled to an
15 injunction with respect to payment on these bonds, have not
16 proven it by the documents that they have shown you.

17 THE COURT: Can I interrupt you?

18 MS. WAGNER: Sure.

19 THE COURT: What bonds are you speaking of?

20 MS. WAGNER: Your Honor, we are speaking of bonds that
21 were issued in exchange for defaulted bonds governed by
22 Argentine law issued pursuant to Argentine decrees. They had
23 no indenture trustee. They were solely in Argentina. They
24 were interested elsewhere, but the bonds themselves are solely
25 in Argentina.

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1 THE COURT: You are going a little fast for me. You
2 are speaking of some of the bonds issued pursuant to the
3 exchange offers of 2005 and 2010, is that correct?

4 MS. WAGNER: Your Honor, it is a little bit broader
5 than that. If I might answer a little bit more broadly?

6 THE COURT: You answer in your way, but that was my
7 question.

8 MS. WAGNER: Okay. Your Honor, the bonds that we,
9 Citibank Argentina, holds are bonds governed by Argentine law.
10 Most of them were not issued in the exchanges at all.
11 72 percent were not issued in any exchange. As to those bonds,
12 there are is no argument by plaintiffs that they are subject to
13 any injunction or that they could be. Those are outside of the
14 discussion right now. The remaining 28 percent were issued in
15 the local Argentine exchange that was the companion to the
16 international exchange. Yes, they were issued in connection
17 with that exchange.

18 But as your Honor is aware under the fiscal agency
19 agreement, in order for them to be considered subject to the
20 fiscal agency agreement, they must be external indebtedness.

21 THE COURT: Where is that?

22 MS. WAGNER: Well, your Honor, what I might hand up to
23 the court, with your permission, we have excerpted three
24 provisions of the fiscal agency agreement on a single page so
25 it is easy to read, and I can hand it up to you if that would

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1 help you.

2 THE COURT: It would certainly help me.

3 MS. WAGNER: Thank you.

4 Your Honor, the first provision that we have excerpted
5 is what we call colloquially the Pari Passu provision. It says
6 that certain securities are --

7 THE COURT: This is from the FAA?

8 MS. WAGNER: This is from the FAA, yes.

9 The first provision tells you -- and your Honor is
10 extremely familiar with this -- that certain bonds are to rank
11 Pari Passu with other external indebtedness. The second
12 provision is the definition of external indebtedness from the
13 FAA.

14 As your Honor is also well aware, that definition
15 excludes domestic foreign currency indebtedness from its scope.

16 THE COURT: Excludes what?

17 MS. WAGNER: Domestic foreign currency indebtedness.

18 THE COURT: Let me read that.

19 MS. WAGNER: Yes. That is the third thing on the
20 page.

21 THE COURT: I have read the first paragraph of that
22 page. I would like to take a minute with the second.

23 MS. WAGNER: Absolutely.

24 THE COURT: You go ahead now, please.

25 MS. WAGNER: Thank you, your Honor.

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1 As to those 28 percent of the bonds that I am talking
2 about that were, in fact, issued in exchanges, those are going
3 to be subject to the Pari Passu clause only if they are
4 external indebtedness. What we are arguing to your Honor is
5 that they are not external indebtedness for two reasons.

6 One reason is because the bonds the Argentine law
7 bonds, the certificates that represent the indebtedness of the
8 Republic, are located only in and exclusively in Argentina.

9 THE COURT: What are you saying? You are saying the
10 bonds are located only what?

11 MS. WAGNER: The global certificates that represent
12 the bonds that are, in turn, the indebtedness of the Republic,
13 the global certificates are located only in Argentina at the
14 CRYL.

15 THE COURT: At the central bank?

16 MS. WAGNER: Not at a central bank, but at a clearing
17 institution.

18 THE COURT: In CRYL?

19 MS. WAGNER: Yes.

20 THE COURT: What is this entity you're talking about.

21 MS. WAGNER: C-R-Y-L, the CRYL.

22 THE COURT: What is that?

23 MS. WAGNER: That is a depository for bonds issued by
24 the Republic. It also does some clearing functions for those
25 kinds of bonds. That is where those bonds are held. That is

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1 the only place that they are held.

2 If an entity is to get an interest in those bonds, the
3 entity has to somehow or another connect up to the CRYL. The
4 bonds and interest in the bonds cannot be obtained unless you
5 go through to the CRYL either directly or indirectly. In our
6 view, your Honor, those bonds are located exclusively in
7 Argentina.

8 However, your Honor, again, as to these exchange
9 bonds, the ones, the 28 percent that were issued in the
10 exchange, they are also not external indebtedness for another
11 reason. As we have set out in our papers and as your Honor is
12 very well aware, Argentina had a very serious debt crisis in
13 2001 and 2002, and one of the things that Argentina did in 2002
14 was to redenominate its foreign debt obligations into local
15 debt obligations; not all of them, but all of the ones that
16 were governed by Argentine law. They could not redenominate
17 obligations that were like plaintiffs' bonds, that were
18 governed by non-Argentine law, where the global bond was not in
19 Argentina and where they had provided for protections pursuant
20 to an agreement like an indenture or the FAA like Pari Passu.
21 But the Republic did turn into peso obligations all debt that
22 was governed by Argentine law and as to which there was no
23 submission to jurisdiction anywhere else and as to which they
24 were paid in the Republic.

25 Among the things that were so-called pesofied were the

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1 Argentine law bonds -- I'm sorry -- the bonds for which the
2 Argentine law bonds were exchanged. So in the exchanges, when
3 the Argentine law bonds that we are speaking about were
4 obtained, they were obtained for bonds that were payable in
5 pesos.

6 If you look, your Honor, to the third provision on the
7 sheet of paper that we put before you and if you look at iii,
8 it says that domestic foreign currency indebtedness, which is
9 not external indebtedness, includes debt issued in payment,
10 exchange, substitution, discharge, or replacement of
11 indebtedness payable in the lawful currency of the Republic of
12 Argentina. These exchange bonds that I am talking about were
13 issued in exchange for bonds payable in Argentine pesos. For
14 that reason as well --

15 THE COURT: You are talking about little iii, right?

16 MS. WAGNER: Little iii and then B.

17 THE COURT: Can I just have a moment to look at that?

18 MS. WAGNER: Absolutely.

19 THE COURT: Can you go over that again? What part are
20 you focusing on?

21 MS. WAGNER: Sure, your Honor. If you see iii?

22 THE COURT: I do.

23 MS. WAGNER: If you go down, you have got, a few lines
24 down, there is an A and a B.

25 THE COURT: I do.

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1 MS. WAGNER: So B says: Issued in payment, exchange,
2 substitution, discharge, or replacement of indebtedness payable
3 in the lawful currency of the Republic of Argentina. This part
4 of the definition covers debt received in exchange for debt
5 that is payable in Argentine pesos. The exchange bonds that we
6 are speaking about were received in exchange for debt payable
7 in Argentine pesos.

8 THE COURT: What is the significance of that?

9 MS. WAGNER: The significance of that, your Honor, is
10 that that kind of debt is considered domestic foreign currency
11 indebtedness, and domestic foreign currency indebtedness is not
12 external indebtedness, and domestic foreign currency
13 indebtedness is not subject to the Pari Passu clause.

14 THE COURT: I have got to ask you to go over that
15 again.

16 MS. WAGNER: Sure. Maybe if we just look --

17 THE COURT: In other words, you go back to the basic
18 paragraph about Pari Passu.

19 MS. WAGNER: Right.

20 THE COURT: That says that the obligations of the
21 Republic under the bonds -- they refer to securities, but
22 bonds -- at all times rank equally with other external
23 indebtedness, right?

24 MS. WAGNER: Exactly.

25 THE COURT: External indebtedness.

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1 MS. WAGNER: External indebtedness excludes domestic
2 foreign currency indebtedness.

3 THE COURT: External indebtedness excludes domestic
4 foreign currency indebtedness. Now what is the significance of
5 little iii?

6 MS. WAGNER: Well, the significance of it is that that
7 is part of the definition of domestic foreign currency
8 indebtedness. If a bond falls within one of the paragraphs --

9 THE COURT: Start again. Just analyze the relevant
10 part of this domestic foreign currency indebtedness paragraph.

11 MS. WAGNER: Sure. As you see, it defines what is
12 included as domestic foreign currency indebtedness. And then
13 if you go down to three iii, it says it includes any other
14 indebtedness which is -- then you go to B and it says -- issued
15 in payment, exchange, substitution, discharge, or replacement
16 of indebtedness payable in the lawful currency of the Republic
17 of Argentina.

18 THE COURT: What does that mean?

19 MS. WAGNER: That means if you have got an Argentine
20 law bond in exchange for a bond that was payable in pesos, both
21 the original bond and the exchange bond are not external
22 indebtedness, they are domestic foreign currency indebtedness,
23 therefore, they are not subject to the Pari Passu clause.

24 THE COURT: Now, give me a kind of summary of what you
25 have gone through.

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1 MS. WAGNER: What we have gone through here, your
2 Honor, is that since we last saw you, we have done a very
3 careful analysis of all of the origins of the Argentine law
4 bonds. We have discovered that all of those bonds that were
5 issued in the exchange, as opposed to the ones that weren't,
6 the ones that were issued in the exchange, all of them were
7 issued for bonds payable in pesos and therefore all of those
8 bonds are domestic foreign currency indebtedness and cannot be
9 subjected to the Pari Passu obligation.

10 THE COURT: Really, it cannot be subjected to the
11 injunction, is that what you are saying?

12 MS. WAGNER: Exactly. It can't be subject to any
13 injunction based on the fiscal agency agreement because it is
14 just outside of the fiscal agency agreement. It is outside of
15 the Pari Passu clause, that is correct.

16 THE COURT: You go ahead now.

17 MS. WAGNER: Your Honor, just in further comment on
18 that, we have put before you declarations of experts who have
19 provided the evidence that, in fact, these bonds were payable
20 in pesos and therefore they were internal indebtedness, not
21 external, and there is no evidence on the other side. So the
22 evidence on this record is that these bonds are domestic
23 foreign currency indebtedness.

24 THE COURT: Go ahead.

25 MS. WAGNER: Your Honor, the response to that from

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1 plaintiffs has been that they believe that somehow the
2 issuance, or what is called the pesofication of this debt,
3 violated the fiscal agency agreement, but as you will see, the
4 fiscal agency agreement does not have any prohibition on how
5 the Republic treats debt of this sort, which is issued by
6 decree not with any agreement with anybody, governed only by
7 Argentine law, payable in Argentina. The global bond is in
8 Argentina. There is no inhibition on the Republic's ability to
9 change the law applicable to those bonds and there is no
10 connection with the fiscal agency agreement. There is nothing
11 in the fiscal agency agreement that prohibits that.

12 For all these reasons, your Honor, we believe that all
13 of the bonds that were issued in the exchange are not external
14 indebtedness. There is no evidence offered by anybody that the
15 other bonds that were not issued in the exchange are external
16 indebtedness, so we would suggest to your Honor, number one,
17 the injunction did not reach any of these bonds, and number
18 two, no injunction could reach them if it is premised on the
19 fiscal agency agreement.

20 Your Honor, we have two further points. Secondly,
21 your Honor's injunction, as you recall, was quite specific as
22 to who was enjoined from making payments. Obviously the
23 Republic was enjoined, and in addition, certain other entities
24 that played some role in connection with payments to the bonds
25 issued under the fiscal agency agreement were also identified

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1 by function so that they could not help the Republic complete
2 the payments that it would make on the bonds issued in exchange
3 for FAA bonds.

4 Citibank Argentina does not fall within any category
5 that is enjoined under your injunction, your Honor. Citibank
6 is a custodian. It acts only for customers pursuant to a
7 contract with customers. It does not act pursuant to any
8 contract with the Republic or any Republic agent. It is not an
9 indenture trustee. It is not a depository holding any global
10 certificates. It is not a clearing system. It is not a
11 participant in the process by which Argentina makes payments on
12 the foreign law bonds that were issued for the FAA bonds.

13 When your Honor issued the big injunction, specific
14 entities were excluded from that injunction. We fall within
15 the category of those entities that were expressly included.
16 Your Honor, if I may, I would like to just show you another
17 exhibit that will sort of lay it out for you. It was appended
18 to our brief, so people have seen it. If that would be
19 helpful, may I hand it up?

20 THE COURT: Of course.

21 MS. WAGNER: Your Honor, what this exhibit shows you
22 on the left side in sort of pink and green is the effect of
23 your injunction on specific parties and entities. On the right
24 side, comparable entities in connection with the Argentine law
25 bonds. To go to the left side now, as you can see, the parties

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1 that were enjoined were the Republic who issued the bonds, Bank
2 of New York Mellon, the indenture trustee who had an agreement
3 with the Republic, the depositories for the foreign law bonds
4 who were located outside of Argentina, and the clearing systems
5 for those bonds, again, located outside of Argentina.

6 Just to remind the court of the thinking behind the
7 injunction, in the court's opinion supporting that injunction,
8 the court noted that plaintiffs are also not requesting that
9 the financial institutions receiving funds from the DTC be
10 bound by the injunctions. As you can see in this exhibit, the
11 entities below DTC are not bound. The ones in green are not
12 bound by the injunction. Plaintiffs have many times said that
13 they did not intend by the injunction to enjoin entities
14 receiving money, holders of the beneficial interests. It was
15 based on their statements and on your Honor's opinion that the
16 Second Circuit said the amended injunctions cover Argentina,
17 the indenture trustees, the registered owners, and the clearing
18 systems. The amended injunctions explicitly exempted financial
19 institutions receiving funds from the DTC.

20 Your Honor, we believe that the left side of this
21 paper accurately depicts what your Honor's injunction does.
22 The right side shows you similar entities, similar parties, how
23 they function on the Argentine law bonds, and you will see, of
24 course, the Republic is the same. CRYL is the same as the
25 depository. Caja de Valores is the same as the clearing system

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1 and Citibank Argentina and other custodians fall below that
2 line.

3 We also argue, your Honor, that entities such as
4 Citibank, that were never intended to be within the scope of
5 the injunction and indeed could not be within the scope of the
6 injunction because it is very clear that Argentina completes
7 its payment obligation on the Argentine law bonds when payment
8 is made to CRYL, there is no way in which Citibank Argentina
9 can assist the Republic in making the payment obligations.
10 They are done by the time Citibank receives funds from Caja de
11 Valores.

12 Finally, your Honor --

13 THE COURT: It is not clear to me from what you are
14 saying what Citibank did.

15 MS. WAGNER: Let me explain to you very specifically
16 what they did. Citibank has contracts, custody contracts, with
17 customers. When a customer buys an interest in an Argentine
18 law bond, it is recorded in the customer's name at Citibank.

19 THE COURT: It is what?

20 MS. WAGNER: It is recorded that -- let's say
21 Mr. Jones has an interest in a specific Argentine law bond. So
22 the records of Citibank Argentina say, I owe Mr. Jones five
23 shares of some Argentine law bond. That is part of it. So
24 whenever Mr. Jones wants his bonds back, Citibank has to give
25 the bonds back. When payments come in on the bonds, they come

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1 in through CRYL and Caja de Valores, and then they come to
2 Citibank and Citibank then credits the customer who owns the
3 bonds with the payments. That is all it does.

4 It has no contract with the Republic, it has no
5 obligations with respect to the bonds themselves, it is not an
6 indenture trustee, it simply holds the bonds. If the bonds
7 were physical, they would be put in the bucket or something.
8 They are not physical, they are book entry bonds, so they are
9 recorded. But they have no role to play in these bonds or any
10 other bonds except to hold them for customers who have bought
11 them.

12 THE COURT: Can we pause a minute?

13 MS. WAGNER: Sure.

14 THE COURT: I gather from what you are saying -- and I
15 guess the record shows this amply, but I am going to say it
16 anyway -- Citibank never bought any of these bonds, is that
17 right?

18 MS. WAGNER: Citibank did not buy the bonds for
19 itself, no. It just holds them for customers.

20 THE COURT: I don't mean for itself.

21 MS. WAGNER: Yes.

22 THE COURT: I meant Citibank did not buy any bonds for
23 its own account, right?

24 MS. WAGNER: Correct.

25 THE COURT: Just briefly go over again what Citibank

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1 did, please.

2 MS. WAGNER: Sure. Citibank, independent of any
3 bonds, Citibank enters into agreements called custody
4 agreements with customers who want to hold their bonds at
5 Citibank Argentina. Pursuant to those agreements, some of
6 which actually have been litigated before in this court,
7 pursuant to those agreements, when customers buy bonds, they
8 put them at Citibank basically as custodian, for safe keeping.

9 Citibank basically, I think, has two functions: One
10 is to keep the bonds and then give them back when they are
11 supposed to go back, and two, when payment is made on the
12 bonds, which comes from Caja de Valores, the clearing system in
13 Argentina that is like DTC here, when the funds come in, they
14 attribute the funds to the customer. That is it.

15 THE COURT: What do you mean when funds come in? In
16 other words, if interest is paid --

17 MS. WAGNER: Yes.

18 THE COURT: -- then --

19 MS. WAGNER: If interest is paid, then money will
20 reach Citibank from Caja de Valores, Citibank Argentina. Let's
21 say, you know, 10,000 pesos or whatever it is, and Citibank
22 obviously knows which of its customers own bonds and they will
23 credit the right customers with the right amount of money.

24 THE COURT: Go ahead.

25 MS. WAGNER: Just to conclude that part of the

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1 discussion, your Honor, it is our view that you never intended
2 and the plaintiff never intended and the Second Circuit never
3 understood that an entity that acts as a custodian for
4 customers was enjoined or could be enjoined pursuant to the
5 fiscal agency agreement.

6 Our third point, your Honor, is that Citibank -- we
7 have argued this to you before on a number of occasions -- is
8 that Citibank Argentina is in a unique situation in this case.
9 Citibank Argentina, as you know, is in Argentina. It is
10 licensed by Argentina to act as a banking institution. Any
11 injunction that directed Citibank Argentina to keep the funds
12 that were paid to it on behalf of customers and not pay the
13 money to their customers would tell Citibank Argentina to
14 violate the law of Argentina.

15 In the Gucci case about which you have heard before,
16 the Second Circuit Court of Appeals said that, in exactly that
17 situation, a court must perform a comity analysis and must
18 consider a number of things under various legal provisions,
19 including the foreign sovereign interest in its banking laws,
20 the expectation of the bank as a nonparty regarding the
21 regulation to which it is subject, both in Argentina and in the
22 U.S., and the United States' interest in enforcing its laws.

23 Here, your Honor, I would submit that a comity
24 analysis makes very clear that Citibank should not be directed
25 by any injunction of this court to violate the banking laws of

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1 Argentina. First of all, Argentina does have a legitimate
2 interest in enforcing its banking laws. Secondly, there is no
3 reason why Citibank Argentina would have expected that a
4 directive coming from the United States would tell it to
5 violate the law of Argentina. Third, and very importantly,
6 while this court and this country have an interest in enforcing
7 contracts, in this case the fiscal agency agreement, forcing
8 Citibank to violate the law and putting it in a position of
9 great danger will not achieve anything as far as enforcement of
10 the contract. The Republic has told Citibank Argentina very,
11 very clearly that Citibank must obey the Argentine banking
12 laws.

13 In a hearing before the Court of Appeals, the counsel
14 for the Republic was asked whether the Republic would, in fact,
15 enforce those laws against Citibank Argentina. The question
16 was: Could the counsel ensure the court that the Republic
17 would not proceed against Citibank Argentina criminally or pull
18 its license or do all kinds of other horrible things? Counsel
19 was not able to respond. When asked whether he could tell the
20 court whether the Republic would impose these sanctions if
21 Citibank obeyed a court order, he indicated that he could not
22 make a representation as an officer of the Court.

23 Therefore, your Honor, the risk is very real, but
24 there is nothing to be gained by enforcing any such injunction.
25 If the Republic acts to sanction Citibank, there will be no

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1 benefits to plaintiffs, there will be no harm to the Republic,
2 and Citibank Argentina will be greatly injured. In that
3 circumstance, your Honor, it just seems fundamentally unfair
4 and inevitable to put Citibank in such a position.

5 Your Honor, we would respectfully request for all of
6 these reasons that your Honor confirm what your Honor has said
7 many times, and that is, the injunction was not intended to
8 apply to these bonds which your Honor has many times called
9 completely different from the bonds that were covered. If you
10 would go back and look at the records for what bonds were
11 covered, it is very, very clear the only record that was made
12 had to do with the New York law bonds.

13 Secondly, that Citibank Argentina, a custodian, was
14 never intended to be enjoined by anything by this injunction,
15 and that there is no basis for any injunction.

16 Thirdly --

17 THE COURT: I would like to pause on that point.

18 MS. WAGNER: Sure.

19 THE COURT: Could I have the text of the June 27 order
20 and the July 28 order? Can you give me the notebook with that?

21 I would like to look at the exact language of the
22 June 27 order and the July 28 order. Have you got that in
23 front of you?

24 MS. WAGNER: I do have that in front of me, your
25 Honor. Thank you.

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1 THE COURT: All right. I am not going to go back too
2 far into the history, but what came up was something -- I am
3 being purposely a little vague -- about Citibank and what they
4 could or could not do. Again, I am being vague right now. It
5 was a June 27 order which said, in effect, what the injunction
6 refers to, of course.

7 MS. WAGNER: Yes.

8 THE COURT: The injunction does not prohibit -- this
9 is the language -- payments by Citibank or Citibank's Argentine
10 branch on peso or U.S. dollar bonds -- I am skipping some
11 language -- that were issued by the Republic of Argentina in
12 the 2005 and 2010 exchanges. I am paraphrasing.

13 Now, this refers to payments by Citibank on certain
14 bonds. It is odd for me to ask you to interpret an order of
15 mine, but I am going to ask it anyway. As a factual matter --
16 and this goes to one of your points very much -- what payments
17 did Citibank make or was contemplating making? What payments
18 was Citibank making or contemplating making?

19 MS. WAGNER: Your Honor, as of that date, Citibank
20 expected to receive payment from the Caja de Valores on June 30
21 on these bonds.

22 THE COURT: Payments from whom?

23 MS. WAGNER: The Caja de Valores, the Argentine
24 clearing system that were payments on the Argentine law bonds.
25 Citibank expected to get that money for customers and --

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1 THE COURT: What customers?

2 MS. WAGNER: Customers who held bonds in custody with
3 Citibank Argentina.

4 THE COURT: Let's go slowly on that.

5 MS. WAGNER: Sure.

6 THE COURT: An interest payment was due June 30 on
7 various obligations, right?

8 MS. WAGNER: That's right.

9 THE COURT: The Argentine --

10 MS. WAGNER: Argentine clearing system.

11 THE COURT: Go ahead. You go ahead.

12 MS. WAGNER: Sure. The money would come from the
13 Republic through the CRYL to the Caja de Valores, which is the
14 Argentine clearing system. Banco Central is in there as well.
15 Then it comes to Citibank. The Republic's payment on the bonds
16 is complete when the money gets to CRYL. By the time it gets
17 to Citibank, it is customer money. So when Citibank gets it,
18 Citibank credits customers with it.

19 THE COURT: But the payment, you say, is complete at
20 what point?

21 MS. WAGNER: If you go back and look at this colorful
22 chart, your Honor, it is complete -- we are now looking at the
23 right side -- it is complete when it gets to the entity called
24 CRYL.

25 THE COURT: Let's go back to these orders of June 27

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1 and July 28, because the motion now is addressed to the July 28
2 order, is it not?

3 MS. WAGNER: Yes, it is, your Honor. The motion is
4 directed to request that the July 28 order be vacated.

5 THE COURT: Let me interrupt you. I'm sorry.

6 MS. WAGNER: Sure.

7 THE COURT: The June 27 order refers to payments by
8 Citibank, and the payments that would be made by Citibank would
9 be made to its customers, right?

10 MS. WAGNER: That's correct, yes.

11 THE COURT: Not as agent of the Republic, right?

12 MS. WAGNER: Certainly not as agent for the Republic,
13 no, as agent for the customers.

14 THE COURT: Agent for the customers.

15 The July 28 order allows a one-time payment by
16 Citibank at the end of the grace period, July 30, of interest
17 due June 30, right?

18 MS. WAGNER: That's correct.

19 THE COURT: This is the July 28 order. It says the
20 court will rescind the Citibank order -- referring to the June
21 27 order -- with regard to the dollar denominated exchange
22 bonds. What that meant -- I will interpret my own order for
23 the moment -- it meant that the injunction applied to the
24 exchange bonds.

25 What you are saying, however, is that Citibank played

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1 a particular and limited role, right?

2 MS. WAGNER: That's right.

3 THE COURT: Say it again. You have said it a bunch of
4 times, but say it again. What role did Citibank play?

5 MS. WAGNER: Just to be very clear, Citibank plays no
6 role in connection with the obligations to pay on the bonds.
7 When Citibank gets funds that were paid on the bonds, then
8 Citibank credits its customers who own the bonds.

9 THE COURT: I think you are arguing, one of your
10 points is, that the particular kind of activity that Citibank
11 engaged in was really not something that was enjoined, isn't
12 that something you are saying?

13 MS. WAGNER: That is something I am saying, yes, your
14 Honor.

15 THE COURT: Isn't that point two?

16 MS. WAGNER: That is point two, yes.

17 THE COURT: When it comes to the other attorneys who
18 are arguing, I hope we will get back to that. You made the
19 point as far as you want to go. Do you have anything else
20 before we go to other attorneys?

21 MS. WAGNER: No, your Honor. Thank you very much.

22 THE COURT: Who else?

23 MR. FRIEDMAN: May I be heard, your Honor, on behalf
24 of the plaintiffs in opposition to the Citibank motion?

25 THE COURT: Of course.

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1 MR. BOCCUZZI: Your Honor, may I be heard for the
2 Republic, speaking in support of Citibank's motion, to get our
3 side done first, or do you want me to reply to Mr. Friedman?

4 THE COURT: I certainly want to hear you. I would
5 like to hear the other side. I will come back to you, of
6 course.

7 MR. FRIEDMAN: Thank you, your Honor. May it please
8 the court. Edward Friedman with Friedman, Kaplan, Seidler &
9 Adelman, attorneys for plaintiffs Aurelius Capital and Blue
10 Angel. I will speak on behalf of all of the Pari Passu
11 plaintiffs.

12 I would like to take a step back, your Honor, to where
13 your Honor started today's hearing, which is we are continuing
14 to address issues that were raised at the September 26 hearing
15 when we were all before your Honor. At that time, the court
16 was interested in the issue of whether these Argentine law
17 bonds had been offered exclusively in Argentina as the Republic
18 and Citibank were contending or whether they had been offered
19 in other places. What I would like to do, your Honor, to
20 start, is hand up a couple of documents that I hope will be
21 helpful in clarifying what we are talking about.

22 To begin with, your Honor asked the question a little
23 while ago, what bonds are we talking about? If I may, I would
24 like to approach the bench and hand up one piece of paper that
25 actually lists the bonds. May I approach, your Honor?

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1 Your Honor, if I may, I have a second piece of paper
2 which is a chronology that may actually be helpful to the court
3 as we proceed.

4 THE COURT: Go ahead, Mr. Friedman.

5 MR. FRIEDMAN: Thank you.

6 The first piece of paper which is entitled U.S. Dollar
7 Denominated Argentine Law Bonds Issued Pursuant to the 2005 and
8 2010 Exchange Offers. There are five different bonds we are
9 talking about. Your Honor may recall hearing that when bonds
10 are issued, they are identified by what is sometimes referred
11 to as an ISIN, I-S-I-N-. It is a unique number that identifies
12 a bond or a series of bonds. On the piece of paper I handed to
13 your Honor, I put in bold the last three digits of each ISIN
14 because that is the way these bonds are sometimes referred to.

15 What we have here is in the 2005 exchange offer, the
16 Argentine law bonds dollar denominated issued by the Republic
17 are referred to as the 097 and the 113 bonds. In the 2010
18 exchange offer, the Republic issued dollar denominated
19 Argentine law bonds with the 704 ISIN and the 688 ISIN. In
20 both the 2005 and 2010 exchange offers, there were ISIN 154
21 bonds issued.

22 THE COURT: I want to ask you to pause for just a
23 minute. Are these all the of the ISINS that are relevant to
24 our case, the ones you have on this sheet, which is -- I will
25 read the last three digits, maybe you have already done it --

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1 097, 113, 704, 688, and 154?

2 MR. FRIEDMAN: Yes, your Honor.

3 THE COURT: Are these all the ones that are relevant
4 to our case?

5 MR. FRIEDMAN: Well, just to be clear, when we talk
6 about our case, we are talking about the Citibank motion.

7 THE COURT: Fair enough.

8 MR. FRIEDMAN: These are all the bonds that are
9 relevant to the Citibank motion. These are all the U.S. dollar
10 denominated Argentine law bonds that were issued pursuant to
11 the 2005 and 2010 exchange offers.

12 With the bonds identified, the first thing I would
13 like to turn to, your Honor, is the court's question, which is
14 where we left off on September 26, 2014: Were these bonds
15 offered exclusively in Argentina? I would be happy to provide
16 any further background or answer any questions your Honor might
17 have before I start describing the evidence about whether these
18 bonds were offered exclusively in Argentina.

19 THE COURT: What I would like to do -- and you can
20 take care of the paperwork -- the document that you gave me
21 U.S. Dollar Denominated Argentine Law Bonds Issued Pursuant to
22 the 2005 and 2010 Exchange Offers, I would like that marked as
23 Court's Exhibit A so it is part of the record.

24 Go ahead.

25 MS. WAGNER: Your Honor, if I may be heard just for

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1 one moment. I don't object, but some of the bonds these
2 numbers on it were not issued in the exchange.

3 THE COURT: Wait. A little louder, if you could.

4 MS. WAGNER: Some of the bonds issued with number 113,
5 a lot of the bonds with 113 were not issued in exchanges. I
6 just want to make that point, if you are going to mark the
7 exhibit.

8 MR. FRIEDMAN: Your Honor --

9 THE COURT: I want to just pause on that.

10 MR. FRIEDMAN: Perhaps I can explain, your Honor,
11 because it is all clear on this sheet and I was coming to it.

12 THE COURT: Ms. Wagner, what are you saying again?

13 MS. WAGNER: Your Honor, all I am saying is that the
14 document is headed Bonds Issued in the Exchange Offers, and I
15 would say that the 113 bonds, most of them were not issued in
16 the exchange offers. Therefore, the title of the exhibit is
17 not consistent with the facts. I just wanted to make that
18 point since we are going to mark the exhibit.

19 THE COURT: Ms. Wagner is correct.

20 MR. FRIEDMAN: May I respond to Ms. Wagner, your
21 Honor, because we tried to be clear.

22 All of these bonds, including the 113 bonds, were in
23 fact issued in the exchange offers. As the last item on the
24 page indicates, there is a dispute concerning the 113 bonds.
25 What it says right here, the only dispute concerns the 113

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1 bonds which were issued in 2005 and later, including to
2 receipt, so in 2014.

3 The purpose of this one piece of paper is to set out
4 for your Honor the bonds that we are talking about, and there
5 is no dispute that the 113 bonds were, in fact, first issues in
6 the 2005 exchange offer.

7 MR. BOCCUZZI: Your Honor, if I may?

8 THE COURT: Yes.

9 MR. BOCCUZZI: Just so there is no confusion in the
10 record, there has been a lot of back and forth about what is an
11 exchange bond, because that is a defined term in your Honor's
12 order. It is the Republic's position -- I won't speak for
13 Citi, I believe is it Citi's position as well -- that the only
14 evidence of exchange bonds ever put in in this case were the
15 exchange bonds your Honor knows very well with the Bank of New
16 York as the indenture trustee, they are governed by New York
17 law, some are governed by English law, and that is what has
18 been clearly enjoined.

19 THE COURT: Look.

20 MR. BOCCUZZI: These Argentine law bonds, they were
21 open in the context of exchange of Argentine law --

22 THE COURT: Please. We will get to you later. Let's
23 stick with who is speaking.

24 MR. BOCCUZZI: It is because plaintiff's lawyer is
25 saying there is no dispute. I don't want silence to indicate

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1 an agreement with his characterization.

2 THE COURT: Silence doesn't say anything this
3 afternoon.

4 MR. BOCCUZZI: Thank you, your Honor.

5 THE COURT: Look, I would like to just dwell a moment
6 on this, what I will call Court's Exhibit A. Is it correct
7 that all of the ISINs, except possibly 113, are composed
8 entirely of exchange bonds, is that correct?

9 MR. FRIEDMAN: Yes, your Honor. When we say "exchange
10 bonds," we are obviously talking about bonds issued pursuant to
11 the 2005 and 2010 exchange.

12 THE COURT: Of course we are. That's right.

13 MR. FRIEDMAN: The ISINs other than the 113, all the
14 outstanding bonds were issued pursuant to the exchange offers.

15 THE COURT: Very good.

16 MR. FRIEDMAN: The one difference for the 113 is that
17 the 113 bonds were first issued in the 2005 exchange offer and
18 then there were subsequent issues of interest in the 113 bonds.

19 THE COURT: Very good. Go ahead with what you wanted
20 to say.

21 MR. FRIEDMAN: That brings us to the first issue,
22 which is the question your Honor raised as to whether these
23 Argentine law bonds, the five ISINs that are listed here,
24 whether these bonds were offered exclusively in Argentina.
25 Your Honor has heard counsel for Citibank and counsel for the

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1 Republic say these Argentine law bonds were offered exclusively
2 in Argentina pursuant to a local exchange and that the global
3 certificate for these bonds sits in Argentina.

4 But the question the court raised and the question
5 that arises under the fiscal agency agreement is not where is
6 the global certificate was maintained, but were these bonds
7 offered exclusively in Argentina. What the evidence shows is
8 that overwhelmingly these bonds were not offered exclusively in
9 Argentina. In fact, there was a global exchange offering in
10 which these bonds, these very ISINs, were offered in the United
11 States, in Luxembourg, in Denmark, in Germany, in England, and
12 Italy and Spain and many other countries. They were offered
13 pursuant to registration statements and prospectuses and other
14 offering materials in all of these countries.

15 The offer was described by Argentina as offering
16 holders of eligible securities the opportunity to tender their
17 eligible securities in exchange for newly issued securities.
18 The newly issued securities include the dollar denominated
19 Argentine law exchange bonds. The eligible securities include
20 the defaulted Argentine law dollar denominated bonds which were
21 held by investors all over the world in the countries I named.
22 They received offers from Argentina to tender and surrender
23 their defaulted Argentine law securities in exchange for the
24 Argentine law dollar denominated exchange bonds.

25 We have submitted evidence to your Honor, and it is

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1 not disputed, these offers were made in all of the countries
2 that I named and we are talking simply about written offering
3 materials being distributed to investors in all of these
4 countries, although that is in important. But in addition, as
5 part of the offer of these Argentine law exchange bonds, senior
6 officials from the Republic of Argentina, including the
7 minister of economy and public finance, the secretary of
8 finance, and the director of the national public credit office,
9 traveled to these countries and made presentations at which the
10 offers were explained. The officials of the Republic who were
11 presenting these offers were accompanied by the international
12 bankers engaged by the Republic to facilitate these offers.

13 These are bankers from Barclays, Merrill Lynch,
14 Citibank, UBS, and Deutsche Bank. The bankers and the Republic
15 officials, traveled to the countries around the world, they
16 distributed copies of the prospectus and the offering
17 materials, they answered questions about the terms of the
18 offer. The offering materials, your Honor, for these Argentine
19 law dollar denominated exchange bonds, the offering materials
20 were published in at least four different languages: German,
21 English, Italian, Spanish; distributed in Spain, Italy,
22 Germany, England. I can assure the court, the offering
23 materials were not translated into all these languages and
24 distributed all around the world because there was an offer
25 exclusively in Argentina.

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1 THE COURT: Look, let me return to something I imagine
2 was discussed in an earlier hearing, but what is on my mind as
3 to what is crucial to the issue you are raising. That is this:
4 certainly, the original bonds of 1994 and the exchange bonds,
5 the offers for exchanges, probably went to lots of countries,
6 certainly outside of Argentina. No question. There is an
7 injunction doing what it does as to all of that.

8 I don't claim that what I am saying is technically
9 accurate as to all the facts, but I want to make a point and a
10 question to you. That is this: Citibank has a branch in
11 Buenos Aires, and the citizens of Buenos Aires, people who
12 reside in Buenos Aires, who want to enter into some transaction
13 with Citibank in Buenos Aires -- I am going to use a
14 hypothetical. The hypothetical may not be too helpful, but I
15 am going to use it anyway.

16 Let's suppose that some people in Buenos Aires want to
17 borrow money from Citibank, the Citibank branch there. Is it
18 not possible for Citibank to enter into transactions with
19 people down in Buenos Aires without having the transaction get
20 involved in a worldwide injunction? The answer, of course, is
21 yes. So it probably shows that my hypothetical doesn't go very
22 far, but if you could get the intent of my inquiry --

23 MR. FRIEDMAN: Yes.

24 THE COURT: -- and that is focusing on what was done
25 here, not on my hypothesis, but what was done here.

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1 MR. FRIEDMAN: Sure.

2 THE COURT: Did it not involve a local matter with
3 local citizens and something that can be carried out without
4 getting some citizens of Buenos Aires and the Buenos Aires
5 branch of Citibank swept up in a big injunction that covers
6 multiple countries, et cetera? You get the issue I am raising.

7 MR. FRIEDMAN: I do, your Honor. I think in answering
8 the court's question, it is important to identify the Citibank
9 role in the payment process.

10 We heard Citibank's counsel explain that Citibank is
11 just a custodian for its customers in Argentina. Your Honor
12 has the exhibit that was provided to the court by Citibank's
13 counsel, and I will refer to that, if it would be convenient
14 for the court.

15 THE COURT: It has two headings at the top: Argentine
16 Law Bonds and Foreign Law Bonds.

17 MR. FRIEDMAN: Yes, that is where I am, your Honor.

18 THE COURT: Let's mark that as Court's Exhibit B so it
19 is part of the record.

20 Go ahead.

21 MR. FRIEDMAN: Your Honor heard Citibank's counsel say
22 that on the Argentine law bonds, the payment is complete when
23 the Republic transfers funds to CRYL. CRYL is the second box
24 in the right-hand column. You heard Citibank's counsel say
25 Citibank is a custodian for its customers in Argentina. Well,

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1 the evidence in the record, in important ways, shows that
2 Citibank's role is different from what was being argued to your
3 Honor.

4 To begin with, it is not correct to say that payment
5 on these Argentine law bonds is complete when CRYL receives
6 money from the Republic. What I have here, your Honor, is a
7 declaration that was submitted to the court with Citibank's
8 original motion for clarification. It is a declaration of a
9 lawyer in Buenos Aires and it is submitted by Citibank.
10 Paragraph ten of this declaration explains, with respect to the
11 payment process, that in order for payment on the Argentine law
12 bonds --

13 MR. BOCCUZZI: Excuse me. Just for the record, can
14 you identify what you are reading from?

15 MR. FRIEDMAN: Yes. I am reading from the declaration
16 of Maximiliano D'Auro in support of Citibank's motion for
17 clarification dated May 21, 2003 in Buenos Aires, filed in this
18 court initially May 22, 2013.

19 THE COURT: You said 2003 a moment ago. You meant
20 2013?

21 MR. FRIEDMAN: If I said 2003, I apologize, your
22 Honor. I did mean 2013.

23 THE COURT: Go ahead.

24 MR. FRIEDMAN: Your Honor may recall that Citibank
25 initially filed its motion for clarification in May of 2013.

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1 The court deferred consideration because the appeals were
2 pending. After the Supreme Court of the United States denied
3 certiorari in June of 2014, your Honor heard the Citibank
4 motion for clarification, which is what led to the June 27
5 order.

6 My purpose in referring to the declaration of
7 Mr. D'Auro is that Mr. D'Auro explains that contrary to what is
8 being argued today, that for payment to be complete on the
9 Argentine law bonds, it is not sufficient for the Republic to
10 transfer funds to CRYL, but rather the funds must reach
11 Citibank. I am not endorsing every aspect of Mr. D'Auro's
12 declaration. This is submitted by Citibank. I am simply
13 making the point, your Honor, that the idea that Citibank is
14 not essential to the payment process is something we very much
15 dispute.

16 The second important point along those lines is that
17 you heard Citibank argue --

18 THE COURT: I am going to interrupt you.

19 MR. FRIEDMAN: Yes.

20 THE COURT: The ultimate question is whether an entity
21 or transaction is subject to the injunction, right?

22 MR. FRIEDMAN: That's where I was going, your Honor,
23 yes.

24 THE COURT: Now, obviously there are some obvious
25 parties that are subject to the injunction. They, of course,

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1 include people who received the exchanges, who accepted the
2 exchange offer, and received the new exchange bonds and owned
3 those bonds. They are clearly subject to the injunction.

4 Let's take people who live in Buenos Aires. They have
5 an account at Citibank and that account has nothing to do with
6 the exchanges. Now, under my hypothesis, neither those people
7 nor Citibank in that connection would be subject to the
8 injunction, right?

9 MR. FRIEDMAN: I'm sorry. Did your Honor say the
10 account has nothing to do with the exchanges?

11 THE COURT: Right.

12 MR. FRIEDMAN: Yes, of course.

13 THE COURT: You tell me what it is that Citibank is
14 doing or has done here to make it subject to the injunction,
15 because you claim it is subject to the injunction in the
16 connection you are talking about, right?

17 MR. FRIEDMAN: Correct, your Honor.

18 THE COURT: What is it that has made Citibank subject
19 to the injunction?

20 MR. FRIEDMAN: What has made Citibank subject to the
21 injunction are the words of the injunction and the role of
22 Citibank. Specifically, the injunction of your Honor refers --
23 this is the main injunction, as that term is sometimes used --
24 refers to participants in the payment process and explains that
25 participants include various categories of entities.

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1 One of the categories of entities defined in the
2 injunction -- your Honor, shall I hand it up, would that
3 actually help?

4 THE COURT: You go ahead. Let's start again. I
5 didn't have the injunction, but I have it now before me.

6 MR. FRIEDMAN: Thank you, your Honor.

7 I am looking at page five and subparagraph F, which
8 says: Participants refer to those persons and entities who act
9 in active concert or participation with the Republic to assist
10 the Republic in fulfilling its payment obligations under the
11 exchange bonds included.

12 If we skip over item one, the indenture trustee, item
13 two, the registered owners, and come to item three, we see the
14 clearing corporations and systems, depositories, operators of
15 clearing systems, and I will pause right there.

16 Citibank, your Honor, is a depository with respect to
17 the payment on the Argentine law exchange bonds. It is a
18 depository and acting on behalf of the Euroclear and
19 Clearstream clearing systems, which are also specifically named
20 as participants. When I say Citibank is a depository, I am
21 talking about the direct evidence we have submitted in the
22 record which makes clear that Citibank is not simply a
23 custodian for local customers in Argentina. Citibank --

24 THE COURT: Let me interrupt you again. The
25 injunction obviously applies to people who accepted the

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1 exchanges and received new bonds in exchange, right?

2 MR. FRIEDMAN: Yes, it does, your Honor.

3 THE COURT: Of course it does. Your position is that
4 if Citibank, while not an owner of the exchange bonds, that
5 they are a participant within the meaning of that part of the
6 injunction, they would be covered by the injunction, right?

7 MR. FRIEDMAN: That is correct, your Honor.

8 THE COURT: You are not seeking to include the
9 injunction activities of Citibank obviously that have nothing
10 to do with this exchange that we are talking about, right?

11 MR. FRIEDMAN: That is correct, your Honor. This
12 relates to Citibank's role in the payment process on bonds that
13 are exchange bonds, as defined in the injunction.

14 THE COURT: Would you explain, even if you are
15 repeating, how Citibank would be considered a participant
16 within the meaning of the injunction?

17 MR. FRIEDMAN: Yes, your Honor.

18 Maybe it would be helpful if I handed up to the court
19 the agreement that Citibank has with Euroclear. It is one of
20 the exhibits in this case that we have submitted. Also, we
21 submitted excerpts from the Euroclear and Clearstream websites,
22 which reflect Citibank's role. I would like to hand those up
23 to your Honor, if I may, and explain them in an answer to the
24 court's question.

25 THE COURT: Of course. Can we move along?

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1 MR. FRIEDMAN: Yes, your Honor. One of the documents
2 I handed you is entitled Market Directory. Do you see that on
3 the first page?

4 THE COURT: Right.

5 MR. FRIEDMAN: This is from the Euroclear website. We
6 submitted it as an exhibit.

7 THE COURT: Look, I think we can come more directly.
8 What do you say Citibank did to be a participant within the
9 meaning of the injunction?

10 MR. FRIEDMAN: Sure. What Citibank did to be a
11 participant, your Honor, is that Citibank received payments and
12 transmitted them to Euroclear and Clearstream, which are the
13 clearing corporations, which then distributed the payments on
14 the Argentine law bonds to all of their participants all around
15 the world ultimately to the exchange bond holders who hold the
16 beneficial interest in these Argentine law exchange bonds.

17 THE COURT: I am missing something. What did they
18 receive? You said they received a payment?

19 MR. FRIEDMAN: Yes, your Honor.

20 THE COURT: What payment?

21 MR. FRIEDMAN: When an interest payment is due on the
22 Argentine law exchange bonds, Citibank acts as the depository
23 in Argentina for the international clearing systems which
24 distribute the payment to --

25 THE COURT: Let's be very specific. What interest

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1 payment are you talking about?

2 MR. FRIEDMAN: Yes. I am talking about interest
3 payments that are due on all the bonds that we identified, the
4 five ISINs that were bonds issued in the 2005 or 2010 --

5 THE COURT: My question is more specific.

6 MR. FRIEDMAN: I'm sorry.

7 THE COURT: What actual interest payment are you
8 talking about, if any?

9 MR. FRIEDMAN: So the actual interest payment I am
10 talking about are interest payments -- for example, there was
11 one made on July 30 which is a payment that was on the 113 ISIN
12 bond that the court allowed to be made on a one-time basis
13 pursuant to the court's July 28 order.

14 THE COURT: Let's pause on that, please. The order
15 shows I permitted that, right?

16 MR. FRIEDMAN: Yes, your Honor.

17 THE COURT: That interest payment, how did it flow?

18 MR. FRIEDMAN: So that interest payment flows from the
19 Republic to CRYL. There is an account at Caja and then to
20 Citibank on behalf of the clearing systems. And then from
21 Citibank it goes into accounts of the clearing systems, who
22 then distribute the payment to their participants, which are
23 the brokerage firms, and banks where exchange bond holders have
24 their accounts. That is how it flows, your Honor.

25 THE COURT: Did it flow that way then?

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1 MR. FRIEDMAN: Yes, your Honor. Your Honor may recall
2 that in connection with the various proceedings on the Citibank
3 motion when there was an agreement or a court order that
4 Citibank could process an interest payment, such as the
5 July 30, such as the September 30, the clearing systems then
6 came into court and obtained permission to further process the
7 payment by distributing what they received from Citibank to
8 their participants and ultimately to the exchange bond holders.

9 THE COURT: I want to get back to the injunction. Can
10 we focus on the language at pages five and six of the
11 injunction?

12 MR. FRIEDMAN: Yes, your Honor.

13 THE COURT: You want to have Citibank included within
14 the ambit of the injunction, right?

15 MR. FRIEDMAN: Well, what I would submit, your Honor,
16 is that Citibank is included within the ambit as a participant
17 in the payment process.

18 THE COURT: I wasn't asking you that question.

19 MR. FRIEDMAN: I'm sorry.

20 THE COURT: What is it that the plaintiffs wish to
21 enjoin or prevent Citibank from doing?

22 MR. FRIEDMAN: I will answer that question directly,
23 your Honor.

24 THE COURT: Okay.

25 MR. FRIEDMAN: What we would like to prohibit Citibank

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1 from doing is processing and transferring payments on Argentine
2 law exchange bonds that are made by the Republic in violation
3 of this court's injunction.

4 THE COURT: What specifically came up in the summer,
5 and presumably you say would continue to come up, what is it
6 that the plaintiffs wish to have Citibank enjoined from doing?
7 Say that again.

8 MR. FRIEDMAN: Yes. Citibank should be enjoined from
9 processing and transferring payments that are made by the
10 Republic on Argentine law exchange bonds in violation of your
11 Honor's injunction.

12 THE COURT: Now what came up this summer that
13 specifically was at issue? Refresh my memory.

14 MR. FRIEDMAN: Yes. What came up this summer, your
15 Honor, is that first of all in June -- and maybe that
16 chronology document I handed the court would be helpful to
17 refer to.

18 THE COURT: You go ahead.

19 MR. FRIEDMAN: Citibank, after the Supreme Court
20 denied cert and the injunction became effective, the court
21 heard Citibank's motion for clarification or modification of
22 the injunction. Your Honor issued an order dated June 27,
23 2014. That order, which allowed Citibank to process payments,
24 was recognized by everyone as an order ruling in substance that
25 the Argentine law exchange bonds were not covered by the

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1 injunction. Then in the summer, plaintiffs made a motion for
2 reconsideration in which we argued that the injunction, the
3 main injunction, covered all the exchange bonds issued in the
4 2005/2010 exchange, whether under Argentine law or other law,
5 and the court issued the July 28 order, which everyone
6 recognizes, including Citibank, as making clear that the
7 Argentine law exchange bonds are covered.

8 Citibank recognized that under the July 28 order,
9 which simply clarifies the main injunction, Citibank recognizes
10 it is enjoined, that is why Citibank joined with the Republic
11 pursued an appeal from the July 28 order.

12 The next thing that happened in the summer, your
13 Honor, is that Citibank and the Republic argued in the Second
14 Circuit that the July 28 order, making clear that Argentine law
15 exchange bonds are covered, they argued that was a
16 modification. They argued the injunction should be interpreted
17 only to cover exchange bonds under U.S. or U.K. law where Bank
18 of New York was the trustee.

19 The Second Circuit totally rejected that contention.
20 The Second Circuit ruled that your Honor's July 28 order merely
21 clarified what was in the injunction. As your Honor will
22 recall, and your Honor said this on the record in the hearing
23 prior to the July 28 order, the injunction covers exchange
24 bonds. Your Honor has had occasion to rule we are not carving
25 exchange bonds out of the injunction.

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1 The last thing that happened in the summer it was --

2 THE COURT: I am going to interrupt you again and I
3 want to go back to Ms. Wagner. Could you go back to the
4 lectern?

5 MS. WAGNER: Certainly.

6 THE COURT: You stay there because I have questions
7 for both of you. I want to get very specific in this way.

8 Ms. Wagner.

9 MS. WAGNER: Yes, your Honor.

10 THE COURT: Citibank is moving to vacate the July 28
11 order, right?

12 MS. WAGNER: Correct.

13 THE COURT: What is it that the July 28 order does to
14 Citibank that Citibank wants to be free from?

15 MS. WAGNER: Your Honor, the July 28 order vacates the
16 June 27 order. The June 27 order said that Citibank was not
17 subject to the injunction. We believe the July 28 order should
18 be vacated because the June 27 order reinstated because we
19 believe it was never your Honor's intention --

20 THE COURT: That's not an answer to my question. What
21 is it that the July 28 order does from a practical standpoint
22 as far as the conduct of Citibank's business? What does it do?
23 What does it prevent? What is the problem practically?

24 MS. WAGNER: Your Honor, the practical problem is that
25 if Citibank is subject to the injunction and if the injunction

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1 covers Argentine law bonds, then Citibank would be enjoined
2 from remitting to its customers the funds that it receives for
3 its customers and that would be a violation of Argentine law
4 and that would put us in great danger.

5 THE COURT: Wait a minute. I want to just go slow.
6 If my memory is correct, the Republic made an interest payment
7 to the exchanges on July 30, am I right?

8 MS. WAGNER: I believe it was June 30, your Honor.

9 THE COURT: I think that it went to the end of the
10 grace period. I think it was July.

11 MS. WAGNER: That may be right, your Honor, yes.

12 THE COURT: Let's assume it is July 30.

13 MS. WAGNER: Yes, your Honor.

14 THE COURT: There was an interest payment and Citibank
15 played a role in processing that interest payment, right?

16 MS. WAGNER: Citibank received the interest payment
17 and remitted it to its customers.

18 THE COURT: Fair enough. Then along comes
19 September 30 and of course we have gone past December 31.

20 MS. WAGNER: Yes, your Honor.

21 THE COURT: Refresh my memory, were there interest
22 payments made?

23 MS. WAGNER: There were interest payments made, and on
24 each occasion your Honor has permitted Citibank to remit the
25 money to its customers.

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1 MR. FRIEDMAN: That was with consent, your Honor.

2 THE COURT: What?

3 MR. FRIEDMAN: That was with consent while we were
4 allowing these proceedings to move forward.

5 THE COURT: Fair enough. Let's suppose that the
6 current -- we will wall it restriction or whatever you want to
7 call it -- that is embodied in the July 28 order, let's suppose
8 that that remains in effect. What it means is that if the
9 Republic tries to make interest payments to its exchangers, and
10 right now that would be illegal, unless the Pari Passu clause
11 was honored and so forth, if the Republic tried to do that --
12 and I will assume try to do something that was unlawful -- then
13 Citibank would be enjoined if the restriction is still there,
14 would be restricted from processing that payment, am I right?

15 MS. WAGNER: Your Honor, if the injunction is
16 interpreted to cover Argentine law bonds, which we think is
17 right and Citibank as custodian, yes, that would be the effect.

18 THE COURT: When you talk about Argentine law bonds --

19 MS. WAGNER: Your Honor.

20 THE COURT: Let me just finish.

21 MS. WAGNER: I'm sorry.

22 THE COURT: The Republic of Argentina has lots of debt
23 in different forms. The litigation before me is limited. It
24 doesn't embrace everything.

25 MS. WAGNER: That's correct.

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1 THE COURT: But it does embrace something, and it
2 embraces the people who received exchange bonds and it would
3 embrace any attempt by the Republic to make a payment of
4 principal or interest on those bonds that is within the
5 injunction which is in effect in this court now. I am not
6 talking about Argentine law bonds, I am talking about the bonds
7 I am talking about. I am talking about may embrace Argentine
8 law bonds, but I am talking about the bonds that I have just
9 described.

10 The issue which you pose, Mr. Friedman opposes, is
11 whether Citibank could process, as has been described, payments
12 of interest if there were payments of interest by the Republic.
13 To some extent the issue we have been grappling with this
14 afternoon is academic. Right now I do not believe that the
15 Republic is making quarterly payments of interest to the
16 exchangers, am I right?

17 MR. FRIEDMAN: Not exactly, your Honor. The Republic
18 on these Argentine law exchange bonds has been making quarterly
19 payments because the plaintiffs and Citibank and the Republic
20 have agreed that while the court has been considering this
21 issue, payments could be paid.

22 But now that we have an opportunity to be heard by the
23 court, the issue before the court is whether the Argentine law
24 exchange bonds are covered by the injunction, as we say they
25 clearly are, in which case when the next interest payment comes

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1 due, which will be March 30, then the injunction will clearly
2 prohibit Argentina from paying the exchangers who hold
3 Argentine law exchange bonds. That is why we are here right
4 now.

5 THE COURT: Well, obviously there is no issue if the
6 plaintiffs agree, as has been done two or three times last
7 year, right?

8 MR. FRIEDMAN: That's correct, your Honor.

9 THE COURT: If you agree, then the Republic makes the
10 payment. If it flows through Citibank, it is all by agreement.

11 MR. FRIEDMAN: To be clear --

12 THE COURT: Let's assume, however, that there is an
13 issue and how the issue arises. The thing is, unless there is
14 consent, Republic cannot make any interest payment.

15 MR. FRIEDMAN: Exactly.

16 THE COURT: Let me finish.

17 MR. FRIEDMAN: I'm sorry.

18 THE COURT: Therefore, there is not going to be
19 anything flowing into or out of or around Citibank. It is not
20 going to happen. However, the injunction is intended to cover
21 not just the Republic but participants. So the issue before me
22 is -- and I am not going to render a decision now this
23 afternoon -- the issue before me is whether Citibank would be a
24 participant in the event of an attempted interest payment or an
25 interest payment.

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1 The reason I engage in this discussion with you is
2 that the injunction not only enjoins the Republic, but it
3 enjoins the parties who are called participants.

4 I take it you, Mr. Friedman, you say Citibank is a
5 participant, right?

6 MR. FRIEDMAN: We say clearly yes, clearly a
7 depository. Net depositories are named as participants, a
8 depository for the clearing systems, which are named as
9 participants. So yes, clearly Citibank is a participant within
10 the definition of participant in the injunction.

11 MS. WAGNER: Your Honor, may I be heard on that
12 specific point?

13 THE COURT: Sure, of course.

14 MS. WAGNER: Your Honor, participants are those people
15 who are above the line on that little chart that I showed you.
16 They include people down to the clearing systems.

17 Now, Mr. Friedman keeps saying that Euroclear and
18 Clearstream are clearing systems. Of course they are clearing
19 systems. They are not acting as clearing systems for the
20 Argentine law bonds. That clearing system is the Caja de
21 Valores and there is no dispute about it.

22 He is just trying to confuse you when he says that
23 these are clearing systems. Your injunction joins people by
24 function and it was all about the New York bonds. Euroclear
25 and Clearstream clear for the New York bonds, they do not clear

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1 for the Argentine law bonds. That is point one.

2 Point two on the participant point, which is really
3 quite extraordinary, the plaintiff themselves defined the
4 depositories in a brief to this court in connection with this
5 injunction as somebody holding one of the global bonds.
6 Citibank does not hold a global bond. The global bond is held
7 by CRYL.

8 The idea that they are now saying that because we hold
9 bonds in custody for customers we are a depository is extremely
10 misleading, your Honor. We are not a participant. We are not
11 a depository. We are not anything to do with any of these
12 roles. Plaintiff themselves have defined these for you in a
13 way that is inconsistent with what you are being told today.

14 THE COURT: I am not getting your point.

15 MS. WAGNER: My point is, your Honor, we are talking
16 here, Citibank is talking about the Argentine law bonds, right?
17 Not the New York law bonds that were addressed in your
18 injunction.

19 For the New York law bonds, as this chart
20 demonstrates, the clearing systems are Euroclear and
21 Clearstream. Euroclear and Clearstream are not the clearing
22 systems for the Argentine law bonds. The clearing system for
23 those bonds is the Caja. Citibank is below the clearing system
24 level, just like financial institutions that were expressly
25 excluded from the injunction.

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1 Plaintiffs are now trying to confuse the issue by
2 saying that somehow because people deposit securities with us,
3 we are a depository. That is completely false. The
4 depositories are those people who hold the global bonds.

5 THE COURT: Can I interrupt you?

6 MS. WAGNER: Yes.

7 THE COURT: It doesn't particularly help this label,
8 foreign law bonds and Argentine law bonds. Those labels are
9 not terribly helpful, although they are used now. What I view
10 within my mind and what really happened is bonds, bonds that
11 were issued in 1994 and then bonds that were issued in 2005 and
12 2010 to people who accepted exchange offers.

13 MS. WAGNER: Yes, your Honor.

14 THE COURT: Those are the bonds that we are talking
15 about. Where they are governed by New York law or Argentine
16 law or whatever, that is not relevant to my point now.

17 MS. WAGNER: May I make just one point on that?

18 THE COURT: Just a minute, please.

19 MS. WAGNER: Yes.

20 THE COURT: As far as Citibank is concerned, in the
21 event of that the Republic made an interest payment that was
22 illegal and it tried to do that last year, then the injunction
23 would forbid participation in that illegal act and the
24 participation, the issue before me -- and I am not going to
25 decide this afternoon -- is whether Citibank, under those

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1 circumstances, if it did what is talked about here quite
2 clearly, if it would be a participant and it would be enjoined.

3 I am talking about a possible attempt to make an
4 illegal payment. If a legal payment is made, if the coast is
5 clear for that, then the question would be whether acting in
6 the way that has been described here, whether Citibank would be
7 a participant.

8 The reason I just go through this discussion with you
9 is that we don't have a really functioning regular set of
10 financial transactions in the regular way. There aren't
11 regular quarterly interest payments that are made in the
12 regular way. There isn't the processing of those payments in
13 the regular way. So here we are, here I am as a judge, dealing
14 with instruments and evidence and all about how things would go
15 in a regular way, but nothing is going in a regular way now.
16 That is a problem that I would have to deal with.

17 I am sure there are others lawyer that wish to speak.
18 Can we get to that?

19 MR. FRIEDMAN: Your Honor, may I just say two words
20 before I sit down?

21 THE COURT: Okay.

22 MR. FRIEDMAN: One is, in terms of the injunction's
23 definition of participants, it covers all clearing systems.

24 THE COURT: It covers what?

25 MR. FRIEDMAN: All clearing corporations and systems.

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1 There is no this is below the line, this is above the line.
2 There is no doubt that with respect to the Argentine law
3 exchange bonds, Citibank is a depository and agent for the
4 clearing systems that are necessary for processing and
5 transmitting payment to the exchange bond holders. I just
6 wanted to be clear with the court that there is nothing in the
7 injunction that lends itself to the kind of interpretation that
8 Citibank is suggesting that this depository or that clearing
9 system is covered and this one isn't.

10 The point is, when Citibank receives payment and
11 passes it on to the clearing systems, Citibank is itself
12 covered. It is also covered under item five, as an agent for
13 the clearing system, that is item five in subparagraph F, and
14 that is all part of the vital process for payment to the
15 exchange bond holders, which is exactly what your Honor
16 enjoined. I just wanted to be clear on that.

17 MS. WAGNER: Let me be clear, we disagree completely
18 with that interpretation.

19 MR. BOCCUZZI: If you are going to switch topics, I
20 can speak that. I want to make a point about that scope.

21 MR. FRIEDMAN: If I may finish what I am saying?

22 MR. BOCCUZZI: Is it on this point?

23 MR. FRIEDMAN: Your Honor?

24 THE COURT: Yes.

25 MR. FRIEDMAN: I had one other point I wanted to make,

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1 if I may, before I sit down.

2 MR. BOCCUZZI: Your Honor, they are both speaking to
3 the scope point. I wanted to point out one thing in the Second
4 Circuit rule. He is going to change the subject. Since we are
5 on this subject, I wanted to point something out to your Honor.

6 THE COURT: What is that?

7 MR. BOCCUZZI: The point is Mr. Friedman was
8 disagreeing with the picture that Citibank provided to your
9 Honor and he said there is no line. There is no line in the
10 injunctions. There actually is a line, and I think we started
11 down this road because Mr. Friedman said that the beneficial
12 owners of the bonds -- and put aside the domestic foreign
13 currency indebtedness issue -- the beneficial owners are
14 enjoined. They are not enjoined.

15 The Second Circuit explicitly said, when it was
16 dealing with claims by four sets of beneficial owners in the
17 second appeal from your Honor's injunctions, they said, in
18 contrast, and they named the folks, EBG, Fintech, Euro
19 Bondholders, and Ice Canyon, they are all holders of the New
20 York law governed exchange bonds are not bound by the amended
21 injunctions.

22 I think Citi's simple point in this picture, and why
23 it is accurate, is that Citi is just there as an agent for
24 these folks who are not bound by the amended injunctions. They
25 are simply saying, as a secondary argument, and the primary

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1 argument is one that we talk about in our brief, which is at
2 the Argentine law bonds are not subject to Pari Passu because
3 they are not external indebtedness. But Citi's second point
4 is, assuming that, they can't be bound by this injunction
5 applying the logic and the holding of the Second Circuit done
6 in this case. So the line drawing is quite correct.

7 That was my point, your Honor.

8 MR. FRIEDMAN: Your Honor, the injunction --

9 THE COURT: Somebody agrees with you.

10 MR. FRIEDMAN: Excuse me?

11 THE COURT: Somebody agrees with you.

12 MR. BOCCUZZI: I agree with her.

13 THE COURT: Oh, her. I'm sorry.

14 Go ahead. Let's finish up.

15 MR. FRIEDMAN: Your Honor's injunction is so clear
16 when it comes to the payment process and the purpose of the
17 injunction. Your Honor was clear, the Second Circuit was
18 clear, the purpose of the injunction is to cover participants
19 whose participation is necessary for transmitting payment to
20 the exchange bondholders, because the court, this court, and
21 the Second Circuit, recognized that there was a substantial
22 likelihood that the Republic would violate the injunction and
23 seek to make payments, as has happened.

24 The only way the injunction will have meaning and be
25 enforced is if those participants who are responsible for

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1 moving the funds to the exchange bondholders are covered. That
2 is what this court recognized, that is what the Second Circuit
3 recognized.

4 THE COURT: All right.

5 MR. FRIEDMAN: The one other thing I wanted to
6 address, your Honor, since it is part of what you have already
7 heard from Citibank's counsel and from the Republic's counsel,
8 is this question of certain of the 113 bonds. They say should
9 not be considered exchange bonds.

10 Your Honor will recall, when I started addressing the
11 court, I handed to the court a piece of paper that had five
12 ISINs on it. I explained that all five of those ISINs are
13 exchange bond ISINs, meaning each of those five ISINs
14 represents bonds that were issued in the 2005 or 2010 exchange,
15 clearly covered as exchange bonds under this court's
16 injunction, as affirmed by the Second Circuit.

17 Citibank and the Republic have raised an issue that
18 only applies to the 113 ISIN. I just would like to be clear
19 about that. There is no issue that for all the other ISINs.
20 The bonds outstanding are exchange bonds covered by the
21 injunction. For the 113 ISIN, the issue that has been raised,
22 your Honor, that Citibank and the Republic say after the 2005
23 exchange, when 113 bonds were issued, the Republic issued
24 additional 113 bonds. The argument presented to your Honor is
25 that, therefore, all the 113 bonds should be carved out of the

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1 injunction says the Republic, therefore the Republic should be
2 able to pay the 113 bonds. By the simple expedient of the
3 Republic issuing some more of the 113 bonds, they say now the
4 injunction cannot be enforced as to the 113 exchange bonds.

5 A couple of problems with that argument, your Honor.
6 To begin with, everybody really does recognize that the 113
7 bonds are exchange bonds full stop. The Republic of Argentina
8 issues an annual or quarterly debt report that includes a
9 listing of its bonos de reestructuracion. Pardon my language
10 or my attempt to repeat a Spanish phrase.

11 That listing sets forth all of the outstanding
12 exchange bonds, whether Argentine law, U.S. law, U.K. law.
13 Those are the restructuring bonds. The figures there, as one
14 would expect, include the full outstanding amount of the 113
15 bonds, including 113 bonds that were issued after the 2005
16 exchange.

17 The next point regarding those 113 bonds and the idea
18 that they should be carved out of the injunction, most of the
19 113 bonds were actually issued to and are owned by ANSES, which
20 is just an instrumentality of the Republic. The idea that
21 where the biggest holder of the bonds is the Republic itself
22 and that is the basis for the Republic coming into court and
23 saying we ought to modify the injunction so that 113 bonds that
24 are exchange bonds and are covered by the injunction should be
25 carved out of the injunction, we respectfully submit there is

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1 just no basis for doing that.

2 We have other legal arguments that I won't repeat that
3 are set forth in our brief starting with the idea of coming
4 into court.

5 THE COURT: I think we better move on.

6 MR. FRIEDMAN: Thank you, your Honor.

7 THE COURT: Who is next?

8 MR. BOCCUZZI: Me, your Honor. Carmine Boccuzzi for
9 the Republic. Thank you, your Honor. I know we have been here
10 a long time. I will try to be brief.

11 Just to go back to the picture from Citigroup, your
12 Honor commented on the two columns. One was called foreign law
13 bonds and one was called Argentine law bonds. I think we could
14 rehead those external indebtedness and domestic foreign
15 currency indebtedness. That is the issue we are here for
16 today, your Honor, because as the first page that Ms. Wagner
17 handed up to you shows, it takes you through the relevant
18 provisions of the FAA, the bond instrument that governs the
19 defaulted debt here, and under which plaintiffs made their Pari
20 Passu claims.

21 As we walk through, the Pari Passu clause applies only
22 to external indebtedness, as defined in the agreement.
23 External indebtedness is an important caveat, and we have put
24 in other debt issuances from other sovereign state from around
25 the 1994 period, and they don't have this carve-out, and that

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1 is a carve-out for domestic foreign currency indebtedness.

2 Domestic foreign currency indebtedness is explicitly
3 said not to be external indebtedness, and that means it cannot
4 be governed or controlled by the Pari Passu clause and would
5 fall outside the reach of your Honor's injunctions.

6 This is all the contractual underpinnings which shows
7 your Honor's correctness back in June of last year when your
8 Honor rejected the view of the plaintiffs and said very
9 clearly, these bonds are different and they have always been
10 treated differently. One difference is that if you had a
11 defaulted FAA bond and you entered the exchange, you could not
12 get an Argentine law bond. Those bonds were only in the
13 exchange for holders of Argentine law debt that was in default.
14 That is important, and I will bear on the various things we
15 have spoken about earlier today.

16 The handout, Court Exhibit A, that Mr. Friedman gave
17 to you, your Honor, has the five ISINs. These are the ISINs
18 for the Argentine law bonds. To put a number on it, there are
19 about \$8 billion in Argentine law bonds that we are talking
20 about. Over 78 percent of them were not issued in connection
21 with any exchange of any kind. They were local issuances, and
22 our brief gets into this, as the Citi's brief and their expert
23 declaration, and that is important because the FAA defines
24 domestic foreign currency indebtedness, the kind of foreign
25 currency indebtedness that is outside of the Pari Passu clause.

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1 It defines that as debt that is offered exclusively in the
2 Republic of Argentina.

3 It is beyond any question that debt that is issued in
4 Argentina, where the global note sits at CRYL, that depository
5 that is located in Buenos Aires, were to buy the debt, you
6 actually have to have an account at CRYL or have an account
7 with someone who has an account at CRYL so you can hold it.
8 Directly or indirectly, it has got to go through that Argentine
9 entity. But that clearly satisfies the definition of domestic
10 foreign currency indebtedness.

11 That leaves the \$2.3 billion of debt, Argentine law
12 debt, that was issued in connection with the exchanges in 2005
13 and 2010. As to those bonds, which are part of these ISINs as
14 well, those also satisfy the definition of DFCI. They were
15 also offered exclusively in Argentina.

16 What do I mean by that? You look at the term offered
17 exclusively, offered means where it is made available, you can
18 only get this debt if you or an agent went through an entity in
19 Argentina that had an account with CRYL. The plaintiffs make a
20 big statement about the exchange offer documents referencing
21 these bonds. The fact that exchange documents reference these
22 bonds because they are also describing the larger exchange with
23 which your Honor is familiar, the New York law governed
24 exchange bonds, and the other non-Argentine law exchange bonds,
25 the fact that there is disclosure describing what you needed to

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1 do if you had Argentine law governed debt to get performing
2 Argentine law governed debt does not change the fact that this
3 debt was offered exclusively in Argentina.

4 Unlike the New York law governed exchange bonds with
5 which your Honor is familiar, there is no indenture trustee,
6 there is no Pari Passu clause, none of these terms and
7 conditions. It is all governed by presidential decree. It is
8 only available in Argentina. This \$2.3 billion that was
9 offered in these local exchanges, which are referenced as such
10 in the relevant legislation, these meet the definition just as
11 the other bonds do of domestic foreign currency indebtedness
12 and so can't fall within the scope of the injunction.

13 But there is another point that tracks the exact
14 language of the FAA that also confirms that this debt is
15 domestic foreign currency indebtedness. If you look at the
16 handout that Ms. Wagner gave you that provides the definition
17 of domestic foreign currency indebtedness. There is little 3
18 and little 3A talks about offered exclusively. Little 3B is
19 debt denominated in a currency other than the Republic
20 currency, so that would be dollars, provided in exchange for
21 debt payable in the currency of the Republic.

22 All of the defaulted Argentine law debt in 2002 was
23 pesofied, which means the Republic passed legislation, as it
24 was permitted to do, because this is all Argentine law governed
25 debt, and it was in a state of emergency, real economic

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1 collapse, it had no hard currency, no dollars to pay off these
2 obligations, and so it passed legislation that has been upheld
3 by the Supreme Court of Argentina and can't be subject to any
4 challenge that any of that was a violation of any obligation
5 owed to plaintiffs. That made this debt payable in pesos, and
6 it remained payable in pesos. It was exchanged for performing
7 debt that we are dealing with today.

8 That means under little 3B of the definition of
9 domestic foreign currency indebtedness, all of the ISINs on
10 this page satisfy the definition as well, and therefore the
11 bonds, just as your Honor said previously, should be thought of
12 as differently, but also are improperly subject to the
13 injunctions because of the plain language of the FAA.

14 Unless your Honor has questions about that, the only
15 point I wanted to make on the secondary point, which was what I
16 addressed when I stood up a few minutes ago, was just to point
17 out that the Second Circuit specifically said that the amended
18 injunctions do not enjoin beneficial owners, and so that was
19 why I was agreeing with Ms. Wagner and her chart, as opposed to
20 plaintiffs in their line-drawing exercise, which the line has
21 been drawn by the Second Circuit. The line was drawn by the
22 plaintiffs who said they were not seeking to enjoin beneficial
23 owners, but where Citi is just acting as an agent for those
24 people. It is not properly subject to any injunction for that
25 reason as well.

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1 I don't think your Honor gets there, if you just
2 sparse that language, and the paragraph is dense and it is an
3 old document, but it all tracks right through. There are
4 letters on this subject recently submitted to your Honor on it
5 that confirms that really the only bonds that they have raised
6 an issue with, which is the \$2.3 billion of what they call
7 exchange bonds, I would disagree with that, because exchange
8 bonds in this case have a defined nature about them. They are
9 the bonds that are governed by New York law, which you can get
10 when you got a defaulted FAA bond, which these are not, but
11 bonds that were issued as part of these local exchanges are
12 swept into the injunction, for the reasons why I said before,
13 because they are domestic foreign currency indebtedness, they
14 are not and they cannot be.

15 THE COURT: Thank you.

16 Anyone else? Are we finished? Decision is reserved
17 on the points that have been raised.

18 Thank you very much.

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