

US Supreme Court backs hedge fund against Argentina

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On Monday June 16, the US Supreme Court ruled against Argentina and granted creditors the right to discover Argentine financial and physical assets that could be embargoed to pay outstanding debts.

The Supreme Court, in a 7-1 decision, ruled in favor of NML Capital Fund, a subsidiary of Elliott Associates, a hedge fund controlled by US billionaire Paul Singer. NML Capital was granted the right to discover any Argentine assets with the intention of seizing them, as long as those assets are not in US territory.

In effect, the US Supreme Court cleared the way for Argentina to be placed on rations, at the whim of the financial oligarchy.

This decision has broad implications for debtor nations. It is a reinterpretation of existing US legislation, the Foreign Sovereign Immunities Act, which up until now protected sovereign nations from fact-finding by creditors of their assets outside their borders. The Court did accept that while the FSIA limits seizing assets from sovereign nations, it does not limit the investigation process, legally known as "discovery."

The US news agency *Bloomberg* reports that one of the hedge funds, NML Capital, is positioning itself, on the authority of this Supreme Court finding, to impound assets owned by the Argentine oil company YPF. NML and other hedge funds, collectively and fittingly known as vulture funds, also intend to force banks and other financial institutions to disclose to them Argentine financial assets.

In a separate decision, the Supreme Court left standing a ruling by a New York Appeals Court preventing Argentina from paying holders of bonds issued from debt swaps in 2005 and 2010 without paying the vulture funds and other creditors that did not accept the debt exchange and are still holding the original bonds.

The Supreme Court finding threw the Argentine government into a financial crisis.

Events moved quickly following the high court ruling. As people lined up to buy dollars in the semiofficial "blue dollar" markets in Buenos Aires, Standard and Poor's lowered the Argentine bonds to CCC- from CCC+, recognizing a higher risk of default on foreign currency debt due to a diminished capacity to service government debt. Those ratings make it

virtually impossible for Argentina to issue dollar- or euro-denominated debt.

The Argentine stock market fell ten percent, and government bond prices plummeted.

On Tuesday, Judge Thomas Griesa of the New York District Court lifted a stay that had permitted payments to the holders of the new bonds. This decision surprised no one. The determination by the New York court prevents the Argentine government from making a \$900 million payment scheduled for June 30, placing the government on the road to default.

In the aftermath of the 2001 Argentine financial collapse and ensuing payments crisis and its consequent economic depression, most holders of government bonds had accepted a negotiated settlement on defaulted obligations of US \$95 billion. Those creditors that accepted that deal, traded in their defaulted bonds, at a discount, for newly issued government bonds.

These debt swaps came at a cost of spending cuts, raids on workers' pension funds, and other austerity measures.

Seven percent of the creditors never did accept that agreement and held out for a better deal. Two speculative "hedge" funds, NML Capital Ltd and Aurelius Capital, hold about \$1.5 billion in defaulted bonds and sued demanding that the debt repayment be suspended and that they receive full payment of their bonds, at face value plus accumulated interest. Judge Thomas Griesa initially ruled in their favor, but granted a stay of his order, while Argentina appealed.

This decision, which will have global implications, places hedge funds, speculators and financial vultures above the authority of national states in managing their own finances. By those two decisions, in fact, the vulture funds have become financial czars over government finances, much like Kevin Orr over Detroit.

This chain of events was initiated in 1994 when Argentina agreed to place Argentine bond debt under the jurisdiction of US courts. Successive Argentine governments, including those of Nestor Kirchner in 2005 negotiations and Cristina Fernandez in 2010 negotiations, have continued to accept that Wall Street would be the final arbiter of debt financing and repayment. In effect, health, education, retirement and all social spending are subordinated to the demands of the Wall Street oligarchs.

Reacting to the Supreme Court finding, the law firm representing the Argentine government initially signaled that their client was prepared to begin negotiations with the vultures. In remarks that day, the Argentine economy minister raised the possibility that investors who want to get paid could swap their bonds for new ones that are independent of US law.

In her initial reaction to the New York ruling, Fernandez denounced it as “extortion,” suggesting that the court order be defied. Her theme—that Argentines unite as a nation against the vultures—was endorsed across the political spectrum. In the course of the week, as it became clear that the government would indeed negotiate, Fernandez’s words proved to be political posturing.

The same goes for the sudden about-face on Thursday night, when the Economy Ministry issued an official announcement contradicting its US attorneys and insisting that it would not negotiate under conditions in which already agreed-upon payments are being held hostage. A few hours later, the ministry confirmed that negotiations would indeed take place. A measure originally intended to boost creditor confidence has become a threat to Argentina’s financial stability.

On Friday, President Fernandez, in a speech in the city of Rosario commemorating Flag Day, confirmed that her administration intended to pay, but only under the right conditions.

Rounding out this week, on Saturday, the government published an ad in the *Wall Street Journal* with the title: “Argentina wants to continue paying its debts but they won’t let it.” The ad restates the Fernandez position.

The danger for the Argentine Central Bank is that, under a 2005 law passed during the government of Nestor Kirchner, any improvement in the terms for the holdouts will also apply to those who accepted the original settlement. On Tuesday, Italian holders of the restructured bonds indicated that they would want to be included in any new deal.

Altogether, the holdouts would be owed \$18 billion, more than half of the Argentine Central Bank dollar reserves, and the holders of restructured bonds \$120 billion.

The decision by the US courts could not come at a worst time for Argentina. Its international reserves have been falling steadily from \$52.6 billion in 2011 to \$28 billion. Both inflation and unemployment are rising; the peso in the open market is falling, while foreign investments are plummeting.

Facing the need to reestablish creditworthiness and raise money in capital markets, in May 2014 Argentine negotiators reached an agreement with the European creditors, the Paris Club, to settle a debt of \$9.7 billion, on the heels of an agreement with the Spanish oil company Repsol for \$6.5 billion. Added to the liabilities from this court decision, Argentina faces an additional \$35 billion in debt repayment.

The Fernandez administration has boasted that \$174 billion have been paid since 2001 to creditors, and that no payments were ever missed to those who took the new bonds in 2005 and

2010. This is a fraud. Much like the bankrupt individual who maxes out one credit card to pay off another, Argentina has piled debt upon debt, postponing the day of reckoning.

The Buenos Aires daily *Clarín* estimates that when all is said and done, Argentina will be faced with a total debt burden of some \$250 billion, including compounded interests and punitive fees, and not including any potential renegotiations. This sum represents \$100 billion more than in 2001.

It is not clear whether or not the vulture funds are interested in negotiations, which are expected to be intense. Debt default swap derivatives may already be insuring their bonds for the full amount.

Predictably the Peronist youth, the labor movement and the pseudo-left all responded favorably to Fernandez’s call for national unity against the vulture funds.

A videotaped statement from the more “left” CT (teachers, government workers, etc.) opposed the US court decision. CTA leader Hugo Yansky indicated that paying the debt would cause hunger and social misery. Yansky came short of suggesting that the debt be repudiated. A labor federation most closely allied with the government, GGT Azopardo, let it be known that it supported the government debt-paying strategy.

On Wednesday Fernandez’s youth movement, *L a Campora*, weighed in. The *camporistas* called for national unity under the slogan “Either Vultures or Argentina!” and proposed a popular plebiscite.

Not to be outdone, *Avanzada Socialista* published by the morenoite PSTU (United Socialist Workers Party) also put the issue in nationalist grounds. *Avanzada* opposes president Fernandez for not defending national sovereignty hard or consistently enough.

The Thursday edition of *Prensa Obrera*, published by the pseudo-left Workers Party (*Partido Obrero*, PO) used the same language as *Campora*: a call for national unity coupled with the demand for a plebiscite.

Incredibly, in a TV interview PO leader Jorge Altamira called for a Greek solution, where the German government forced the creditors to accept a reduction in the principal. Altamira claims that what is needed is “national solidarity” to force creditors to accept better terms for Argentina, like Germany’s Angela Merkel did with Greek and Cypriot debt.

Following the logic of his remarks, really a call for national unity to force some sort of sacrifice from the vulture funds, banks and Wall Street, some sort of “haircut”, as in Greece, or Detroit for that matter, workers, youth and poor people should all accept whatever sacrifices and suffering are decided for them.



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