# Burford Capital Ltd - Statement on YPF Damages Ruling

2023-09-11

RNS Number : 9319L
Burford Capital Limited
11 September 2023

**8 September 2023**

**Released out of hours on September 8, 2023, and queued for release via RNS upon its reopening on September 11, 2023.**

**BURFORD CAPITAL STATEMENT ON YPF DAMAGES RULING**

*Court's Ruling suggests a final judgment of approximately $16 billion against Argentina*

Burford Capital Limited, the leading global finance and asset management firm focused on law, today releases the following statement in connection with the September 8, 2023 Findings of Fact and Conclusions of Law (the "Ruling") issued

by the United States District Court for the Southern District of New York (the "Court") in connection with the *Petersen* and *Eton Park* cases against the Republic of Argentina and YPF (the "Case" or the "YPF Litigation").

The Ruling follows a prior decision on March 31, 2023 by the Court granting summary judgment on liability against Argentina and setting for an evidentiary hearing questions around the date on which Argentina should have made a tender offer for YPF's shares and the appropriate rate of pre-judgment interest to be applied. That evidentiary hearing was held on July 26-28, 2023 and the Ruling is the Court's decision on the issues raised for hearing.

The Court decided the issues raised at the hearing in Petersen's and Eton Park's (collectively, "Plaintiffs'") favor, holding that the appropriate date for the tender offer was April 16, 2012 and that pre-judgment interest should run from May 3, 2012 at a simple interest rate of 8%.

The Court has asked the parties to memorialize the Ruling in a proposed judgment and submit it to the Court, which Petersen and Eton Park will endeavor to do forthwith. We discuss below the computation of potential damages but in round numbers the Court's Ruling implies a judgment against Argentina of approximately $16 billion.

In other words, the Ruling results in a complete win against Argentina at the high end of the possible range of damages.

**Jonathan Molot, Burford's Chief Investment Officer who leads Burford's work on the Case, commented:**

"We have been pursuing this case since 2015 and it has involved substantial Burford management time along with the dedicated engagement of a team of some of the best lawyers on the planet from multiple law firms and world-class experts (going up against very good lawyers, and winning). Burford is uniquely positioned to pursue these kinds of cases and secure wins for clients and substantial returns for shareholders - not only because of the size and scale of these kinds of cases, but because of the internal and external resources we can uniquely bring to bear. There is no aspect of this case, from strategy to minutiae, that did not involve an experienced Burford team spending many thousands of hours getting to this point. This case represents what Burford is all about and exemplifies the contribution we make to the civil justice system - without us, there would be no justice in this complicated and long-running case for Petersen and Eton Park."

**Christopher Bogart, Burford's Chief Executive Officer, commented:**

"In our recent shareholder letter, we referred to the YPF-related assets as one of Burford's four pillars of value and I'm pleased to see this extraordinary win and the value it could create for our shareholders once we complete the litigation process and collect from Argentina. The Ruling is a major milestone for Burford and we continue to see momentum in our overall portfolio and continued demand for our capital and services."

Introductory matters

As is customary in US litigation, the Ruling was released without prior notice to Burford or the parties by its posting on PACER, the publicly available official US federal court site, at 10:45am EDT on September 8, 2023, and was thus public immediately upon release. The Ruling is also available in its entirety on Burford's IR website at http://investors.burfordcapital.com for the convenience of investors who did not wish to register for a PACER account.

While Burford offers in this release its views and interpretation of the Ruling, those are qualified in their entirety by the actual text of the Ruling and we caution that investors cannot rely on Burford's statements in preference to the actual Ruling. In the event of any inconsistency between this release and the text of the actual Ruling, the text of the actual Ruling will prevail and be dispositive. Burford disclaims, to the fullest extent permitted by law, any obligation to update its views and interpretation as the litigation proceeds. Moreover, the Case remains in active litigation and Argentina has declared its intention to appeal any decision; all litigation carries significant risks of uncertainty and unpredictability until final resolution, including the risk of total loss. Finally, Burford is and will continue to be constrained by legal privilege and client confidences in terms of the scope of its ability to speak publicly about the Case or the Ruling.

Burford also cautions that there are meaningful remaining risks in the Case, including further proceedings before the Court, appeals, enforcement and collateral litigation in other jurisdictions. Moreover, litigation matters often resolve for considerably less than the amount of any judgment rendered by the courts and to the extent that any settlement or resolution discussions occur in this Case no public communication about those discussions will be possible until their conclusion.

The Ruling

The Court previously held that (i) the bylaws "on their face, required that the Republic make a tender offer" for Petersen's and YPF's shares; (ii) "the Republic failed to make the tender offer"; and (iii) the failure "harmed Plaintiffs because they never received the compensated exit" that the bylaws promised. Indeed, the Court held that "once the Court decides the legal issues, the relatively simple facts in this case will demand a particular outcome" and held that "there is no question of fact as to whether the Republic breached".

Thus, the Court held that "Plaintiffs were damaged by the Republic because Plaintiffs were entitled to receive a tender offer that would have provided them with a compensated exit but did not".

The Court previously held that the damages to be awarded will consist of the tender offer price under Formula D of the bylaws calculated in US dollars as of a constructive notice date that is 40 days prior to Argentina taking control and triggering the tender offer obligation. The Court said it must decide as a factual

matter whether the operative notice date for the calculation is 40 days before April 16, 2012, when the Presidential intervention decree was implemented, or 40 days before May 7, 2012, when the Argentine legislature took follow-up action. In the Ruling, the Court concluded that April 16, 2012 was the appropriate date.

The calculation of damages using a notice date that is 40 days before the April 16, 2012 takeover was included in Plaintiffs' publicly filed summary judgment brief and would imply tender offer consideration of approximately $7.5 billion for Petersen and $900 million for Eton Park, before interest.

The Court also previously reserved for determination the prejudgment interest rate that would run from the date of the breach in 2012 through the issuance of a final judgment in 2023. The Court accepted that "the commercial rate applied by the Argentine courts is the appropriate measure" and noted that Plaintiffs had pleaded that that rate was "between 6% and 8%", but "the Court reserves judgment on the precise rate it will utilize". After the hearing, the Court ultimately applied an 8% rate from May 3, 2012 until the date of the judgment, and thereafter interest will accrue at the applicable US federal rate until payment.

Subject to final computations by the parties' experts, that finding implies interest of approximately $6.8 billion for Petersen and $815 million for Eton Park, yielding a total judgment of approximately $14.3 billion for Petersen and $1.7 billion for Eton Park, or $16 billion in total.

Investors may find notable the Court's commentary on Burford's role in the case:

> The Court also rejects the Republic's effort to inject Burford Capital into these proceedings. This remains a case brought by plaintiffs against a defendant for its wrongful conduct towards them, and the relevant question is what the Republic owes Plaintiffs to compensate them for the loss of the use of their money, not what Plaintiffs have done or will do with what they are owed. The Republic owes no more or less because of Burford Capital's involvement. Furthermore, the Republic pulled the considerable levers available to it as a sovereign to attempt to take what it should have paid for and has since spared no expense in its defense. If Plaintiffs were required to trade a substantial part of their potential recovery to secure the financing necessary to bring their claims, in Petersen's case because it was driven to bankruptcy, and litigate their claims to conclusion against a powerful sovereign defendant that has behaved in this manner, this is all the more reason to award Plaintiffs the full measure of their damages.

Next steps

The Court has asked the parties to submit a proposed judgment reflecting the Ruling, which Plaintiffs will endeavor to do promptly. Once that judgment issues, Argentina has indicated its intention to appeal.

There is also a process for seeking reconsideration from the District Court of its own ruling, although such motions rarely prevail as they are being made to the same judge who decided the matter originally.

Once the Court issues its final judgment, that judgment will be appealable as of right to the Second Circuit Court of Appeals.

The Second Circuit presently is taking around a year to resolve appeals once filed, although there is meaningful deviation from that mean. The District Court's judgment would be enforceable while the appeal is pending unless Argentina posts a bond to secure its performance, which we consider unlikely, or unless a court grants a relatively unusual stay.

Following the Second Circuit's decision, either party can seek review from the Supreme Court of the United States. The Supreme Court accepts cases only on a discretionary basis and we believe the likelihood of it accepting a commercial case of this nature that does not present a contested issue of law is quite low, particularly given that Argentina has already once in this Case unsuccessfully sought Supreme Court review.

With an enforceable judgment in hand, Plaintiffs will either need to negotiate a resolution of the matter with Argentina, which would certainly result in what would likely be a substantial discount to the judgment amount in exchange for agreed payment, or engage in an enforcement campaign against Argentina which would likely be of extended duration relying on Burford's and its advisors' judgment enforcement expertise. Burford will not provide publicly any information about its enforcement or settlement strategies.

Burford's position

Burford has different economic arrangements in each of the Petersen and Eton Park cases.

At bottom, on a net basis, we expect that the Burford balance sheet will be entitled to around 35% of any proceeds generated in the Petersen case and around 73% of any proceeds generated in the Eton Park case.

In the Petersen case, Burford is entitled by virtue of a financing agreement entered into with the Spanish insolvency receiver of the Petersen bankruptcy estate to 70% of any recovery obtained in the Petersen case. That 70% entitlement is not affected by Burford's spending on the cases, which is for Burford's account; it is a simple division of any proceeds. From that 70%, certain entitlements to the law firms involved in the case and other case expenses will need to be paid, reducing that number to around 58%.

Burford has, however, sold 38.75% of its entitlement in the Petersen case to third party investors, reducing Burford's net share of proceeds to around 35% (58% x 61.25%).

In the Eton Park case, there is both a funding agreement and a monetization

transaction. The net combined impact of those transactions is that Burford would expect to receive around 73% of any proceeds. Burford has not sold any of its Eton Park entitlement.

In both Petersen and Eton Park, the numbers above are approximations and will vary somewhat depending on the ultimate level of case costs by the end of the Case, as we expect continued significant spending on the Case.

**For further information, please contact:**


**Burford Capital Limited**
*For investor and analyst inquiries:*
Robert Bailhache, Head of Investor Relations, EMEA and Asia - email +44 (0)20 3530 2023
Jim Ballan, Head of Investor Relations, Americas - email +1 (646) 793 9176
*For press inquiries:*
David Helfenbein, Vice President, Public Relations - email +1 (212) 235 6824

**Numis Securities Limited** - NOMAD and Joint Broker +44 (0)20 7260 1000
Giles Rolls
Charlie Farquhar

**Jefferies International Limited -** Joint Broker +44 (0)20 7029 8000
Graham Davidson
Tony White

**Berenberg** - Joint Broker +44 (0)20 3207 7800
Toby Flaux
James Thompson
Arnav Kapoor


**About Burford Capital**

Burford Capital is the leading global finance and asset management firm focused on law. Its businesses include litigation finance and risk management, asset recovery and a wide range of legal finance and advisory activities. Burford is publicly traded on the New York Stock Exchange (NYSE: BUR) and the London Stock Exchange (LSE: BUR), and it works with companies and law firms around the world from its offices in New York, London, Chicago, Washington, DC, Singapore, Dubai, Sydney and Hong Kong.

For more information, please visit www.burfordcapital.com.

**This announcement does not constitute an offer to sell or the solicitation of an offer to buy any ordinary shares or other securities of Burford.**

**This announcement does not constitute an offer of any Burford private fund.** Burford Capital Investment Management LLC, which acts as the fund manager of all Burford private funds, is registered as an investment adviser with the US Securities and Exchange Commission. The information provided in this announcement is for informational purposes only. Past performance is not indicative of future results. The information contained in this announcement is not, and should not be construed as, an offer to sell or the solicitation of an offer to buy any securities (including, without limitation, interests or shares in any of Burford private funds). Any such offer or solicitation may be made only by means of a final confidential private placement memorandum and other offering documents.

**Forward-looking statements**

This announcement contains "forward-looking statements" within the meaning of Section 21E of the US Securities Exchange Act of 1934, as amended, regarding assumptions, expectations, projections, intentions and beliefs about future events. These statements are intended as "forward-looking statements". In some cases, predictive, future-tense or forward-looking words such as "aim", "anticipate", "believe", "continue", "could", "estimate", "expect", "forecast", "guidance", "intend", "may", "plan", "potential", "predict", "projected", "should" or "will" or the negative of such terms or other comparable terminology are intended to identify forward-looking statements, but are not the exclusive means of identifying such statements. In addition, Burford and its representatives may from time to time make other oral or written statements which are forward-looking statements, including in its periodic reports that Burford files with, or furnishes to, the US Securities and Exchange Commission, other information made available to Burford's security holders and other written materials. By their nature, forward-looking statements involve known and unknown risks, uncertainties and other factors because they relate to events and depend on circumstances that may or may not occur in the future. Burford cautions you that forward-looking statements are not guarantees of future performance and are based on numerous assumptions, expectations, projections, intentions and beliefs and that Burford's actual results of operations, including its financial position and liquidity, and the development of the industry in which it operates, may differ materially from (and be more negative than) those made in, or suggested by, the forward-looking statements contained in this announcement. Significant factors that may cause actual

results to differ from those Burford expects include, among others, (i) uncertainty relating to adverse litigation outcomes and the timing of resolution of litigation matters and (ii) those discussed under "Risk Factors" in Burford's annual report on Form 20-F for the year ended December 31, 2022 filed with the US Securities and Exchange Commission on May 16, 2023 and other reports or documents that Burford files with, or furnishes to, the US Securities and Exchange Commission from time to time. In addition, even if Burford's results of operations, including its financial position and liquidity, and the development of the industry in which it operates are consistent with the forward-looking statements contained in this announcement, those results of operations or developments may not be indicative of results of operations or developments in subsequent periods.

Except as required by law, Burford undertakes no obligation to update or revise the forward-looking statements contained in this announcement, whether as a result of new information, future events or otherwise.

This information is provided by RNS, the news service of the London Stock Exchange. RNS is approved by the Financial Conduct Authority to act as a Primary Information Provider in the United Kingdom. Terms and conditions relating to the use and distribution of this information may apply. For further information, please contact rns@lseg.com or visit www.rns.com.

RNS may use your IP address to confirm compliance with the terms and conditions, to analyse how you engage with the information contained in this communication, and to share such analysis on an anonymised basis with others as part of our commercial services. For further information about how RNS and the London Stock Exchange use the personal data you provide us, please see our Privacy Policy.

END

STRLMMFTMTMBMAJ