

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

02 Civ. 5699 (TPG)

ANSWER

Plaintiffs, - against -THE
REPUBLIC OF ARGENTINA,
Defendant.

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Defendant the Republic of Argentina (the "Republic"), as and for its answer to the Class Action Complaint dated July 22, 2002 (the "Complaint"), respectfully states as follows:

1. To the extent Paragraph 1 purports to characterize the nature of the action brought, no responsive pleading is required. The Republic admits that it issued the bonds listed on Schedule A, except that the Republic lacks knowledge or information sufficient to form a belief as to the existence of the bonds with WKN198518 and WKN 631144.
2. The Republic denies the allegations contained in Paragraph 2 of the Complaint.
3. The Republic admits that it has not made payments of principal and interest, if any, in 2002 in connection with any issued and outstanding Schedule A bonds.
4. Paragraph 4 purports to characterize the nature of the action brought, and accordingly no responsive pleading is required.
5. The Republic states that Paragraph 5 of the Complaint constitutes a conclusion of law as to which no responsive pleading is required.

6. The Republic states that Paragraph 6 of the Complaint constitutes conclusions of law as to which no responsive pleading is required, In stating these conclusions of law Paragraph 6 of the Complaint purports to characterize the contents of written documents, which documents speak for themselves. The Republic denies such characterizations inconsistent with the contents of the referenced documents and refers to the documents cited in Paragraph 6 of the Complaint for their true and correct contents.

7. The Republic lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of the Complaint. To the extent Paragraph 7 constitutes a conclusion of law, no responsive pleading is required.

8. The Republic lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 of the Complaint. The Republic admits that it has not made payments of principal and interest, if any, in 2002 in connection with any Schedule B bonds that it issued. To the extent Paragraph 8 constitutes a conclusion of law, no responsive pleading is required.

9. The Republic states that Paragraph 9 of the Complaint constitutes a conclusion of law as to which no responsive pleading is required. The Republic otherwise admits that it is a foreign state as defined in 28 U.S.C. § 1603(a),

10. Paragraph 10 purports to characterize the nature of the action brought, and no responsive pleading is required.

11. The Republic lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11(a)-(e) of the Complaint To the extent Paragraph 11(a)-(e) purports to state conclusions of law or otherwise to characterize the nature of the claims

alleged in the Complaint, no responsive pleading is required. The Republic denies that it maintains records from which the identities of purported class members can be determined,

12. The Republic lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12(i)-(iii) of the Complaint. To the extent Paragraph 12(i)-(iii) purports to state conclusions of law, or otherwise to characterize the nature of the claims alleged in the Complaint, no responsive pleading is required,

13. The Republic lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13 of the Complaint, but admits that it has issued bonds in an aggregate face amount of billions of dollars.

14. Paragraph 14 of the Complaint purports to characterize the contents of written documents, which documents speak for themselves. The Republic denies such characterizations inconsistent with the contents of the referenced documents and refers to the documents cited in Paragraph 14 of the Complaint for their true and correct contents.

15. The Republic denies the allegations contained in Paragraph 15 of the Complaint, except admits that it has not made payments of principal or interest, if any, in 2002 to its bondholders.

16. Paragraph 16 purports to characterize a legal act or acts of the Republic, and accordingly no responsive pleading is required. The Republic otherwise denies such characterizations inconsistent with the referenced legal act or acts.

17. The Republic denies the allegations contained in Paragraph 17 of the Complaint.

18. The Republic denies the allegations contained in Paragraph 18 of the Complaint.

First Affirmative Defense

19. The Court lacks subject matter and personal jurisdiction, except with respect to plaintiffs' claims under bonds issued pursuant to the Fiscal Agency Agreement. As to all claims other than those under bonds issued pursuant to the Fiscal Agency Agreement, the Republic is immune from suit in this Court under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 et seq. (the "FSIA")⁷ in that the Republic is a foreign state and no exception to immunity under section 1605 of the FSIA exists.

Second Affirmative Defense

20. The Complaint fails to state a claim upon which relief may be granted.

Third Affirmative Defense

21. Enforcement of plaintiffs' claims would violate the public policy of the United States (and thereby the public policy of New York),

22. The Republic is currently in the worst financial crisis in its modern history. The economy is now in its fourth year of recession; external indebtedness of the Republic and its provinces exceeds \$140 billion and the banking system is on the verge of collapse, with bank depositors often unable to access their funds for basic living expenses. Since January 2002 the Argentine peso has decreased in value by approximately 70%, Current unemployment exceeds 20%, with half of the population living below the poverty line.

23. Angry protests and rioting in Argentina during December 2001 and June 2002 resulted in numerous deaths.

24. In the face of this grave crisis, which threatens the stability of the nation, the Republic is focused on achieving the following goals: (i) preserving the soundness of the financial system and rebuilding the country's internal payment system and access to liquidity for the Argentine people; (ii) enacting a sound budget in light of internal and external resources

(iii) continuing discussions with the International Monetary Fund to establish a sustainable economic program, and (iv) maintaining a dialogue with external creditors in order to achieve a successful reprofiling of external indebtedness.

25. The Republic has taken steps necessary to implement sound fiscal policies, including by entering into an agreement with Argentine provinces that, *inter alia*, provides for the reduction of provincial budget deficits. This agreement was specifically praised by U.S. Secretary of the Treasury Paul O'Neill.

26. In addition, the Republic continues to work with the IMF to put in place a sustainable economic program.

27. United States public policy has consistently supported, and cooperated with, efforts by debtor nations to adopt sound economic and fiscal policy, including the reprofiling of unmanageable external indebtedness. Since 1982, when sovereign debt crises began to affect many countries in Latin America and elsewhere, the United States has invested considerable efforts to help resolve debt crises, and United States public policy has evolved to address the interest of the United States and debtor nations.

28. In this case, plaintiffs are intentionally trying to thwart the Republic's attempts to equitably resolve the debt crisis by prosecuting this action with full knowledge that the Republic is involved in efforts to commence discussions with creditors in order to reprofile its external indebtedness.

29. Plaintiffs' tactics threaten the common strategy of cooperation that has evolved in the international financial community for the orderly resolution of sovereign debt crises, through the encouragement of the United States government and of international financial institutions of which the United States is a member, such as the IMF and the World Bank. Such

tactics undermine the established cooperative framework necessary to continued success in dealing with international financial problems.

30. If any creditor can circumvent United States policy by resorting to the courts, without any willingness even to consider equitable debt repayment plans backed by United States policy, such conduct would be rewarded and United States policy severely impaired.

Fourth Affirmative Defense

31. Because the actions of the Republic are consistent with United States policy, as set forth in Paragraphs 21-30 of this Answer, plaintiffs' claims are barred by the doctrine of comity.

Fifth Affirmative Defense

32. Plaintiffs' claims are barred by the act of state doctrine.

Sixth Affirmative Defense

33. To the extent plaintiffs are not acting in good faith in commencing and prosecuting this action, they are barred from enforcing any rights they may otherwise have.

Seventh Affirmative Defense

34. Plaintiffs' claims are barred by the doctrine of unclean hands.

Eighth Affirmative Defense

35. Plaintiffs* claims are barred by the doctrine of abuse of rights.

WHEREFORE, the Republic respectfully requests that the Court enter an order:

- (a) dismissing plaintiffs' claims with prejudice;
- (b) awarding the Republic costs and disbursements, including reasonable attorneys' fees; and
- (c) granting the Republic such other and further relief as the Court may deem just and proper.

Dated: New York, New York

September 25, 2002

CLEARY, GOTTLIB, STEEN & HAMILTON



Bv: _____
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