

THE AM LAW LITIGATION DAILY

Litigators of the Week: Second Circuit Tells Argentina to Turn Over More Than \$300M to Bondholders

By Ross Todd

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Our Litigators of the Week are **Dennis Hranitzky, John Bash** and **Alex Loomis** of **Quinn Emanuel Urquhart & Sullivan** who recently secured a more than \$300 million win at the Second Circuit for holders of bonds issued by Argentina.

The Second Circuit [last week upheld](#) a district court decision that rejected Argentina's argument that funds held by the Federal Reserve Bank of New York were protected by the Foreign Sovereign Immunities Act, which generally protects the property of foreign sovereigns from attachment. The court agreed that those funds fell under an exception to the immunity provided by FSIA because the country had used them for "commercial activity"—namely paying off other debt holders to "exchange old debt for new, as any non-sovereign entity might do."

Litigation Daily: Who are your clients and what was at stake here?

Dennis Hranitzky: Our clients are investment funds which together hold judgments totaling just over \$450 million on Argentinian sovereign bonds that have been in default since 2001.



Courtesy photos

L-R: John Bash, Dennis H. Hranitzky, and Alex H. Loomis of Quinn Emanuel Urquhart & Sullivan.

How did this matter come to you and the firm?

Hranitzky: The clients came to us in 2020 after having been represented by another firm for several years. I had just wrapped up my representation of the exchange bondholder committee in Argentina's 2020 restructuring and was once again free to act for bondholders in collection litigation. I had represented all of these clients on other matters before they retained us for this one. And I had many years of relevant experience, having represented both Ken Dart and later Elliott in their famous collection litigation against Argentina between

2002 and 2016. **Kevin Reed, Debra O’Gorman** and John Bash all worked for Elliott with me on that matter—although Kevin and John were not at the same firm as Debra and me at the time.

Who is on the team and how have you divided the work—both at the trial court and here on appeal?

Hranitzky: We had a large and very talented team. In the district court proceedings I was lead counsel, but was supported by Debra O’Gorman, Alex Loomis, **Jianjian Ye** and **Yvonne Zhang**. And our partner Kevin Reed argued the petition for turnover of the German collateral. Several of our colleagues in Germany assisted with that piece as well, led by the head of our Germany practice **Marcus Grosch**.

John Bash: Dennis asked me to take the lead on the consolidated appeals from the district court’s various orders. Alex, our fantastic senior appellate associate, did excellent work on the briefs, and the rest of the district court team all contributed.

The decision notes that over the past 20 years, the Second Circuit has twice approved the attachment of these same reversionary interests by creditors. Why are we still here?

Alex Loomis: Argentina was making different arguments. In the two prior attachments, Argentina was arguing that allowing the attachments to go forward would interfere with sovereign restructurings and shouldn’t be allowed for that reason. For some reason, Argentina did not argue in 2005 or 2010 that the attached property was entitled to sovereign immunity. But the restructuring argument wouldn’t have worked now, so Argentina refocused their strategy to focus on sovereign immunity.

Here the lawyers for Argentina pointed out that some of the underlying collateral is made up of bearer bonds physically located in Germany. What issues did that raise for your clients?

Loomis: It made the issue conceptually much harder. Courts historically held that foreign states’ assets could not be seized if they were located abroad, and Argentina appealed to that precedent throughout their briefing. And there’s some intuitive appeal to this argument. But the more we dug into it, the less the argument seemed to apply here. We weren’t seizing the actual bearer bonds or demanding that the German bank hand them over. We were asking the court to give us the right to demand payment from the Federal Reserve Bank of New York. Because the Federal Reserve Bank of New York was based in New York, its payment obligation was also based in New York.

Are there things that holders of other countries’ sovereign debt can take from this decision, or is Argentina’s situation one of a kind?

Loomis: I think the biggest takeaway is that it is possible to find recoverable assets of a sovereign if you look hard enough for them. Argentina’s collateral was disclosed in SEC filings. The fact that Argentina used the collateral in U.S. restructurings—a key fact that the panel focused on—was also disclosed in SEC filings. There’s almost certainly more opportunities for creditors to find sovereign assets if they look in the right places.

The Court’s holding on intangible property rights is also a good, widely applicable holding. It’s common for foreign states to have rights to

payment from U.S. entities, and those assets are located in the U.S. and subject to U.S. attachment procedures.

John, with this decision in-hand, is there anything that sticks out from the argument at the Second Circuit earlier this year?

Bash: While it was not surprising in the least, it was still remarkable how well-prepared every member of the panel was to discuss some fairly esoteric and record-intensive issues relating to sovereign immunity and New York property law. For example: what is the geographic location of a reversionary interest in bond collateral? The panel's questions were incisive, drilling right down to the core of the issues in the case.

How does this dispute fit into the broader litigation over Argentine debt? What else are you handling for these clients?

Hranitzky: Unless Argentina defaults again, we and one other plaintiff called Bainbridge are the last ones standing in the United States. And this recovery will cover most of our clients' judgments. But our partner **Aidan O'Rourke** and associate **Nik Bruce-Smith** in London recently obtained a \$1.8 billion judgment from the High Court in London on GDP-linked warrants issued by Argentina in 2005. Argentina has asked the Supreme Court of the UK to review that judgment. But if it is affirmed, unless the case settles, I expect those clients will also be looking to collect. So we may not see an end

to bondholder litigation against Argentina for many years.

What will you remember most about getting this result?

Bash: In addition to working with fantastic Quinn Emanuel colleagues, what was memorable to me was how this case, in a sense, brought me full circle in my career. One of the first big sets of cases I worked after coming off my clerkships involved Argentine bonds. In fact, I worked with Dennis on those cases, although we were at different firms back then. Since that time, I'd served nearly a decade in government, both in the U.S. Solicitor General's office and as U.S. Attorney in West Texas. Now that I am back in private practice, it was gratifying to notch a big win in the same basic area where I had started my career.

Loomis: It's hard to emphasize enough how much I've learned working with this group. Dennis, Kevin Reed, and John are world-class attorneys—truly the best in their fields—and I've learned an incredible amount from them over the last several years. The result was incredible, but I'll probably remember most sitting in the SDNY and CA2 courtrooms during the hearing and argument and, based on the judges' questions, realizing that our briefs had broken through on the key issues, and our hard work had a real chance of paying off.

Hranitzky: For me, the most memorable thing about this win against Argentina was working with this truly world-class team of colleagues.