## *I. Closing the Book on Argentina's Sovereign Debt Default: The Second Circuit's Decision and Its Ramifications for Sovereign Debt Restructuring in the Eurozone*

### A. Introduction

In affirming the Southern District of New York's decision to enjoin the Republic of Argentina from paying only those sovereign-bondholders who agreed to a post-recession debt restructuring, the Second Circuit Court of Appeals sent a simple message to Buenos Aires: adhere to your agreements.[1] Nonetheless, Seton Hall Law School Professor Stephen J. Lubben criticized the Second Circuit's ruling in *NML Capital, Ltd. v. Republic of Argentina*, because it enforces an obscure clause found in most sovereign bond agreements that he describes as "the equivalent of your appendix."[2] Therefore, Lubben and other critics argue, the court has required Argentina to do more than merely adhere to its agreements; it has mandated that Argentina exceed the bounds of its sovereign bond agreements and cater to wealthy individuals, hedge funds, and pensions (the "holdouts") that held out from restructuring.[3] Nevertheless, Argentina will have to stick to its agreement as the Second Circuit interpreted it, a prospect that could "send shockwaves through all future restructurings."[4]

Argentina issued the sovereign bonds between 1994 and 2001, as part of a Fiscal Agency Agreement ("FAA") with its bondholders ("FAA Bonds").[5] The FAA dictated the terms and conditions of the bond issuance and included a *pari passu* clause, which the Second Circuit relied on in coming to its decision.[6] This clause in the FAA guaranteed to bondholders that Argentina would

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[1] *See* NML Capital, Ltd. v. Republic of Arg., 699 F.3d 246, 260 (2d Cir. 2012).

[2] *See, e.g.*, Stephen J. Lubben, Possible Ripples From the Argentine Bond Litigation, N.Y. TIMES DEALBOOK (Dec. 13, 2012, 12:25 PM), http://dealbook.nytimes.com/2012/12/13/possible-ripple-effects-from-the-argentina-hedge-fund-court-fight/.

[3] *See infra* Part D.

[4] Sujata Rao, *Investment Focus—Argentine Case Adds to Sovereign Debt Doubts*, REUTERS (Nov. 23, 2012), http://www.reuters.com/article/2012/11/23/investment-focus-idUSL5E8MN83Y20121123; see also infra Part D.

[5] *NML Capital*, 699 F.3d at 251.

[6] *See generally id.* at 258–60.

not subordinate their claims, which "shall at all times rank at least equally with all its other present and future unsecured and unsubordinated External Indebtedness."[7] Relying on this boilerplate provision, the court held that the FAA Bonds were, from their inception and without qualification, guaranteed against subordination.[8] Thus, under the court's construction of the *pari passu* clause, Argentina's refusal to make payments to the holdouts to restructuring agreements in 2005 and 2010 violated the FAA.[9]

This article argues that the Second Circuit's decision in *NML Capital* potentially places defaulting Eurozone sovereigns and their bondholders in a sort of prisoner's dilemma where both sides have a stronger incentive to defect than to cooperate with one another. Part B discusses the Eurozone's sovereign debt crisis, which potentially encompasses some of the largest sovereign debt defaults in history, and the parallels between it and Argentina's prior sovereign debt crisis.[10] Part C continues with an examination of the Second Circuit's decision in *NML Capital*.[11] Although the amount and manner of payment Argentina owes to holdouts remains unclear, the Second Circuit has made clear that Argentina will have to service the holdouts' bonds despite its attempts to restructure this bad debt.[12] Because the court's interpretation of Argentina's sovereign bond agreement rested on a feature prevalent in sovereign bond agreements in general, Part D details *NML Capital*'s potential ramifications, which spread beyond South America and into the fragile Eurozone economies that the recession hit hardest.[13] Finally, Part E concludes that the Second Circuit's holding could mean that

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[7] *Id.* at 251.

[8] *Id.* at 260 ("[E]ven under Argentina's interpretation of the [pari passu provision] . . . the Republic breached the provision.").

[9] *Id.* at 253, 259 ("As with the 2005 exchange offer, plaintiffs did not participate in the 2010 restructuring. After the two exchange offers, Argentina had restructured over 91% of the foreign debt on which it had defaulted in 2001 . . . . The record amply supports a finding that Argentina effectively has ranked its payment obligations to the plaintiffs below those of the exchange bondholders.").

[10] *See infra* Part B.

[11] *See infra* Part C.

[12] *NML Capital*, 699 F.3d at 264–65 (remanding case to District Court "for such proceedings as are necessary to address the operation of the payment formula and the Injunctions' application to third parties and intermediary banks").

[13] *See infra* Part D.

sovereign debtors of the Eurozone—particularly Portugal, Ireland, Greece, and Spain, which loaded up on the most sovereign debt in the years leading up to the 2008 Global Recession—may find it more difficult to restructure obligations that they can no longer satisfy.[14]

### B. The Eurozone's Sovereign Debt Crisis

In the run up to the 2008 recession, countries in the Eurozone racked up sovereign debt obligations without hesitation.[15] Although the Maastricht Treaty, which European Union member states signed in 1992, limited the amount of deficit spending and borrowing available to signatories,[16] Eurozone countries did not abide by these limitations because there were no enforcement mechanisms in place.[17] For instance, even with the "Maastricht Criteria" debt limit of 60%, the average Eurozone nation incurred debt ranging from roughly 70% to 85%.[18] As European economies continued to grow until 2007, driven in part by increased debt accumulation, sovereigns increasingly issued bonds under the mistaken belief that they would have little trouble repaying those debts.[19] The 2008 recession brought the debt-and-spend era to a close and left overleveraged sovereigns struggling to repay obligations.[20]

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[14] *See infra* Part E; Rao, *supra* note 4 ("'the wider implications of this legal ruling will send shockwaves through all future restructurings'").

[15] *See generally* Caroline Jensen, *What Doesn't Kill Us Makes Us Stronger: But Can the Same Be Said of the Eurozone?*, 46 INT'L LAW. 759, 759–63 (2012) ("The image of a teenager with a brand new credit card springs to mind.").

[16] *Id.* at 761 ("['Maastricht Criteria'] entailed keeping inflation below 1.5% a year and maintaining a budget deficit of less than 3 percent of GDP, as well as a debt to GDP ratio of less than 60 percent.").

[17] Michael Quirk, *Sovereign Default: A Detour on the Road to Recovery*, 29 REV. BANKING & FIN. L. 342, 343 (2010) ("[A] lack of oversight and enforcement within the E.U. allowed countries such as Greece to accumulate excessive public debt due to irresponsible fiscal policy.").

[18] Jensen, *supra* note 15, at 762.

[19] *Id.* at 760–61 (describing the road to insolvency in the Eurozone as a result of increased debt and spending after the adoption of the Euro and the idea that currently insolvent sovereigns "were buoyed by their association with stronger Eurozone members").

[20] *See, e.g.*, Quirk, *supra* note 17, at 345 ("While the Greek crisis stems from reckless fiscal policy, the Spanish crisis is more the result of a private and public 'debt-fueled spending binge.'").

Today's debt crisis in the Eurozone leaves near-defaulting sovereigns limited in their ability to alleviate their debt burdens.[21] They can attempt to satisfy sovereign debt obligations in full, a practically impossible prospect that would require depleting resources needed for economic recovery, or default and restructure debt obligations.[22] Sovereigns also have the option to default and ignore debt obligations, but few choose to exercise that option because of recent developments in sovereign debt litigation.[23] That is, unlike private defaults by individuals or banks, sovereign debt defaulters cannot avoid their obligations by, for instance, taking advantage of bankruptcy law's automatic stay; instead, they must face their creditors in court.[24] Additionally, government borrowers can no longer exercise sovereign immunity in litigated cases.[25] Therefore, countries in crisis are opting to give bondholders a "haircut," which requires that at least a majority of bondholders agree to a restructuring.[26] While restructuring can protect sovereign debtors from defaulting entirely and ignoring obligations, further deteriorating their credit ratings and limiting crucial access to capital

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[21] *See generally* Steven M. Davidoff, *In Court Battle, a Game of Brinksmanship with Argentina*, N.Y. TIMES DEALBOOK (Nov. 27, 2012, 05:02 PM), http://dealbook.nytimes.com/2012/11/27/in-court-battle-a-game-of-brinkmanship-with-argentina/ (describing the limited options available to creditors and sovereign debtors upon sovereign debt default).

[22] *Id.* (explaining that once a "deadbeat debtor" defaults because of inability to satisfy obligations, "the lawyers and bankers are sent in, as a default usually leads to restructuring of the country's debt.").

[23] *Compare id.* ("A century or so ago, creditor countries would sometimes send in gunboats and troops to force payment."), *with infra* notes 24–25 and accompanying text.

[24] Jonathan I. Blackman & Rahul Mukhi, *The Evolution of Modern Sovereign Debt Litigation: Vultures, Alter Egos, and Other Legal Fauna*, LAW & CONTEMP. PROBS., Fall 2010, at 47, 48.

[25] Ross P. Buckley, *Why Are Developing Nations So Slow to Play the Default Card in Renegotiating Their Sovereign Indebtedness?*, 6 CHI. J. INT'L L. 345, 354–55 (2005) ("Before 1982 most sovereign debt crises led to default. After 1982 less than a quarter of nations in crisis have defaulted on their debt . . . [because of] the effective repeal by the US and England of the sovereign immunity of sovereign borrowers . . . . This is relevant as virtually all sovereign loan agreements and bonds are governed by English or New York law.").

[26] Rodrigo Olivares-Caminal, *The Pari Passu Interpretation in the Elliott Case: A Brilliant Strategy but an Awful (Mid-Long Term) Outcome?*, 40 HOFSTRA L. REV. 39, 51 (2011).

markets, it does not protect sovereigns from holdout lawsuits.[27] Creditor-bondholders of Eurozone debt, which include some of "the largest European banks . . . flush with both national and foreign government bonds,"[28] can either agree to the restructuring deal or hold out for full payment, a viable option only where the bond agreement's terms permit it.[29]

As with corporate and bank issued bonds, sovereign bond issuances, including those in dispute in the Eurozone crisis, involve agreements that usually include *pari passu* provisions, which prevent bond subordination.[30] Accordingly, the Second Circuit's interpretation recharacterizes these *pari passu* clauses from the traditional determination of rank to a broad limitation on preference payments.[31] Interpreted this way, restructuring the sovereign debt in the Eurozone may seem like an impossible objective since creditors with *pari passu* protection must now receive payment at the same time, encouraging them to join forces to demand higher payment.[32] However, more recent sovereign bond agreements, including most Eurozone-issued ones, include a mitigation provision through collective action clauses (CACs), which "make a restructuring agreement binding on all creditors."[33] For instance, Greece recently restructured its sovereign debt without unanimous support from bondholders because its bond agreements included CACs.[34] Unlike the bonds at issue in the Eurozone crisis, Argentina's FAA did not include collective action safeguards.[35]

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[27] Buckley, *supra* note 25, at 352 ("Prior to default most sovereigns will go to great lengths to preserve their standing in the financial markets and preserve their access to reasonably priced capital; however, once a sovereign borrower has defaulted, it no longer has standing to seek to preserve. It has nothing to lose.").

[28] Jensen, *supra* note 15, at 763.

[29] *See* discussion *infra* Part C and accompanying notes.

[30] Lubben, *supra* note 2 ("[Sovereign bonds] will typically include terms that prohibit the granting of new liens, which limits the creation of more senior debt . . . .").

[31] *Id.*

[32] *See* discussion *infra* Part D.

[33] Rao, *supra* note 4.

[34] *Id.*

[35] *See id.*

### C. Argentina's Sovereign Debt Crisis and the Second Circuit's Decision

The plaintiffs in *NML Capital* purchased FAA Bonds directly from Argentina starting in 1998, and individuals and financial companies continued to purchase them on the secondary market through 2010.[36] The driving force behind the litigation was a subset of the FAA bondholders who "are often referred to as 'vulture funds' because their strategy is to buy sovereign debt instruments when a country is most vulnerable."[37] In Argentina's case, the "vultures" began buying FAA Bonds on the secondary market after the Republic's 2001 recession, which, like the Eurozone crisis, grew out of fears of uncontrollable debt accumulation.[38] As soon as default on the bonds became imminent, "the funds [could] purchase the debt at a deep discount from their face value and attempt to enforce the full claims."[39] Argentina began negotiating restructuring deals in 2005, but the vulture funds, which include pension and hedge funds,[40] held out for higher payments and eventually brought suit in the Southern District of New York in accordance with the FAA.[41] In

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[36] *See* Bob Van Voris & Ellen Rosen, *Argentina Debt War Lawyers Spend Decade Before Judge*, BLOOMBERG (Dec. 19, 2012), http://www.bloomberg.com/news/2012-12-19/argentina-debt-war-lawyers-spend-decade-before-judge. html (describing the individual parties that make up the class of plaintiffs).

[37] Blackman & Mukhi, *supra* note 24, at 49.

[38] *See* Jayson J. Falcone, *Argentina's Plight—An Unusual Temporary Solution to a Sovereign Debt Crisis*, 27 SUFFOLK TRANSNAT'L L. REV. 357, 368–69 (2004) ("Although the citizens of Argentina were paying fewer taxes, the Argentine government continued to finance its operations with debt and continuously spent more than it made. As a result, Argentina faced a liquidity crisis. Each new loan to the Argentine government from intergovernmental organizations and investors bore a higher interest rate and risk premium, pushing Argentina into a vicious cycle whereby it could no longer finance its own operations.").

[39] Blackman & Mukhi, *supra* note 24, at 49.

[40] Davidoff, *supra* note 21 ("But there were holdouts, including thousands of Italian pensioners, who own what is now about $11 billion in debt. The holdouts also included a number of hedge funds, some of which had acquired the debt as far back as the 1990s, seeing an opportunity for a big return, despite the risk.").

[41] NML Capital, Ltd. v. Republic of Arg., 699 F.3d 246, 253–54 (2d Cir. 2012) ("The FAA is governed by New York law and further provides for jurisdiction in 'any state or federal court in The City of New York.'").

order to cash in on their gamble, the vulture funds had to prove to the court that Argentina violated the FAA's *pari passu* clause, a strategy that commentators predicted would fail, but that ultimately prevailed in the Second Circuit.[42]

Argentina first restructured its sovereign debt in 2005 "at a rate of 25 to 29 cents on the dollar" and then again in 2010 "with a payment scheme substantially identical to the 2005 offer."[43] The plaintiffs argued that in passing a "Lock Law" that essentially forced creditors to accept the restructured debt or else "remain in default indefinitely,"[44] Argentina breached the *pari passu* clause because it legally subordinated the claims of all parties that refused to participate in the restructuring.[45] Additionally, the plaintiffs argued that Argentina's continued repayment to exchange bondholders prioritized one class of bondholders over others, which on its face violated the clause.[46] Argentina, on the other hand, argued that the *pari passu* clause is a boilerplate provision that guarantees to bondholders only that their claims are not subject to legal subordination, as sovereigns and their bondholders have "universally understood for over 50 years."[47] With this argument, Argentina was attempting to convince the court that the clause provided meager protections to bondholders and was merely included, and customarily perceived, as an afterthought.[48]

The Second Circuit relied heavily on its interpretation of the *pari passu* clause in deciding whether Argentina violated the FAA.[49] Because there was no consistent interpretation of the clause, the court did not have any overwhelmingly persuasive guidance.[50] The

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[42] *See* Davidoff, *supra* note 21 ("It's an arcane legal argument, and most legal scholars and those in the market sided with Argentina.").
[43] *NML Capital*, 699 F.3d at 252.
[44] *Id.* at 252.
[45] *See id.* at 258.
[46] *Id.*
[47] *Id.*
[48] *Cf.* Olivares-Caminal, *supra* note 26, at 45 ("The pari passu clause seemed 'a harmless relic of the historical evolution' in standard sovereign bonds—a useless decorative accessory—that suddenly returned from its grave.").
[49] *See NML Capital*, 699 F.3d at 258 ("[T]he real dispute is over what constitutes subordination under the Pari Passu Clause.").
[50] *See id.* ("We are unpersuaded that the clause has this well settled meaning . . . the preferred construction of pari passu clauses is far from 'general, uniform and unvarying.'").

Second Circuit, therefore, adopted its own interpretation of the *pari passu* clause, which states:

> [T]he Securities will constitute . . . direct, unconditional, unsecured, and unsubordinated obligations of the Republic and shall at all times rank *pari passu* without any preference among themselves. *The payment obligations of the Republic shall at all times rank at least equally with all its other present and future unsecured and unsubordinated External Indebtedness.*[51]

The court reasoned that even if it accepted Argentina's argument for the allegedly customary understanding of the clause in the sovereign bond context, Argentina violated it because "in pairing the two sentences of its *Pari Passu* Clause, the FAA manifested an intention to protect bondholders from more than just formal subordination."[52] Thus, the court enjoined Argentina from continuing to service debts owed to exchange bondholders without making proportionate payments to the holdouts.[53] With an unprecedented, creditor-friendly, and strictly textual interpretation, the Second Circuit breathed new life into the boilerplate clause.[54]

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[51] *Id.* at 251 (emphasis in original) (quoting the FAA).
[52] *Id.* at 258–59.
[53] *Id.* at 265.
[54] *See* W. Mark C. Weidemaier, *Sovereign Debt After* NML v. Argentina, CAP. MARKETS L. J. (forthcoming 2013) (manuscript at 7), *available at* http://ssrn.com/abstract=2199655; *see also* Felix Salmon, *Argentina's Stunning Pari Passu Loss*, REUTERS (Oct. 27, 2012), http://blogs.reuters.com/felix-salmon/2012/10/27/argentinas-stunning-pari-passu-loss ("I've been writing about holdouts, or vultures . . . for a good dozen years now, and although they've had victories here and there, there's been nothing remotely as big or precedent-setting as this."). *See generally* Olivares-Caminal, *supra* note 26 at 42–45 (recounting the history of pari passu interpretations, including Elliott Assocs., L.P., General Docket No. 2000/QR/92 (Ct. App. of Brussels, 8th Chamber, Sept. 26, 2000), a similar decision delivered by Belgium's highest court that came closest to the Second Circuit's holding in *NML Capital*, but lacked the injunctive force and magnitude).

### D. Ramifications of the Second Circuit's Decision

The Second Circuit's decision in *NML Capital* specifically affects Argentina and its sovereign bondholders, but perhaps more significantly, it could affect the Eurozone sovereign bond crisis and sovereign debt restructuring generally.[55] For Argentina, the decision means that it will have to spend up to $11 billion, a staggering sum for any country, servicing debts to holdouts that ultimately benefited from their obstinacy.[56] Argentina can primarily avoid the court's injunction by defaulting on the debts owed to exchange bondholders and refusing to make payments to sovereign bondholders altogether.[57] Thus, the court has effectively increased Argentina's incentive to default on both classes of sovereign bonds.[58] This increased incentive to default directly applies not only to Argentina but also to any sovereigns that issued bonds under New York law and pursuant to agreements that include *pari passu* clauses, but do not include CACs.[59] The subset of sovereign bonds that *NML Capital*

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[55] *E.g.*, Weidemaier, *supra* note 54, at 2 ("[I]f made broadly available to creditors, injunctions of this sort would increase bondholders' incentive to hold out from a debt restructuring and complicate efforts to provide debt relief to financially-distressed sovereigns.").

[56] Helen Popper & Daniel Bases, *Argentina Appeals U.S. Court Order to Pay Holdout Bond Investors*, REUTERS (Nov. 27, 2012), http://www.reuters.com/article/2012/11/27/uk-argentina-debt-idUSLNE8AQ00C20121127 ("Paying all the outstanding defaulted bonds would cost up to about $11 billion, equivalent to about a quarter of the foreign currency reserves that Argentina needs to keep servicing its debts in the absence of fresh credit.").

[57] Weidemaier, *supra* note 54, at 3.

[58] *See* Jorge Otaola & Walter Bianchi, *Argentine Bonds Rally as U.S. Ruling Quells Default Fears*, REUTERS (Nov. 29, 2012), http://www.reuters.com/article/2012/11/29/us-argentina-debt-idUSBRE8AS0J420121129 ("[D]ismayed investors who took part in the two debt swaps . . . feared the country would refuse to pay and hence fall into technical default on about $24 billion in restructured debt."); *supra* note 55 and accompanying text.

[59] HENRY WEISBURG, ANTONIA E. STOLPE, & STEPHEN J. MARZEN, SHEARMAN & STERLING LLP, DON'T CRY FOR ME ARGENTINE BONDHOLDERS: THE SECOND CIRCUIT DECIDES NML CAPITAL V. ARGENTINA 5 (2012), *available at* http://www.shearman.com/files/Publication/2a8ced23-e0a7-4553-b33a-27ca8b73834f/Presentation/PublicationAttachment/f0b7d735-0759-4611-a3c7-68f6df16f5c5/Dont-Cry-

directly affects amounts to "billions of dollars of sovereign bonds outstanding that were issued prior to 2002 that are now subject to this interpretation of the *pari passu* clause."[60]

Although New York law does not govern the bond agreements at issue in the Eurozone's sovereign debt crisis, and the agreements include collective action clauses, the Second Circuit's decision nonetheless has ramifications for the current sovereign debt crisis.[61] While the court itself portrayed its decision as only impacting bond agreements governed by its circuit, its decision could open the door for other circuits and courts around the world to adopt its unprecedented interpretation.[62] The court further rejected Argentina's argument that a broad interpretation of *pari passu* clauses would weaken bondholders' incentives to restructure debts because "collective action clauses . . . have been included in 99% of the aggregate value of New York-law bonds issued since January 2005."[63] Legal and business commentators, however, counter the court's assertions by pointing out that collective action clauses, when present, can only affect restructuring where a supermajority of creditors agrees to "take a haircut."[64] The court's decision thus reduces the likelihood, in general, that the requisite number of creditors will succumb to sovereign renegotiation demands; instead, the decision will likely encourage creditors to try to emulate the success of Argentina's holdouts in other courts.[65]

### E. Conclusion

Because restructuring allows sovereigns to maintain access to capital markets and bondholders to recuperate some of the debt those sovereigns owe to them, both sides of the sovereign bond relationship benefit from restructuring, but currently face losing that benefit because of the court's decision in *NML Capital*. Although sovereign bond agreements drafted after Argentina's default contain more safeguard clauses meant to protect the debtor-sovereigns, the

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for-Me-Argentine-Bondholders--Second-Circuit-Decides-NML-Capita-v-Argentina-LT103.pdf.

[60] *Id.*

[61] *See infra* notes 62–65 and accompanying text.

[62] *See supra* notes 50 and 54 and accompanying text.

[63] NML Capital, Ltd. v. Republic of Arg., 699 F.3d 246, 264 (2d Cir. 2012).

[64] *See* Weidemaier, *supra* note 54, at 9.

[65] *Id.*

Second Circuit's opinion will likely make restructuring more expensive, if parties attempt it at all.[66] By emboldening plaintiff-holdouts, the Second Circuit has given other sovereign bondholders presented with restructuring proposals greater incentive to hold out.[67] If sovereigns cannot offer restructuring deals that are more favorable to bondholders than going through litigation, then bondholders will reject the deal and test their luck in court.[68] Collective action clauses may ameliorate this effect, but only to an extent because agreements that include CACs still require the support of a supermajority of bondholders.[69]

Particularly in the Eurozone, countries in debt are already under immense economic pressure, to which *NML Capital* only contributes further.[70] At the very least, the court injected more uncertainty into the sovereign debt market by giving new meaning to the *pari passu* clause, different from the interpretation that sovereign debtors held for so many years.[71] Over the past thirty years, sovereign debtors have gone from essentially untouchable in courts to being treated like any other borrower.[72] The Second Circuit's interpretation of the *pari passu* clause, however, further damaged sovereign debtors by effectively removing options that are available to other bankrupt debtors.[73] Thus, the implications of the Second Circuit's ruling in *NML Capital* will seriously hamper efforts to

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[66] *See supra* Part D.
[67] *See supra* Part D.
[68] *See supra* Part D.
[69] *See supra* note 26 and accompanying text.
[70] *See supra* Part B.
[71] *See supra* note 54 and accompanying text (describing why the court's ruling is unprecedented and a departure from traditional understanding of the pari passu clause).
[72] *Compare supra* notes 23–25 and accompanying text, *with* Salmon, *supra* note 54 ("Sovereigns have less freedom of movement now than they have [had] in a very long time, and we're only beginning to [understand] the implications of those constraints.").
[73] *E.g.* Weidemaier, *supra* note 54, at 13 ("Because there is no bankruptcy regime, sovereigns must persuade bondholders to reduce their claims voluntarily. The court's decision effectively imposes a condition full payment to holdouts on the sovereign's ability to make restructuring payments. If bondholders expect the sovereign to obey such an injunction, then they have little incentive to reduce their claims voluntarily.").

restructure sovereign debt in the Eurozone if the decision persuades enough bondholders to take a risk and hold out.[74]

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[74] *See supra* Part D.
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