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3 IN THE MATTER OF

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6 CHEVRON

7

8 -against-

9

10 DONZIGER

11

12 -----  
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2 HON. POOLER: I understand all  
3 parties are here so due to the length  
4 of the challenge, I won't call it.

5 We'll start with the first case  
6 on our calendar which is Chevron  
7 Corporation versus Camacho and others.

8 The panel has determined that  
9 the first five minutes will be on the  
10 mandamus motion, the movants and the

11 opponents, and then we will turn to  
12 the other issues on appeal.

13 So five minutes on the clock on  
14 the mandamus motion.

15 MR. TYRELL: May it please the  
16 court, my name is James Tyrell from  
17 the firm of Patton Boggs and I  
18 represent individual Ecuadorian  
19 citizens, Mr. Camacho and Mr.  
20 Payaguaje. The court surprise me. I  
21 was going to start the other way, but  
22 I'm happy to start on the mandamus  
23 petition.

24 HON. POOLER: Thank you.

25 MR. TYRELL: I start with the

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2 standard. The standard for  
3 application of mandamus is an  
4 objective analysis. Recusal under 28  
5 USC 455A is based upon what the man in  
6 the street perceives the  
7 reasonableness of judicial conduct.  
8 Any doubt is to be resolved in favor  
9 of recusal. We maintain that the  
10 standard here is one of deep  
11 antagonism, that deep antagonism has  
12 been demonstrated by the district  
13 court to the judicial system of  
14 Ecuador, to my individual clients, and  
15 to my individual clients' lead  
16 counsel, Mr. Danziger.

17 We ask that, in addition to  
18 mandamus, that the court consider as  
19 an alternative but also available,  
20 reassignment.

21 The conduct of the district  
22 court can be put into several broad  
23 categories, each of which we believe  
24 mandates recusal or reassignment.

25 Number one, prejudice and

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2 visceral snap judgment. This court  
3 had this case at the time of the  
4 Berlinger 1782 and in that case with  
5 no reason to do it, it discredited the  
6 Ecuadorian court system saying that it  
7 would be happy to wait for a judgment  
8 if it was the high court of London but  
9 not a court in Ecuador. That was in  
10 April of 2010.

11 In September of 2010 in the  
12 Danziger Section 1782 --

13 HON. LYNCH: I'm sorry, I don't  
14 understand, isn't the very issue in  
15 this case whether the Ecuadorian  
16 system of justice is to be credited?  
17 Isn't that the whole point? I  
18 understand that you take the position  
19 that it should be and that the judge  
20 was wrong in his view that there are  
21 deep problems with the Ecuadorian  
22 judicial system, but are you just

23 saying that he came to a conclusion  
24 that is erroneous about that issue?  
25 MR. TYRELL: It's the timing,  
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2 your Honor, in the Berlinger 1782, the  
3 issue was the discovery of the  
4 outtakes. The legitimacy of the  
5 Ecuadorian court system was not before  
6 the court. He went out of his way to  
7 disparage the Ecuadorian court system  
8 at that time. In the Danziger 1782,  
9 which I'm about to get to, there was  
10 no issue yet because there was no  
11 filing for declaratory judgment. He  
12 again went out of his way to disparage  
13 the Ecuadorian court system. In  
14 short, it demonstrates a prejudgment,  
15 a snap visceral reaction which is  
16 precisely the kind of thing that this  
17 court in a recent case in 2010 said  
18 has to be looked at for purposes of  
19 recusal.  
20 In the Danziger 1782, what does  
21 the court say? And it's the court's  
22 own words. Mr. Danziger is trying to  
23 become the next big thing in fixing  
24 the balance of payments deficit. Key,  
25 I got it from the beginning. In other  
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2 words, he knew from the prior  
3 proceedings before involving Berlinger  
4 what that case was about. It was a  
5 fraud, a sham by American class action  
6 lawyers to, as he said it, hit Chevron  
7 big, and the statements are in our  
8 brief; I won't go through them. Those  
9 particular comments disparaging Mr.  
10 Danziger before this case is ever  
11 filed dealing with declaratory  
12 judgment or civil RICO evidenced a  
13 predisposition and unwillingness to  
14 have an open mind with respect to  
15 issues now before the court in this  
16 case.  
17 HON. LYNCH: Had Judge Kaplan  
18 seen the film by the time he made  
19 those comments about Mr. Danziger?  
20 MR. TYRELL: He had seen five  
21 minutes of outtakes of six hundred  
22 hours of film. And as we have put  
23 forward in our brief, Chevron is a  
24 master and their counsel are a master  
25 of taking two words here, a snippet  
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2 there, gluing them together. We have  
3 set forth in our brief the entire  
4 context.  
5 The bottom line is Judge Kaplan

6 is not changing his mind; he will  
7 never change his mind. He believes  
8 Mr. Donziger is some sort of PR guy,  
9 as he said, not a lawyer, not entitled  
10 to an attorney-client privilege.  
11 With Mr. Donziger, as this court  
12 well knows, he made Mr. -- my clients,  
13 my Ecuadorian plaintiffs forfeit  
14 eighteen years of privileged documents  
15 because Mr. Donziger, who he has no  
16 respect for, supposedly missed a  
17 deadline to get a privilege log in at  
18 the same time that he moved to strike  
19 the entire subpoena or limit its  
20 scope. When we were before this  
21 court, and I argued it last December,  
22 the court said there's only one reason  
23 why that would be appropriate and that  
24 is the criminal proceedings, their  
25 imminence pending in Ecuador. It had  
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2 instructed the district court that if  
3 that imminence went away, he should  
4 sua sponte go back and look at that  
5 privilege waiver. Of course, the  
6 court never did it. In fact, right  
7 now that privilege waiver has been  
8 extended by the district court in ways  
9 we've never seen before to potentially  
10 include the documents of thirty other  
11 law firms and consultants, including  
12 my law firm Patton Boggs, who is  
13 somehow deemed to have waived the  
14 privilege derivative of Mr. Donziger's  
15 waiver of the privilege. These aren't  
16 the kinds of things that are judge,  
17 who has an open mind and is willing to  
18 demonstrate the appearance of  
19 impartiality, does.  
20 Your Honor, I'm out of time, but  
21 there's more to say. I'll do whatever  
22 you wish.  
23 HON. POOLER: We'll hear from  
24 Chevron on the recusal motion.  
25 MR. TYRELL: And so I can  
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2 clarify, will I come back to speak to  
3 the merits argument and will I have  
4 nine minutes at that time?  
5 HON. POOLER: Yes.  
6 MR. TYRELL: Thank you very much,  
7 your Honor.  
8 MR. MASTRO: Thank you, your  
9 Honors.  
10 Actually, the standard on  
11 mandamus, it's one of the highest  
12 standards that can possibly be --  
13 HON. POOLER: Could you do  
14 something with the microphones?  
15 MR. MASTRO: Your Honor, the  
16 standard on mandamus, as this court  
17 well knows, are that it is an

18 extraordinary measure and only granted  
19 in the most extreme circumstances.  
20 One, it has to be a circumstance of  
21 mandamus where an appeal would not  
22 suffice; two, it has to be such a  
23 clear and undisputable abuse of  
24 discretion, because we're talking  
25 about abuse of discretion here; and

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2 three, it has to involve significant  
3 issues.

4 HON. POOLER: The defendants  
5 argue that they have lost every single  
6 time they've come before this judge.

7 MR. MASTRO: Actually, they've  
8 lost every single time they've been  
9 before this court, your Honor. And  
10 the very thing that Mr. Tyrell  
11 complains about --

12 HON. POOLER: Not exactly.

13 MR. MASTRO: Mr. Tyrell complains  
14 about the privilege waiver and the  
15 ramifications of that and Judge  
16 Kaplan's as to Mr. Danziger and  
17 ramifications of that. This court  
18 affirmed, affirmed with an opinion  
19 that made crystal clear that Judge  
20 Kaplan had handled the cases -- he'd  
21 had multiple cases at that point --  
22 in, quote, an exemplary manner and  
23 that all concerned, not least this  
24 court, are well served by his  
25 stewardship.

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2 Now, your Honor, Litek is the  
3 standard and Litek tells us, the  
4 Supreme Court has told us flat out the  
5 judicial rulings alone almost never  
6 are a cause for mandamus, that it's  
7 not reviewable, a decision for bias or  
8 prejudice whether it's based on his  
9 knowledge or opinion based on what's  
10 properly happened in the case. And in  
11 this case, Judge Kaplan's  
12 observations, Judge Kaplan's rulings,  
13 they were, your Honor, when Danziger  
14 ruled -- when he ruled on Danziger's  
15 waiver, he had seen the crude outtakes  
16 because this court confirmed the crude  
17 outtakes being released. And they  
18 showed Mr. Danziger saying that  
19 Ecuador, the judges in Ecuador are  
20 corrupt, it's their birthright, saying  
21 that they don't decide by the law,  
22 they decide by who they fear, saying  
23 that maybe the judge won't be killed  
24 but if he thinks he will, that's good  
25 enough. These are the kinds of things

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2           that he admitted and on those crude  
3           outtakes, they showed the plaintiff's  
4           leading -- the court's global damages  
5           expert, supposedly an independent --  
6           HON. POOLER: Counsel, what  
7           you're describing is evidence.  
8           MR. MASTRO: And that's what  
9           Judge Kaplan --  
10          HON. POOLER: But has he made  
11          findings based on that evidence up  
12          until his last decision? He had not.  
13          I think that's what counsel is saying  
14          is that before he made a decision, he  
15          seemed to have prejudged the issue.  
16          MR. MASTRO: Absolutely not, your  
17          Honor. In the Danziger waiver  
18          context, we had to show that we were  
19          entitled to have a subpoena issued and  
20          he reviewed the evidence to date,  
21          including the crude outtakes which  
22          showed Mr. Danziger's blatant  
23          misconduct, in fact his criminal  
24          conduct. So your Honors, he made a  
25          ruling that this court affirmed based  
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2           on the evidence before him which  
3           included the crude outtakes. And your  
4           Honor, he made rulings in our case  
5           based on an overwhelming record. In  
6           thirty years of practice and as a  
7           former prosecutor, I've never seen a  
8           record so shocking of illegal and  
9           improper conduct; a fraud on the court  
10          in Ecuador blackmailing the judge to  
11          get them to appoint a court-appointed  
12          officer and then ghostwriting his  
13          report word for word and submitting  
14          other false expert reports and now the  
15          evidence -- with complicity of counsel  
16          of trying to cleanse that fraud by  
17          offering new experts who did no work  
18          themselves, relied simply on the old  
19          fraudulent Cabrera report. And your  
20          Honor, the latest efforts even that  
21          these plaintiffs and their agents --  
22          I'm referring to the LAPs, not Chevron  
23          as the plaintiff -- they even  
24          ghostwrote the judgment that issued  
25          out of Ecuador. We see whole sections  
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2           of internal memos of theirs that were  
3           never submitted to the court that  
4           showed up word for word in the  
5           Ecuadorian judgment as well as their  
6           own internal database, never turned  
7           over to the court called Selva Viva  
8           which turned out to be a hotel room.  
9           That shows up word for word in the  
10          judgment.  
11          HON. POOLER: Counsel, the issue  
12          as to the validity of the Ecuadorian

13 judgment is, in fact, to be tried by  
14 Judge Kaplan.  
15 MR. MASTRO: Correct, your Honor.  
16 HON. POOLER: And what these  
17 defendants, plaintiffs in other  
18 contexts, are saying is that he  
19 appears to have prejudged the issue of  
20 the validity of the Ecuadorian  
21 judgment. That has not been decided  
22 yet.  
23 MR. MASTRO: But your Honor, what  
24 he has done is issue -- and we're now  
25 getting into the second part of the  
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2 argument -- he issues a status quo  
3 preliminary judgment based on what was  
4 undisputed evidence before him of  
5 fraud in the procurement of the  
6 judgment and lack of impartiality  
7 in --  
8 HON. WESLEY: Well, that's not  
9 true because the timelines were pretty  
10 tight; weren't they? Donziger didn't  
11 have much time to respond. You had  
12 showed up with a thousand pages,  
13 didn't you, of exhibits and Donziger  
14 got how many days to respond?  
15 MR. MASTRO: Actually, your  
16 Honor --  
17 HON. WESLEY: It's a just  
18 question. I need you to respond.  
19 MR. MASTRO: He, from the time he  
20 had notice of the complaint and the  
21 TRO which was issued on notice, it was  
22 not issued at the outset, he had eight  
23 days to come into the court on the TRO  
24 and then until the eleventh, that's  
25 eleven days, to submit additional  
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2 papers. He chose not to. The LAPs  
3 did. The LAPs, in fact, put in a  
4 sixty-plus page brief at the TRO  
5 hearing and hundreds of pages of their  
6 own of exhibits. Mr. Donziger chose  
7 not to do that. The LAPs put in more  
8 papers by the eleventh. Mr. Donziger  
9 chose not to do that even while he had  
10 a prominent criminal defense attorney  
11 in the New York City, Jay Lefkowitz,  
12 speak on his behalf the very first day  
13 the complaint was filed.  
14 HON. POOLER: How can you say the  
15 evidence then was uncontroverted?  
16 They did attempt to controvert it;  
17 didn't they?  
18 MR. MASTRO: But your Honor, they  
19 didn't put in any evidence, no sworn  
20 statement from anyone, not Mr.  
21 Donziger, no one in Ecuador, nowhere  
22 disputing our evidence from the crude  
23 outtakes and from their own internal  
24 documents, including their own

25 Ecuadorian lawyers who wrote, when the  
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2 fraud was going to be revealed, that  
3 this is a disaster for our case, it  
4 will destroy it. We, your Ecuadorian  
5 lawyers, may all go to jail. Their  
6 words, not mine. They didn't put in a  
7 single sworn statement from anybody,  
8 not Donziger, not an Ecuadorian  
9 lawyer, not a plaintiff, no one,  
10 disputing the fraud in the submission  
11 of falsified expert reports, you had  
12 ghostwriting in the Cabrera report --  
13 HON. POOLER: We're a little off  
14 the topic. This is an recusal.  
15 MR. MASTRO: But your Honor, I  
16 was just coming to Judge Kaplan who's  
17 not prejudged, he has done what a  
18 judge should do which is to decide a  
19 preliminary injunction, decide whether  
20 there is a likelihood or success or  
21 serious questions going to the merits,  
22 evaluated all of the evidence before  
23 him, and that evidence, your Honors,  
24 showed undisputed, because they put  
25 nothing in to dispute this core  
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2 evidence, that they had ghostwritten  
3 expert reports, that they --  
4 HON. POOLER: We'll hear from  
5 them on the merits.  
6 MR. MASTRO: I understand. I  
7 just want to make the point --  
8 HON. POOLER: So you're opposing  
9 recusal of Judge Kaplan?  
10 MR. MASTRO: Oh, without  
11 question, your Honor. This court has  
12 had recusal motions time and time  
13 again. This is the same tactic they  
14 tried with Judge Rakoff when he was  
15 overseeing the Aguinda case and it had  
16 failed then, the judge vilified him --  
17 HON. LYNCH: Mr. Mastro, you may  
18 take notice of the fact that the  
19 presiding judge has told you to sit  
20 down.  
21 MR. MASTRO: I'm sorry, your  
22 Honor. I just wanted to make that  
23 point.  
24 Thank you very much.  
25 HON. POOLER: Before I turn to  
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2 the merits argument, we gave  
3 permission to Chevron to have a  
4 reporter here. Of course, a copy of  
5 the transcript should be sent to the  
6 clerk's office as well.  
7 You're aware of that, counsel?



8 MR. MASTRO: Of course, your  
9 Honor.  
10 MR. TYRELL: May it please the  
11 court, eighteen years of litigation do  
12 not easily lead to a recitation of the  
13 facts, so I'll skip them. But I would  
14 like to frame, particularly in light  
15 of Judge Wesley's questions, some  
16 headlines which are both important to  
17 the merits and to what we've just  
18 discussed.

19 After nine years of litigation  
20 in New York, this court dismissed on  
21 forum non conveniens, as you're aware,  
22 the action brought here. It did so  
23 based on promises exclusively made by  
24 Chevron that representations that the  
25 court in Ecuador was fair and

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2 impartial, that they would submit to  
3 jurisdiction in Ecuador, and that they  
4 would pay a judgment if it was  
5 entered, subject to reserving their  
6 rights under the New York recognition  
7 Act.

8 The first thing they did when  
9 they went to Ecuador was to contest  
10 jurisdiction. After nine more years  
11 of litigation in Ecuador, the  
12 Ecuadorian court finally rendered a  
13 judgment which is not final, which is  
14 on appeal de novo, but in that one  
15 hundred eighty-seven-page opinion, it  
16 found Chevron liable for contaminating  
17 a Rhode Island-sized piece of the  
18 Ecuadorian rainforest and awarded  
19 damages of approximately \$18 billion.

20 Before the Ecuadorian judgment  
21 was entered, Chevron, who has eschewed  
22 any activity in the Southern District  
23 of New York, rushes back to the  
24 Southern District of New York of  
25 course, I suggest, after sampling

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2 sixteen other federal courts to find a  
3 judge that looked most favorable to  
4 them. They then, using the related  
5 case doctrine, managed to usher the  
6 case to the very judge that they  
7 wanted who we've already argued showed  
8 predisposition in their favor. That  
9 judge then enters a temporary  
10 restraining order, a full scope  
11 antifoign suit injunction, before  
12 anything is there to enjoin in  
13 Ecuador.

14 HON. WESLEY: Mr. Tyrell, can you  
15 tell me the status of the Ecuadorian  
16 judgment now?

17 MR. TYRELL: It is on de novo  
18 appeal, which is intermediate appeal  
19 in Ecuador. Both sides have

20 cross-appealed. Both sides have  
21 stipulated that the judgment is not  
22 final until that cross-appeal is  
23 resolved. And even then Chevron has a  
24 right to seek a further appeal to a  
25 higher court in Ecuador.

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2 HON. WESLEY: Does the final  
3 appeal require posting of the bobbed?

4 MR. TYRELL: It is disputed. We  
5 think it should.

6 HON. WESLEY: Is it disputed as  
7 to the period of time it will take the  
8 Ecuadorian intermediate court to  
9 resolve the matter?

10 MR. TYRELL: It isn't disputed,  
11 but no one knows.

12 HON. POOLER: At what stage could  
13 collection of the judgment be  
14 initiated?

15 MR. TYRELL: The judgment cannot  
16 be enforced until the final  
17 disposition of the Ecuadorian  
18 intermediate court and a decision by  
19 Chevron not to appeal further or, if a  
20 bond is required, not to post the  
21 bond. If it posts a bond, it's  
22 required and they then appeal. Not  
23 until -- I forget what the name of the  
24 court is but it's equivalent to their  
25 Supreme Court -- until their Supreme

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2 Court decides it so it should be.

3 HON. WESLEY: After they say that  
4 the intermediate court issues a  
5 decision, what is the maximum amount  
6 of period of time that Chevron, by  
7 considering or seeking additional  
8 appeals, prior to an actual appeal  
9 beginning in the highest court, what  
10 is the maximum period of time they  
11 could accomplish?

12 MR. TYRELL: I'm not sure but I  
13 believe it's a minimum of thirty days.  
14 We can certainly find that out and  
15 submit it to your Honor.

16 HON. LYNCH: Just so it's clear,  
17 I take it what you're saying is if the  
18 Ecuadorian intermediate court affirms  
19 this judgment which could happen  
20 tomorrow or it could happen a year  
21 from now since at least in this  
22 country appellate courts are not under  
23 any deadline, perhaps unfortunately,  
24 for litigants with respect to issuing  
25 their opinions. I take it you're

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2 saying that's true from Ecuador as

3 well, so we don't know when a judgment  
4 might come, we don't know what that  
5 judgment might be, and if that  
6 judgment is adverse to Chevron, then  
7 there would be some further  
8 disputation as to whether a bond would  
9 be required to appeal to the Supreme  
10 Court. That issue would be resolved  
11 possibly favorably to Chevron. And  
12 either way with if posting a bond is  
13 required or without if not required,  
14 they would then have an appeal to the  
15 Supreme Court but we don't know how  
16 long that would take.

17 And your position to this court  
18 today is that if all those steps are  
19 taken, this judgment would not be  
20 appealable -- would not be enforceable  
21 until the Supreme Court has ruled;  
22 that's what you're telling us?

23 MR. TYRELL: That's correct, your  
24 Honor. In fact, I should add my  
25 clients, in connection with the de

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2 novo appeal in Ecuador, put in a  
3 declaration that they will never seek  
4 to enforce this judgment in New York  
5 and put in a complementary declaration  
6 before Judge Kaplan.

7 So your question leads me to my  
8 argument. There's no actual case or  
9 controversy here. There is nothing so  
10 fixed in form that this court or the  
11 district court can seize upon it.

12 And I'd like to turn, if I can,  
13 to both of my intertwined arguments  
14 which first has to do with comity in  
15 China Trade and intertwined with it no  
16 case or controversy.

17 The salient case here is of  
18 course China Trade. The standard in  
19 this circuit is very vile. Used  
20 sparingly with great restraint before  
21 any antiforesh suit injunction is  
22 entered. I suggest to the court that  
23 the standard set here in 1987 was  
24 reaffirmed by the Supreme Court as  
25 recently as June 16 in Smith versus

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2 Bayer, which was an anti-injunction in  
3 that case, but the same principles  
4 applied. In fact, in the Chesney  
5 decision rendered by this court in  
6 1991, it said those principles  
7 applied, those comity principles a  
8 fortiori in the international context.

9 HON. LYNCH: Do you agree, Mr.  
10 Tyrell, that this is just a China  
11 Trade kind of case, that that's --  
12 that this is the sort of simple case  
13 where the China Trade standard  
14 occurred just like a lot of other

15 cases where Plaintiff sues Defendant  
16 in New York and Defendant sues  
17 Plaintiff or may sue Plaintiff  
18 somewhere else? I would have thought  
19 your position would be that this is it  
20 even more dramatic than the situation  
21 in China Trade.

22 MR. TYRELL: Absolutely, which is  
23 why I said I didn't know whether to  
24 argue my second point first or my  
25 first point second. But in reality,

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2 this is a case where there is  
3 absolutely no case or controversy. As  
4 you wrote, Judge Lynch, in the  
5 Republic of Ecuador opinion, no one  
6 knows what's going to happen in  
7 Ecuador. In those circumstances, we  
8 believe under Dow Jones, under all the  
9 principles articulated by this court  
10 there is no case or controversy now.  
11 That goes to this court's subject  
12 matter jurisdiction if you agree with  
13 us and the right result, the right  
14 result would be to send this back  
15 hopefully not to Judge Kaplan but to a  
16 different judge or to the wheel with  
17 instructions to dismiss this case.

18 This isn't a simple China Trade  
19 decision. There is no firm fixed  
20 issue that can now be resolved by the  
21 district court. And I suggest to you  
22 it can never be resolved by a district  
23 court in New York because my clients  
24 and all of the Ecuadorian plaintiffs  
25 have eschewed ever seeking enforcement

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2 in New York.  
3 When you look at what the  
4 underlying premise is for the  
5 substantive law ruling that Chevron  
6 seeks, it's the New York Recognition  
7 Act. The New York Recognition Act,  
8 aside from the fact that it says on  
9 its face will not apply unless the  
10 judgment is final and enforceable  
11 where rendered, and both sides have  
12 stipulated that that isn't the case,  
13 our clients have said we're not coming  
14 to New York when that is met. We're  
15 never going to come to New York.

16 HON. LYNCH: I think your client  
17 said that after this preliminary  
18 injunction action got going.

19 MR. TYRELL: There's no doubt  
20 about that, your Honor, there's no  
21 doubt about that. But nonetheless --

22 HON. LYNCH: Well, at the time  
23 Chevron sought its preliminary  
24 injunction and whatever the merits of  
25 entry or other arguments, they had no

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2       way of knowing that your clients would  
3       never come to New York if indeed your  
4       clients at that point had already  
5       decided that they would never come to  
6       New York; right?

7               MR. TYRELL: What they did know  
8       is that there was no ability with a  
9       final enforceable judgment to invoke  
10       at that time the New York Recognition  
11       Act. This was a preemptory strike for  
12       an advisory opinion and Judge Kaplan  
13       permitted it.

14               HON. WESLEY: Excuse me a second,  
15       but I hoping the chair will indulge us  
16       just bit.

17               The fact that they choose New  
18       York doesn't have to necessarily be  
19       tied to whether you decide to come to  
20       New York to enforce the judgment  
21       because if you're here, present in an  
22       in personam sense, they can go  
23       wherever they wish because if they can  
24       get a judgment precluding you from  
25       enforcing a judgment based on in

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1       \*\*\* UNCERTIFIED ROUGH DRAFT \*\*\*  
2       personam grounds, they can pursue that  
3       anywhere that you are, in the  
4       jurisdictional sense. So that  
5       assurance is not necessarily a  
6       jurisdictional deterrent; is it?

7               MR. TYRELL: Let me try to answer  
8       your question.

9               HON. WESLEY: I mean, there may  
10       be serious questions as to whether the  
11       LAP plaintiffs in the Ecuadorian  
12       action are here because of what  
13       Danziger does.

14               MR. TYRELL: That's what I was  
15       going to respond. We don't think  
16       they're here under 301 or whatever.  
17       But the other point is not right, I  
18       don't think, your Honor. We don't  
19       agree with that. We think that it  
20       would stand the law on its head for  
21       the loser in a judgment to be able to  
22       go anywhere in the world and select  
23       the forum of its choice to argue for  
24       nonenforcement. The only substantive  
25       law predicate, even if there were

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1       \*\*\* UNCERTIFIED ROUGH DRAFT \*\*\*  
2       personal jurisdiction over my clients,  
3       the only substantive law predicate  
4       that lets them come to New York is  
5       judgment enforcement. This court has  
6       already concluded the case is all  
7       about Ecuador.

8               HON. WESLEY: Let me make it  
9       easier.

10 If they lived here, if they  
11 lived here, wouldn't this be an  
12 appropriate forum to seek that  
13 determination?

14 MR. TYRELL: I don't believe so.  
15 Because the party who wins the  
16 judgment can enforce it where they  
17 wish.

18 HON. WESLEY: Well, no, I  
19 understand that. But if you have  
20 personal jurisdiction over them, then  
21 you have the ability to preclude them  
22 from doing something anywhere.

23 MR. TYRELL: You may have the  
24 power but you then have to have a  
25 substantive law right and the

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2 substantive law right here is  
3 derivative of the -- is based on the  
4 Recognition Act and the Recognition  
5 Act can't apply. What other  
6 substantive law basis could you have  
7 to come to just come to New York and  
8 go after my client but the Recognition  
9 Act?

10 HON. POOLER: Which was  
11 preserved.

12 HON. WESLEY: I appreciate your  
13 fervor, but the judgment is a piece of  
14 property and they own it, your  
15 plaintiffs own it. If they're here,  
16 wherever they are, that shows an  
17 action is here and you have control  
18 over them because they're the only  
19 people who can enforce.

20 MR. TYRELL: Just if I may, your  
21 Honor, I don't want to take any  
22 additional time. But in response to  
23 your point do they own it, one of the  
24 points I was going to get to if time  
25 permitted under the China Trade

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2 analysis is they don't own it. The  
3 court in Ecuador has decided that a  
4 commercial trust to be established  
5 under the control of the court in  
6 Ecuador will own the judgment, not my  
7 clients. My clients are no longer the  
8 real party in interest. But the real  
9 part is even that can change. Because  
10 the de novo intermediate appellate  
11 court can make somebody else the real  
12 party in interest. So there is no  
13 real party in interest in New York now  
14 that is firm and fixed as required by  
15 the first prong of China Trade.

16 HON. WESLEY: Does Judge Kaplan's  
17 order deal with that trust issue?

18 MR. TYRELL: He says yes, that  
19 it's one and the same thing because  
20 the beneficiaries of the trust are the  
21 forty-seven LAPs and the front, the

22 Amazonian Front. Well, if you read  
23 the judgment itself, it says the  
24 beneficiary is all the residents of  
25 the area affected by Chevron's

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2 conduct. And if I could just -- the  
3 second piece, it can't be dispositive.

4 HON. POOLER: So you argue on the  
5 first ground of China Trade that it's  
6 not identity of the parties?

7 MR. TYRELL: We do. But we even  
8 argue more persuasively on the second  
9 grounds, and you're indulging me with  
10 time and I do not want to follow the  
11 prior examples so the moment you say  
12 stop -- when I clerked for Judge Garth  
13 on the Third Circuit, he said the most  
14 important thing is to answer the  
15 court's questions and even more  
16 important to stop. So when you say  
17 stop, I guarantee I will.

18 HON. POOLER: Well your time has  
19 expired.

20 You're reserving time for --

21 MR. TYRELL: Yes, I reserve three  
22 minutes.

23 Would you wish an answer to your  
24 second point or not?

25 HON. POOLER: Yes, just answer

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2 that.

3 MR. TYRELL: Just briefly, it  
4 can't be dispositive because the law  
5 says that every jurisdiction, every  
6 foreign country has the right to apply  
7 its own standards to judgment  
8 enforcement. So whatever Judge Kaplan  
9 decides or whoever decides it here in  
10 New York can only govern New York  
11 enforcement standards can never be  
12 dispositive around the world if that  
13 judgment is taken to --

14 HON. POOLER: But what I asked  
15 you I had more question on --

16 MR. TYRELL: Thank you, your  
17 Honor. I'm going to consider myself  
18 entitled to respond to that, too.

19 HON. POOLER: He said the  
20 recognition under New York was  
21 preserved in the original forum non  
22 conveniens decision?

23 MR. TYRELL: No, in the original  
24 forum non conveniens decision, they  
25 unilaterally said we'll make all these

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2 representations to let it go to  
3 Ecuador but we're reserving this  
4 right. My clients never agreed to

5 anything about that.  
6 Do they have a right to try to  
7 bring the case into New York? They  
8 have the right to try. I suggest they  
9 can because of the argument I made.  
10 Judge Lynch held that they had a try  
11 to try to do something with the BIT  
12 arbitration.  
13 HON. LYNCH: It wasn't me, it was  
14 a unanimous panel.  
15 MR. TYRELL: Judge Pooler  
16 decided, you decided, and your  
17 colleague decided.  
18 HON. POOLER: Thank you, counsel.  
19 MR. TYRELL: Thank you very much,  
20 your Honor.  
21 HON. POOLER: We'll hear from  
22 your co-counsel.  
23 HON. LYNCH: You know, Mr.  
24 Tyrell, I used to be able to decide  
25 things in my days in the district  
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2 court but, as the saying goes, now I'm  
3 only one-third of a judge. So in this  
4 case, it was one-third of a judge that  
5 decided this.  
6 MR. TYRELL: Your Honor, if  
7 you'll indulge me, when I clerked for  
8 Judge Garth, it was his first year on  
9 the circuit and he had moved up from  
10 the district court. He told me he was  
11 -- he apologized. He said he hired me  
12 for the district court and he said my  
13 experience on the circuit would be  
14 much less exciting.  
15 MR. KEKER: Good morning, your  
16 Honors. I'm John Keker. I represent  
17 Mr. Danziger. Mr. Danziger, in our  
18 view, has been convicted by Judge  
19 Kaplan in the court below already  
20 without any meaningful opportunity to  
21 fight back, to talk back, to present  
22 any evidence. But because I have  
23 three minutes, I'm not going to talk  
24 about that today.  
25 There is a silver bullet in this  
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2 appeal. You've been talking about it  
3 already. The silver bullet is that  
4 there is no subject matter  
5 jurisdiction because there's not an  
6 actual controversy before the court  
7 first on the preliminary injunction  
8 when the preliminary injunction was  
9 issued, only on the Declaratory  
10 Judgment Act. And then second and  
11 equally important to us, there won't  
12 be any subject matter jurisdiction in  
13 this trial that Judge Kaplan intends  
14 to have in November where he's going  
15 to try the Ecuadorian court system  
16 without ever looking, having a



17 judgment to evaluate.  
18 HON. POOLER: Did he set that  
19 November day with reference to what  
20 the Ecuadorian courts will do?  
21 MR. KEKER: Yes, ma'am. Judge  
22 Kaplan said he was quite sure the  
23 appeal would be immediately affirmed,  
24 further showing his attitude, and  
25 therefore he was going to set as  
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2 speedy a trial as he could, set it in  
3 November, promptly went through  
4 various machinations to cut Mr.  
5 Donziger out of the trial, did it in  
6 such a way that Mr. Donziger, because  
7 he left him enough intervention rights  
8 so that this court has said it's not  
9 an appealable order, we have to wait  
10 until after Judge -- until after the  
11 final decision.  
12 So during a period where the  
13 LAPs, the Lago Agrio plaintiffs were  
14 doing no discovery, not getting any  
15 experts, now they've begun in late  
16 July, after all this period the case  
17 has simply been undefended and it's  
18 about to be a show trial where Chevron  
19 gets to put on its evidence with the  
20 Lago Agrio plaintiffs, if you'll  
21 excuse me, basically tethered to a  
22 stake like a goat during that trial.  
23 HON. POOLER: Is there any  
24 indication that should the  
25 intermediate court not issue a  
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2 decision before the November trial  
3 that Judge Kaplan would adjourn the  
4 trial?  
5 MR. KEKER: Totally the opposite,  
6 your Honor. We kept going back and  
7 saying please let us intervene now  
8 that, for example, Chevron filed  
9 twenty-nine experts which they  
10 eventually cut down to nineteen  
11 experts, making plain that the trial  
12 is going to be a do-over of this  
13 environmental dispute that's going on  
14 in Ecuador, a complete do-over;  
15 scientific evidence, whether there was  
16 pollution, the whole thing. We said  
17 all right, let us in. You're deciding  
18 something about whether or not  
19 Donziger is guilty of fraud as you've  
20 alleged, please let us participate.  
21 No way. We're going to go ahead with  
22 this. The Lago Agrio plaintiffs filed  
23 motions saying there's a difference  
24 between extrinsic and intrinsic fraud.  
25 You can't try things that are being  
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2 tried in Ecuador and were tried by the  
3 court. That's intrinsic fraud. No,  
4 there's no distinction says Judge  
5 Kaplan, we're going ahead with the  
6 whole thing.

7 But my point is, with respect to  
8 what's before you now, which is the  
9 preliminary injunction decision, if  
10 there is no -- on this record, if  
11 there is no actual controversy, it's  
12 very important that that be said now  
13 because it will make plain to whatever  
14 district court judge handles this case  
15 that it cannot be tried, there's no  
16 jurisdiction to try it under this  
17 severed case. Because they've severed  
18 the RICO. The dispute now is whether  
19 the judgment in Ecuador is enforceable  
20 anywhere in the world.

21 HON. POOLER: Is that the count  
22 nine?

23 MR. KEKER: That's count nine.

24 And what Judge Kaplan suggested  
25 to Chevron is why don't we sever that,

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2 cut Donziger out of that, and then  
3 we'll just try that quickly and I'll  
4 make a decision about essentially  
5 whether or not Ecuador stinks, if you  
6 permit me the colloquialism.

7 What Judge Wesley was asking  
8 about are questions that we believe go  
9 to what might be considered after you  
10 actually have a judgment in Ecuador  
11 and then questions about can you use  
12 the recognition statute defensively  
13 under the Declaratory Relief Act would  
14 become important, was there estoppel  
15 because there was promises. That  
16 would become important. But until  
17 that happens and there's no guarantee,  
18 nobody knows what's going to happen in  
19 Ecuador, I wanted to emphasize one  
20 other thing. That not only is it de  
21 novo review in Ecuador but both  
22 parties are throwing tremendous amount  
23 of new information into the record,  
24 both arguments and facts. Everything  
25 -- the diatribe that you just heard

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2 from Mr. Mastro is being presented to  
3 the Ecuadorian court. Presumably at  
4 some point they will make a decision.  
5 Either Chevron will win or they'll say  
6 let's do the case again down in  
7 Ecuador or they will say we completely  
8 affirm or they will say we partially  
9 -- who knows what they're going to  
10 say? And who knows what that decision  
11 will look like? They may say we've

12 ignored all of this evidence and  
13 therefore make the following -- we  
14 just don't know. It's completely,  
15 purely hypothetical, as this court  
16 collectively has said, in the Republic  
17 of Ecuador case.

18 HON. LYNCH: Mr. Keker, one other  
19 question. You said -- you used most  
20 of your argument to the idea that this  
21 is premature and that the judgment is  
22 not enforceable. There's something I  
23 wanted to clarify.

24 Let's suppose it does become  
25 enforceable. Some day, I take it, it

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2 is the position of your -- I hope of  
3 your side of the table that it will be  
4 affirmed and it will become  
5 enforceable.

6 Are you conceding that at that  
7 point it would be appropriate and  
8 permissible for Chevron to ask a New  
9 York court to apply the New York  
10 recognition of foreign judgments act  
11 offensively even if the underlying  
12 plaintiffs don't come to New York as  
13 opposed to defensively to resist  
14 enforcement of the judgment in New  
15 York?

16 MR. KEKER: I said defensively.  
17 I got it mixed up.

18 Absolutely not. At that point  
19 that decision would have to be made  
20 and those arguments would have to be  
21 made. Our position is the New York  
22 Recognition Act can only be used or  
23 the recognition of judgment act where  
24 you claim fraud, you claim it's an  
25 impartial tribunal can only be used

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2 defensively. If somebody brings the  
3 case here, then you can make those  
4 arguments. If somebody doesn't bring  
5 the case here, you can't, by forum  
6 shopping, come to New York, say  
7 there's a danger that this is going to  
8 be enforced in Kazakhstan and  
9 therefore I want a New York court to  
10 let me overturn it under the  
11 recognition statute when there's  
12 absolutely no reason for the court to  
13 take that on.

14 HON. POOLER: The court had a  
15 memo -- I know you've gone beyond your  
16 time -- but the court had a memo that  
17 talked about an enforcement strategy  
18 that included countries all over the  
19 world and the court relied on that  
20 memo; didn't it?

21 MR. KEKER: The court -- you can  
22 use relied or it certainly cited and  
23 used it as its argument for why it

24 made sense.

25 HON. POOLER: Correct.

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2 MR. KEKER: What that memo said  
3 is we could try -- it was a think  
4 piece which you, yourself, identified  
5 in another hearing as kind of a think  
6 piece and there's probably one like it  
7 about resisting enforcement. But  
8 basically one of the things it  
9 mentioned that the court picked up on  
10 is prejudgment attachment. That is  
11 magical thinking.

12 I mean, first of all, there  
13 hasn't been any prejudgment attachment  
14 in all the time that we're there.

15 Second, think of it. You go up  
16 and you slap a writ on a pipeline in  
17 Kazakhstan and you say a court in  
18 Ecuador may some day have a final  
19 enforceable judgment and therefore,  
20 because this \$200 billion revenue each  
21 year corporation might not be able to  
22 pay, we'd like to attach this  
23 pipeline. I mean, it is -- it's  
24 remote, it's kind of silly, and I  
25 called it magical thinking.

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2 In our brief, that's our  
3 argument about why you can't create an  
4 actual controversy out of that kind of  
5 magical thinking. An actual  
6 controversy has to be more  
7 substantial, has to be imminent, has  
8 to be kind of real. This idea that  
9 some lawyer sitting in an office  
10 thought maybe we should think about  
11 that in a privileged memo which never  
12 should have seen the light of day if  
13 it weren't for various rulings, I  
14 mean, it's just -- we don't think that  
15 makes an actual controversy. And yes,  
16 Judge Kaplan used it to create an  
17 actual controversy.

18 HON. POOLER: Thank you.

19 MR. KEKER: He gave one paragraph  
20 to questions whether or not there was  
21 an actual controversy here.

22 HON. POOLER: Thank you, Mr.  
23 Keker.

24 MR. KEKER: Thank you, ma'am.

25 HON. POOLER: Mr. Mastro, both

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2 opponents went overtime so I'll be  
3 flexible with you.

4 MR. MASTRO: I appreciate it,  
5 your Honor, and I will also be  
6 cognizant of the time.

7 Mr. Keker just said that Judge  
8 Kaplan shouldn't have credited that  
9 Invictus memo. He shouldn't have  
10 credited all these other statements  
11 that come out of the mouths of the  
12 plaintiffs' agents themselves, Mr.  
13 Donziger and the other lawyers. He  
14 credited largely undisputed record  
15 evidence that comes right out of the  
16 mouths of the plaintiffs' counsel, the  
17 plaintiffs' agents, the plaintiffs'  
18 attorneys.  
19 HON. LYNCH: Wouldn't any  
20 plaintiff who had a big judgment  
21 against a company with worldwide  
22 operations undertake planning as to  
23 where it would be advantageous for  
24 them to go and enforce the judgment  
25 and wouldn't it be a part of that  
  
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2 thinking for anybody as to whether a  
3 settlement would be more likely if  
4 they found the best place among any  
5 places?  
6 MR. MASTRO: Your Honor, prudent  
7 planning on where to enforce is one  
8 thing. What Judge Kaplan found and  
9 what that memo screams out is not  
10 about an enforcement strategy. It is  
11 about, their words, using the  
12 political connections of the Patton  
13 Boggs law firm to find the, quote the  
14 path of lease resistance in countries  
15 that will not have a, quote, jaundiced  
16 eye and won't care whether the  
17 judgment was rendered in circumstances  
18 that raised substantial doubt about  
19 the integrity of the rendering court,  
20 obtain, their words, ex parte  
21 prejudgment attachments to disrupt  
22 Chevron's operations worldwide,  
23 pressure it into settlement.  
24 HON. WESLEY: Well, you know, way  
25 back when I was practicing law in  
  
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1 \*\*\* UNCERTIFIED ROUGH DRAFT \*\*\*  
2 small rural communities, I had a  
3 fellow that didn't want to pay child  
4 support and I found him on Christmas  
5 Eve and I had him thrown in jail. He  
6 changed his mind about child support.  
7 Sometimes folks have a way of using  
8 restraining orders and other things to  
9 produce reasonableness.  
10 So I mean, seriously, the  
11 problem I have here is that presume  
12 that this was a judgment by a Canadian  
13 trial court and it's a \$12 billion  
14 judgment against Chevron in a Canadian  
15 trial court and you have reason to  
16 believe that the judge was in cahoots  
17 with the plaintiff's lawyers.  
18 You mean to tell me that because

19 the underlying -- and that they were  
20 ready and willing and able to go after  
21 this and enforce this against you in  
22 Kazakhstan because Kazakhstan  
23 regularly recognizes Canadian  
24 judgments; we won't worry about other  
25 jurisdictions.

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2 You mean to tell me that a judge  
3 in the Southern District before even  
4 an intermediate appeal had been  
5 completed would have the appropriate  
6 jurisdiction to, under China Trade or  
7 any other theory, to enjoin those  
8 plaintiffs from pursuing that?

9 MR. MASTRO: Yes, your Honor,  
10 under the circumstances presented  
11 here. And I think your Honor had it  
12 absolutely right. There's no question  
13 that New York is not only an  
14 appropriate jurisdiction for this  
15 action, it's the most appropriate.

16 HON. WESLEY: Don't you have to  
17 separate the banality of the conduct  
18 from the legitimacy of the process?  
19 Don't we have some sense of comity to  
20 the legitimacy of the process? Are we  
21 just to say to the people of Ecuador  
22 you're all corrupt and your process  
23 doesn't matter to the United States or  
24 a United States federal judge is not  
25 going to hear anything about the

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2 legitimacy of your process, a process,  
3 by the way, which you invoked?

4 MR. MASTRO: Your Honor,  
5 actually, Judge Kaplan hasn't said  
6 that. He's issued a --

7 HON. WESLEY: Well, he's issued a  
8 restraining order.

9 What's the premise of it?

10 MR. MASTRO: So that he can have  
11 a trial to determine whether this  
12 judgment was procured by fraud, to  
13 determine whether this judgment  
14 resulted from a system that failed to  
15 enforce due process and impartial  
16 tribunal. It's a temporary status quo  
17 injunction.

18 HON. WESLEY: Doesn't it seem  
19 like you're spending an awful lot of  
20 money to finish a trial in November  
21 where on the last day of trial the  
22 Ecuadorian intermediate court vacates  
23 the judgment, finds it's procured by  
24 fraud, and absolves Chevron of all  
25 liability?

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2 MR. MASTRO: If that happens,  
3 your Honor --

4 HON. WESLEY: I wonder what the  
5 shareholders of Chevron are interested  
6 in with regard to the money that's  
7 being spent on behalf of Defendants  
8 pursuing this.

9 MR. MASTRO: Your Honor, here's  
10 why a trial is so necessary and  
11 appropriate. It's not simply a  
12 question of what's the appeal in  
13 Ecuador. There is a judgment that has  
14 been issued for \$18.2 billion that is  
15 now on appeal. But the record  
16 evidence was undisputed, undisputed  
17 that these plaintiffs could take that  
18 judgment right now. Their lawyers  
19 Donziger and Fajardo said they don't  
20 plan to wait for the appeal, they plan  
21 to enforce now.

22 HON. LYNCH: They've already  
23 stipulated that they're not going to  
24 do that. And it's clear under law  
25 that the judgment is not enforceable.

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2 MR. MASTRO: They have most  
3 definitely not, your Honor. And it  
4 is, under treaty with Latin American  
5 countries like Colombia, Argentina,  
6 and Venezuela right now something that  
7 these plaintiffs could take to those  
8 countries and seize Chevron's  
9 substantial assets in those countries.  
10 There is a real and immediate danger  
11 right now, and they never stipulated.

12 HON. LYNCH: This is under  
13 Venezuelan law?

14 MR. MASTRO: No, under  
15 international Latin American treaty  
16 which is undisputed, it's in the  
17 Coronel affidavit. I'll be happy to  
18 give your Honors the exact cite. The  
19 exact cite to that, your Honors, is on  
20 pages 6167 through 6170 of part  
21 twenty-two of the appendix. Coronel,  
22 noted Ecuadorian law expert,  
23 undisputed by them, and Judge Kaplan  
24 credited there's a Latin American  
25 treaty to give them the right to ex

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2 parte freeze assets right now in those  
3 countries. It's a real and immediate  
4 danger right now.

5 HON. LYNCH: To take preliminary  
6 steps to enforce an order that is not  
7 enforceable under Ecuadorian law?

8 MR. MASTRO: Correct, correct,  
9 and that's absolutely the state of law  
10 in Ecuador and it's undisputed below  
11 that they could be doing that right  
12 now and the injunction is the only  
13 thing that has held them off.

14 HON. WESLEY: But you then said,  
15 in response to Judge Lynch's question,  
16 that not all of them have so  
17 stipulated.

18 MR. MASTRO: Absolutely.

19 HON. WESLEY: Is that the LAP,  
20 the LAP plaintiffs?

21 MR. MASTRO: Absolutely, before  
22 this court and Judge Kaplan repeatedly  
23 asked why don't you all stipulate,  
24 because Danziger can't do it alone,  
25 stipulate to forbear, that you won't

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2 try to get the judgment or to enforce  
3 it. They refused. That's because  
4 this is their plan and that's why the  
5 Invictus memo is so disturbing.

6 HON. WESLEY: Well, what are you  
7 going to do if Mr. Tyrell stands up in  
8 open federal court and states they'll  
9 stipulate that they'll not take any  
10 enforcement actions anywhere in the  
11 world pending the outcome of the  
12 intermediate court? What do you do  
13 then?

14 MR. MASTRO: Well, ask him if  
15 he'll do that. He's only here for two  
16 of the plaintiffs --

17 HON. WESLEY: But there are only  
18 two of the plaintiffs in front of us;  
19 aren't there?

20 MR. MASTRO: Your Honor, the  
21 others all defaulted so there's  
22 default judgments against them. They  
23 were all sued in our action.

24 But your Honor, Mr. Tyrell, ask  
25 him if he'll do that. Because if he

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2 really represents all the plaintiffs  
3 and they will come into court and  
4 stipulate, that would be different.  
5 But I have to say this, I have to say  
6 this, they've consistently refused to  
7 this court and others.

8 And let me come to a few other  
9 points that I think are extremely  
10 important because --

11 HON. LYNCH: Let me ask you a  
12 question first.

13 About the New York judgment act,  
14 do you have any precedent of the New  
15 York court or the federal court  
16 applying New York law utilizing the  
17 New York judgment statute offensively  
18 as opposed to defensively to rule that  
19 an enforcement -- that the act, forget  
20 all the jurisdictional questions and  
21 everything else and whether it's right  
22 and everything else, that the New York  
23 law authorizes an action to prohibit  
24 the enforcement of a judgment rather  
25 than simply being a direction to the



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2       New York courts as to when they may  
3       and may not enforce a judgment when  
4       someone asks them to? Do you have any  
5       case that utilizes the statute that  
6       way?

7             MR. MASTRO: Your Honor, we have  
8       not cited such a case.

9             HON. LYNCH: You know one but you  
10       haven't cited it? You have had some  
11       summer associate research this and  
12       that person has not come up with such  
13       a case; right? Because there is no  
14       such case; right? Am I right or  
15       wrong?

16            MR. MASTRO: You're correct, but  
17       that's because of the unique  
18       circumstances of this case.

19            HON. LYNCH: Now, was there  
20       anything in the statute that suggests  
21       that it creates an affirmative cause  
22       of action, is there any language there  
23       that says anything other than these  
24       are the circumstances in which a New  
25       York court may and may not enforce a

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2       foreign judgment when someone asks it  
3       to? Is there any language suggesting  
4       such a cause of action and, if so,  
5       could you point me to it?

6             MR. MASTRO: Your Honor, the  
7       statute speaks of the defenses. But  
8       this is an action brought under the  
9       Declaratory Judgment Act as a  
10       declaratory judgment to seek a  
11       resolution of that question which is  
12       ripe and ready for adjudication now.  
13       And as your Honor said --

14            HON. LYNCH: If the shoe were on  
15       the other foot, the plaintiff called  
16       in a not-yet-enforceable foreign  
17       judgment -- and the statute refers to  
18       a judgment that is enforceable where  
19       made, that's what starts it, because  
20       after all, this is a statute about the  
21       recognition, not about  
22       non-recognition, because when would we  
23       recognize it, and the answer is it has  
24       to be at square one, it has to be  
25       enforceable where made.

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2       Are you suggesting to me that a  
3       plaintiff holding a judgment that was  
4       not enforceable where made could evade  
5       that requirement of the statute by  
6       coming in and saying, you know, the  
7       defendants are saying that this is not  
8       going to be enforceable in New York,

9 we'd like a declaratory judgment; that  
10 if and when we get an enforceable  
11 judgment in this other country you  
12 will enforce it? Do you think the New  
13 York courts would entertain that kind  
14 of action?

15 MR. MASTRO: Your Honor, I think  
16 that there's a huge difference between  
17 the plaintiffs' attempting to do that  
18 and Chevron, in defending itself  
19 against this judgment where it faces  
20 an immediate jeopardy of them being  
21 able to take it into Latin American  
22 countries and freezing assets in an ex  
23 parte manner, being able to get the  
24 protection --

25 HON. LYNCH: So you're not

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2 concerned, you're not concerned about  
3 the enforcement of the judgment in New  
4 York at all, you're concerned about  
5 the enforcement of the judgment in any  
6 -- pick one out of a hat -- Venezuela?

7 MR. MASTRO: I am concerned about  
8 their enforcement of the judgment  
9 which seems to us and Judge Kaplan  
10 found based on his review of an ample  
11 record of how much the government has  
12 been influencing on this case the  
13 courts that the appeal process is  
14 likely not to be any different than  
15 the trial process. But your Honor,  
16 the fact is what we have here is  
17 Chevron going to the only jurisdiction  
18 that is sure to apply the New York  
19 recognition statute.

20 HON. LYNCH: Of course. New York  
21 is the only jurisdiction that is going  
22 to apply New York law to decide  
23 whether a judgment is enforceable in  
24 New York. That makes sense.

25 Again, if the shoe were on the

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2 other foot, that is speaking of  
3 international comity, how do you think  
4 the New York courts would react if a  
5 Venezuelan court attempted to enjoin a  
6 holder of a judgment from Russia and  
7 in New York by enjoining the  
8 plaintiffs and saying under Venezuelan  
9 law, this is not enforceable so do not  
10 go into New York and attempt to  
11 enforce a judgment which might be  
12 enforceable under New York law because  
13 we find it not enforceable under  
14 Venezuelan law? Do you think there's  
15 any chance that the New York courts  
16 would respect such a judgment or  
17 should respect such a judgment?

18 MR. MASTRO: No, your Honor, but  
19 what makes this case unique, as your  
20 Honor knows and as you know, Judge

21 Pooler, there were commitments made.  
22 It's not true what Mr. Tyrell told  
23 you. What you were actually told on  
24 the BIT panel and what Judge Sand was  
25 told by the LAPs counsel was that  
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2 there was, quote, an express agreement  
3 to adjudicate these claims in Ecuador  
4 subject to only 5304 and that 5304 --  
5 that's the New York recognition  
6 statute -- gives them, Chevron, the  
7 forum and a venue post judgment to  
8 challenge any judgment. That's page  
9 A3756.  
10 HON. POOLER: That's in Texaco.  
11 Didn't you just say that you  
12 would move to be not judicially  
13 estopped from declaring that you were  
14 bound by Texaco's agreements?  
15 MR. MASTRO: Your Honor, you all  
16 defined in your opinion on the BIT  
17 stay what rights were reserved to  
18 Chevron and you told us that we have  
19 reserved the right --  
20 HON. POOLER: Excuse me, didn't  
21 Judge Kaplan recently conclude that  
22 you were not judicially estopped from  
23 denying the concessions made by  
24 Texaco?  
25 MR. MASTRO: Judge Kaplan ruled  
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2 based on the evidence before him in  
3 the context of motion practice that it  
4 remained, as far as he was concerned,  
5 a matter that Chevron and Texaco had  
6 separate corporate forums.  
7 HON. POOLER: And if it was  
8 Texaco that reserved the 5304, right?  
9 So you want it both ways yet again?  
10 MR. MASTRO: I don't, your Honor,  
11 I want it the way you all directed the  
12 parties which was you all said that  
13 having reserved our rights under the  
14 New York recognition statute, Chevron  
15 was free to assert them whenever and  
16 wherever. And if there was no --  
17 HON. LYNCH: But isn't there a  
18 difference between your having the  
19 right to resist enforcement of the  
20 judgment which otherwise you said you  
21 would pay if someone comes to New York  
22 and tries to enforce it, you still  
23 have the right to resist, you reserve  
24 that right? Is that the same thing as  
25 saying that you have the right to have  
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2 a New York court settle for Australia,  
3 for Kazakhstan, for Denmark, for

4 Canada, for Chile, whether under --  
5 because the law is not -- the judgment  
6 is not enforceable under New York law,  
7 assuming that's true, that neither is  
8 anyone to try to enforce the judgment  
9 in any country where it might be  
10 enforceable? Is there any indication  
11 that that was either the agreement, if  
12 you want to call it that, that the  
13 parties struck when you were trying to  
14 get the case to Ecuador or your  
15 predecessors were or what this court  
16 was referring to when that issue came  
17 up in the completely different context  
18 of whether a BIT arbitration was a  
19 violation of that agreement?

20 MR. MASTRO: Your Honor, the  
21 short answer to your question is that  
22 yes, Chevron should be recognized to  
23 have those rights because, because  
24 Chevron has the right under the  
25 Declaratory Judgment Act when there is

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2 a ripe controversy as there is now  
3 because that judgment, even if there's  
4 still an intermediate appeal level --  
5 and that, by the way, will make it  
6 final -- it can still be enforced in  
7 other countries. So if it is enforced  
8 in other countries, those Latin  
9 American countries, it will, based on  
10 the Invictus memo, it will be used to  
11 pressure Chevron and disrupt its  
12 operations worldwide, force it into  
13 making payment, and therefore it will  
14 moot out the proceedings in New York  
15 to determine under the New York  
16 recognition statute whether this  
17 judgment passes muster. And your  
18 Honors, that's the right that we  
19 supposedly had reserved, that's the  
20 right this court said we had reserved.  
21 If will never get litigated if that  
22 happens.

23 HON. LYNCH: Let's look back to  
24 when that decision was made. You  
25 succeeded in getting the case

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2 transferred to Ecuador. I say you, I  
3 understand there's a dispute about  
4 who's you in the context. But your  
5 side of the table got the case sent to  
6 Ecuador by promising that you would  
7 pay the judgment except that you  
8 reserved certain defenses.

9 MR. MASTRO: Yes, your Honor.

10 HON. LYNCH: And now you're  
11 telling me that that means that even  
12 though, as you just told me, this  
13 judgment might be enforceable today in  
14 Venezuela under Venezuelan law, the  
15 fact that, if it is a fact, the

16 judgment would not be enforceable in  
17 New York authorizes a New York court  
18 to trump Venezuelan law along with  
19 every other country in the world,  
20 whatever it may be, by ordering the  
21 plaintiffs not to seek to present the  
22 judgment to the courts of sovereign  
23 countries to see whether they will  
24 enforce it or not?  
25 MR. MASTRO: That's correct, your  
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2 Honor. We're back where we started,  
3 correct? We're back in New York  
4 because there was a reservation of  
5 rights that Texaco, now Chevron, in  
6 the BIT stay decision, reserved its  
7 rights to challenge under the New York  
8 recognition statute. The only way we  
9 can challenge the judgment under the  
10 New York recognition statute and they  
11 can't get around that, this is  
12 something that they said was, to this  
13 court, an agreement, they said it was  
14 our escape hatch that we could  
15 challenge under the New York  
16 recognition statute. If we don't have  
17 the right to come into court in New  
18 York to make sure that a New York  
19 court reviews the New York recognition  
20 statute, what do we have --  
21 HON. LYNCH: But what if the New  
22 York statute does not recognize a  
23 cause of action to do that? What if  
24 the New York statute only authorizes  
25 the defense which you have reserved in  
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2 the event it should become relevant?  
3 MR. MASTRO: But your Honor,  
4 again, the New York recognize statute  
5 makes plain that these are defenses to  
6 enforcement of a judgment. We have a  
7 ripe controversy under the Declaratory  
8 Judgment Act.  
9 HON. LYNCH: But even assuming  
10 that you did, what gives you have the  
11 right to a declaratory judgment under  
12 New York law to anything beyond the  
13 statement that this judgment is not  
14 enforceable in New York under the New  
15 York statute? Assume you could get  
16 that. Assume that you can demonstrate  
17 first it is a ripe controversy, that  
18 it is for declaratory judgment, and  
19 the true answer under New York law is  
20 that this judgment is not enforceable  
21 in New York.  
22 MR. MASTRO: Yes, your Honor.  
23 HON. LYNCH: What in the New York  
24 law authorizes broader relief than  
25 that?  
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2 MR. MASTRO: Your Honor, the  
3 federal court, in entertaining a ripe  
4 declaratory judgment action, obviously  
5 has the inherent authority right to  
6 protect its jurisdiction, to prevent  
7 vexatious bad faith litigation, and  
8 most importantly to prevent a fraud  
9 from being effected.

10 HON. LYNCH: What would be  
11 vexatious to go to a country where the  
12 judgment might be enforceable under  
13 that country's law because the New  
14 York court has decided that it's not  
15 enforceable under New York law? Why  
16 is that vexatious litigation rather  
17 than just the right to go to a forum  
18 where the law allows something that  
19 happens not to be allowed in New York?

20 MR. MASTRO: But your Honor, we  
21 know that the aim, as spelled out in  
22 the memo, is to bring these foreign  
23 litigations as vexatious litigation  
24 not necessarily to enforce because New  
25 York and the U.S. are, in fact, the

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2 jurisdictions where they could  
3 potentially satisfy the judgment, they  
4 would prefer to go to jurisdictions  
5 where they can disrupt Chevron's  
6 operations ex parte.

7 HON. POOLER: But isn't that  
8 their right to go and enforce the  
9 judgment?

10 MR. MASTRO: Not, your Honor,  
11 under circumstances such as this where  
12 knowingly procuring a judgment by  
13 fraud and then are going to use a  
14 vexatious litigation strategy to try  
15 and shake down a settlement or an  
16 extortion statement. No U.S. court  
17 should tolerate that kind of behavior,  
18 no U.S. court.

19 HON. POOLER: Why wouldn't the  
20 Venezuelan court itself look to the  
21 quality of the judgment? Do you know  
22 for a fact they wouldn't?

23 MR. MASTRO: They say in *Invictus*  
24 that they're going to try to find  
25 those jurisdictions where they can use

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2 their political connections in those  
3 courts to --

4 HON. LYNCH: No, no, no, I think  
5 what you quoted was that Patton Boggs  
6 would use its vaunted ability to have  
7 connections everywhere to find out  
8 what countries take what kinds of  
9 positions on this. That's what it  
10 said. What you quoted to us, that's

11 what it said.  
12 MR. MASTRO: They said much more  
13 than that, your Honor. They said they  
14 wanted to identify the path of least  
15 resistance, places that wouldn't have  
16 a jaundiced eye, they wouldn't look at  
17 whether the judgment was procured by  
18 fraud. And your Honor, to me, that  
19 fundamentally violates U.S. and New  
20 York policy, that we don't tolerate  
21 judgments procured by fraud, we don't  
22 tolerate judgments --  
23 HON. LYNCH: Anywhere in the  
24 world, New York is in charge of --  
25 excuse me, New York is in charge of  
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2 deciding that we will not tolerate a  
3 South African judgment being procured  
4 by fraud and enforced in Russia?  
5 MR. MASTRO: I think, your Honor,  
6 where there has been a reservation of  
7 rights, and their own counsel told you  
8 and the Southern District during the  
9 BIT case that there was an this was an  
10 agreement that the New York  
11 recognition statute would apply. I  
12 think that changes the equation.  
13 HON. WESLEY: Are you saying that  
14 in essence that stipulation is somehow  
15 a choice of law with regard to the  
16 stipulation, that somehow that  
17 stipulation has a broader sweep than  
18 just the particular prospect of coming  
19 back to New York and that that somehow  
20 you've imprinted New York law onto any  
21 ability to enforce the judgment  
22 anywhere in the world?  
23 MR. MASTRO: I believe, your  
24 Honor, that the parties committed that  
25 the New York recognition statute would  
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2 cover enforceability. And the only  
3 way to have that determination made  
4 and therefore hopefully to give it  
5 effect elsewhere around the world is  
6 for that determination to be made and  
7 that's a determination that Judge  
8 Kaplan is prepared to make. And if  
9 this temporary preliminary injunction,  
10 this is a status quo injunction were  
11 to be lifted, you will see, just like  
12 you saw a judgment come out of Ecuador  
13 in a matter of days, one hundred  
14 eighty-eight single spaced judgment as  
15 soon as a TR0 entered even though the  
16 judge there said he still had fifty  
17 thousand pages of the record to go,  
18 you will see that appeal decision come  
19 out in a red hot second and them  
20 trying to enforce around the world.  
21 We have a status quo injunction, your  
22 Honor.

23 HON. POOLER: We don't deal with  
24 predictions here, counsel. Your time  
25 is up.

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2 MR. MASTRO: I understand. Thank  
3 you very much, your Honors.  
4 I implore your Honors just one  
5 last point, if I may, please, your  
6 Honor? I implore your Honors to  
7 maintain the status quo injunction  
8 because there will be an opportunity  
9 for a full trial. But we had other  
10 claims in this case as well. It was  
11 severed at their request. But we had  
12 also RICO and fraud claims that would  
13 also have justified injunctive relief  
14 here based on the massive fraud that  
15 occurred here and Judge Kaplan should  
16 have the opportunity to decide whether  
17 injunctive relief is appropriate under  
18 those claims.

19 HON. LYNCH: If we were to  
20 reverse this order, speaking of  
21 predictions and what's going to happen  
22 in a red hot second, are you telling  
23 us that you would then go back to  
24 Judge Kaplan and ask to reactivate the  
25 RICO claims and seek the same

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2 injunction under those claims?

3 MR. MASTRO: Judge Kaplan didn't  
4 decide --

5 HON. LYNCH: I know, he didn't do  
6 anything with that because he severed  
7 it.

8 MR. MASTRO: I don't want to make  
9 predictions either.

10 HON. LYNCH: Oh, you don't want  
11 to predict what you'll do. You only  
12 want to predict what the Ecuadorian  
13 intermediate appellate court is sure  
14 to do, but you have no idea what  
15 you're going to do?

16 MR. MASTRO: Your Honor, I was  
17 simply trying not to have predictions  
18 about what this court might do, but if  
19 this court were to alter the status  
20 quo vis-a-vis the dec relief action,  
21 I think that we would have every right  
22 to go back to Judge Kaplan and we  
23 would ask your Honors to give us that  
24 opportunity to maintain the status quo  
25 while we did that. But we very

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2 strongly believe that it was perfectly  
3 appropriate under these circumstances  
4 for him to enter a status quo  
5 injunction and that this would



6 benefit this court would benefit in  
7 just a few weeks from now having a  
8 full trial record where there would be  
9 a full record of the full extent of  
10 the fraud here, the full extent of the  
11 lack of impartiality and due process  
12 in Ecuador, and that this court should  
13 decide this case on that kind of a  
14 full record, not alter a status quo  
15 injunction.

16 HON. LYNCH: I was just wondering  
17 if any instructions to Judge Kaplan  
18 with respect to what the law is with  
19 respect to the New York foreign  
20 judgment act would leave Judge Kaplan  
21 on his own with respect to what might  
22 be appropriate under RICO.

23 MR. MASTRO: And clearly there's  
24 the ability to give injunctive relief  
25 under RICO and under common-law fraud.

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2 Thank you very much, your Honor.

3 HON. POOLER: Thank you.

4 Mr. Tyrell, you've reserved

5 three minutes for rebuttal.

6 MR. TYRELL: Thank you, your

7 Honors, a few quick points.

8 Judge Lynch said doesn't anyone  
9 plan for a judgment, hence the  
10 invocation of the Invictus memorandum.  
11 I'm rather proud of that. I suggest  
12 that it's in the record, the court  
13 read it it itself. It talks nothing  
14 about acting like Somali pirates. It  
15 talks about the kinds of opportunities  
16 that are available in the world to  
17 enforce judgment under the laws of  
18 various states, that's all it says, no  
19 matter what nefarious tone Judge  
20 Kaplan placed about it.

21 Mr. Mastro stands here and says,  
22 oh, my God, you're going to go ex  
23 parte and try to enforce that  
24 judgment. You mean like Mr. Mastro's  
25 done in sixteen federal courts around

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2 the state using 1782 which is allows  
3 you to go ex parte?

4 The important point is the memo  
5 and the plan, which was highly  
6 preliminary, was to be able to use the  
7 law, not the lack of law that is  
8 permitted in other countries. There  
9 is nothing wrong with that.

10 Judge Wesley made a comment  
11 about his experience on Christmas Eve.  
12 This court in China Trade made the  
13 following observation which I think is  
14 pertinent. It says an injunction is  
15 not appropriate merely to prevent a  
16 party from seeking slight advantages  
17 in the substantive or procedural law

18 to be applied in a foreign court.  
19 This court has always recognized that  
20 the judgment creditor has a right to  
21 seek procedural advantages where he  
22 goes and enforces his judgment.  
23 Judge Lynch asked a question of  
24 can you cite any case in which the  
25 Recognition Act was used

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2 affirmatively. I can tell you we've  
3 researched it and I'll give you a very  
4 clear answer. We can't find any at  
5 all. So it would be groundbreaking  
6 for this court to decide and affirm  
7 Judge Kaplan that it can be used  
8 affirmatively.

9 Judge Lynch also asked a  
10 question of Mr. Mastro which I picked  
11 up on in which he said so you're  
12 really not concerned about enforcement  
13 in New York; are you. Well, they  
14 can't be because of the stipulation  
15 and they couldn't have enforced it  
16 here before that anyway.

17 HON. LYNCH: Who stipulated that  
18 they weren't coming to New York?

19 MR. TYRELL: All of the  
20 Ecuadorian plaintiffs.

21 HON. LYNCH: But all of them  
22 haven't conveyed the stipulation that  
23 Mr. Mastro suggested with respect to  
24 not taking advantage of this Latin  
25 American treaty.

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2 MR. TYRELL: Right, we disagree  
3 that the Latin -- no, they have not  
4 made any such stipulation.

5 HON. LYNCH: Well, when you say  
6 you disagree with whether that is  
7 authorized, if you think it's not  
8 authorized, why would there be any  
9 problem with doing what Judge Wesley  
10 suggested which is all the plaintiffs  
11 stipulate that they aren't going to do  
12 something that you said they couldn't  
13 do anyway. I think that's a pretty  
14 small concession to make.

15 MR. TYRELL: Your Honor, there is  
16 nothing wrong with it. And if I had  
17 the authority today when I'm  
18 representing two to get the approval  
19 from the people that represent the  
20 forty-five, I'm willing to go and ask  
21 them.

22 The point is what stipulation  
23 was asked of us. The stipulation that  
24 was demanded of us was not that of  
25 Judge Kaplan. Judge Kaplan asked us

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2           to stipulate to the permanent -- to  
3           the entry of the preliminary  
4           injunction for an indefinite period of  
5           time, in short waiving our appellate  
6           rights in order to get a fair amount  
7           of time to respond to the preliminary  
8           injunction here.  
9           HON. LYNCH: Mr. Mastro today  
10          suggested that at least this of the  
11          many, many, many disputed issues  
12          between the parties would perhaps  
13          disappear, at least this advantage  
14          that he is pressing that he says -- I  
15          understand you disagree -- that in  
16          Latin American countries specifically  
17          this judgment could be enforced today.  
18          He's asking that the plaintiffs, the  
19          Lago Agrico plaintiffs stipulate that  
20          they need to do something that you say  
21          they can't do anyway. I don't know  
22          what the other members of the panel  
23          think but I'd be interested in seeing  
24          whether we get a letter in some  
25          reasonable period of time saying that

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2           sure, they'll do that.  
3           HON. WESLEY: I was going to ask,  
4           is it conceivable that you could or  
5           are you willing to contact the other  
6           forty-five and see if they will  
7           stipulate to not enforcing the  
8           Ecuadorian judgment until the  
9           appellate process in Ecuador has run  
10          its course?  
11          MR. TYRELL: I understand that  
12          request and we'll get back to the  
13          court with a letter.  
14          HON. WESLEY: I know your red  
15          light is on, but I want to ask you a  
16          couple of questions.  
17          You raised a personal  
18          jurisdictional objection under the  
19          law?  
20          MR. TYRELL: Yes.  
21          HON. WESLEY: And I read the  
22          complaint. The complaint, although  
23          doesn't necessarily track what Judge  
24          Kaplan said, pretty much premises the  
25          jurisdictional determination on the

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2           fact that the plaintiffs have appeared  
3           on other occasions with regard to  
4           actions in New York; is that correct?  
5           MR. TYRELL: The answer is it is  
6           based on two things. There were four  
7           actions in New York. Three of them  
8           were completely defensive. They  
9           appeared, the Ecuadorian plaintiffs --  
10          HON. WESLEY: I was going to get  
11          to what their status was. But as to  
12          plaintiffs, as to being plaintiffs --

13 MR. TYRELL: Only Aguinda, only  
14 the original eighteen year ago action  
15 in Aguinda was their only affirmative  
16 invocation of this court.

17 HON. WESLEY: They intervened in  
18 the arbitration but the arbitration  
19 has been resolved, the mandate's been  
20 issued, there's no more proceeding in  
21 that; is that the case?

22 MR. TYRELL: That's correct. An  
23 they had continued to try to not lose  
24 their privileges in the Donziger 1782  
25 action. That's why they stepped in.

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2 They said we shouldn't forfeit  
3 eighteen years of our attorney-client  
4 communications. They did it  
5 defensively.

6 HON. WESLEY: I understand  
7 the 1782 objection. I'm also  
8 interested in just a couple of other  
9 things. It seems clear that although  
10 in New York -- and maybe it's foolish  
11 to say that an individual couldn't do  
12 business in New York. I would  
13 strongly suspect the New York Court of  
14 Appeals would tell us that. But in  
15 doing this, in your view, were your  
16 clients doing business in New York?

17 MR. TYRELL: Absolutely not, your  
18 Honor. And the only analysis of it --  
19 for either purposes of general or  
20 specific jurisdiction.

21 And if I may respond to you in  
22 two ways, the only thing that Judge  
23 Kaplan hangs his hat on is to say that  
24 all of the actions of Mr. Donziger who  
25 happens to maintain his home and an

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2 office in his home in New York, that  
3 that is transacting business by my two  
4 clients in New York, there isn't a  
5 single suggestion that they aimed any  
6 communication here, there isn't even  
7 anything in the record to suggest that  
8 my two, as distinct from the  
9 Ecuadorian lawyer, ever spoke  
10 personally with Mr. Donziger.

11 HON. WESLEY: Well, transacting  
12 business when -- when hiring a lawyer  
13 to represent you someplace else and  
14 then the lawyer having a dispute with  
15 you about a fee, that's the Fishbar  
16 case, that's an appellate decision  
17 just a couple of years ago, that's 303  
18 and all there has to be a substantial  
19 nexus in the activities because the  
20 transaction of business and the  
21 dispute. Here it seems to me that  
22 Kaplan has said that because Mr.  
23 Donziger sought out financing to  
24 further the lawsuit in Ecuador, that

25 that was transacting business on  
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2 behalf of your clients.  
3 What's your view on that?  
4 MR. TYRELL: We disagree strongly  
5 with that.  
6 First of all, there's no  
7 suggestion that my two clients knew  
8 anything about what Mr. Donziger was  
9 doing. There's no connection  
10 whatsoever. My clients basically are  
11 indigenous people living in the jungle  
12 in Ecuador. They have never probably  
13 -- they have never authorized Mr.  
14 Donziger to go seek funding for them.  
15 There's no evidence to that  
16 whatsoever. And you're focusing on  
17 the first prong. Of course on the  
18 second prong, if it was specific  
19 jurisdiction, the case would have to  
20 arise out of it. Here the issue, of  
21 course, can't.  
22 HON. WESLEY: Well, there has to  
23 be a substantial nexus between the  
24 activity and the claim asserted.  
25 MR. TYRELL: And the claim here  
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2 is that the Ecuadorian court system is  
3 corrupt and that the judgment was  
4 obtained by fraud. That wasn't done  
5 in New York. The Ecuadorian court  
6 system is or is not corrupt. That has  
7 nothing to do with New York.  
8 HON. WESLEY: Fair enough. Thank  
9 you.  
10 MR. TYRELL: Thank you very much.  
11 HON. POOLER: Thank you, counsel.  
12 Thank you all very much. We'll  
13 reserve judgment on the mandamus  
14 motion.  
15 MR. TYRELL: Your Honor, if I may  
16 break my rule, we intended but I  
17 forgot to, to renew our request for  
18 the stay of the proceedings in the  
19 district court in light of the  
20 argument.  
21 HON. POOLER: Thank you.  
22 We'll let the room clear out and  
23 we'll turn to our next matter.  
24 (TIME NOTED: 11:17 a.m.)  
25  
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