



A US Court Showdown over Argentine Debt

Edwin M. Truman and John Williamson offer differing assessments of a US Federal judge's order to Argentina to pay its debts to "vulture funds" after defaulting a decade ago.

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Steve Weisman: Just before Thanksgiving, a federal judge in New York ordered Argentina to pay what it owed to private equity funds referred to in Argentina as "vulture funds." The decision ordered Argentina to pay up to \$1.3 billion by the middle of December. The decision has stirred debate throughout the world of people who handle crises.

This is Steve Weisman. I'm here with Edwin M. (Ted) Truman and John Williamson, who have different perspectives on the decision. Let me start first with Ted to explain what the judge ordered.

Ted Truman: About a decade ago, Argentina defaulted on its foreign debts and negotiated a restructuring of those debts in which there were a number of hold-outs who did not participate in the restructuring. In 2010, the second restructuring, on those same terms 7 percent of its original \$100 billion face value of debt is still outstanding in the hands of what you call these "vulture funds" that either held the debt or purchased it from other holders. And these vulture funds have gone into various courts around the world to try to force Argentina to meet the terms of the original obligations.

This judge has accepted their argument and has said that Argentina cannot pay the holders of the restructured debt on December 15th unless they also pay what is due to the holders of the old debt. And unless this decision is overturned in some form, it would bring the entire process of Argentina's financial arrangements with the world to a halt. It impacts, as you said, impacts not only Argentina but the whole process of debt restructurings as it has evolved over the past 20 years.

Steve Weisman: John Williamson. Did the judge make the right decision?

John Williamson: It's difficult to say what he could have decided differently. But no doubt that it created a big problem in the present circumstance. The problem is, as Ted has said, if Argentina can perfectly well afford to pay 7 percent of the original things, but if it pays these holdouts, these vulture funds, the original amount that was due, nobody is going to restructure debt in the future. That's a big problem because there's a chance of getting back all you had if only you hold out. And Argentina clearly can't afford to pay the whole 100 percent.

Steve Weisman: Would this have an effect on, say, Europe?

John Williamson: I was thinking primarily of third world countries rather than of Europe.

Steve Weisman: Right, because in Europe they've already restructured the privately-held debt.

John Williamson: They have capital account. They have CACs, the Collective Action Clauses, in the restructured debt. Therefore I think the problem doesn't arise in the same way.

Steve Weisman: But it could in a future third world debt crisis?

John Williamson: Yes, it could.

Steve Weisman: A moment ago, you said that it was difficult to see how the judge could have decided otherwise. In other words, are you saying these holdouts had a pretty airtight claim?

John Williamson: Legally I think it's fairly difficult to see what they could have done differently. But there's no doubt that it creates a big problem for the world and therefore reinforces the case for having a bankruptcy clause in treating these cases differently.

Steve Weisman: Ted Truman.

Ted Truman: I'm going to disagree with John, but not on the way I anticipated. This is not the first such case that has come to a court. These people have brought many cases in many courts over the last decade since the original default. In general, the way judges have interpreted the law is that they do not force what is called technically *pari passu* -- that if you pay creditor A, you have to pay creditor B. The only times in which you can do that is if you can actually get at certain assets that the original creditors had claims over. It's very difficult to identify those assets because Argentina doesn't hold any assets that are outside the country or protected under various laws like the *pari passu* laws. They may be held at Federal Reserve Bank in New York, where there are official assets and they are protected. They can't be of use.

The point is, this is a bit of a rogue judge action which throws a spanner, as John has said, into a process through which there was a standoff between Argentina and these holders.

Steve Weisman: Let me ask you about that standoff. One of the criticisms of the holdouts and some others is that Argentina never really negotiated in good faith and could have paid more to the holdouts and indeed to everyone than it did, and that its own behavior is being judged here by [U.S.] Judge [Thomas B.] Griesa in New York.

John Williamson: No, there is no question that Argentina has not behaved like an exemplary debtor. But Ted made what I think is a very good point, that the real objection to Judge Griesa's ruling is the use of the *pari passu* laws to enforce what is not at all similar. *Pari passu* means doing the same thing in two cases. The cases of the restructured debt and the original debt are not the same, so one shouldn't invoke the *pari passu* laws to suggest that they are.

Ted Truman: I think the complication here is that if Argentina had been more of an exemplary debtor, as John put it, then it would be easier for other actors to get involved, like the US government or other governments who would come to the court and submit a brief and say to Argentina, "This is wrong and this would mess up the system." [This] has been done in the past occasionally way back in the 1980s in an old case, a Costa Rican case.

But in this case because Argentina is such a pariah -- it hasn't, for example, paid any of its debts to foreign governments since it defaulted on those debts a decade ago, the so called Paris Club Debts, and has engaged in a bunch of expropriations -- it's very difficult

politically for the US government to come in and say, “Well, you ought to read the law the way it’s generally been read elsewhere.”

My guess is that in the end the judge will be overruled, but it may take a while to get there because it’s awkward because of the situation with Argentina.

Steve Weisman: John, does this case illustrate the need for some international norms? You mentioned a moment ago the term “exemplary debtor” which is kind of an oxymoron.

John Williamson: Because it’s servicing all of its debt.

Steve Weisman: In other words, a debtor whose behavior shows that it is willing to pay off its debts even at great cost to its people and taxpayers.

John Williamson: Right.

Steve Weisman: Does this case illustrate the need for some kind of international norms or are there already such norms?

John Williamson: I think it illustrates the need to build the norms much longer than they are. You can argue that some norms at the present time don’t include a bankruptcy court, and therefore there’s no ultimate appeal. Everything is in the hands of a judge like Judge Griesa, who should be able to close these things on his own without the US government intervening.

Steve Weisman: Ted, what about the IMF [International Monetary Fund] playing a role?

Ted Truman: In some sense, that was tried. In the best of all possible worlds, we have an international bankruptcy court with well-defined rules, not just for the court, but also for behavior before you came to the court. And that, again, is one of the problems with the Argentine case.

Normally in the past, these unwritten rules had been that the country would engage with the IMF at the same time that it negotiated its debt restructuring -- as was the case, for example, with Greece. They engaged with the IMF. The IMF acted as partly an informal arbitrator of the capacity to pay, and the country had a program with the IMF as part of that process. Because of its history, Argentina chose not to involve the IMF a decade ago. As a consequence, it essentially negotiated or imposed its solution outside that system.

That’s part of the system. The IMF could be involved and could actually have more powers to adjudicate. That was tried and proposed, again, a little more than a decade ago, the SDRM, Sovereign Debt Restructuring Mechanism. But it was not approved by the members of the IMF at that time.

Steve Weisman: John, any final thoughts?

John Williamson: Well, if it wasn’t approved last time, but that doesn’t mean that it’s never going to be approved.

Steve Weisman: OK. Gentlemen, thank you both very much.

