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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Argentina Bondholders Say Mediator Blocked Them From Talks

By **Vince Sullivan**

Law360, Wilmington (March 14, 2016, 5:42 PM ET) -- A group holding small portions of Argentina's debt securities has asked a New York federal judge to remove the mediator overseeing negotiations between the South American country and its bondholders regarding its 2001 default because he has shut them out of the talks and treated them unfairly.

Attorneys representing holders of about $27 million worth of small bonds said Thursday that Special Master Daniel A. Pollack, appointed in 2014 to preside over settlement negotiations between bondholders and Argentina over its 2001 sovereign debt default, has excluded them from the negotiations and injured their attempts at recovery by endorsing an Argentine proposal that would give them a return about one-third less than what larger bondholders received. They say they are not being given the chance to represent the interests of their clients in the negotiations and are having the agreements reached by larger bondholders forced onto them.

"By shutting these parties out of the negotiations altogether, the Special Master has completely undermined the plaintiffs' rights to self-determination, and his public endorsement of Argentina's position is a coercive attempt to force plaintiffs to accept Argentina's unilateral settlement proposal," the bondholders wrote in a memorandum supporting its motion to remove Pollack.

The memo highlights an email exchange between bondholder Mohammad Ladjevardian, with about $11 million in bonds, and Pollack, in which Ladjevardian asked to be included in the negotiations and said he otherwise would pursue Pollack's removal as special master. In his reply, Pollack allegedly said that he wouldn't communicate with Ladjevardian going forward unless he apologized.

The bondholders also called into question Pollack's appointment and the fact that he was exempted from filing a disclosure of potential conflicts of interest. They feel that Pollack's appointment did not comply with federal rules because of this exemption, which was granted because of the narrow scope of the proceedings.

Bondholders' attorney Howard Crystal of Novak Burnbaum Crystal LLP argued that Pollack, an attorney in private practice at McCarter & English LLP, would benefit from a rapid resolution to the settlement negotiations currently underway because some of his private clients could see increased business if Argentina is able to re-enter the international debt market as a result.

Pollack said Monday that Ladjevardian's allegations are meritless and that he has worked to bring together all stakeholders in the negotiations.

"Mr. Ladjevardian's position is without basis," Pollack said in a statement. "I have, at all times, strived to facilitate settlements between bondholders, large and small, with the republic."

He explained that he doesn't have the power to compel a party to offer or accept a settlement and that under his supervision, most bondholders have reached resolution with Argentina.

"My record speaks for itself: There are agreements in principle with many, many bondholders, large and small, aggregating more than 85 percent of the bonds at issue in the cases before Judge Griesa," Pollack said, adding that the Feb. 5 offer made to Ladjevardian worth 150 percent of the principal amount of the bond is still on the table.

After Argentina defaulted on its sovereign debt by placing a moratorium on any debt or interest payments, the country offered bond exchanges in 2005 and 2010. The exchanges would swap the existing bonds for newly issued debt securities that would pay out about 30 cents on the dollar to bondholders.

In the current action, which was one of many filed in New York federal court by bondholders large and small, Judge Thomas P. Griesa entered judgment against Argentina, ordering the country to pay the principal and interest on the bonds named in the suit totalling nearly $60 million. Some of the bondholders in the case participated in the exchange offer after Argentina failed to pay the judgment, leaving Ladjevardian and others as holdouts with $27 million in bonds. After the 2010 debt exchange offer, negotiations between the holdouts and Argentina stalled.

The holdouts asked Judge Griesa to grant them relief under a clause in their bond agreements granting their securities the same status or higher as any new bonds issued by the Argentine government. The so-called "pari passu" clause would require that the holdouts be paid at the same time as the bondholders who participated in the exchange. But a 2012 injunction from Judge Griesa prevented the exchange payouts, citing the pari passu clauses in the original bond agreements.

In December, a new administration took power in Argentina, and President Mauricio Macri said that settling with the bondholders was a high priority. But Pollack has allegedly blocked participation by small bondholders holding less than $100,000 in debt securities while allowing larger hedge fund bondholders to take part in the talks. Meetings between the large holders and representatives of Argentina's finance ministry allegedly took place in January and February without any representation from the small bondholder holdouts.

By the end of February, the new administration had **settled with about 85 percent** of the pari passu claimants worth about $6 billion, and Argentina asked Judge Griesa to vacate the injunctions preventing the payouts. He **agreed to do so** only if the Argentine congress repealed a 2012 law preventing payouts to bondholders who didn't accept the exchanges, known as the Lock Law, and if the country pays any settlements reached before Feb. 29.

Pollack did not immediately respond Monday to requests for comment.

The bondholders are represented by Bruce G. Hart of Steamer & Hart LLP and Howard C. Crystal of Novak Burnbaum Crystal LLP.

Argentina's finance minister is represented by Eugenio Bruno.

The case is Ladjevardian, et al., v. The Republic of Argentina, case number 1:06-cv-03276, in the U.S. District Court for the Southern District of New York.

--Editing by Christine Chun.