

# Morgan Lewis

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February 26, 2016

Honorable Thomas P. Griesa  
United States District Court for the Southern District of New York  
500 Pearl Street  
New York, NY 10007-1312

Re: No. 6978: Republic of Argentina Sovereign Debt Litigation

Dear Judge Griesa:

We represent pending Intervenors<sup>1</sup> who hold Argentina bonds governed by German and English law, and sought *pari passu* relief in 2014. Intervenors moved to intervene in Case No. 08 Civ. 6978 on February 19, 2016.<sup>2</sup> Dkt. No. 878. In Intervenors' main cases, cross-motions are pending, which address questions of German statutes of limitation and English no-action rules. Absent settlement, further briefing and oral argument would proceed this Spring.

We respond to Mr. Paskin's letter motion of February 25, 2016 (Dkt. No. 888), and respectfully request that it be denied, in light of circumstances that occurred after the Court's ruling.

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<sup>1</sup> ARAG-A Limited, ARAG-O Limited, ARAG-T Limited, ARAG-V Limited, Yellow Crane Holdings, L.L.C., MCHA Holdings, LLC, Honero Fund I, LLC, Red Pines LLC, Trinity Investments Limited, Spinnaker Global Emerging Markets Fund, Ltd. and Spinnaker Global Special Situations Fund LP have instructed us to write this letter. Various Intervenors, including Honero Fund I, LLC, also hold New York law bonds, which are the subject of various of the so-called "Me-Too" actions. They have been seeking, without success, to settle those actions as well.

<sup>2</sup> The Intervenors sought to intervene in the lead case of the matters holding the injunctions. See Memorandum of Law in Support of the Motion to Intervene [Dkt. No. 879] at 1 n.1.

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Prior to the Court's February 19 ruling, our clients attempted to engage Argentina in settlement for many months. While it was not visible to the Court, that effort was finally *beginning* to bear fruit in the days just prior to February 19. But with the publication of the Court's ruling, Argentina's interest in negotiation vanished. With relief from the injunctions all but inevitable, it abandoned engagement for cram-down.

Today we have filed the affidavit of Siong Wei ("Max") Lee, an authorized representative of one of our clients, Honero Fund I, LLC ("Honero"). His experience appears to be representative.

Prior to February 2016, Mr. Lee's settlement overtures met with silence. *See* Lee Decl. ¶ 5. Honero's position, and that of its co-plaintiffs, was straightforward. They would compromise debt claims substantially, but not if it meant further proceedings in this Court debating German law on claims timeliness or the English "special exception" doctrine. On February 16, Honero submitted a spreadsheet of its bond holdings, and sought confirmation of telephonic advice that Argentina was "offering 150% of principal/face value for all of the bonds in the attached spreadsheet." *Id.* ¶ 7 & Ex. 2. Argentina responded the next day with a link to a form of "Master Settlement Agreement" published on a government website. It wrote; "**[w]e did not find any issues in the list of ISINs that you sent us.**" *Id.* ¶ 8 & Ex. 3 (emphasis added).

On February 18, *at Argentina's request*, Honero emailed a fully-executed Agreement Schedule to Argentina. *Id.* ¶ 9 & Ex. 5. The submission was on Argentina's form, with only one change. In light of the disputes still pending before Your Honor regarding foreign law on claims timeliness, a rider added a paragraph to moot them. *Id.* at Ex. 5. Honero's cover email flagged the rider, and advised that perhaps as much as 73% of the foreign-law plaintiff group would accept the same terms. *Id.* ¶ 10 & Ex. 5.

The next morning, Mr. Lee emailed Argentina again, advising that he understood that group support now exceeded 90%. *Id.* ¶ 12 & Ex. 6. This, apparently, was good news. A few hours later, Argentina responded, stating: "**We will be okay with the rider.**" *Id.* ¶ 13 & Ex. 7 (emphasis added).

On the strength of that agreement, other Intervenors acted, and sent in their Agreements along with the same rider text. Momentum was building nicely toward a settlement with our client group, just as all would have hoped.

And then everything changed. Late that afternoon, the Court entered the Indicative Order. Case No. 14 Civ. 8602, Dkt. No. 59. Following its entry, Argentina reneged. On Monday, it emailed Honero, stating: "we reviewed your calculation and we believe that you are not taking into consideration the statu[te] of limitations." Lee Decl. ¶15. Mr. Lee reminded Argentina of its agreement the morning before Your Honor ruled, but all of his efforts, and those of his co-plaintiffs since February 19, have failed.

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Many parties have tried to settle; Honero's and related client-group cases provide one illustration. Other counsel can advise the Court of other such accounts. They all point to the same thing: Argentina has simply exploited the indicative ruling.

We request therefore that the Court not *yet* vacate any injunction. The presence of the injunctions imposed good incentives on all parties. The process was working. With the injunctions in place, we believe a vastly greater number of settlements is highly likely. Without them, we fear Argentina's cram-down approach will persist, and a global resolution to an intractable problem, which for a few days was advancing, will again recede.

Very truly yours,

*/s/ Sabin Willett*

Enclosures

cc: Counsel of Record (via ECF)