

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

NML CAPITAL, LTD.,

Plaintiff,

-against-

THE REPUBLIC OF ARGENTINA,

Defendant.

08 Civ. 6978 (TPG)  
09 Civ. 1707 (TPG)  
09 Civ. 1708 (TPG)

**OPINION**

Plaintiff, NML Capital, Ltd., (“NML”), is the beneficial owner of certain bond indebtedness issued by defendant, the Republic of Argentina (the “Republic”), on which the Republic defaulted in December 2001. Plaintiff now moves for partial summary judgment for principal and interest due on the bonds. The Republic responds that plaintiff “has improperly redacted purchase price information from most of the proof offered in support of the motion,” and therefore “the Republic reserves its rights and preserves for appeal all objections to the deficiencies” in this proof.

The motion for partial summary judgment is granted.

**Background**

The bond indebtedness at issue is governed by a Fiscal Agency Agreement dated October 19, 1994 (the “1994 FAA”). The 1994 FAA is the same agreement that governed the bond indebtedness on which this court granted summary judgment to the plaintiffs in Lightwater Corp. Ltd. v. Republic of Argentina, No. 02 Civ. 3804, 2003 WL 1878420 (S.D.N.Y. Apr. 14, 2003). Section 22 of the 1994 FAA states that the Republic waives sovereign

immunity and consents to jurisdiction in any state or federal court in the borough of Manhattan in the City of New York. The 1994 FAA also provides that the Republic's obligations on the bonds are unconditional and that failure to make any payment of principal or interest for 30 days after the applicable payment date constitutes an event of default. A declaration by the Republic of a moratorium on the payment of principal or interest on its public external indebtedness is an event of default as well. Paragraph 12 of the FAA provides for acceleration of principal if there is a failure to pay interest or a moratorium. If either of these events occurs, "each holder of Securities and such Series may by such notice in writing declare the principal amount of Securities of such Series held by it to be due and payable immediately."

On December 24, 2001, the Republic declared a moratorium on payments of principal and interest on the external debt of the Republic. The court refers to its previous opinions for a description of the circumstances of these defaults. Lightwater, 2003 WL 1878420, at \*2; Applestein v. Republic of Argentina, No. 02 Civ. 1773, 2003 WL 1990206, at \*1 (S.D.N.Y. Apr. 29, 2003).

On August 1, 2008, plaintiff sent a notice to Bankers Trust Company, the Fiscal Agent of the Republic, declaring the principal amounts of the debt securities held by plaintiff in Case No. 08 Civ. 6978 to be immediately due and payable. On February 4, 2009, plaintiff sent a notice to Bankers Trust Company declaring the principal amounts of bonds with CUSIP Nos. 040114BE9, 040114FC9, 040114GD6, 040114AR1, 040114FB1, 040114AV2,

and 040114GG9, held by plaintiff in Case No. 09 Civ. 1708 to be immediately due and payable.

The Floating Rate Accrual Notes in Case. No. 09 Civ. 1707 matured on April 10, 2005, at which time the entire principal amount and all accrued and unpaid interest thereon became due and payable. The bonds with CUSIP No. 040114AN0 in Case No. 09 Civ. 1708 matured on October 9, 2006, at which time the entire principal amount and all accrued and unpaid interest therein became due and payable.

The bonds that are the subject of these actions, and the amounts of the beneficial interests owned by plaintiff, are listed in the following tables.<sup>1</sup>

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<sup>1</sup> The court notes the distinction between bonds and beneficial interests. In some previous opinions, the court has simply referred to the plaintiffs as owners of "bonds," when in fact plaintiffs are technically owners of "beneficial interests in bonds." The Republic actually issues "a bond" to a depository. The depository, in some form, issues "participations" to brokers, who sell "beneficial interests" to purchasers. These beneficial interests are identified by reference to the underlying bond (CUSIP or ISIN number or both; date of issuance and maturity; rate of interest) and the principal amount of the beneficial interest. This distinction is discussed more fully in Million Air Corp. v. Republic of Argentina, No. 04 Civ. 1048, 2005 WL 2656126 (S.D.N.Y. Oct. 17, 2005).

Table 1

<u>Case No.</u>	08-Civ-6978
<u>Plaintiff Bond Holder or Beneficial Owner</u>	NML Capital, Ltd.
<u>Face Value</u>	U.S. \$225,000
<u>CUSIP No.</u>	040114AN0
<u>Date of Issuance:</u>	October 9, 1996
<u>Date of Maturity:</u>	October 9, 2006
<u>Interest Rate/Payable:</u>	11%
<u>Date of Acquisition:</u>	July 7, 2008
<u>Acceleration:</u>	Notice sent August 1, 2008
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	The 1994 FAA
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	JP Morgan Global Settled Holdings COB Report, dated October 13, 2010. JP Morgan Consolidated Settlement ITD Report Statements.

Table 2

<u>Case No.</u>	08-Civ-6978
<u>Plaintiff Bond Holder or Beneficial Owner</u>	NML Capital, Ltd.
<u>Face Value</u>	U.S. \$11,290,000
<u>CUSIP No.</u>	040114BE9
<u>Date of Issuance:</u>	April 7, 1999
<u>Date of Maturity:</u>	April 7, 2009
<u>Interest Rate/Payable:</u>	11.75%
<u>Dates of Acquisition:</u>	July 7, 8, 10, 14, and 24, 2008
<u>Acceleration:</u>	Notice sent August 1, 2008
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	The 1994 FAA
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	JP Morgan Global Settled Holdings COB Report, dated October 13, 2010. JP Morgan Consolidated Settlement ITD Report Statements.

Table 3

<u>Case No.</u>	08-Civ-6978
<u>Plaintiff Bond Holder or Beneficial Owner</u>	NML Capital, Ltd.
<u>Face Value</u>	U.S. \$10,260,000
<u>CUSIP No.</u>	040114FC9
<u>Date of Issuance:</u>	March 15, 2000
<u>Date of Maturity:</u>	March 15, 2010
<u>Interest Rate/Payable:</u>	11.375%
<u>Dates of Acquisition:</u>	July 7, 2008 and July 21, 2008
<u>Acceleration:</u>	Notice sent August 1, 2008
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	The 1994 FAA
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	JP Morgan Global Settled Holdings COB Report, dated October 13, 2010. JP Morgan Consolidated Settlement ITD Report Statements.

Table 4

<u>Case No.</u>	08-Civ-6978
<u>Plaintiff Bond Holder or Beneficial Owner</u>	NML Capital, Ltd.
<u>Face Value</u>	U.S. \$10,500,000
<u>CUSIP No.</u>	040114GD6
<u>Date of Issuance:</u>	February 21, 2001
<u>Date of Maturity:</u>	February 21, 2012
<u>Interest Rate/Payable:</u>	12.375%
<u>Dates of Acquisition:</u>	July 14, 2008 and July 24, 2008
<u>Acceleration:</u>	Notice sent August 1, 2008
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	The 1994 FAA
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	JP Morgan Global Settled Holdings COB Report, dated October 13, 2010. JP Morgan Consolidated Settlement ITD Report Statements.

Table 5

<u>Case No.</u>	08-Civ-6978
<u>Plaintiff Bond Holder or Beneficial Owner</u>	NML Capital, Ltd.
<u>Face Value</u>	U.S. \$42,155,000
<u>CUSIP No.</u>	040114AR1
<u>Date of Issuance:</u>	January 30, 1997
<u>Date of Maturity:</u>	January 30, 2017
<u>Interest Rate/Payable:</u>	11-3/8%
<u>Dates of Acquisition:</u>	June 9, 24, 27 and 30, 2008; July 15 and July 18, 2008
<u>Acceleration:</u>	Notice sent August 1, 2008
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	The 1994 FAA
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	JP Morgan Global Settled Holdings COB Report, dated October 13, 2010. JP Morgan Consolidated Settlement ITD Report Statements.

Table 6

<u>Case No.</u>	08-Civ-6978
<u>Plaintiff Bond Holder or Beneficial Owner</u>	NML Capital, Ltd.
<u>Face Value</u>	U.S. \$1,100,000
<u>CUSIP No.</u>	040114FB1
<u>Date of Issuance:</u>	February 3, 2000
<u>Date of Maturity:</u>	February 1, 2020
<u>Interest Rate/Payable:</u>	12%
<u>Date of Acquisition:</u>	July 16, 2008
<u>Acceleration:</u>	Notice sent August 1, 2008
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	The 1994 FAA
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	JP Morgan Global Settled Holdings COB Report, dated October 13, 2010. JP Morgan Consolidated Settlement ITD Report Statements.

Table 7

<u>Case No.</u>	08-Civ-6978
<u>Plaintiff Bond Holder or Beneficial Owner</u>	NML Capital, Ltd.
<u>Face Value</u>	U.S. \$5,500,000
<u>CUSIP No.</u>	040114AV2
<u>Date of Issuance:</u>	September 19, 1997
<u>Date of Maturity:</u>	September 19, 2027
<u>Interest Rate/Payable:</u>	9.75%
<u>Dates of Acquisition:</u>	July 7, 15, 17 and 21, 2008
<u>Acceleration:</u>	Notice sent August 1, 2008
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	The 1994 FAA
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	JP Morgan Global Settled Holdings COB Report, dated October 13, 2010. JP Morgan Consolidated Settlement ITD Report Statements.

Table 8

<u>Case No.</u>	09-Civ-1707
<u>Plaintiff Bond Holder or Beneficial Owner</u>	NML Capital, Ltd.
<u>Face Value</u>	U.S. \$30,000
<u>CUSIP No.</u>	040114AX8
<u>Date of Issuance:</u>	April 13, 1998
<u>Date of Maturity:</u>	April 10, 2005
<u>Interest Rate/Payable:</u>	Variable
<u>Date of Acquisition:</u>	October 16, 2008
<u>Acceleration:</u>	
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	The 1994 FAA
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	JP Morgan Global Settled Holdings COB Report, dated October 13, 2010. JP Morgan Consolidated Settlement ITD Report Statements.

Table 9

<u>Case No.</u>	09-Civ-1708
<u>Plaintiff Bond Holder or Beneficial Owner</u>	NML Capital, Ltd.
<u>Face Value</u>	U.S. \$3,442,000
<u>CUSIP No.</u>	040114AN0
<u>Date of Issuance:</u>	October 9, 1996
<u>Date of Maturity:</u>	October 9, 2006
<u>Interest Rate/Payable:</u>	11%
<u>Dates of Acquisition/Sale:</u>	November 10, 13 and 20, 2008; November 23, 2009 and July 2, 2010
<u>Acceleration:</u>	
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	The 1994 FAA
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	JP Morgan Global Settled Holdings COB Report, dated October 13, 2010. JP Morgan Consolidated Settlement ITD Report Statements.

Table 10

<u>Case No.</u>	09-Civ-1708
<u>Plaintiff Bond Holder or Beneficial Owner</u>	NML Capital, Ltd.
<u>Face Value</u>	U.S. \$15,339,000
<u>CUSIP No.</u>	040114BE9
<u>Date of Issuance:</u>	April 7, 1999
<u>Date of Maturity:</u>	April 7, 2009
<u>Interest Rate/Payable:</u>	11.75%
<u>Dates of Acquisition/Sale:</u>	August 4, 2008; November 26, 2008; and November 24, 2009
<u>Acceleration:</u>	Notice sent February 4, 2009
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	The 1994 FAA
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	JP Morgan Global Settled Holdings COB Report, dated October 13, 2010. JP Morgan Consolidated Settlement ITD Report Statements.

Table 11

<u>Case No.</u>	09-Civ-1708
<u>Plaintiff Bond Holder or Beneficial Owner</u>	NML Capital, Ltd.
<u>Face Value</u>	U.S. \$5,465,000
<u>CUSIP No.</u>	040114FC9
<u>Date of Issuance:</u>	March 15, 2000
<u>Date of Maturity:</u>	March 15, 2010
<u>Interest Rate/Payable:</u>	11.375%
<u>Dates of Acquisition:</u>	October 2, 15, 22 and 29, 2008; November 7 and November 13, 2008
<u>Acceleration:</u>	Notice sent February 4, 2009
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	The 1994 FAA
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	JP Morgan Global Settled Holdings COB Report, dated October 13, 2010. JP Morgan Consolidated Settlement ITD Report Statements.

Table 12

<u>Case No.</u>	09-Civ-1708
<u>Plaintiff Bond Holder or Beneficial Owner</u>	NML Capital, Ltd.
<u>Face Value</u>	U.S. \$8,209,000
<u>CUSIP No.</u>	040114GD6
<u>Date of Issuance:</u>	February 21, 2001
<u>Date of Maturity:</u>	February 21, 2012
<u>Interest Rate/Payable:</u>	12.375%
<u>Dates of Acquisition/Sale:</u>	August 25, 2008; October 30, 2008; November 13, 2008; and November 24, 2009
<u>Acceleration:</u>	Notice sent February 4, 2009
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	The 1994 FAA
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	JP Morgan Global Settled Holdings COB Report, dated October 13, 2010. JP Morgan Consolidated Settlement ITD Report Statements.

Table 13

<u>Case No.</u>	09-Civ-1708
<u>Plaintiff Bond Holder or Beneficial Owner</u>	NML Capital, Ltd.
<u>Face Value</u>	U.S. \$15,301,000
<u>CUSIP No.</u>	040114AR1
<u>Date of Issuance:</u>	January 30, 1997
<u>Date of Maturity:</u>	January 30, 2017
<u>Interest Rate/Payable:</u>	11-3/8%
<u>Dates of Acquisition:</u>	August 25, 2009; October 29, 2008; November 13 and November 24, 2008; December 5, 2008 and January 2, 2009
<u>Acceleration:</u>	Notice sent February 4, 2009
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	The 1994 FAA
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	JP Morgan Global Settled Holdings COB Report, dated October 13, 2010. JP Morgan Consolidated Settlement ITD Report Statements.

Table 14

<u>Case No.</u>	09-Civ-1708
<u>Plaintiff Bond Holder or Beneficial Owner</u>	NML Capital, Ltd.
<u>Face Value</u>	U.S. \$298,000
<u>CUSIP No.</u>	040114FB1
<u>Date of Issuance:</u>	February 3, 2000
<u>Date of Maturity:</u>	February 1, 2020
<u>Interest Rate/Payable:</u>	12%
<u>Date of Acquisition:</u>	November 13, 2008
<u>Acceleration:</u>	Notice sent February 4, 2009
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	The 1994 FAA
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	JP Morgan Global Settled Holdings COB Report, dated October 13, 2010. JP Morgan Consolidated Settlement ITD Report Statements.

Table 15

<u>Case No.</u>	09-Civ-1708
<u>Plaintiff Bond Holder or Beneficial Owner</u>	NML Capital, Ltd.
<u>Face Value</u>	U.S. \$16,290,000
<u>CUSIP No.</u>	040114AV2
<u>Date of Issuance:</u>	September 19, 1997
<u>Date of Maturity:</u>	September 19, 2027
<u>Interest Rate/Payable:</u>	9.75%
<u>Dates of Acquisition/Sale:</u>	November 10, 13, 19, 26 and 28, 2008; November 25 and 27, 2009
<u>Acceleration:</u>	Notice sent February 4, 2009
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	The 1994 FAA
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	JP Morgan Global Settled Holdings COB Report, dated October 13, 2010. JP Morgan Consolidated Settlement ITD Report Statements.

Table 16

<u>Case No.</u>	09-Civ-1708
<u>Plaintiff Bond Holder or Beneficial Owner</u>	NML Capital, Ltd.
<u>Face Value</u>	U.S. \$76,545,549
<u>CUSIP No.</u>	040114GG9
<u>Date of Issuance:</u>	June 19, 2001
<u>Date of Maturity:</u>	June 19, 2018
<u>Interest Rate/Payable:</u>	12.25%
<u>Dates of Acquisition:</u>	August 11, 2008; October 2, 15, 29 and 31, 2008; November 3, 5, and 11, 2008; and December 10, 2008
<u>Acceleration:</u>	Notice sent February 4, 2009
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	The 1994 FAA
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	JP Morgan Global Settled Holdings COB Report, dated October 13, 2010. JP Morgan Consolidated Settlement ITD Report Statements.

## **Discussion**

This court has already granted summary judgment in other cases to plaintiffs seeking to collect on the Republic's defaulted bonds issued under the 1994 FAA. See Mazzini v. Republic of Argentina, No. 03 Civ. 8120, 2005 WL 743090 (S.D.N.Y. Mar. 31, 2005). Only certain issues need to be discussed in connection with the present motion.

### **Standing and Proof of Ownership**

In two opinions, Fontana v. Republic of Argentina, 415 F.3d 238 (2d Cir. 2005), and Applestein v. Province of Buenos Aires, 415 F.3d 242 (2d Cir. 2005), the Second Circuit held that an owner of a beneficial interest, such as plaintiff in the instant cases, must receive authorization from the registered holder of the bond before it may sue, but that such authorization may be granted subsequent to the filing of a lawsuit. Alternatively, the Republic may waive the authorization requirement.

The Republic has agreed to waive objections based on lack of authorization where the court makes a finding of current ownership. See Transcript, March 28, 2006, Cilli v. Republic of Argentina (04 Civ. 6594).

Here, plaintiff has adequately demonstrated through account statements from JP Morgan that it owned the beneficial interests as of October 13, 2010. There is no evidence of any change of ownership thereafter.

### Conclusion

The motion for partial summary judgment is granted. Judgment will be entered for the principal amounts of the bonds plus accrued interest in each of the three above-captioned cases.

The parties shall consult with one another concerning the form of the judgments and the amounts of interest that should be awarded in the judgments. If the parties are able to reach agreement on those subjects, they shall jointly submit agreed proposed judgments to the Court. If the parties are unable to reach agreement on those subjects, plaintiff shall submit proposed judgments to the Court, and the Republic shall submit any objections to the proposed judgments within five business days thereafter. The Court will then resolve any remaining disagreements. Proposed judgments submitted to the Court should include the following language: "It is further ORDERED that, until further notice from the Court, plaintiff(s) must refrain from selling or otherwise transferring their beneficial interest in the bond(s) involved in this action without advising the Court in advance and obtaining permission of the Court."

This opinion resolves the motion listed as document number 232 in case 08 Civ. 6978, as well as the same motion in the related cases.

SO ORDERED.

Dated: New York, New York  
September 28, 2011

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: <u>9/28/11</u>



Thomas P. Griesa  
U.S. District Judge