

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MONTREUX PARTNERS, L.P.,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

14 Civ. 7171 (TPG)

CORDOBA CAPITAL,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

14 Civ. 7164 (TPG)

WILTON CAPITAL, LTD.,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

14 Civ. 7166 (TPG)

LOS ANGELES CAPITAL,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

14 Civ. 7169 (TPG)

EM LTD.,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

No. 14 Civ. 8303 (TPG)

**DECLARATION OF MICHAEL STRAUS IN SUPPORT OF THE MOTION
OF DEFENDANT THE REPUBLIC OF ARGENTINA FOR INDICATIVE
RULING AND FOR RELIEF FROM AN INJUNCTION**

I, Michael Straus, declare as follows:

1. I am a Managing Member of Montreux Capital Management, LLC, the general partner of Montreux Partners, L.P. (“Montreux”). Montreux has authority herein to act for itself and for three related or affiliated entities, Cordoba Capital (“Cordoba”), Wilton Capital, Ltd. (“Wilton”), and Los Angeles Capital (“LAC”) (collectively with Montreux, the “Montreux Plaintiffs”). I am also a member in good standing of the Bars of the States of New York and Alabama, holding retired status in the one and special status in the other. I have been involved in matters concerning debts issued by foreign states from the early 1980s on, first in the private practice of law and thereafter in my investment management capacities.

2. I make this declaration in support of the motion of defendant the Republic of Argentina (“Argentina”) for an indicative ruling pursuant to Federal Rule of Civil Procedure 62.1 and on a motion under Federal Rule of Civil Procedure 60(b) seeking relief from the injunction entered by this Court on October 30, 2015, in these actions, referred to in this declaration as the “*Pari Passu* Injunction.” It is important to note, however, that the support of the Montreux Plaintiffs for Argentina’s motion is conditioned on a decision by this Court granting Argentina’s motion in *all* of the cases

in which Argentina is making the motion—in other words, in all of the actions in which this Court has granted *any* plaintiff an injunction based on the *pari passu* clause in documents relating to bonds issued by Argentina. That is so primarily because if the Court does not grant Argentina’s motion in all of the actions in which Argentina is making the motion, my understanding is that Argentina will not consider itself in a position to complete its settlement with the Montreux Plaintiffs. In that event, it would be pointless, and could lead to confusion, for Argentina’s motion to be granted in the actions brought by the Montreux Plaintiffs.

3. I am fully knowledgeable concerning the Montreux Plaintiffs’ litigation against Argentina arising from Argentina’s default on its sovereign debt and about the recent settlement negotiations with Argentina. The facts set forth in this declaration are based upon my personal knowledge.

4. Montreux is the owner of \$5,000,000 in original principal amount of Floating Rate Accrual Notes (“FRANs”), issued by Argentina pursuant to a Fiscal Agency Agreement between Argentina and Bankers Trust Company, as Fiscal Agent, dated as of October 19, 1994 (the “1994 FAA”), together with all accrued and unpaid interest thereon. (Deutsche Bank is now the successor fiscal agent under the 1994 FAA.)

5. Cordoba is the owner of \$10,287,000 in original principal amount of FRANs issued by Argentina pursuant to the 1994 FAA, together with all accrued and unpaid interest thereon.

6. Wilton is the owner of \$10,900,000 in original principal amount of FRANs issued by Argentina pursuant to the 1994 FAA, together with all accrued and unpaid interest thereon.

7. LAC is the owner of \$16,176,000 in original principal amount of FRANs issued by Argentina pursuant to the 1994 FAA, together with all accrued and unpaid interest thereon.

8. On December 24, 2001, Argentina declared a moratorium on the payment of principal and interest with respect to all of its external debt, including the FRANs owned by the Montreux Plaintiffs. Argentina's failure to pay principal and interest on the FRANs when due and the declaration of a moratorium on the payment of amounts due on the FRANs each constituted an event of default under the 1994 FAA. The defaults of Argentina entitled the Montreux Plaintiffs to accelerate, and the Montreux Plaintiffs did accelerate, the obligation of Argentina to pay the entire principal amounts of the FRANs.

9. On April 28, 2005, Montreux initiated a lawsuit against Argentina to enforce Montreux's contractual right to immediate payment by Argentina of the entire principal amount of the FRANs, together with all accrued and unpaid interest thereon.

10. On June 1, 2009, this Court entered a judgment in *Montreux Partners, L.P. v. Republic of Argentina*, No. 05 Civ. 4239 (TPG) (the "Montreux Judgment") in favor of Montreux and against Argentina awarding an aggregate amount of \$48,621,544. Argentina has not paid any portion of the Montreux Judgment.

11. On August 3, 2006, Cordoba initiated a lawsuit against Argentina to enforce Cordoba's contractual right to immediate payment by Argentina of the entire principal amount of the FRANs, together with all accrued and unpaid interest thereon.

12. On June 1, 2009, this Court entered a judgment in *Cordoba Capital v. Republic of Argentina*, No. 06 Civ. 5887 (TPG) (the "Cordoba Judgment") in favor of

Cordoba and against Argentina awarding an aggregate amount of \$100,033,967.

Argentina has not paid any portion of the Cordoba Judgment.

13. On March 1, 2007, Wilton initiated a lawsuit against Argentina to enforce Wilton's contractual right to immediate payment by Argentina of \$4,100,000 in principal amount of the FRANs, together with all accrued and unpaid interest thereon.

14. On June 1, 2009, this Court entered a judgment in *Wilton Capital, Ltd. v. Republic of Argentina*, No. 07 Civ. 1797 (TPG) (the "First Wilton Judgment") in favor of Wilton and against Argentina awarding an aggregate amount of \$39,869,672. Argentina has not paid any portion of the First Wilton Judgment.

15. On April 28, 2005, Wilton's predecessors in interest initiated a lawsuit against Argentina to enforce their contractual right to immediate payment by Argentina of, among other amounts, \$6,800,000 in principal amount of the FRANs, together with all accrued and unpaid interest thereon in *Greylock Global Distressed Debt Master Fund, Ltd. and Greylock Global Opportunity Master Fund, Ltd. v. Republic of Argentina*, No. 05 Civ. 4246 (TPG).

16. By order dated December 12, 2008, this Court substituted Wilton as plaintiff on claims relating to the FRANs and directed that Wilton proceed with such claims in a new action. In compliance with this Court's order, Wilton commenced a new action on January 14, 2009, which was designated *Wilton Capital v. Republic of Argentina*, No. 09 Civ. 401 (TPG).

17. On June 26, 2009, this Court entered *nunc pro tunc* an amended judgment in *Wilton Capital v. Republic of Argentina*, No. 09 Civ. 401 (TPG) (the

“Second Wilton Judgment”) in favor of Wilton and against Argentina awarding an aggregate amount of \$66,125,303. Argentina has not paid any portion of the Second Wilton Judgment.

18. On December 5, 2005, LAC initiated a lawsuit against Argentina to enforce LAC’s contractual right to immediate payment by Argentina of \$8,449,000 in principal amount of the FRANs, together with all accrued and unpaid interest thereon, including capitalized interest.

19. On June 1, 2009, this Court entered a judgment in *Los Angeles Capital v. Republic of Argentina*, No. 05 Civ. 10201 (TPG) (the “First LAC Judgment”) in favor of LAC and against Argentina awarding an aggregate amount of \$82,160,690. Argentina has not paid any portion of the First LAC Judgment.

20. On March 21, 2007, LAC initiated a legal action against Argentina to enforce LAC’s contractual right to immediate payment by Argentina of \$8,449,000 in principal amount of the FRANs, together with all accrued and unpaid interest thereon, including capitalized interest.

21. On June 1, 2009, this Court entered a judgment in *Los Angeles Capital v. Republic of Argentina*, No. 07 Civ. 2349 (TPG) (the “Second LAC Judgment”) in favor of LAC and against Argentina awarding an aggregate amount of \$75,139,739. Argentina has not paid any portion of the Second LAC Judgment.

22. The Montreux Judgment, the Cordoba Judgement, the First Wilton Judgment, the Second Wilton Judgment, the First LAC Judgment, and the Second LAC Judgement (collectively, the “Montreux Plaintiffs’ Judgments”) total \$411,950,915 in the aggregate. Post-judgment interest on the Montreux Plaintiffs’

Judgments was awarded at a rate of 0.49% per annum. The Montreux Plaintiffs' Judgments have not been satisfied to date in whole or in part. It is my understanding that the Montreux Plaintiffs' Judgments are among the largest judgments against Argentina awarded to creditors with claims or judgments based on defaulted bonds issued under the 1994 FAA.

23. From the time of its default and continuing through the entry of the Montreux Plaintiffs' Judgments against it, Argentina neither sought to pay the amounts it owed nor engaged in any form of discussions, let alone meaningful negotiations, with the Montreux Plaintiffs over the payment of the Montreux Plaintiffs' Judgments. To the contrary, the Argentine government during those years repeatedly resisted this Court's decisions and orders; disavowed its duty to pay the Montreux Plaintiffs' Judgments; and took steps calculated to frustrate any fair resolution of the Montreux Plaintiffs' claims.

24. On September 5, 2014, after being thwarted in recovering its claims, the Montreux Plaintiffs filed the following new actions in the United States District Court for the Southern District of New York: *Montreux Partners, L.P. v. Republic of Argentina*, No. 14 Civ. 7171 (TPG), *Cordoba Capital v. Republic of Argentina*, No. 14 Civ. 7164 (TPG), *Wilton Capital, Ltd. v. Republic of Argentina*, No. 14 Civ. 7166 (TPG), *Los Angeles Capital v. Republic of Argentina*, No. 14 Civ. 7169 (TPG). The complaints in these actions alleged that Argentina had violated the *pari passu* clause in the 1994 FAA. On February 27, 2015, the Montreux Plaintiffs filed motions for summary judgment in these actions. On June 5, 2015, the Montreux Plaintiffs' summary judgment motions were granted.

25. On August 17, 2015, the Montreux Plaintiffs, together with similarly situated judgment creditors of Argentina, filed motions for specific performance based on Argentina's violations of the *pari passu* clause in the 1994 FAA. The Montreux Plaintiffs moved for specific performance and sought issuance of the *Pari Passu* Injunction in response to Argentina's long-standing refusal to satisfy the Montreux Plaintiffs' Judgments. Up to that point, Argentina had maintained its refusal to pay the judgments or even engage in meaningful settlement negotiations. I personally recall Argentina's evasive tactics and repeated efforts to frustrate any resolution of this matter, including statements made in 2013 and 2014 by Argentina's then-President, Cristina Fernandez de Kirchner, and others in the Argentine government criticizing the rulings of this Court and the Second Circuit and indicating their intent to defy the orders of the U.S. courts.

26. In light of the circumstances at that time, the Montreux Plaintiffs believed that they had no effective remedy for Argentina's repeated breaches of its contractual obligations under the 1994 FAA except filing a motion for specific performance seeking the issuance of the *Pari Passu* Injunction. The Montreux Plaintiffs further believed the public interest favored the issuance of the *Pari Passu* Injunction, in part because it would prevent Argentina from engaging in unfair treatment of bondholders like the Montreux Plaintiffs and could well have the salutary effect of causing Argentina to reconsider its negative strategy with respect to resolving these disputes.

27. The motions of the Montreux Plaintiffs and other similarly situated plaintiffs in related actions for specific performance were granted on October 30,

2015. In granting those motions this Court issued the *Pari Passu* Injunction, which in substance ordered Argentina, among other things, to perform its obligations to plaintiffs under the *pari passu* clause in the FAA by making ratable payments to plaintiffs any time Argentina makes, or attempts to make, payments on the “Exchange Bonds.” The “Exchange Bonds” is a term used by this Court to refer to certain other bonds offered by Argentina in 2005 and 2010.

28. In December 2015, Argentina’s ruling party changed with the election of a new president, Mauricio Macri. President Macri had campaigned on a platform that called for resolution of the disputes arising from Argentina’s 2001 default.

29. Almost immediately after President Macri’s election, Argentina indicated that it was prepared to engage in a new round of negotiations with bondholders. Shortly thereafter, in January 2016, Argentina initiated settlement negotiations with the Montreux Plaintiffs with the assistance of court-appointed Special Master Daniel A. Pollack. I personally participated in those negotiations on behalf of the Montreux Plaintiffs.

30. It quickly became clear to me that Argentina had set a course to resolve the pending disputes. In particular, Argentina promptly deployed and sent to New York a sophisticated team of senior economic and political advisors captained by Luis Caputo, Secretary of Public Finance, and Mario Quintana, the President’s Cabinet Chief. That team engaged, for the first time in years, in full and frank discussions with external creditors with a view to realizing the President’s commitment to resolving its outstanding debt obligations. Further, abandoning its past defiance, Argentina honored this Court’s appointment of a highly experienced


Special Master by submitting to his oversight and entering into good faith, confidential negotiations, all as facilitated by him with firmness, thoughtfulness, and patience. For their part, the Montreux Plaintiffs engaged in good faith, arm's length negotiations with Argentina, leading to an agreement in principle on February 3, 2016 whereby Argentina would satisfy the Montreux Plaintiffs' Judgments. Upon information and belief, Plaintiff EM Ltd. and Argentina also reached an agreement in principle on or around the same date. The agreement in principle to pay the Montreux Plaintiffs' Judgments is subject to certain conditions, including relief under the *Pari Passu* Injunction and the repeal of legislation in Argentina that I understand was intended to prohibit settlements with the Montreux Plaintiffs and similarly situated parties.

31. Subsequently, Argentina publicly released a proposal which, if approved by the Argentine Congress, would extend a settlement offer to all holders of defaulted bonds covered by the 1994 FAA. As someone who has been intimately involved with this dispute for over a decade, I therefore believe Argentina has fundamentally shifted its approach to these disputes not just in word but in deed.

32. Based on my personal experience and knowledge of these matters, I am confident that the relief requested by the motion of Argentina will advance the cause of resolving the litigation between the Montreux Plaintiffs and Argentina arising from the 2001 default. More specifically, it is my hope and expectation that the granting of that relief, coupled with appropriate action by the Argentine Congress, will enable completion of the settlement relating to the Montreux Plaintiffs' Judgments and the separate settlement of the judgment obtained by EM Ltd.

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

Executed at Alton, Alabama on February 10, 2016

A handwritten signature in black ink, appearing to read "Michael Straus", written over a horizontal line.

Michael Straus