

EXHIBIT A

Transcript of Oral Argument in *Aurelius Opportunities Fund II LLC v. Republic of Argentina*, No. 15-1060(L) (2d Cir.), held on February 24, 2016

1 UNITED STATES COURT OF APPEALS

2 FOR THE SECOND CIRCUIT

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4 In the Matter of:

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6 AURELIUS OPPORTUNITIES FUND II. LLC., et al,

7 Appellees.

8 v.

Docket No. 15-1060-cv

9 THE REPUBLIC OF ARGENTINA,

10 Appellant.

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14 U.S. Court of Appeals

15 Thurgood Marshall U.S. Courthouse

16 40 Foley Square

17 New York, New York

18

19 February 24, 2016

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21 B E F O R E:

22 HON. PETER W. HALL

23 HON. JOHN M. WALKER, JR.

24 HON. REENA RAGGI

25 U.S. COURT OF APPEALS JUDGES

1 A P P E A R A N C E S :

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9 Attorney for Appellees

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11 BY: MATTHEW D. MCGILL

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P R O C E E D I N G S

JUDGE RAGGI: And now we'll hear from the parties in Aurelius Opportunities v. Argentina. Counsel, let me begin by saying this case is before the Court for argument of an appeal, but there have been motions filed recently, first of all, to dismiss the schedules appeal with prejudice, and then to have this panel entertain motions in a related case, which is colloquially referred to by all parties as involving the me too injunctions.

And to remand that case for further action by the District Court. I think we'd like to start by hearing you all on the motions. And if everybody could just identify themselves for us, who's going to be arguing, it would be helpful.

MR. PASKIN: Yes, may it please the Court, Michael Paskin from Cravath, Swaine & Moore for the Republic of Argentina.

JUDGE RAGGI: Thank you, Mr. Paskin.

MR. MCGILL: May it please the Court, Judge Raggi, Matthew McGill of Gibson, Dunn & Crutcher for the appellees in 1060. And to the extent the Court is addressing 3675, I'm here on behalf of appellees, NML Capital, the Aurelius appellees and FFI and FFY Funds.

JUDGE RAGGI: Thank you.

JUDGE WALKER: And we also have another. We have

1 other people who have come in support of Argentina for some
2 of the -- for the remand.

3 MR. PASKIN: That's correct. There have been
4 other papers filed --

5 JUDGE RAGGI: And only the two of you are going to
6 be arguing?

7 JUDGE WALKER: Only the two of you will be
8 arguing, okay.

9 MR. PASKIN: But only the two of us will be --

10 JUDGE WALKER: That's fine.

11 JUDGE RAGGI: Well, if I understand it, the motion
12 for dismissal with prejudice is Argentina's. The motion for
13 this panel to consider the remand motion is Argentina's, but
14 the motion for this panel to consider it is -- comes from
15 your client, Mr. McGill, is that right?

16 MR. MCGILL: That is correct, Your Honor.

17 JUDGE RAGGI: All right. Well, we'll start with
18 Argentina. And we have many questions on these motions, so
19 I'm going to start, let Judge Hall start us off here.

20 MR. PASKIN: Of course.

21 JUDGE HALL: I guess let me make first make clear,
22 Mr. Paskin, in the me too cases, is it Argentina's motion
23 also to refer this case -- sorry -- to remand this case
24 under 12.1?

25 MR. PASKIN: Argentina's motion, yes, in the me

1 too cases is to remand under 12.1 based on the Court's
2 indicative ruling.

3 JUDGE HALL: But and my colleagues will jump in
4 very shortly, but I think the first thing we would like to
5 know is with respect to that motion, why is Argentina not
6 seeking to dismiss that appeal with prejudice as it is doing
7 in this one?

8 MR. PASKIN: Right. Well, frankly, Your Honor, I
9 think dismissal with prejudice of that appeal as a
10 substantive issue would be appropriate and entirely
11 consistent with the overall change in strategy of the
12 Republic here, which is we are not pursuing these old issues
13 and these old appeals, and challenging the entry of these
14 injunctions.

15 Things have obviously been moving, you know,
16 extremely quickly over the last several days, and couple of
17 weeks. And the concern, and it may be a baseless concern,
18 but the concern with just dismissing the 3675 appeal along
19 with 1061 was, does it procedurally interfere with our
20 attempt to get the remand and make sure that we're on
21 procedurally appropriate grounds with the District Court's
22 indicative ruling and the ability to have that converted
23 into an actual order?

24 JUDGE RAGGI: I'm not sure I understand. You're
25 looking for dismissal with prejudice in this case. I would

1 assume that the same concerns apply.

2 MR. PASKIN: Yes, I --

3 JUDGE RAGGI: And that's why we're a little
4 perplexed as to why there are different applications in the
5 two cases.

6 MR. PASKIN: Okay. Well then, apologies for the
7 complexity there, Your Honor, but Argentina's position is it
8 is not pursuing the substance of either of the pending
9 appeals.

10 JUDGE WALKER: I'd like to ask a few questions, if
11 I could --

12 MR. PASKIN: Of course.

13 JUDGE WALKER: -- about the District Court's order
14 lifting the -- or opinion lifting the injunction. First of
15 all, it's not lifting the injunction, it's because we have
16 jurisdiction, so it's going to depend upon a remand of
17 somehow getting it back before the District Judge, right?

18 MR. PASKIN: Of course.

19 JUDGE WALKER: And then the second question that I
20 have, though, are what are the terms of the lifting of the
21 injunction? The injunction, as I read it, it looks like
22 Argentina has to take some legislative steps, and then
23 payment has to be made before the injunction can be lifted.

24 MR. PASKIN: That's correct.

25 JUDGE WALKER: But how do you pay -- make

1 payments, and then lift the injunction, if you don't lift
2 the injunction first? That's one question.

3 JUDGE RAGGI: Because the payments are not in
4 conformity with (indiscernible).

5 JUDGE WALKER: The payments are not in --

6 JUDGE RAGGI: (indiscernible) --

7 JUDGE WALKER: -- conformity of the pari passu.

8 MR. PASKIN: The -- technically, the injunctions
9 themselves apply to payments to the exchange bond holders.

10 JUDGE WALKER: Right.

11 MR. PASKIN: The payments that would be made in
12 conform -- in consistent with Judge Griesa indicative ruling
13 are payments to the holdout bond holders, the litigants in
14 these cases, who settle with Argentina.

15 JUDGE WALKER: Don't the -- doesn't the injunction
16 enjoin Argentina from making anything other than pari passu
17 payments?

18 MR. PASKIN: The injunction enjoins Argentina from
19 making anything other than pari passu payments to the
20 exchange bond holders. They can't make payments to the
21 exchange bond holders, unless they also are making payments
22 from the --

23 JUDGE WALKER: From the injunction.

24 MR. PASKIN: -- to the holdouts.

25 JUDGE WALKER: It doesn't cover the settlements.

1 MR. PASKIN: That's correct. The injunction
2 doesn't --

3 JUDGE WALKER: Even though the contract would?

4 MR. PASKIN: That is, you know, correct, yes. And
5 Judge Griesa, it appears, is prepared to -- proposes in his
6 order that he would --

7 JUDGE WALKER: (indiscernible) -- violate the pari
8 passu clause of a contract in order to effectuate the
9 settlement.

10 MR. PASKIN: That he would authorize those
11 payments in order to bring about the settlement so that
12 everybody can get paid.

13 JUDGE WALKER: So but let me just ask then, what
14 is the realistic -- I mean, you've -- there's a lot of talk
15 about an emergency here, and Monday's got to be an emergency
16 and everybody's got to settle by then. And the date -- the
17 reason that's been fixed, apparently, is because the
18 legislature's coming into session on the following day,
19 March 1st, correct?

20 MR. PASKIN: Correct.

21 JUDGE WALKER: So what is the indication that the
22 legislature's going to do anything for -- on March 1st, or
23 for that matter, for the next three months?

24 MR. PASKIN: Right. Well, the legislative process
25 is going to take time. They have two houses of Congress.

1 There's a house and a Senate (indiscernible) --

2 JUDGE WALKER: Right. So why wouldn't the actual
3 lifting of the lock law be -- and the other impediments to
4 settlement be the triggering event, at least as far as
5 lifting the injunction is concerned, rather than having it
6 be Monday.

7 MR. PASKIN: Well, the triggering event, as far as
8 lifting the injunction is not only the change of the laws,
9 but it's also getting these payments effectuated.

10 JUDGE WALKER: Well --

11 MR. PASKIN: And just to continue, Your Honor, if
12 the question is why isn't there a delay prior to remand in
13 order to let the District Court enter his order, because
14 that appears to be appellees' position is the -- as to what
15 should happen.

16 JUDGE WALKER: Yeah.

17 MR. PASKIN: The issue there becomes, in order to
18 effectuate the payments that are the other prong of the
19 conditions under the order, what really is necessary is for
20 the -- for there to be certainty about the meaning and
21 viability of that order. If it's unclear whether upon
22 making those payments, that order would then be challenged
23 in this Court, and potentially overturned, then it can't
24 work.

25 And so, the idea would be if there's going to be a

1 challenge, the challenge to the indicative ruling or the
2 challenge to the rationale behind it should happen as
3 quickly as possible. It should be converted to an order.
4 If appellees want to take it up on appeal, which presumably,
5 they do, then it can be challenged.

6 And in parallel, with the process that goes on in
7 the legislature, and the mechanics behind effectuating
8 payments to the settling bond holders, excuse me, we can get
9 the certainty as to whether the order that's been entered,
10 that's proposed to be entered by the District Court is an
11 order that actually is going to stand.

12 And because without that, it puts -- it makes the
13 entire situation untenable. And so, while Mr. McGill
14 suggests that we should all wait and let the status quo of
15 the last two years just prevail, that doesn't really work,
16 first of all, because the status quo has changed. The
17 government has come in and changed its attitude, and based
18 on that, the District Court has changed its interpretation
19 of, you know, what equitably is required to do here.

20 JUDGE WALKER: When would the parties appear
21 before the District Judge, if a remand occurred? Because it
22 seems to me there are lots of questions about why this --
23 why -- I don't understand quite right now, by the February
24 29th date, is in place, were -- for the others to settle, in
25 order to benefit from, in effect, from the injunction.

1 Because if they don't settle by the 29th, then they're --
2 they have no injunction, right?

3 MR. PASKIN: Well, if they don't settle by the
4 29th, they -- and everything goes forward and the settling
5 parties do get paid and the injunction and the order becomes
6 effective --

7 JUDGE WALKER: Right.

8 MR. PASKIN: -- essentially, that's correct.
9 Appellees no longer, who don't settle, no longer have the
10 injunctions.

11 JUDGE WALKER: This is effectively a cram down
12 provision.

13 MR. PASKIN: No, it's absolutely not, because
14 first of all, the District Court retains jurisdiction over
15 the injunction. And as has been abundantly clear in the
16 past, if it believes that Argentina is no longer, is
17 reverting to its old ways, to put it, you know,
18 colloquially, the District Court obviously can put the --
19 you know, can impose the same restrictions or harsher ones
20 or whatever it is that the District Court is inclined to do.

21 JUDGE RAGGI: That would be a new order, and that
22 would be appealable and that's what the non-settling parties
23 don't want to have to go through.

24 MR. PASKIN: If it's just a question, Your Honor,
25 of the effort of that, Argentina is taking the position, and

1 again, I'm not expecting them to be taken on their words
2 alone, which is why there are these conditions in the
3 lifting of the injunction. We're abandoning the substantive
4 arguments against the imposition of the original
5 injunctions.

6 And by abandoning those arguments, I would expect
7 that it's going to be very hard to reassert them again,
8 having lost them in past years, having lost them on appeal
9 before, and now having completely changed the strategy. So
10 there's a certain point at which the new government has to
11 be given an opportunity to actually do what it says it's
12 going to do with these conditions applied, and allow these
13 settlements to happen, because I realized that I'm running
14 out of time, but --

15 JUDGE RAGGI: You're last on our calendar.

16 MR. PASKIN: But the -- but I think the other
17 issue about the status quo is the status quo that prevailed
18 for the last two years, as Mr. McGill points out in his --
19 in one of his briefs, at least up until the new government
20 took office in December, was a status quo that inflicted
21 tremendous pain on Argentina, that they had brought upon
22 themselves admittedly. But one -- didn't actually succeed
23 in moving settlement talks forward, that didn't actually
24 succeed in getting any of these holdout bond holders paid.

25 So now we have a process in place that allows

1 those things to move forward, that allows settlements to
2 happen. There have been billions of dollars in settlements
3 announced already, pursuant to these new rules and the new
4 approach of Argentina's government. So it seems that the
5 worst position that the appellees find themselves in is
6 exactly the same position that they have been in, which is
7 winning everything in Court, but not actually getting the
8 satisfaction that they want.

9 And now there's a way through it, so we would
10 think, respectfully, that they should be in favor of a
11 prompt remand of converting the indicative ruling into an
12 order. And if by that point they haven't settled or other
13 people haven't, take it up on appeal. Figure out what the
14 rules are and then play by them.

15 JUDGE HALL: When is the injunction actually
16 lifted? It's not lifted for several months, is that right,
17 until the payments are (indiscernible) --

18 MR. PASKIN: Until the payments occur.

19 JUDGE HALL: When do they occur? Do we know,
20 roughly?

21 MR. PASKIN: It -- ultimately, it will depend
22 upon, I think the quantity of payments required, and the
23 degree to which access to capital markets will be required
24 in order to finance them.

25 JUDGE HALL: And so, until that time, the

1 injunction remains in play.

2 MR. PASKIN: Exactly.

3 JUDGE HALL: And the District Judges can modify it
4 or do whatever, hear arguments on that score.

5 MR. PASKIN: Of course.

6 JUDGE HALL: But then, right now, as we stand here
7 now, who has settled? My -- the papers seem to indicate
8 that I think 14 percent have settled, and that's of the me
9 toos, I assume?

10 MR. PASKIN: Those were me toos. The 14 percent
11 referred to in the papers were the initial settlements that
12 were announced back on February 5th or whatever the date
13 was. Since then, the special master has made statements as
14 additional cases and additional plaintiffs have settled.
15 Those statements have come out on practically a daily basis
16 of additional --

17 JUDGE HALL: What's the tally in that?

18 JUDGE RAGGI: (indiscernible) --

19 JUDGE HALL: What's it now?

20 MR. PASKIN: I don't know what the exact tally is,
21 but I think we're now approaching \$2 billion rather than a
22 little bit over one million.

23 JUDGE HALL: (indiscernible) percentage.

24 JUDGE RAGGI: (indiscernible) percentage, are we
25 talking 25 percent, 40 percent?

1 MR. PASKIN: I wouldn't want to be taken exactly
2 on it, but I think about 25 percent is where they are.

3 JUDGE WALKER: And those are the me toos?

4 MR. PASKIN: It's a -- (indiscernible) question.

5 JUDGE WALKER: (indiscernible) no-me too, any
6 original (indiscernible)?

7 MR. PASKIN: No, good question. I should know the
8 answer to that question, but I don't, so I'm not going to
9 guess.

10 JUDGE RAGGI: With respect to the motion before us
11 on dismissal with prejudice, you know, this was made just
12 the other day. We -- we're ready to hear this appeal and
13 resolve it. And I'm wondering why we shouldn't? You know,
14 you said, well, you basically abandoned the challenges to
15 the original injunction, and so you're -- you know, there
16 wouldn't be litigation of that again.

17 But a dismissal with prejudice leaves some
18 ambiguity as to what got resolved, and you know, I'm a
19 little concerned about this, especially if you're not
20 looking to dismiss with prejudice, the me too case, which
21 would then perhaps leave you free, or your client, I
22 understand, that you're making a representation to the
23 Court, but your client's changed its mind before, to
24 resurrect issues that we're prepared to address right now.

25 MR. PASKIN: Right, understood, Your Honor.

1 JUDGE RAGGI: Why should we dismiss?

2 MR. PASKIN: Well, first, with the question of
3 dismissal of the other case, of the me too case, as I stated
4 earlier, we are prepared to dismiss that.

5 JUDGE RAGGI: With prejudice?

6 MR. PASKIN: With prejudice?

7 JUDGE RAGGI: Okay.

8 JUDGE WALKER: Can you do that today?

9 MR. PASKIN: Yes, I can do that today. We can
10 dismiss that with prejudice. I just wanted to preserve
11 procedurally the District Court's ruling and the ability to
12 convert that into an order.

13 JUDGE RAGGI: So your adversary expressed some
14 cost to that -- some question about litigating costs and
15 sanctions. What's Argentina's position with respect to
16 costs, because I might have thought those were dictated by
17 Rule 39?

18 MR. PASKIN: I think that at this point, first of
19 all, I would expect appellees to be happy with the result,
20 and that the costs associated with the particular appeal
21 here seem to be a drop in the bucket relative to --

22 JUDGE RAGGI: (indiscernible) acknowledging your
23 responsibility for costs, how much is maybe another
24 question, but you're acknowledging your responsibility for
25 costs (indiscernible) --

1 MR. PASKIN: I'm acknowledging the client's, you
2 know, potential responsibility for costs, subject to a
3 motion for costs that they would bring.

4 JUDGE RAGGI: Now my understanding about Rule 38
5 sanctions motions is that those could be sought even after
6 dismissal. Does Argentina take any different view on that?
7 I mean, if we dismiss this case, are you going to dispute
8 their ability to seek sanctions?

9 MR. PASKIN: No.

10 JUDGE RAGGI: I mean, you'd dispute their right.

11 MR. PASKIN: We made -- exactly. We may challenge
12 the substance of it, but we won't challenge --

13 JUDGE RAGGI: (indiscernible) --

14 MR. PASKIN: -- the procedural time limits,
15 exactly.

16 JUDGE RAGGI: Okay. We may have more questions,
17 but I think we want to hear from your adversaries first.

18 MR. PASKIN: Okay. Thank you, Your Honor.

19 MR. MCGILL: Thank you, Your Honors, and may it
20 please the Court, Matthew McGill for the parties as I
21 described before. The District Court's indicative ruling of
22 just Friday gave Argentina's public tender offer the force
23 of a judicial ultimatum.

24 JUDGE RAGGI: Before we get to the merits of what
25 the District Court did, which may not even be in front of

1 us, you've just heard Argentina say that it's prepared to
2 have both appeals dismissed with prejudice. They
3 acknowledged that they will be liable for costs, the amounts
4 to be resolved, and that you can bring a Rule 38 sanctions
5 motion, even after dismissal. In light of that position,
6 why should we not grant dismissal with prejudice, of the two
7 appeals?

8 MR. MCGILL: Rule 42(b) dismissals are within the
9 discretion of the Court, particularly at --

10 JUDGE RAGGI: Right. So now tell us why not?

11 MR. MCGILL: And I will. Let me paint the picture
12 of what the indicative ruling does and permits. On Monday,
13 that's February 29th, on Monday, Argentina's public tender
14 offer closes. And on Tuesday, Argentina can fulfill the
15 conditions set forth in the order. The injunctions are
16 automatically lifted. There is no hearing. There has been
17 no hearing on this motion. This was a -- this was presented
18 by an ex parte order to show cause.

19 It was briefed on our side. Initially, we were
20 told, you know, the Court had already closed for the Friday
21 and Monday, and our deadline was Tuesday at noon, at 10:30
22 on Tuesday. The Court extended it to Thursday.

23 JUDGE WALKER: What's to prevent you from going
24 right -- if we dismiss these appeals, and did it quickly,
25 you're going right before Judge Griesa this week and making

1 whatever points you want to make.

2 MR. MCGILL: Well, I would --

3 JUDGE WALKER: The injunction's not going to take
4 effect.

5 MR. MCGILL: We would've -- well, no, that's
6 exactly the point. On Monday, the -- is when the offer
7 closes, this public tender offer.

8 JUDGE RAGGI: (indiscernible) --

9 MR. MCGILL: On Tuesday, they can fulfill the
10 conditions, and that -- and then, it is a springing vacatur
11 of the injunction.

12 JUDGE RAGGI: (indiscernible) to the Court,
13 though.

14 MR. MCGILL: It -- they do not. It --

15 JUDGE RAGGI: That's what the last line of the
16 Judge's order says, the indicative ruling. Let me get it in
17 front of me.

18 MR. MCGILL: (indiscernible), and it says, "If the
19 Court of Appeal remands, the injunctions will be lifted
20 automatically upon fulfillment of these two conditions."

21 JUDGE WALKER: One of which is that the Republic
22 give notice of the payments (indiscernible) --

23 MR. MCGILL: But --

24 JUDGE RAGGI: Right, so the last line of the
25 second (indiscernible) --

1 MR. MCGILL: But all that can happen on Tuesday.
2 The lock law can be lifted. The payments can be made.
3 We're talking about -- you asked how many people have
4 settled so far? It's 20 percent. 20 percent is what
5 settled. The three funds that I mentioned before, NML, the
6 Aurelius funds and FFI and FFY, we're 65 percent. Right?
7 My plea to the Court is, "Wait to dismiss anything." We are
8 -- we have had, since Thursday --

9 JUDGE RAGGI: What is that going to mean in terms
10 of the District Court being able to decide what it's going
11 to do here?

12 MR. MCGILL: I --

13 JUDGE RAGGI: Because the alternative is, we're
14 ready to hear the appeal and we're ready to rule on it --

15 MR. MCGILL: Right, and --

16 JUDGE RAGGI: -- probably in a, you know, very
17 brief time.

18 MR. MCGILL: And I'm -- and I can address that.
19 But the point here is, you have discretion on -- to whether
20 or not to dismiss. And I think you should wait to dismiss
21 for the following --

22 JUDGE HALL: (indiscernible), though? Why should
23 we be in the position of having to decide whether the
24 settlement's effective or fair or anything like that,
25 because that's the District Court's normal responsibilities?

1 MR. MCGILL: It is --

2 JUDGE RAGGI: That's (indiscernible) --

3 JUDGE HALL: The -- this District Judge has been
4 on this case forever, and that's what you're asking us to
5 do. You're asking us to weigh in and see if we can help you
6 get a better settlement.

7 MR. MCGILL: No, no, I'm not. All I'm asking for
8 is for a little time for the settlements that Argentina
9 claims that they want to take place. My point, my core
10 point is that this February 29th deadline is needless and
11 counterproductive.

12 JUDGE RAGGI: Well, why (indiscernible) --

13 MR. MCGILL: And we had had no --

14 JUDGE RAGGI: (indiscernible) for an adjournment
15 then, or an extension, if you need more time? Why should
16 this Court use a delay in either granting a dismissal motion
17 or deciding the appeal? Why should it delay either of
18 those, in order --

19 MR. MCGILL: Because --

20 JUDGE RAGGI: -- in order to give you time on
21 something that's really a District Court matter?

22 MR. MCGILL: I think there are two reasons, Judge
23 Raggi. One is that we have made repeated requests to the
24 District Court to be heard on this motion, and thus far,
25 have been -- those requests have been declined. The order

1 was entered, and the --

2 JUDGE HALL: (indiscernible) have jurisdiction,
3 isn't it?

4 MR. MCGILL: No, it's not.

5 JUDGE HALL: (indiscernible) of these --

6 MR. MCGILL: He entered the indicative ruling and
7 he could've heard us on the ex parte motion to enter an
8 indicative ruling and he chose not to. And he --

9 JUDGE RAGGI: We need to grant dismissal for rule
10 in this case so that the appeal is over. You can make
11 whatever application you have to the District Court.

12 MR. MCGILL: Well --

13 JUDGE RAGGI: If you're not successful, can't you
14 appeal the unsuccessful ruling --

15 MR. MCGILL: The --

16 JUDGE RAGGI: -- and seek a stay, if you
17 (indiscernible)?

18 MR. MCGILL: Well, if Argentina would consent now
19 to a stay pending appeal --

20 JUDGE RAGGI: They're not going to consent.

21 MR. MCGILL: Okay. But --

22 JUDGE RAGGI: And you'll make the application to
23 the Court.

24 MR. MCGILL: Well, then here's the problem, and
25 now let me just try to paint it. If Argentina satisfies the

1 conditions on Tuesday and the injunctions are automatically
2 lifted on Tuesday, on that same day, Argentina can change
3 the payment mechanisms that have been in place for years,
4 that the injunction prohibits them from changing, and
5 thereby render the restoration of effective injunctive
6 relief impossible.

7 JUDGE RAGGI: I understand all these concerns you
8 have, I do. But my question is, how do we use delay in
9 ruling on motions for an appeal to effectively grant you a
10 stay of the lifting of the injunction?

11 MR. MCGILL: It is within your discretion to grant
12 or to decline to grant the dismissal.

13 JUDGE RAGGI: But why (indiscernible) exercise it
14 for the purpose you're urging?

15 MR. MCGILL: I --

16 JUDGE RAGGI: That doesn't seem to be our task.

17 MR. MCGILL: The -- and I'm -- the reason you
18 should exercise it is that it will facilitate the end of the
19 litigation. What nobody wants is what this order is going
20 to create, which is the cascade of appeals and stay motions
21 and everything else. Let me finish. The -- my clients, the
22 65 percent, we have had a -- an agreement on economic terms
23 with Argentina since Thursday. We're this close to a deal,
24 this close.

25 We've been discussing payment mechanics, ancillary

1 provisions. And I should mention that our deal, our on
2 economic terms is closer to their public tender offer than
3 100 percent. We are this close. Unfortunately, we've had
4 some hiccups in negotiating these mechanics. You know, the
5 first payment, the -- a payment mechanic that was suggested
6 by the special master, it was discovered very late that it
7 involved, rather than a wire transfer, it involved the use
8 of paper checks coming through FedEx.

9 That was not going to work. So we're trying to
10 find a payment mechanics that work. This is a \$5 billion
11 transaction, and we're being told that we have to sign it up
12 on a page and a half agreement by Monday. If we have just a
13 little time, we can finish the deal. The economic terms are
14 agreed.

15 What they're asking for, and what we're afraid of,
16 is that by hastening this back to the District Court, we're
17 all going to be mitigating stay motions, stays pending
18 appeal that will last --

19 JUDGE WALKER: How much time do you feel you need
20 to settle this?

21 MR. MCGILL: What I suggested in my papers, on the
22 remand motion, which I --

23 JUDGE HALL: The balance of next week?

24 MR. MCGILL: I think what would be appropriate is
25 that the Court wait until Argentina lifts its lock law.

1 That is the first, but not the second condition that
2 Argentina has set forth that would trigger the indicative
3 ruling. And then, that is when they'll be ready to pay. We
4 are, you know, we are so close to ending 15 years --

5 JUDGE RAGGI: (indiscernible) know before they
6 lift the laws, how many parties they settled. Isn't that
7 why there's the 29th and then the Argentine legislature will
8 meet within a day or two of that? So you're suggesting that
9 it be put the other way, that Argentina lift the laws before
10 your client settles.

11 MR. MCGILL: The --

12 JUDGE RAGGI: I don't want to get into which makes
13 sense, but that's what I understand the (indiscernible)
14 reason.

15 MR. MCGILL: The indicative ruling is in place.
16 The Court, the District Court has signaled its intention --

17 JUDGE RAGGI: Well, the indicative ruling is an
18 indicative ruling. We have to decide something and get the
19 case back to it before it can enter anything.

20 MR. MCGILL: I --

21 JUDGE RAGGI: I mean, I would almost understand
22 you're saying to us, "Ask the District Court before it makes
23 it a final ruling," to give you another opportunity to be
24 heard.

25 MR. MCGILL: We would think at a minimum, we would

1 be entitled to that. This is litigation, just on the pari
2 passu -- I mean, the litigation has gone on for 15 years.

3 JUDGE RAGGI: Yeah, but an opportunity to be
4 heard, and he just enters an indicative ruling, you have an
5 automatic appeal, and probably a very successful one. Don't
6 you think?

7 MR. MCGILL: I --

8 JUDGE RAGGI: I mean, if you haven't been heard up
9 to this point and he's not hearing you and then he enters an
10 injunction and you're not --

11 MR. MCGILL: I, I'm going to --

12 JUDGE RAGGI: This is an injunction and you're not
13 prepared to --

14 MR. MCGILL: I'll be back here on Tuesday, you
15 know, saying, "I desperately need a stay pending appeal."
16 And but the fact is is that we really don't want that. What
17 we want is to settle these cases that have clogged the
18 dockets of the District Court and this Court for 15 years.

19 JUDGE RAGGI: I understand that, I'm just not sure
20 I understand why a delay by this Court is an appropriate
21 action by us to facilitate something like that. We review
22 District Court decisions, that's what we do.

23 MR. MCGILL: Right. Well, one, the -- obviously,
24 the me too appeals have yet to be dismissed. And that --
25 they may -- that may happen, and if they do, then we'll be

1 in a different situation. They blew their briefing deadline
2 of yesterday, so that fairly does indicate an intent to
3 dismiss the appeals.

4 JUDGE RAGGI: (indiscernible) sought an extension.

5 MR. MCGILL: Yeah, so the -- you asked the, I
6 think fine, the -- what is the key question? Why should you
7 exercise your discretion in this way? And I think the
8 answer is that it will facilitate the ends that everybody
9 here is professing to want to achieve. And it is so close,
10 and it would be such a tragedy, if it all vaporized, because
11 of a hasty, indicative ruling that was entered.

12 And I should just say, you know, my clients are
13 the lucky ones, right? My clients have had the opportunity
14 to negotiate. There are dozens of plaintiffs who, for whom
15 it's the tender offer or nothing. And maybe, you know,
16 maybe they'll be the ones taking the appeals.

17 JUDGE RAGGI: You know, Judge Walker asked you how
18 long do you want your stay, do you want it, (indiscernible)?

19 JUDGE HALL: What's the (indiscernible)?

20 JUDGE RAGGI: Well, that's a curious way for us to
21 act. We're going to delay a ruling? Not for two weeks, not
22 for two months, but until another sovereign takes certain
23 action. I mean, that seems an extremely curious thing, when
24 the two applications before us are to dismiss with prejudice
25 or to decide an appeal that we are prepared to hear you on.

1 MR. MCGILL: We will -- I'm perfectly happy to be
2 heard on the 1060 appeal. I think the Court should decide
3 it. It should rule on the merits. But that's --

4 JUDGE RAGGI: But that's going to (indiscernible)
5 on that --

6 JUDGE HALL: And that --

7 JUDGE RAGGI: -- you'll be in the same position as
8 a dismissal with prejudice.

9 MR. MCGILL: Yes, that's correct, Judge Raggi.
10 That's correct. And I'm not -- and what we're -- what we
11 want to do is what we have argued is that this -- when it
12 was just a motion to remand, we argued that the remand
13 should wait until this -- this isn't even a real indicative
14 ruling, it's a conditional indicative ruling, right? It's
15 an indicative ruling that we -- it will vacate if two
16 conditions are satisfied.

17 Now I think maybe seeing the force of that
18 argument, Argentina has changed tactics again, in yet
19 another abrupt procedural maneuver, has now said, "We're
20 going to dismiss the appeals outright." And this is all
21 calculated to avoid a hasty -- this is all calculated to
22 avoid any holdup in this Court and to delay any entry of
23 this order.

24 And I think it is -- I would not be protecting my
25 client's interests and I would not be serving the interests

1 of the other bond holders involved in this appeal, if we did
2 not have an opportunity to seek appellate review of that
3 order, once it's entered. And our very real concern, our
4 very real concern is that Argentina will satisfy all the
5 conditions and make it impossible to restore injunctive
6 relief. There -- this is an -- this -- Argentina, I
7 recognize that the government has changed --

8 JUDGE WALKER: (indiscernible) relief of the very
9 form.

10 MR. MCGILL: Right. If you reversed --

11 JUDGE WALKER: (indiscernible) appeal onto the --

12 MR. MCGILL: If you reversed -- yeah, if the
13 indicative ruling were entered as an order to vacate and you
14 reversed, it could be, "Well, too bad that we've changed the
15 payment mechanics and Bank of New York is no longer the
16 trustee of the U.S. dollar bonds, it's now (indiscernible),"
17 which is, I have -- it bears mentioning. Argentina remains
18 in contempt of court. They -- it's un-purged for their
19 legislation to fire Bank of New York as Trustee, and to
20 replace them with an Argentine institution.

21 Judge Griesa had recognized that this was a
22 blatant attempt to evade the injunction. So the --
23 actually, the legislative mechanism is already in place in
24 Argentina. It's already in place. So there is no way,
25 under the structure of this order, I've never seen anything

1 like it. It is a springing vacatur upon satisfaction of two
2 conditions that are entirely within Argentina's control.

3 They could make them happen tomorrow. It could
4 pass the law and it can wire the funds. The injunction goes
5 away. We change the payment mechanics and we're left with
6 nothing, except our judgments, which will keep the
7 litigation going forever.

8 JUDGE RAGGI: Why don't we hear briefly from
9 Argentina, and you know, if you need to respond further,
10 we'll hear you then? Thank you.

11 MR. MCGILL: Thank you, Judge Raggi.

12 JUDGE WALKER: You have a way of addressing your
13 adversaries concerns here, if you want to settle this case,
14 by agreeing to a period of time that could be used to
15 effectuate these settlements, so that it's not what I raised
16 earlier., effectively, you know, my way or the highway until
17 Monday.

18 MR. PASKIN: Well, I think it's interesting, Your
19 Honor, because Mr. McGill effectively said that this is all
20 about settlement leverage. And if the question is, what's
21 brought the settlement negotiations as close to fruition as
22 they have been with his clients, and have concluded them
23 with other parties, it's hard to believe, when he says
24 that's what brought Argentina to that position is the years
25 of history of having these injunctions in place.

1 JUDGE HALL: Right, but --

2 MR. PASKIN: It's --

3 JUDGE WALKER: I'm asking a more direct question.
4 I'm asking you a question as to whether or not there is a
5 possibility that there could be a meeting of the minds on
6 how this is -- how this could play out, rather than our
7 hearing a competing -- competing considerations and having
8 to wrestle with those.

9 MR. PASKIN: Right.

10 JUDGE WALKER: In other words, you heard what he
11 said, and --

12 MR. PASKIN: Yes.

13 JUDGE WALKER: -- his concerns. Is there a way
14 you can address those?

15 MR. PASKIN: I think the way that I would address
16 it is that his description of the terms is not accurate,
17 because it's not the my way or the highway deadline.

18 JUDGE WALKER: No, he is saying that the
19 effectively, Argentina, once the injunction is lifted, is
20 free to alter all sorts of things and make it very difficult
21 for his clients to get paid in any event. If you want a
22 settlement here, why wouldn't you want some period of time
23 in which to effectuate that?

24 MR. PASKIN: The period of time has -- we've given
25 a period of time. We're trying to effectuate settlements

1 with as many parties as possible. I think that the
2 existence of the firm deadline is what in fact has brought
3 the parties as close together as they are.

4 JUDGE RAGGI: It's unlikely you'll settle with
5 everybody between now and Monday.

6 MR. PASKIN: It's --

7 JUDGE RAGGI: And the concern is, if you get the
8 injunction lifted, which would, you know, you're -- the
9 concern is the legislature changes to the law the next day,
10 and you transfer the money immediately to everyone, what
11 you'll also do is free of the injunction, change transfer
12 agents, do all of the things that have allowed the Court's
13 injunction to limit Argentina's violation of the pari passu
14 clause by, you know, basically taking the actions out of the
15 supervision of the United States Court.

16 And while, you know, your client professes to have
17 a new view of all of this, those of us who've been involved
18 in the supervision of the litigation for 14 years know that
19 there've been changes of heart over time.

20 MR. PASKIN: Absolutely understood, Your Honor. I
21 think the bottom line here is that the situation that he
22 posits is exactly the same situation that he's currently in,
23 and that he's been in for years without an ability to get
24 what his clients want.

25 JUDGE RAGGI: Well, except that at least for the

1 last few years, there's been the injunction.

2 MR. PASKIN: Right, and the --

3 JUDGE RAGGI: That -- and while that may not be
4 the triggering agent that has made the new administration
5 take a different view, it certainly has to have played a
6 part.

7 MR. PASKIN: Of course it's played a part. And by
8 the District Court having continuing jurisdiction to oversee
9 those issues, if Argentina steps --

10 JUDGE RAGGI: These are changing your transfer
11 banks and all of this. The District Court may not be able
12 to enter the same kind of injunction that it -- that is
13 presently in place.

14 MR. PASKIN: But it still has the power,
15 regardless of any of those changes, it still has the power
16 to block -- to direct Argentina not to make the other
17 payments, essentially to direct Argentina that it can't
18 violate *pari passu*.

19 JUDGE WALKER: You don't have any -- are you not
20 at all concerned about the fact that Judge Griesa has not
21 accommodated the other side here, in terms of meeting with
22 him to discuss the -- or to go over this indicative ruling?

23 MR. PASKIN: Why Judge Griesa did what he did, I
24 wasn't before him either. So we don't know.

25 JUDGE HALL: Well, I understand that, but I mean -

1 -

2 JUDGE RAGGI: Would you have any objection to it?

3 I mean --

4 JUDGE HALL: If we were to --

5 JUDGE RAGGI: If we're going to send this back, do
6 you have any objection to meeting with the Judge and all
7 these concerns being aired before the final ruling is
8 entered?

9 MR. PASKIN: We have no objection at all to
10 whatever proceedings Judge Griesa wishes to hold before he
11 enters his orders. We want to do whatever --

12 JUDGE HALL: (indiscernible) to order him to do
13 certain things, or at least in broad brush?

14 MR. PASKIN: You probably --

15 JUDGE HALL: That is hold a hearing and hear from
16 those parties that want to be present, prior to entering
17 this order?

18 MR. PASKIN: Your Honor probably knows the answer
19 to that question better than I do, but if you believe that
20 that's something that you can and should do, well then,
21 we'll appear at the hearing and defend the positions that
22 we've already articulated and that have already been
23 responded to on the papers.

24 JUDGE RAGGI: Let me ask you another question, I
25 was concerned with Mr. McGill that he was asking us to delay

1 rulings as a way of ensuring that they would have the time
2 to appeal any action by the District Court, or at least
3 delay any action until they were heard.

4 If we were to go ahead and rule, as you're urging
5 us to do, and the District Court lifts the injunction, are
6 you prepared to agree to something like a 24 or a 48 hour
7 period before you take any action, to give them at least a
8 time to come to the Court and seek whatever redress they
9 want? That's not to say they'll be successful, but at least
10 to ensure that before anything happens, they've had an
11 opportunity to be heard by this Court.

12 MR. PASKIN: As I said before, Your Honor, we have
13 no objection to appropriate appellate review of what the
14 District Court has articulated in its indicative ruling.

15 JUDGE WALKER: Is the offer -- does the offer that
16 expires on the 29th, do you have authority to extend that
17 offer?

18 MR. PASKIN: I do not.

19 JUDGE WALKER: Mm hmm.

20 MR. PASKIN: But as I was saying, first of all, 24
21 or 48 hours functionally wouldn't matter because to get the
22 laws changed is going to take more than 24 or 48 hours. To
23 set up the mechanics to pay the people who settle by the
24 deadline is going to take more than 24 or 48 hours. And as
25 I explained earlier, as a practical matter, unless Argentina

1 knows that the order that Judge Griesa anticipates entering
2 is a good order that's going to hold up, then they can't
3 meet the conditions. They need that certainty.

4 So I would submit that we have just the same
5 interest in having finality associated with that order, as
6 Mr. McGill says he has, and that's why I don't understand
7 his suggestion that there be this delay built in. He should
8 be as anxious as anybody to say, "This case should go back
9 to the District Court, reduce it to real orders that are
10 appealable, appeal it as quickly as possible," and all of
11 that's going to happen very quickly.

12 JUDGE RAGGI: Anything else? Otherwise, I'm going
13 to let Mr. McGill have the last word here.

14 MR. PASKIN: No, that's all, Your Honor. Thank
15 you.

16 JUDGE RAGGI: Mr. McGill, you've heard what
17 Argentina's position is on all of this.

18 MR. MCGILL: If Argentina won't agree to a stay of
19 even 24 hours, then this is a cram down period. There is no
20 other way to describe it. It is take the tender offer or
21 you get nothing.

22 JUDGE RAGGI: All right, well let's
23 (indiscernible) --

24 MR. MCGILL: That --

25 JUDGE HALL: You're saying he does have authority

1 to do it, but we've got the rest of this week to sort it
2 out. Suppose we say we'll -- we won't decide these motions
3 for three days, and then in the meantime, we direct the
4 parties to appear before Judge Griesa?

5 MR. MCGILL: I think this Court has ample
6 authority and discretion under Rule 42(b) to condition its
7 dismissal on proceedings in the District Court. It could
8 condition its dismissal on the Court's entry of a stay
9 pending appeal of some length of time. It could be brief,
10 to allow a properly briefed and argued stay motion to happen
11 before a motions panel of this Court --

12 JUDGE WALKER: You have no problem with us
13 granting all the motions, but if we included with it a stay
14 of any effectuation of the order until -- to give you an
15 opportunity to appeal, and a directive to appear before
16 Judge Griesa?

17 MR. MCGILL: I think. Judge Walker, you know, I've
18 avoided talking about the substance of the indicative
19 ruling. I think the indicative ruling is deeply, deeply
20 flawed. But, I --

21 JUDGE RAGGI: Right, but that's --

22 MR. MCGILL: -- I, so I --

23 JUDGE RAGGI: -- (indiscernible) whether you have
24 had an opportunity to be heard by the District Court,
25 whether you have the opportunity to be heard (indiscernible)

1 --

2 MR. MCGILL: If we have an opportunity to be heard
3 by both forums, I think that would solve many of the
4 concerns I have about the picture I painted of the
5 injunction going away very suddenly. I do need to make just
6 one more point. The me too appeals involved 49 different
7 cases. I am, you know, here in -- from in those cases, I'm
8 here for three large hedge funds that have the bulk of the
9 claims. But there are dozens of other parties who have had
10 no opportunity to negotiate. I urge the Court to look at
11 the letters of Mr. Michael Spencer, describing what he has
12 had in terms of an opportunity to negotiate.

13 JUDGE RAGGI: Negotiate settlement.

14 MR. MCGILL: Negotiate a settlement. He's not
15 nobody. He's got almost a billion dollars of claims here.
16 And, you know, and he represents individuals from Argentina
17 who bought these bonds at par before default. He represents
18 some small funds, but there's been no meaningful opportunity
19 for these people to negotiate. And for them, it really is a
20 cram down, and that is -- it is obvious, any sentient being
21 can see what's going on here. It is settle with the big
22 guys by -- and then tell everyone else on February 29th to
23 take a hike.

24 And I don't think this Court should be party to
25 it. I urge the Court to condition any dismissal on at least

1 those non-settling parties having ample opportunity to be
2 heard in the District Court and to be heard in this Court
3 before any vacatur of the injunction takes effect.

4 JUDGE RAGGI: Well, I mean, let me ask both
5 parties again to avoid any misunderstanding about this. So
6 what you're suggesting is that if we grant relief here,
7 namely the dismissal, that the order indicate that we
8 understand this is sought for the purposes of allowing the
9 indicative ruling to be an actual ruling, and that before
10 that's done, all parties in the two cases should have the
11 opportunity to be heard by the District Court.

12 MR. MCGILL: I would add to that, Judge Raggi,
13 that -- and before any vacatur takes effect, that the Court
14 stay it for a -- whatever period of time this Court views is
15 sufficient, to --

16 JUDGE WALKER: Well, you would stay it until a
17 proper stay motion with more --

18 MR. MCGILL: Right.

19 JUDGE WALKER: -- with better papers and so forth
20 could be made before a motions panel of this Court.

21 MR. MCGILL: Right. And I don't want to presume
22 what length of time that should be. But we would accept,
23 speaking for the people I represent, we would accept any
24 conditions that the Court wants to impose.

25 JUDGE RAGGI: (indiscernible) all kinds of

1 (indiscernible). I've seen District Courts grant stays for
2 only 24 hours on the theory that then a judge of this court
3 can decide whether to enter a longer stay. I've seen judges
4 enter a stay for a week. So there are lots of ways that's
5 done. Counsel, Mr. Paskin, what's your view on what's being
6 proposed here?

7 MR. PASKIN: I think, Your Honor, that with
8 respect to the idea that we be directed to appear before
9 Judge Griesa. We have no objection to that whatsoever.

10 JUDGE RAGGI: And all parties, so that all parties
11 are (indiscernible) --

12 MR. PASKIN: That any party who wants to appear --

13 JUDGE WALKER: (indiscernible) pending any appeal.

14 MR. PASKIN: A stay pending any appeal, as Your
15 Honor suggested, I think if you want to grant a stay that
16 gives them enough time to apply for a stay to this Court, we
17 have no --

18 JUDGE WALKER: (indiscernible) on Tuesday.

19 MR. PASKIN: Yes, we have no problem with that,
20 Your Honor.

21 JUDGE WALKER: I think we're going to discuss it
22 and then come back and tell them what we're going to do.

23 JUDGE RAGGI: All right. Given the time
24 sensitivity of this, we'd like to conference and ask you to
25 wait.

1 MR. PASKIN: Okay. Thank you, Your Honor.

2 MR. MCGILL: Very well, Your Honor.

3 JUDGE RAGGI: Okay, thank you very much.

4 CLERK: The Court's in recess. Judges of the
5 United States Court of Appeals for the Second Circuit.

6 JUDGE RAGGI: Please be seated. First of all, let
7 me thank all counsel for their arguments and responsiveness
8 to our questions. It is our inclination, subject to hearing
9 from you now, to grant the dismissals with prejudice, but
10 subject to certain agreements that we understand counsel to
11 have indicated a moment ago. So I'm going to try to speak
12 slowly and suggest that this is a draft of an order, but I
13 think substantively, it captures what we want. I may have
14 to clean up our syntax a little bit.

15 We expect to note that motions to dismiss the
16 appeals in, and then list all the docket numbers that
17 pertain, have been sought in order to allow the District
18 Court to enter orders indicated in its indicative ruling of
19 February 19th.

20 The motions are granted pursuant to the party's
21 agreement. One, that Argentina will give notice to all
22 parties in these actions. If it moves the District Court to
23 formalize the indicative rulings, and Argentina will afford
24 the parties an opportunity to be heard before the District
25 Court.

1 Then number two, Argentina agrees to the entry of
2 a stay of any order of the District Court for up to two
3 weeks, so that the parties can file a notice of appeal
4 within two business days of the order, and then, seek a stay
5 from a motions panel of this Court pending appeal.

6 If you gentlemen want to think about this for a
7 moment or talk among yourselves, we're happy to give you
8 some time. Otherwise, the question is whether we've
9 correctly understood what you just agreed to and whether
10 there's any other concerns we should be mindful of before we
11 proceed in the way I'm just indicating.

12 MR. MCGILL: May I be heard, Judge Raggi?

13 JUDGE RAGGI: Sure.

14 MR. MCGILL: On the -- if I understand correctly
15 the first of the two conditions you set forth, it's that
16 Argentina will provide notice to all of the affected parties
17 that it is filing a motion to formalize the indicative
18 ruling. My -- this is -- I think the substance of that is
19 fine, except for one unique feature of this indicative
20 ruling, is that I do not read it to contemplate any further
21 action by the District Court.

22 JUDGE HALL: Well, the indicative ruling --

23 MR. MCGILL: Or excuse me, I misspoke.

24 JUDGE HALL: A precondition here is that the
25 indicative ruling can't take effect otherwise.

1 MR. MCGILL: So that it will take effect only
2 after a motion being made on notice, not ex parte --

3 JUDGE HALL: Right.

4 MR. MCGILL: -- in the District Court, and we --
5 us having an opportunity to brief and be heard on that
6 motion?

7 JUDGE RAGGI: Well, my first sentence, which I
8 know went by quickly, says that the motions to dismiss the
9 appeals in docket numbers whatever are sought in order to
10 allow the District Court to enter orders indicated in its
11 indicative ruling. So we are contemplating that the
12 indicative ruling has no force in effect by itself.

13 This Court has to return jurisdiction to the
14 District Court, whereupon the ruling is indicated it wants
15 to enter once it has jurisdiction could be entered. And
16 pursuant to your agreement, and Argentina has to indicate
17 whether this is correct, Argentina has agreed it'll give
18 notice to everybody and afford them an opportunity to be
19 heard when it says to Judge Griesa, "You've got jurisdiction
20 again, enter your orders." And it will also agree to a
21 modest stay, so that you can come up and file your notice of
22 appeal and move for a stay and take your chances as to how
23 that will go for you.

24 MR. MCGILL: On the understanding that as the
25 first condition that there will be a motion filed in the

1 District Court --

2 JUDGE HALL: Yes, because the indicative ruling is
3 just -- he's indicated what his ruling will be. He hasn't -
4 - it's not a ruling yet.

5 MR. MCGILL: I understand that part.

6 JUDGE HALL: It won't be a ruling until he says
7 it's a ruling.

8 MR. MCGILL: I clearly understand that part. What
9 I am concerned about, and I, I'll just put it on the table,
10 and I just want to make sure we all have a clear
11 understanding, since this is an agreement among the parties,
12 is that --

13 JUDGE RAGGI: Let me see if I can tweak language,
14 but I'd first like to hear from Argentina, so that I know
15 exactly -- I'd like to know whether we have an agreement on
16 the large points or not?

17 MR. PASKIN: Right. Yes, thank you, Your Honor.

18 JUDGE RAGGI: Mr. Paskin.

19 MR. PASKIN: With respect to the points as Your
20 Honor laid them out, yes, we can agree to those conditions.
21 I believe the point that Mr. McGill was getting at is that
22 it is possible, and without knowing what the District
23 Court's intent is, that the District Court doesn't believe a
24 further motion by Argentina is necessary in order to just
25 say, "I've received remand, now I'm going to enter the

1 orders."

2 JUDGE WALKER: Because the orders say, because the
3 indicative orders say that it becomes effective as an order,
4 upon remand, or does it require -- does it say -- is it
5 silent?

6 MR. PASKIN: It's silent about that. So but the
7 question is, because the motions were put before the
8 District Court on -- seeking the underlying substantive
9 relief, the District Court has those motions. And so, the
10 question I believe for this Court is not necessarily whether
11 Argentina can agree to say, "If we move to formalize the
12 order, we're going to give notice," but whether, you know --
13 but what to do in the event that the District Court on its
14 own determines that now that the case has been remanded, I
15 can just enter my orders.

16 JUDGE RAGGI: Well, let me suggest this, though I
17 could be blunter even than this, we would say that the
18 motions are granted pursuant to the parties agreements.
19 One, that before any indicative order is formalized,
20 Argentina will give notice to all parties of its intent to
21 request such an order, and an opportunity to be heard before
22 the District Court. Now that's one way of doing it.

23 You know, another is to say that motions to
24 dismiss the appeals have been sought in order to allow the
25 District Court upon motions of the parties to enter orders

1 indicated in the indicative ruling. Or, I could do both, as
2 belts and suspenders, you know, whatever. I want to capture
3 what you all have agreed to.

4 MR. PASKIN: Right. I understand, Your Honor, and
5 again, the way Your Honor described it is perfectly
6 acceptable to us. But I think that if you really want to
7 ensure that notice happens, I think that it needs to account
8 for the possibility that there would be no motion required
9 in order to get the District Court to issue its orders.

10 So it could be that the District Court, prior to
11 issuing such orders, must notify or must require Argentina
12 to notify all parties of this remand and the fact that --
13 something along those lines.

14 JUDGE RAGGI: (indiscernible) give you notice of
15 the remand.

16 MR. PASKIN: Exactly.

17 JUDGE RAGGI: The final -- a final sentence could
18 read, "Jurisdiction is returned to the District Court in
19 order to allow motions to be made consistent with the
20 agreements of the parties stated above," something to that
21 effect.

22 MR. PASKIN: Yes.

23 JUDGE RAGGI: Now we have belts, suspenders.

24 MR. PASKIN: Yes. That would be fine, Your Honor.
25 I would envision a one line motion that says --

1 JUDGE WALKER: Or we could even say it a little
2 further, not only an order to, it's conditioned upon the
3 District Court.

4 JUDGE RAGGI: On condition.

5 JUDGE WALKER: On condition that the parties have
6 notice and be able to appear before the District Court
7 before any finalization of the indicative order.

8 JUDGE RAGGI: All right.

9 MR. PASKIN: That's certainly acceptable to us.

10 JUDGE RAGGI: Now I will need a little time to get
11 this in, you know, cogent English, but do you have another
12 suggestion?

13 JUDGE HALL: Do you have something else?

14 MR. MCGILL: I have one last friendly suggestion.
15 Could -- as a part of the second condition, could you
16 please, in all cases, waive federal rule of Appellate
17 Procedure Eight, which would require us to seek a stay in
18 the District Court first?

19 JUDGE HALL: You're getting this stay pursuant to
20 the order, I think.

21 JUDGE RAGGI: Why should we do that, if the
22 District Court grants you the stay, you've got what you
23 want. Why should we eliminate that? Maybe I'm missing
24 something.

25 MR. MCGILL: Well, I just -- the way I had

1 understood what Your Honors had suggested was that there --
2 that the District Court would impose a stay for two weeks,
3 in order for us to seek a stay pending appeal in this Court.
4 And on my reading of --

5 JUDGE HALL: You want us to waive the requirement
6 when you're seeking a stay with us that you have sought the
7 stay?

8 MR. MCGILL: Correct.

9 JUDGE RAGGI: Oh.

10 MR. MCGILL: Yes.

11 JUDGE RAGGI: So --

12 MR. MCGILL: It's a procedural formality, but I
13 want to be observant of the formalities.

14 JUDGE WALKER: (indiscernible) shoelaces with the
15 belt and suspenders.

16 MR. MCGILL: Don't want to trip and fall.

17 JUDGE WALKER: Absolutely.

18 MR. MCGILL: I think with -- I would also --

19 JUDGE RAGGI: Rule Eight?

20 MR. MCGILL: Yes, of the Appellate Procedure
21 Rules. And I understand the Court to be saying in the
22 beginning, when you said, when you referred to all of the
23 cases. We're talking about the consolidated appeals 15-
24 1060, and 15-3675.

25 JUDGE RAGGI: I have I think seven numbers just

1 for the appeal today. And then, there are numbers there.
2 Frankly, I would not mind if the parties were able to ensure
3 that we've got everybody (indiscernible) -- I'm sorry
4 (indiscernible) go back here --

5 MR. MCGILL: May I suggest something that would
6 make that very easy for Your Honor?

7 JUDGE RAGGI: Yes.

8 MR. MCGILL: And with his (indiscernible) -- this
9 is on the fly, but perhaps, since he is -- since you are
10 dismissing everything, consolidate the two appeals,
11 consolidate 1060 and 3675, then it all goes back down in one
12 neat package.

13 JUDGE WALKER: (indiscernible) good?

14 MR. PASKIN: That seems fine to me, Your Honor.

15 JUDGE WALKER: I didn't hear what you said. You
16 said it seems fine?

17 MR. PASKIN: I said that seems fine.

18 JUDGE RAGGI: All right, so it's consolidating the
19 1060 and the 1035, is that the --

20 MR. MCGILL: 3675.

21 JUDGE RAGGI: 3675.

22 MR. MCGILL: And then, what I envision would
23 happen is that when -- unfortunately there's many, many
24 parties, so what we -- if there is an appeal, there would be
25 many appeals. So we would -- if the Court wishes, we can

1 move to consolidate at that time, or the Court could include
2 it in its order that any appeal from the order will be
3 consolidated in a single docket.

4 JUDGE RAGGI: I'm not inclined to consolidate in
5 advance of knowing what goes on and who's appealing on what
6 grounds, but I -- you can certainly move to consolidate, if
7 everybody's bringing common issues or (indiscernible) --

8 MR. MCGILL: We've --

9 JUDGE RAGGI: That's fine.

10 MR. MCGILL: Historically, we've always
11 (indiscernible) --

12 JUDGE RAGGI: We would consolidate simply for
13 purposes of the order. There -- I think you may have a
14 colleague who wants to consolidate?

15 MAN: (indiscernible).

16 JUDGE RAGGI: You are, sir?

17 MAN: (indiscernible) representing
18 (indiscernible). I (indiscernible) convenience of the Court
19 and the parties that they might indeed want to allow
20 (indiscernible) to make consolidated (indiscernible), simply
21 to do it as (indiscernible).

22 JUDGE RAGGI: We'll consider that. I need to
23 think about that, and I'm sure my colleagues do, too.
24 Anything else? All right, we will try to get this in clean
25 prose and out as soon as possible. Thank you all again for

1 your attention to this matter.

2 CLERK: The Court stands adjourned.

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I N D E X

RULINGS

Grant the dismissals with prejudice, but subject to certain
agreements, Argentina agrees to entry of stay and
consolidation of 1060 and 1035 Page 41 Line(s) 8-11

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: February 25, 2016