

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ELLINGTON OVERSEAS PARTNERS, LTD. and  
ELLINGTON LONG TERM FUND, LTD.,

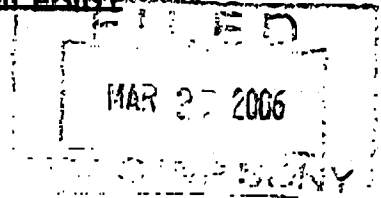
Plaintiffs,

-against-

HSBC SECURITIES (USA) INC.,

Defendant.

COMPLAINT



06 CIV. 2353

Judge Berman

The plaintiffs, Ellington Overseas Partners, Ltd. ("EOP") and Ellington Long Term Fund, Ltd. ("ELT"), by their attorneys, McCarthy Fingar LLP, for their complaint against the defendant, HSBC Securities (USA), Inc. ("HSBC"), allege as follows:

PARTIES

1. The plaintiff, EOP, is a company formed in and under the laws of the Cayman Islands with its principal place of business in George Town, Grand Cayman, British West Indies.
2. The Plaintiff, ELT, is a company formed in and under the laws of the Cayman Islands with its principal place of business in George Town, Grand Cayman, British West Indies.
3. The defendant, HSBC, is a corporation formed in and under the laws of the State of Delaware with its principal place of business in the State and County of New York.

JURISDICTION AND VENUE

4. Jurisdiction of this Court over the defendant and subject matter of

this lawsuit is proper pursuant to 28 U.S.C. §1332 in that the amount in controversy exceeds the statutory threshold, plaintiffs are foreign companies with their principal places of business outside the United States, and the defendant is a Delaware corporation with its principal place of business within the State of New York.

5. Venue in this action is properly laid in the Southern District of New York pursuant to 28 U.S.C. §1391 in that, among other things, the sole defendant resides within the State and County of New York.

#### **FACTUAL BACKGROUND**

6. Defendant, HSBC, is a securities broker engaged in the business of executing securities trades as principal for its account and as agent on behalf of its customers, including trades for certain bonds at issue in this action.

7. In or about the early 1990s certain developing countries including Venezuela, Mexico, Nigeria and Uruguay issued bonds to numerous commercial banks in exchange for and as partial recovery of eligible debt obligations of those countries to those commercial banks, which debt was then in default. The bonds are commonly referred to in the financial industry as "Brady bonds" in reference to one of the primary sponsors of this South American debt restructuring, former United States Treasury Secretary Nicholas Brady.

8. Among the bonds issued by Venezuela were Par bonds denominated in United States dollars bearing a fixed interest rate of 6.75%. These bonds are hereinafter referred to as the "Venezuela Par Bonds."

9. The Venezuela Par Bonds were issued with certain warrants attached. Specifically, five (5) warrants were attached to each \$1,000 face value of the corresponding Venezuela Par Bonds with each warrant entitling the owner to additional periodic payments under a formula based generally upon the total production and average market price of Venezuelan oil. These attached warrants are hereinafter referred to as the "Warrants" and the periodic payments thereunder are hereinafter referred to as "Warrant Payments."

**FIRST CAUSE OF ACTION**  
**(Breach of Contract, EOP against HSBC)**

10. Plaintiff, EOP, repeats and realleges each and every allegation contained in paragraphs 1 through 9 as if fully set forth in this First Cause of Action.

11. On or about November 1, 2001 the plaintiff, EOP, entered into a trade with HSBC for the purchase of \$3,000,000 face value Venezuela Par Bonds together with their corresponding 15,000 Warrants attached, which trade was to settle on November 6, 2001.

12. Plaintiff, EOP, paid all sums due and owing to, and fulfilled any and all other obligations to HSBC in connection with the purchase of the Venezuela Par Bonds and Warrants.

13. While HSBC did deliver the Venezuela Par Bonds to EOP in connection with EOP's purchase, HSBC has failed and refused to deliver to EOP, despite due demand, the 15,000 Warrants also due in connection with such purchase.

14. Pursuant to the terms of the Warrants purchased by EOP from HSBC on or about November 1, 2001, Venezuela became obligated to make and, upon information and belief, has actually made Warrant Payments with respect to the 15,000 Warrants as follows:

<u>Amount</u>	<u>Date</u>
\$ 200.34	October 15, 2004
45,000.00	April 15, 2005
<u>45,000.00</u>	October 15, 2005
\$ 90,200.34	

15. Because of HSBC's failure to deliver the Warrants to EOP, EOP has received none of the corresponding Warrant Payments to which EOP is entitled.

16. In addition to EOP not having received the past due Warrant Payments, the current value of the Warrants that HSBC has failed to deliver to EOP exceeds \$600,000.

17. As a result of HSBC's breach of its contract to deliver the Venezuela Par Bonds with 15,000 Warrants attached to EOP, EOP has been damaged in an amount to be fully determined at trial, but in at least the sum of \$690,200.34.

**SECOND CAUSE OF ACTION**  
**(Breach of Contract, ELT against HSBC)**

18. Plaintiff, ELT, repeats and realleges each and every allegation contained in paragraphs 1 through 9 as if fully set forth in this Second Cause of Action.

19. On or about November 1, 2001 the plaintiff, ELT, entered into a trade

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with HSBC for the purchase of \$2,500,000 face value Venezuela Par Bonds together with their corresponding 12,500 Warrants attached, which trade was to settle on November 6, 2001.

20. Plaintiff, ELT, paid all sums due and owing to, and fulfilled any and all other obligations to HSBC in connection with the purchase of the Venezuela Par Bonds and Warrants.

21. While HSBC did deliver the Venezuela Par Bonds to ELT in connection with ELT's purchase, HSBC has failed and refused to deliver to ELT, despite due demand, the 12,500 Warrants also due in connection with such purchase.

22. Pursuant to the terms of the Warrants purchased by ELT from HSBC on or about November 1, 2001, Venezuela became obligated to make and, upon information and belief, has actually made Warrant Payments with respect to the 12,500 Warrants as follows:

<u>Amount</u>	<u>Date</u>
\$ 166.95	October 15, 2004
37,500.00	April 15, 2005
<u>37,500.00</u>	October 15, 2005
\$ 75,166.95	

23. Because of HSBC's failure to deliver the Warrants to ELT, ELT has received none of the corresponding Warrant Payments to which ELT is entitled.

24. In addition to ELT not having received the past due Warrant Payments, the current value of the Warrants that HSBC has failed to deliver to ELP exceeds \$500,000.

25. As a result of HSBC's breach of its contract to deliver the Venezuela Par Bonds with 12,500 Warrants attached, ELT has been damaged in an amount to be determined at trial, but at least the sum of \$575,166.95.

**THIRD CAUSE OF ACTION**  
**(Breach of Contract, ELT against HSBC)**

26. Plaintiff, ELT, repeats and realleges each and every allegation contained in paragraphs 1 through 9 as if fully set forth in this Third Cause of Action.

27. On or about May 16, 2001 the plaintiff, ELT, entered into a trade with HSBC for the purchase of \$6,500,000 face value Venezuela Par Bonds with their corresponding 32,500 Warrants attached, which trade was to settle on May 21, 2001.

28. Plaintiff, ELT, paid all sums due and owing to, and fulfilled any and all other obligations to HSBC in connection with the purchase of the Venezuela Par Bonds and Warrants.

29. While HSBC did deliver the Venezuela Par Bonds to ELT in connection with ELT's purchase, HSBC has failed and refused to deliver to ELT, despite due demand, the 32,500 Warrants also due in connection with such purchase.

30. Pursuant to the terms of the Warrants purchased by ELT from HSBC on or about May 16, 2001, Venezuela became obligated to make and, upon

information and belief, has actually made Warrant Payments with respect to the 32,500 Warrants as follows:

<u>Amount</u>	<u>Date</u>
\$ 434.07	October 15, 2004
97,500.00	April 15, 2005
<u>97,500.00</u>	October 15, 2005
<b>\$195,434.07</b>	

31. Because of HSBC's failure to deliver the Warrants to ELT, ELT has received none of the corresponding Warrant Payments to which ELT is entitled.

32. In addition to ELT not having received the past due Warrant Payments, the current value of the Warrants that HSBC has failed to deliver to ELT exceeds \$1,300,000.

33. As a result of HSBC's breach of its contract to deliver the Venezuela Par Bonds with 32,500 Warrants attached ELT has been damaged in an amount to be determined at trial, but at least the sum of \$1,495,434.07.

**FOURTH CAUSE OF ACTION**  
**(Breach of Contract, ELT against HSBC)**

34. Plaintiff, ELT, repeats and realleges each and every allegation contained in paragraphs 1 through 9 as if fully set forth in this Fourth Cause of Action.

35. On or about April 26, 2001 the plaintiff, ELT, entered into a trade with HSBC for the purchase of \$10,000,000 face value Venezuela Par Bonds together

with their corresponding 50,000 Warrants attached, which trade was to settle on May 1, 2001.

36. Plaintiff, ELT, paid all sums due and owing to, and fulfilled any and all other obligations to HSBC in connection with the purchase of the Venezuela Par Bonds and Warrants.

37. While HSBC did deliver the Venezuela Par Bonds to ELT in connection with ELT's purchase, HSBC has failed and refused to deliver to ELT, despite due demand, the 50,000 Warrants also due in connection with such purchase.

38. Pursuant to the terms of the Warrants purchased by ELT from HSBC on or about April 26, 2001, Venezuela became obligated to make and, upon information and belief, has actually made Warrant Payments with respect to the 50,000 Warrants as follows:

<u>Amount</u>	<u>Date</u>
\$ 667.80	October 15, 2004
150,000.00	April 15, 2005
<u>150,000.00</u>	October 15, 2005
\$300,667.80	

39. Because of HSBC's failure to deliver the Warrants to ELT, ELT has received none of the corresponding Warrant Payments to which ELT is entitled.

40. In addition to ELT not having received the past due Warrant Payments the current value of the Warrants that HSBC has failed to deliver to ELT exceeds \$2,000,000.

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41. As a result of HSBC's breach of its contract to deliver the Venezuela Par Bonds with 50,000 Warrants attached ELT has been damaged in an amount to be determined at trial, but at least the sum of \$2,300,667.80.

WHEREFORE, (A) the plaintiff, Ellington Overseas Partners, Ltd., demands judgment on the First Cause of Action against HSBC Securities (USA), Inc. in the sum of at least \$690,200.34 together with its costs and disbursements in this action, including attorneys fees and such other and further relief as is proper under the circumstances; and (B) the plaintiff, Ellington Long Term Fund, Ltd., demands judgment: against HSBC Securities (USA), Inc. (i) on The Second Cause of Action in the sum of at least \$575,166.95; (ii) on the Third Cause of Action in the sum of at least \$1,495,434.07; (iii) on the Fourth Cause of Action in the sum of at least \$2,300,667.80, together with its costs and disbursements in this action, including attorneys fees and such other and further relief as is proper under the circumstances.

Dated: March \_\_\_\_\_, 2006  
White Plains, New York

McCARTHY FINGAR LLP

By: \_\_\_\_\_  
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