

FT Alphaville YPF SA

Dog catches Argentine car

Exploring Burford's prospects of extracting that \$16bn judgement out of Buenos Aires



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Jay Newman 3 HOURS AGO

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It took over a decade but Burford Capital finally got its man this autumn: [a \\$16bn judgment against Argentina](#). This provides a fascinating public market laboratory for valuing sovereign judgments and awards.

For decades, sovereign debt has traded over-the-counter and under the radar. But Burford, a litigation specialist, is a public company with shares trade in the US and the UK. We're going to be able to observe — in real time — what markets make of Burford's enforcement strategy and prospects as the case meanders through the legal system.

At pixel time, Burford's market cap is \$2.9bn, with a share price of \$13.18. At full face value, Burford's \$6.3bn share of the judgment would be worth nearly \$29 per share. Indeed, not even Burford believes the judgment will be collected in full. In its most recent financials, Burford assigned a book value of \$1.3bn to its Petersen claims using an internal fair value model. Crediting that, the Peterson judgment equates to 45 per cent of the company's market cap, roughly \$6 per share.

Some people are more optimistic. Jefferies and Berenberg have assigned a base case

value to Burford's share of \$3bn, or \$13.70 per share. Their research suggest a target of \$20-22.50 per share, implying that 70 per cent of the target BUR share price is attributable to the expected value of the Petersen claim — with just 30 per cent attributable to the rest of BUR's litigation portfolio and other businesses.

But given that Argentina exists in a [bizarro](#) universe, what does it really mean? What are the odds on Burford crystallising its mammoth judgment win into money in the bank?

Burford's (potential) Argentine bonanza

Burford Capital Share price (\$)



Source: LSEG

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Here's a quick recap of the decade-long saga: In 2012, then-president Cristina Fernández de Kirchner [renationalised](#) the country's largest oil company, Yacimientos Petrolíferos Fiscales (YPF). But there was a catch: when Argentina partially privatised YPF in 1993, YPF amended the company's bylaws requiring that the country would tender for the shares according to a formula if Argentina ever renationalised it. Undeterred, deputy economy minister Axel Kicillof declared it "[stupid](#)" to comply with YPF's bylaws or "respect its statutes." Argentina refused to tender for the shares.

No longer receiving dividends on its shares, YPF's largest minority shareholder, Petersen, soon became insolvent. Burford pounced, took control of Petersen's claims, and sued in the US District Court for the Southern District of New York. Last [March](#), Judge Loretta Preska — [no stranger](#) to sovereign litigation — ruled against Argentina; in September, she [entered a \\$16bn judgment](#) for Burford, of which the litigation

financier is entitled to \$6.3bn.

And when Judge Preska refused to grant Argentina a [stay](#) of enforcement unless it posts its 51 per cent ownership stake in YPF and future receivables from the Yacyreta dam project with Paraguay as collateral, Burford seemed to be at the cusp of claiming that jackpot. For unless Argentina posts the required collateral, Burford can start enforcement proceedings as of January 10th.

However, history suggests that Argentina won't encumber its assets. That will bring to Burford's doorstep the reality of enforcing a judgment against a sovereign. The company hasn't disclosed its plans, but, given that the largest chunk of its share value reflects the Petersen judgment it's worth exploring. Enforcement against Argentina definitely won't be easy.

First off, there's the sheer size of the judgment. What's Argentina's current capacity — and incentive — to pay a judgment that equals 2.5 per cent of GDP? The Argentine economy faces rampant inflation, an overvalued currency, chronic fiscal deficits, \$44bn in debt to the IMF, \$6.5bn owed to China, and [\\$280bn of external debt](#). President-elect Javier Milei is fond of saying “there is no money” to countrymen demanding continued subsidies. If there is no money for Argentines, it goes double for Burford.

Secondly, there remains substantive legal risks. Argentina will appeal Judge Preska's judgment, and there is of course some probability — how big or small depends on what lawyers you talk to — that it will manage to overturn the judgment.

Moreover, Judge Preska may have gotten the measure of damages completely wrong. She calculated the size of the judgment using the value of the peso as of the date of expropriation — the “breach day rule.” Pesos were worth *a lot* more in 2012: that produced an award of \$16bn. Had the calculation been based on the exchange rate prevailing on the date of the judgment (the so-called “judgment day rule”), the judgment would have been closer to \$200-300mn, depending on the precise date — a staggering 98 per cent writedown. Many lawyers thought this was the right result from the start.

Thirdly, the timetable is challenging. Even if Argentina obtains no relief on appeal, you can be sure that Argentina will exhaust its legal recourse before considering settlement. Initial appeal to the Second Circuit could take up to two years. If Argentina loses and appeals to the Second Circuit for rehearing *en banc*, add another two-to-four months. If Argentina loses that as well, it will petition the Supreme Court: add another six-to-nine months. In total, a final decision is likely still two-three years

away — or more. And it is not until one has a final unappealable judgment that an enforcement campaign can really get traction.

Fourthly, the obvious enforcement risks. The US Foreign Sovereign Immunities Act (FSIA) and England's State Immunity Act 1978 (SIA) are a morass. Optimists tout [Argentina's 2016 settlement](#) with creditors led by Elliott Management. But our group had advantages Peterson judgment holders don't. Argentina's bonds included robust waivers of sovereign immunity, which explicitly broadened the range of assets that could be attached and seized globally. For Peterson claims, there's no waiver of immunity.

In the US, Petersen will have to rely on Section 1610(a)(2) of the FSIA, which says that assets can be seized if it "[is or was used for the commercial activity on which the claim is based.](#)" Plainspeak: only property in the United States that was used in Argentina's 2012 refusal to tender for Petersen's shares possibly can be seized, of which there is likely none.

Argentina may have assets in other jurisdictions subject to more favourable rules, but — after decades in default — the country is pretty-much judgment proof, with assets held (safely) by the Bank for International Settlements and the New York Fed. I speak from personal experience when I say Argentina is a hard, and hardened, target.

Then, there's the infamous *pari passu* clause. The Elliott bondholder crew owned bonds with a *particularly* clear and broad covenant requiring that their claims on defaulted bonds be paid ratably if Argentina sought to remain current on other external debt. But Peterson claimants don't have this. Absent similar contractual [pari passu rights](#), the prospects for obtaining an injunction that would force Argentina into a cross-default on other debt are nil.

Relying on the availability of Elliott-like tools to force Argentina's hand is therefore wishful: they're simply not available to Petersen claimants. More likely, to the extent that Argentina is otherwise able to tap capital markets — a big if these days — markets will remain wide open notwithstanding legal fights. Court battles alone are unlikely to motivate the country to pay up.

After all, Milei has his hands full — with a feeble economy, ramshackle finances and the need to appease many masters. Given the scale of the challenges it would be no surprise if Milei falls back on Argentina's tried and true approach to financial and fiscal problems: default.

That's what market prices for Argentina sovereign debt imply. The 1-year probability

of default on the 2030 bonds is circa 33 per cent, and 86 per cent over the next five years. [Odds of a sixth recession](#) in less than a decade are high.

In fact, default might be the least bad option. It would be an opportunity to implement a comprehensive set of new policies — to reset all of Argentina’s obligations in a single, complicated, massive reconsideration of who, including Burford shareholders, should get paid what. Burford will be standing in a years-long line with everyone else.

Burford is tenacious, resourceful, and lawyered-up, but the prospects for rapidly monetising a \$16bn claim were dim before factoring in the likelihood that Milei will stumble into that old Argentine kabuki. Meanwhile: watch this space.

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