

Litigators of the Week: Michael Paskin of Cravath and Paul Clement of Bancroft

By Scott Flaherty
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For more than a decade, the Republic of Argentina fought tooth-and-nail to fend off bondholders—the country long derided them as “vultures”—looking to force a full payout on billions of dollars in defaulted sovereign debt.

But after years of refusing to obey court judgments in the U.S., Argentina changed its tune after a new president took office last year, and in February the government hired new lawyers at Cravath, Swaine & Moore to finally put the litigation behind it. On Wednesday Cravath and its appellate co-counsel at Bancroft PLLC vindicated Argentina’s strategy at the U.S. Court of Appeals for the Second Circuit, helping the country regain its footing on the global financial stage.



“There is now a path cleared for Argentina to return to the international capital markets for the first time since its default in 2001, which is a cornerstone of the new government’s overall economic recovery plan,” said lead counsel Michael Paskin



Michael Paskin, attorney for Argentina, leaves the U.S. Court of Appeals for the Second Circuit, April 12, 2016. The court on April 13 cleared Argentina to make payments on its debt, paving the way for the country to settle its long battle over bonds defaulted in 2001.

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of Cravath. “I have never been involved in anything quite like it—as cliché as it sounds, it has felt as if the fate of a nation was riding on our work.”

In a rare occurrence at the Second Circuit, a three-judge panel on Wednesday ruled from the bench in Argentina’s favor. Bancroft’s Paul Clement (pictured left), Argentina’s appellate counsel in the case since 2013, argued the appeal, in which creditors who refused to restructure their bonds sought to overturn

a ruling that Paskin and his team secured in district court last month.

Although the country had long resisted settling, it has drastically changed course since a new president, Mauricio Macri, took office in December. In addition to hiring Cravath to take the reins from its longtime lawyers at Cleary Gottlieb Steen & Hamilton, the country announced a proposed settlement in February that would provide \$6.5 billion to bondholders that have been litigating against Argentina.

On March 2, Paskin and his team persuaded U.S. District Judge Thomas Griesa to lift a pair of *pari passu*—or “equal footing”—injunctions that he had imposed in 2012 and 2015. Winning those injunctions had been a huge victory for hedge fund creditors holding court judgments against Argentina in New York, since they forced Argentina to pay them in full before it could repay holders of its restructured bonds. Even after Macri’s government made clear it was ready to negotiate, the hedge funds saw the injunctions as crucial leverage during the settlement process.

At the district court and during the appeal, it fell to Paskin and Clement to argue that the country’s commitment to its creditors was now strong enough for the injunctions to be lifted.

“The legal strategy—which was essentially to figure out a way to get the extraordinary injunctions that had been imposed on Argentina vacated—could not have been possible without restoring Argentina’s credibility in the eyes of the courts,” Paskin said in an email on Thursday. “I believe that our appearance in the case was helpful in that regard, but none of it would have been possible without the extraordinary

efforts and good faith of the new government in Argentina.”

Paskin and his team argued at the district court that Macri’s policy changes had paved the way for the \$6.5 billion proposal. But the team also stressed that the court’s injunctions made it difficult for Argentina to raise enough money in global debt markets to actually follow through on the settlement payment.

Griesa agreed, writing in his March 2 ruling that the circumstances surrounding the litigation had changed “so significantly as to render the injunctions inequitable and detrimental to the public interest.”

With backing from Paskin and others at Cravath, Clement made a similar argument at the Second Circuit.

“Argentina’s dramatic change of course has resulted in settlements with the vast majority of bondholders and good-faith settlement proposals to the remaining claimants,” Argentina’s legal team wrote in a March 23 appellate brief. “A critical precondition to that resolution, however, is this court’s expeditious affirmance of the district court’s order.”

Clement faced off in the appeal against several groups of holdout creditors, including hedge funds Aurelius Capital Management LP and NML Capital Ltd. They argued, among other things, that the country had yet to make good on its purported change of course and that the injunctions therefore shouldn’t be lifted.

The Second Circuit disagreed, signaling that Argentina’s creditors—the so-called vultures included—may soon be paid, and the decade-long fight may soon be over.

CRAVATH, SWAINE & MOORE LLP