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Mediator Pollack's pragmatism gets Argentina and creditors to deal

NEW YORK | BY [DANIEL BASES](#)



New York attorney Daniel Pollack, the court appointed mediator in the sovereign debt settlement talks between the government of Argentina and holdout bondholders, poses for a photograph during an interview with Reuters in his office in Manhattan, New York, March 3, 2016.

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Argentina's celebrated \$16.5 billion return to international capital markets last week was the final mile of a tortured 14-year path from historic default through the U.S. court system.

Along the way, the saga included a death threat against a judge, the seizure of an Argentine naval vessel at the behest of creditors, and a trip to the U.S. Supreme Court.

In the end, the resolution was crafted in the 27th-floor Park Avenue office of New York lawyer Daniel Pollack who convinced bitter adversaries that more than a decade of unproductive squabbling was enough.

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On Friday, the proceeds of last week's international bond sale began flowing to the U.S. hedge funds who had refused to accept earlier settlements from Argentina stemming from its \$100 billion debt default in 2002.

With the payments made, Pollack, appointed by the court in 2014 to mediate the dispute, was at last free to discuss the frantic final stages of the negotiations.

In an interview with Reuters, Pollack recounted the relentless shuttle diplomacy, marathon talks, and late-night phone calls and emails that culminated in Argentina agreeing to pay billionaire Paul Singer's fund Elliott Management and three major holdout investors more than other creditors.

"The Elliott deal recognized a reality that for Argentina, these people created something close to an existential threat," Pollack said. "The hedge funds had spent tens of millions of dollars. They had the will and intent to continue and for me it was a question of appealing to both sides' respective economic interests."

FRESH FACES

Pollack's efforts were certainly made easier though by a surprise change of government in Argentina late last year.

The prior government of Cristina Fernandez had made a central policy plank out of her refusal to settle with investors. Fernandez call the holdout hedge funds "vultures" because they were effectively holding a sovereign government hostage by not participating in the earlier debt restructurings agreed to by 93 percent of other creditors.

So the initial breakthrough came when Fernandez was replaced by a more market-friendly government. Even before Mauricio Macri took over as president in December 2015, Pollack received an email from incoming finance secretary, Luis Caputo, asking for a discreet meeting. Up till then Pollack had overseen nearly two years of sporadic talks that had yielded only deeper acrimony.

"You have to have people who are willing. [Former Economy Minister Axel] Kicillof and [Fernandez] were not willing," Pollack told Reuters. "The Macri administration was motivated and willing."

From there, the pace accelerated and by early February this year it was frantic. After false starts, Argentina proposed a settlement on Feb. 5 to pay remaining holdout creditors more than double the 30 cents on the dollar that the other 93 percent of creditors accepted in 2005 and 2010.

The first to accept were Dart Management and Montreux Partners, who opted to break with the Elliott consortium at that stage. Pollack hand wrote Dart's one page two paragraph

agreement for \$849 million. Montreux signed a one page four paragraph deal for \$308.6 million.

Pollack "was capable of being forceful. He was capable of keeping some room for maneuvering when he needed it. I think what he did was a real tour de force. I don't think the case could have been resolved without him," said former U.S. Attorney General and federal judge Michael Mukasey, who represented Dart.

THE ICE BREAKS

Those deals broke the ice. Pressure on Singer, who never once spoke directly with the Argentines, also grew after U.S. District Court Judge Thomas Griesa ruled he would remove injunctions blocking Argentina's ability to pay creditors if the government met certain conditions.

It was a significant shift for Griesa who had overseen the litigation from its beginning and whom Pollack said had received a death threat over the case.

Pollack bore down on the holdout creditors, which also included Aurelius Capital Management, Davidson Kempner, and Bracebridge Capital, telling them if they continued to refuse to settle, "You will be forever locked in this negative embrace."

That embrace included the holdout creditors scouring the globe for Argentine assets to seize. In 2012 they convinced Ghana to briefly detain the Libertad, Argentina's naval training vessel.

Finally, on Feb. 28, the hedge funds signed on to a deal paying them 75 percent of their claim, plus an additional amount for legal

fees and expenses, bringing the total payout to \$4.65 billion, far more than others.

The agreement was the final major hurdle in the 14-year-old saga, effectively ending Argentina's status as a pariah in international markets. Still, a handful of far-smaller holdouts remain, and some are critical of Pollack.

"What we have is the bigger guys getting more when the premise of their lawsuit was equal treatment," said Mohammad Ladjevardian, a Houston-based investor who has yet to settle.

While the holdout creditors may have won this battle over bigger payouts in sovereign debt restructurings, they may have lost the war over creditor rights in the future.

The Argentine debt saga set in motion a series of changes to contracts governing sovereign bond issues. With support for the International Monetary Fund, the introduction of so-called Collective Action Clauses in most sovereign debt sales now makes it harder for creditors to hold out against a debt restructuring, limiting their leverage to sue for better terms.

Collective action clauses allow a supermajority of creditors to agree a restructuring that becomes legally binding on all bondholders.

For example, since the Greek debt crisis in 2012 all bonds issued by Eurozone member states with maturities exceeding one year, issued after January 1, 2013, have a mandatory collective action clause.

POLLACK'S PRAGMATISM

On balance, though, most parties are complimentary of Pollack's job in shepherding a resolution to what had been an intractable standoff.

"Whenever a problem arose during the negotiations, he always responded with effective and pragmatic solutions," Argentina's Caputo told Reuters. "Outstanding job."

Griesa, who rarely speaks to the press, praised Pollack on Friday for achieving the settlement.

"There has now been great progress in this direction, and this is due in large part to the enormous effort and diplomatic skill of Mr. Pollack," Griesa told Reuters through his law clerk.

For his part, Pollack said he is proud that with this deal, as more than 90 percent of the claims before Griesa have now been settled, with payouts well over \$8 billion. He recalled his constant reminder to the parties during his long hours of shuttle diplomacy, quoting them the bartender's last call from T.S. Eliot's *The Wasteland*: "Hurry up please its time."

(Reporting By Daniel Bases; Additional reporting by Paul Kilby; Editing by Dan Burns and Clive McKeef)