STAY CURRENT
A Client Alert from Paul Hastings

PAUL HASTINGS

February 2012

Second Circuit Issues Two Key Enforcement Rulings

BY JAMES E. BERGER & CHARLENE SUN

On January 26, 2012, the U.S. Court of Appeals for the Second Circuit issued its long-anticipated ruling in *Chevron Corp. v. Naranjo*,[1] in which it previously vacated an anti-enforcement judgment prohibiting a group of Ecuadorian plaintiffs from seeking to enforce an $18 billion judgment anywhere outside of Ecuador. The Second Circuit's decision in *Chevron* comes just over a month after its equally significant ruling in *Figueiredo v. Republic of Peru*,[2] in which the Court ordered a proceeding brought under the Inter-American Convention on International Commercial Arbitration (the "Panama Convention")[3] dismissed on *forum non conveniens* grounds. We briefly summarize and analyze each of these significant decisions below.

ANTI-ENFORCEMENT INJUNCTIONS:

Chevron Corp. v. Naranjo, ___ F.3d ___, 2012 WL 232965 (2d Cir. Jan. 26, 2012)

The Second Circuit's decision in *Chevron* represents the latest development in the legal battle — ongoing for almost twenty years — between citizens of Ecuador and Chevron over alleged environmental harm resulting from oil exploration activities in the Lago Agrio region of the Ecuadorian Amazon. In 1993, a putative class of Ecuadorian citizens (the "Lago Agrio Plaintiffs") commenced an action against Texaco, Inc. ("Texaco") in the U.S. District Court for the Southern District of New York (the "*Aguinda*" action), seeking billions of dollars in damages as a result of alleged environmental damage that the plaintiffs contended was caused by Texaco, a subsidiary of which had engaged in petroleum exploration and drilling activities between 1964 and 1992.[4] Texaco promptly moved to dismiss the *Aguinda* action on a number of grounds, including *forum non conveniens* and the plaintiffs' failure to join the Republic of Ecuador ("ROE") and Petroecuador as indispensable parties. The district court dismissed the *Aguinda* action on *forum non conveniens* grounds, and the Second Circuit affirmed.[5] In connection with the dismissal of the *Aguinda* action, Texaco agreed to submit to the jurisdiction of the Ecuadorian courts (which it had argued were a more suitable forum for the case) in connection with the *Aguinda* claims, but specifically reserved its right to contest the validity of any judgment resulting from Ecuadorian proceedings.

Following the Second Circuit's dismissal of the *Aguinda* case on forum grounds, a group of Ecuadorian plaintiffs (including many of the original *Aguinda* plaintiffs) commenced suit against Chevron and Texaco in Lago Agrio, Ecuador. The Lago Agrio litigation was characterized by disputes about the propriety of expert reports, allegations of political interference in the proceedings by Ecuadorian officials (including the President of Ecuador), and changes in the makeup and constitution of the Ecuadorian judiciary. The Lago Agrio court rendered its judgment on February 14, 2011. That judgment awarded the plaintiffs a total of over US$18 billion. Of this sum, $8.646 billion was characterized as compensatory damages; an additional amount equal to ten percent of the

compensatory award that would be paid to the Amazon Defense Fund ("ADF"), an organization purporting to represent the plaintiffs; and punitive damages equal to the compensatory award, which the Court held would be imposed unless Chevron issued a "public apology" to the plaintiffs within fifteen days, something it did not do.

On February 1, 2011, just prior to the Lago Agrio court's issuance of the judgment, Chevron commenced suit against the Lago Agrio plaintiffs (the "LAPs"), their American lawyer, one of the environmental consulting firms that assisted the plaintiffs in the Lago Agrio case, and four groups affiliated with the plaintiffs (including ADF). Chevron's complaint included claims under the Civil RICO statute, related state tort claims sounding in tortious interference with contract, fraud, civil conspiracy, unjust enrichment, claims against the lawyers concerning their conduct of the case, and a declaration that the Lago Agrio judgment is not entitled to recognition in the United States or anywhere else. In connection with its claim for a declaratory judgment, Chevron sought a preliminary injunction seeking to prohibit the LAPs from enforcing their judgment anywhere outside Ecuador.

Judge Lewis Kaplan granted Chevron's motion in a 127-page decision that held that Chevron was likely to succeed on the merits of its action seeking a declaration that the Ecuadorian judgment was unenforceable under the Uniform Foreign Country Money Judgments Act, and that any enforcement actions undertaken by the LAPs posed a risk of irreparable injury to Chevron.[6] As a result, it preliminarily enjoined the LAPs from pursuing any enforcement proceedings outside Ecuador. The district court's grant of the injunction relied extensively on evidence concerning the LAPs' conduct of the Lago Agrio case,[7] as well as findings that the LAPs had a strategy of seeking prompt enforcement of the judgment, that such a strategy was specifically intended to coerce Chevron into settling the case quickly in order to avoid harm to its corporate goodwill and business relationships, and that in the absence of an injunction, the LAPs might achieve this goal through asset seizures that would disrupt Chevron's supply chain and cause it to miss deliveries that would damage its goodwill. In considering the potential irreparable injury to Chevron, the district court observed that:

> injunctions to restrain a multiplicity of suits [in cases of vexatious litigation] . . . are not only permitted, but favored, by the courts." This is so largely because a multiplicity of suits has *in terrorem* value — it forces its target needlessly to defend itself in many fora and thus creates settlement pressures above and beyond anything warranted by the merits.[8]

The LAPs appealed Judge Kaplan's decision.

The Second Circuit vacated Judge Kaplan's order on September 19, 2011, stating that it would issue an opinion at a later time. On January 26, 2012, the Court issued a 30-page decision dismissing Chevron's declaratory judgment cause of action (upon which the injunction was based) in its entirety. The court's decision was based upon its view that New York's Uniform Foreign Money Judgments Act (the "Foreign Judgments Act") — upon which Chevron relied for its request for declaratory and injunctive relief — did not permit a judgment debtor to preemptively challenge a foreign judgment by seeking to establish that judgment's unenforceability. Specifically, the court stated:

> Whatever the merits of Chevron's complaints about the Ecuadorian courts, however, the procedural device it has chosen to present those claims is simply unavailable: The Recognition Act nowhere authorizes a court to declare a foreign judgment unenforceable on the preemptive

> suit of a putative judgment-debtor. The structure of the Act is clear. The sections on which Chevron relies provide *exceptions* from the circumstances in which a holder of a foreign judgment can obtain enforcement of that judgment in New York; they do not create an affirmative cause of action to declare foreign judgments void and enjoin their enforcement.
>
> * * *
>
> Challenges to the validity of foreign judgments under the [Foreign Judgments] Act can occur only after a bona fide judgment-creditor seeks enforcement in an "action on the judgment, a motion for summary judgment in lieu of complaint, or in a pending action by counterclaim, cross-claim or affirmative defense," and not before.[9]

In finding that the Foreign Judgment Act may not be affirmatively used by a judgment debtor, the court noted that both the Act and the common law principles upon which it was based were "motivated by an interest to *provide for* the enforcement of foreign judgments, not to prevent them," and that the Act "'was designed to promote the efficient enforcement of New York judgments abroad by assuring foreign jurisdictions that their judgments would receive streamlined enforcement' in New York."[10] The court concluded its discussion of the Foreign Judgments Act by noting that:

> The existence of [] an enforceable [foreign] judgment is a *necessary* condition that must precede the invocation of the [Foreign Judgments Act]; it is not, as we have just explained, a sufficient condition. There is thus no legal basis for the injunction that Chevron seeks, and, on these facts, there will be no such basis until judgment-creditors affirmatively seek to enforce their judgment in a court governed by New York or similar law.[11]

The court found that international comity concerns provided further support for its conclusion, noting that:

> the New York legislature, in enacting the [Foreign Judgments Act], sought to provide a ready means for foreign judgment-creditors to secure routine enforcement of their rights in the New York courts, while reserving New York's right to decline to participate in the enforcement of fraudulent "judgments" obtained in corrupt legal systems whose courts failed to provide the basic rudiments of fair adjudication. In doing so, New York undertook to act as a responsible participant in an international system of justice — not to set up its courts as a transnational arbiter to dictate to the entire world which judgments are entitled to respect and which countries' courts are to be treated as international pariahs.[12]

And while noting that an inquiry into the suitability of other nations' courts is a necessary aspect of the enforcement system established under the Foreign Judgments Act, the court added:

> But when a court in one country attempts to preclude the courts of every other nation from ever considering the effect of that foreign judgment, the comity concerns become far graver. In such an instance, the court risks disrespecting the legal system not only of the country in which the judgment was issued, but also those of other countries, who are inherently assumed insufficiently trustworthy to recognize what is asserted to be the extreme incapacity of the legal system from which the judgment emanates. The court presuming to issue such an injunction sets itself up as the definitive international arbiter of the fairness and integrity of the world's legal systems.[13]

Interestingly, the Court noted that its long-established framework for international anti-suit injunctions — set forth in China Trade — was not implicated, since the injunction at issue was an "anti-enforcement" rather than an "anti-suit" injunction. And while clearly highlighting the comity concerns that the district court's injunction would create, the court's decision can rest entirely on its view that the Foreign Judgment Act neither contemplates nor permits actions by a judgment debtor to preemptively declare a foreign judgment unworthy of recognition. By basing its ruling on the Foreign Judgments Act, the Second Circuit's ruling does not affect China Trade or the authority of Second Circuit courts to enter anti-suit injunctions designed to protect their jurisdiction and judgments from vexatious foreign litigation.

FORUM NON CONVENIENS AS DEFENSE TO RECOGNITION OF INTERNATIONAL ARBITRAL AWARD:

***Figueiredo Ferraz Engenharia de Projeta Ltda v. Republic of Peru Papt Parssa Pronap*, ___ F.3d ___, 2011 WL 6188497 (2d Cir. Dec. 14, 2011).**

Foreign parties seeking to avoid confirmation of arbitral awards in U.S. courts regularly seek to invoke the defense of *forum non conveniens*, a prudential doctrine designed to combat forum shopping and minimize inconvenience to defendants and the courts by allowing courts to dismiss actions that have little relationship to the United States. Until recently, only one Second Circuit decision — *In re Arbitration Between Monegasque de Reassurances S.A.M. v. Nak Naftogaz of Ukraine*[14] — had acknowledged the applicability of the doctrine to proceedings to recognize a foreign arbitral award, and the facts of that case, coupled with courts' subsequent and repeated refusals to dismiss enforcement proceedings on forum-based grounds, led many practitioners to regard *Monegasque* as an anomalous decision that would be confined to its facts. The Court of Appeals for the Second Circuit's recent decision in *Figueiredo*, however, forcefully undermines that perception, and should leave little question that the doctrine poses a significant (and unpredictable) obstacle to any attempt to confirm, under either the New York or Panama Convention, foreign arbitral awards rendered against non-U.S. parties in Second Circuit courts.

Figueiredo concerned an attempt to enforce, under the Inter-American Convention on International Commercial Arbitration ("Panama Convention"),[15] an arbitral award rendered in Peru. The case involved a dispute over a consulting agreement entered into by the plaintiff, a Brazilian corporation hired to prepare engineering studies on water and sewage services in Peru, and a number of Peruvian government entities, including the Republic of Peru, the Ministry of Housing, Construction and Sanitation, and the Programa Agua Para Todos. The agreement designated the plaintiff as a domiciliary of Peru, and required arbitration of any disputes in Peru. Following a fee dispute, the plaintiff commenced arbitration in Lima against the government entities and, in 2005, was awarded

over $21 million, more than the amount of the contract. In October 2005, the Court of Appeals in Lima upheld the award, rejecting the Ministry's argument that the plaintiff's recovery was limited to the amount of the contract because the arbitration was an "international arbitration" involving a non-domestic party. To the contrary, the Peruvian court found that the arbitration was a "national arbitration" involving only domestic parties, and that the equitable award was allowed under Peruvian law. While the Lima court's decision required the defendants to pay the judgment, their obligation — and ability — to do so was limited by a Peruvian statute that prohibited any of them from paying more than three percent of their annual budget toward the judgment. This statute was designed to limit the amount of annual expenditures public agencies could devote to satisfying judgments.

In January 2008, the plaintiff filed a petition in the Southern District of New York seeking confirmation of the award and judgment for $21,607,003. The defendants interposed various defenses, including that the action was barred by the doctrine of *forum non conveniens*. The doctrine of *forum non conveniens* represents a narrow prudential exception to the well-established principle that federal courts have an "unflagging obligation" to adjudicate cases over which they have jurisdiction, and permits a court to decline to exercise its jurisdiction — and to dismiss a proceeding — on the grounds that "trial [of the case] in the chosen forum would 'establish . . . oppressiveness and vexation to a defendant . . . out of all proportion to plaintiff's convenience,' or when the 'chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems."[16] The district court denied the defendants' motion to dismiss and confirmed the award, based at least in part upon its finding that Peru had assets in the United States that could be executed in aid of the judgment, and noting further that those assets could only be executed in the United States, which rendered Peru an unsuitable alternative forum.[17]

The Second Circuit reversed, finding that the district court's refusal to dismiss the case on forum grounds constituted an abuse of discretion. Applying the standard test for *forum non conveniens*, the court first considered the adequacy of Peru as an alternative forum. It rejected the district court's determination that Peru was inadequate, reasoning that "the adequacy of the alternate forum [in this context] depends on whether there are some assets of the defendant in the alternate forum, not whether the precise asset located [in the United States] can be executed upon there."[18] Thus, in the Second Circuit's view, the inability of a Peruvian forum to attach assets located in the United States did not render that forum inadequate; the presence of executable assets rendered Peru a suitable alternative forum, even if the plaintiff would recover less than the full award amount in Peru. Specifically, the court stated that "[i]t is no doubt true that only a United States court may attach a defendant's particular assets located here, but that circumstance cannot render a foreign forum inadequate. If it could, every suit having the ultimate objective of executing upon assets located in this country could never be dismissed" on forum grounds.[19] The court added:

> Where adequacy of an alternative forum is assessed in the context of a suit to obtain a judgment and ultimately execution on a defendant's assets, the adequacy of the alternate forum depends on whether there are some assets of the defendant in the alternate forum, not whether the precise asset located here can be executed upon there. [20]

The most notable aspect of the court's decision was its consideration of the public interest factors that courts must address when considering a motion to dismiss for *forum non conveniens*. The Supreme Court has held that the *forum non conveniens* inquiry necessarily involves consideration of both private (designed to determine the level of inconvenience to the parties) and public (designed to determine the level of inconvenience to the court and the appropriateness of its hearing the case)

factors. In addressing these factors, the Second Circuit found that Peru's statute capping the government's annual repayment of a judgment was "a highly significant public factor warranting FNC dismissal." According to the court, the cap statute was also relevant to comity and abstention concerns raised by the defendants, as "[t]he rate at which public funds may be disbursed to satisfy public obligations is surely 'intimately involved with sovereign prerogative'" and thus exclusively within the Peruvian courts' domain. The court stated:

> We agree with the Appellants that the cap statute is a highly significant public factor warranting FNC dismissal. Although it obviously has special significance for one of the parties in this litigation, Peru, and to that extent differs from public factors such as court congestion, which are independent of particular litigants, there is nonetheless a public interest in assuring respect for a sovereign nation's attempt to limit the rate at which its funds are spent to satisfy judgments.[21]

In reaching this conclusion, the court specifically rejected the plaintiff's argument that a forum dismissal was inappropriate in light of the strong federal policy favoring the enforcement of arbitration awards. While noting that bedrock policy, and noting further that enforcement of international awards is "specifically contemplated by the Panama Convention," the court found that the "significant public factor" of Peru's cap statute outweighed the policies underlying the Panama Convention such that the cap mandated dismissal. The court further brushed aside the plaintiff's argument that the grounds for non-recognition of an arbitral award set forth in the Panama Convention are exclusive; on this point, the court noted that *forum non conveniens* is a doctrine of procedure that, under Article 4 of the Convention, may properly be applied in any action brought under the Panama Convention and Article 3 of the FAA, pursuant to which the Convention is implemented in the United States. As it has in other cases (such as in the *Chevron* case discussed above), the court ruled that dismissal should be made contingent upon the defendants' consent to suit in Peru, including waiver of any applicable statute of limitations.

The court's decision brought a lengthy and strong dissent from Circuit Judge Lynch. While recognizing that the Second Circuit had, in *Monegasque*, held that courts may consider forum-based defenses in proceedings to confirm arbitral awards, Judge Lynch questioned that premise, going so far as to suggest that *Monegasque* had been wrongly decided and favorably noting the suggestion, made by several commentators, that the court's decision in *Monegasque* may have constituted a breach by the United States of its obligations under the New York and Panama Conventions. Judge Lynch recounted the circumstances that led to the adoption and ratification of the Panama Convention, and specifically the widespread recognition that "international arbitration is viable only if the awards issued by arbitrators can be easily reduced to judgment in one country or another and thereby enforced against the assets of the losing party," and opined that the majority's ruling would undermine the Convention's effectiveness by erecting hurdles to enforcement that have nothing to do with the grounds for nonrecognition set forth in the Convention itself.[22] He stated:

> Given that *forum non conveniens* is not listed as a defense to enforcement in either the New York or the Panama Convention, a strong case can be made that, by acceding to the treaties, the United States has made the doctrine inapplicable to enforcement proceedings that they govern. Moreover, because *forum non conveniens* is a discretionary doctrine that resists attempts "to catalogue the

> circumstances which will justify or require either grant or denial of [the] remedy," its application in these circumstances would seem to dramatically undercut the treaty drafters' efforts to foster confidence in the reliability and efficacy of international arbitration.[23]

Further, Judge Lynch argued that the application of *forum non conveniens* in Convention proceedings would undermine the Convention's goal "to unify the standards by which" arbitration agreements are applied and awards enforced,[24] noting specifically that because civil law nations do not recognize the doctrine, its application in the United States is inconsistent with the Convention's goal of uniformity and consistency.

Judge Lynch also disagreed with the majority's treatment of the Peruvian cap statute as a "public factor" warranting consideration in the *forum non conveniens* analysis. Specifically, he noted that the Supreme Court has held that "the consideration of where a judgment may be most enforceable is a legitimate criterion for a plaintiff to consider in choosing a forum"[25] and that under the Supreme Court's decision in *Piper*, "[t]he possibility of a change in substantive law should ordinarily not be given conclusive or even substantial weight in the *forum non conveniens* inquiry."[26] Given these principles, Judge Lynch concluded that the majority had reached its preferred conclusion through "sleight of hand," ignoring the general rule against considering substantive law in its adequacy analysis by transforming those substantive legal principles into "public interest factors" when the party objecting to the U.S. forum is a sovereign seeking the protection of its own laws. Summing up his discussion of the public interest factors and their proper application, Judge Lynch observed:

> But however these factors cut, none of them is remotely analogous to Peru's interest in enforcing its three-percent limitation. The public factors cited by the Supreme Court, like the private interest factors, relate to the balance of conveniences — that is, to neutral reasons why it makes sense to hold a judicial proceeding in one country rather than another. The majority correctly appreciates that the plaintiff's desire to obtain a *larger* recovery is not a reason to *reject* application of forum non conveniens. Why then should a defendants' desire to avoid payment by forcing the case into a forum in which the plaintiff's recovery will be *smaller* be a reason to *embrace* it? The hopes of one party to the litigation that it will more easily prevail in the litigation are not transformed into "public factors" simply because that party is a sovereign state.[27]

Judge Lynch performed his own *forum non conveniens* analysis, ultimately concluding that the plaintiff's decision to seek enforcement of its arbitration award in the United States could in no way be considered "oppressive" or "vexatious" so as to warrant dismissal based on *forum non conveniens*. Noting that the district court's decision was subject to abuse of discretion review, he expressed particular disagreement with the majority's finding that the district court's decision "cannot be located within the range of permissible decisions."[28]

Figueiredo is a significant decision. Foreign parties seeking to avoid confirmation of an arbitration award almost reflexively invoke forum non conveniens as a defense, and prior to *Figueiredo*, the only support for doing so was *Monegasque* — a case with unusual and easily distinguishable facts that, while cited frequently in support of forum arguments, established a high bar for dismissal. Unlike *Monegasque*, the Second Circuit's decision in *Figueiredo* threatens to inject significant uncertainty in

arbitral confirmation proceedings, particularly in cases involving sovereign defendants. Under the plain logic of the majority's decision, a sovereign defendant may be able to provide itself (or its subordinate agencies and instrumentalities) with the ability to circumvent U.S. jurisdiction by adopting protective legislation and then claiming that the unavailability of the legislation's protections in U.S. proceedings renders the U.S. an inconvenient forum in which to litigate; even non-sovereign defendants are likely to try to seize upon *Figueiredo* as a basis for claiming that because litigation in the U.S. may leave them unable to invoke protective legal regimes available to them in their home jurisdiction, litigation in the U.S. is unduly burdensome. And as *Figueiredo* shows, this result may obtain even where the state has potentially executable assets in the United States that could be used to satisfy the arbitral award at issue. In all, it seems clear that *Figueiredo* will inject considerable uncertainty into proceedings to recognize foreign arbitral awards, despite the fact that such proceedings are governed by a treaty designed to remove the influences of national law from the recognition process and ensure that arbitral awards are enforced swiftly.

The majority in *Figueiredo* specifically declined to follow the District of Columbia Circuit's decision in *TMR Energy Ltd. v. State Property Fund of Ukraine*,[29] in which the D.C. Circuit held that where a particular asset could only be executed in the United States, the foreign forum was necessarily inadequate. Of course, the fact that the Second Circuit majority rejected the D.C. Circuit's rule raises the possibility that the Supreme Court may ultimately seek to resolve the conflict, especially if it finds that the availability of *forum non conveniens* as a defense in New York and/or Panama Convention proceedings implicates the United States' legal obligations under those treaties.

✧ ✧ ✧

New York Litigation associate Jena Sold assisted in the preparation of this alert.

If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings New York lawyers:

James E. Berger
1.212.318.6450
jamesberger@paulhastings.com

Charlene Sun
1.212.318.6703
charlenesun@paulhastings.com

[1] *Chevron Corp. v. Naranjo*, ___ F.3d ___, 2012 WL 232965 (2d Cir. Jan. 26, 2012).

[2] *Figueiredo Ferraz E Engenharia de Projeto Ltda. v. Rep. of Peru Papt Parssa Pronap*, ___ F.3d ___, 2011 WL 6188497 (2d Cir. Dec. 14, 2011).

[3] 1438 U.N.T.S. 248, codified at 9 U.S.C. § 301 *et seq*.

[4] Texaco's operations in Ecuador were undertaken by Texaco Petroleum Company ("Tex-Pet"), a fourth-tier subsidiary of Texaco, Inc. In 1965, Tex-Pet undertook its operations in Ecuador through a consortium that was owned in equal shares by Tex-Pet and GulfOil Corp. In 1974, the Ecuadorian state-owned oil company assumed GulfOil's interests in the consortium; Petroecuador and the Republic of Ecuador became the majority owner of the consortium in 1976, and Petroecuador became the sole owner of the consortium in 1992. Chevron acquired all the stock of Texaco, Inc. in 2001.

[5] *Aguinda v. Texaco, Inc.*, 303 F.3d 470 (2d Cir. 2002).

[6] *Chevron Corp. v. Donziger*, 768 F. Supp. 2d 581 (2011). Despite the fact that the injunction sought by Chevron would prevent the LAPs from commencing enforcement litigation, the district court did not apply the specific test for anti-suit injunctions set forth in *China Trade & Dev. Corp. v. M.V. Choong Yong*, 837 F.2d 33 (2d Cir. 1987) and its progeny, instead analyzing the motion under the standard test for preliminary injunctive relief, which in the Second Circuit requires a party seeking a preliminary injunction to demonstrate that it is likely to suffer irreparable injury in the absence of the injunction and either (a) a likelihood of success on the merits, or (b) sufficiently serious questions going to the merits and a balance of the hardships tipping decidedly in its favor. The district court only considered *China Trade* in connection with the LAPs' request that the district court dismiss or abstain from ruling on Chevron's claim on grounds of international comity.

[7] Specifically, the district court concluded that there was "ample evidence of fraud" in the Ecuadorian proceedings. This conclusion was based primarily on evidence that an expert report, prepared to quantify damages resulting from the alleged environmental harms, had been forged, and that a subsequent effort had been made to "cleanse" the report. The court found that the irregularities surrounding the preparation of the expert report from the judgment itself.

[8] *Donziger*, 768 F. Supp. 2d at 627 (footnote omitted).

[9] *Naranjo*, 2012 WL 232965, at *6 (quoting N.Y. C.P.L.R. § 5303).

[10] *Id.* at *7 (quoting *CIBC Mellon Trust Co. v. Mora Hotel Corp. N.V.*, 100 N.Y.2d 215, 221 (2003)).

[11] *Id.*

[12] *Id.*

[13] *Id.* at *9.

[14] 311 F.3d 488 (2002).

[15] 1438 U.N.T.S. 248, codified at 9 U.S.C. § 301 *et seq*.

[16] *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 (1981) (quoting *Koster v. Lumbermens Mut. Cas. Co.*, 330 U.S. 518, 524 (1947) (second alteration in original)).

[17] *Figueiredo Ferraz Consultoria E Engenharia de Projeto Ltda. v. Rep. of Peru*, 655 F. Supp. 2d 361, 375-76 (2009).

[18] *Figueiredo*, 2011 WL 6188497, at *4.

[19] *Id.* at *3.

[20] *Id.* at *4.

[21] *Id.* at *5.

[22] *Id.* at *7 (Lynch, J., dissenting).

[23] *Id.* at *8 (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)) (alteration in original) (citation omitted).

[24] *Id.* at *9 (quoting *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 (1974)) (internal quotation mark omitted).

[25] *Id.* at *15 (citing *Gilbert*, 330 U.S. at 508).

[26] Id. at *14 (quoting *Piper*, 454 U.S. at 247) (alterations in original) (internal quotation marks omitted).

[27] *Id.* at *17.

[28] *Id.* at *14 (quoting *Zervos v. Verizon N.Y., Inc.*, 252 F.3d 163, 169 (2d Cir. 2001)) (internal quotation marks omitted).

[29] 411 F.3d 296 (D.C. Cir. 2005).