

Belgian Court to Rule on Enforceability of US Argentine Debt Injunction

On August 23rd, the US Court of Appeals for the Second Circuit affirmed an injunction ordering Argentina to make ratable payment to holders of initial defaulted bonds whenever it would make payments on its restructured debt.

Despite not being parties to the injunction, the US Court made clear that holders of the restructured debt might be found in contempt if they assisted Argentina in evading the injunction.

Several European holders of the restructured debt, including Knighthead Capital Management LLC, are seeking a declaration from a Belgian court that the injunction is unenforceable in Europe and that Belgian intermediaries may pass payments despite the injunction. Katia Porzecanski at Bloomberg reports that a hearing is scheduled today in Brussels.

I understand that the defense to the recognition of the injunction is a 2004 Belgian Law prohibiting any obstruction in cash payments made by settlement agents. This suggests that the argument should be framed in public policy terms.

In June, Knighthead Capital Management LLC and other third parties had sought an interim injunction ordering Belgium based intermediary Euroclear to pass payments to be made by Argentina to holders of the restructured debt. The Belgian Court held that the application was premature, as the issue of the impact of the injunction on Euroclear would only arise if Argentina actually made the relevant payments. At the time, however, the Court found that it had not been provided with evidence that Argentina would, in breach of the injunction. The Court suggested that, should Argentina want to pay holders of the restructured debt, plaintiffs would still have 30 days to apply for a declaration that Euroclear should pay notwithstanding the US injunction.