

DEC 10 2007

No. 07-619

IN THE
Supreme Court of the United States

PT PERTAMINA (PERSERO), f/k/a PERUSAHAAN
PERTAMBANGAN MINYAK DAN GAS
BUMI NEGARA,

Petitioner,

v.

KARAH BODAS COMPANY, L.L.C.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether an anti-suit injunction, upheld by the United States Court of Appeals for the Second Circuit using the most restrictive standard available, was justified under that approach.
2. Whether a litigant who obstructs the important public policies of prompt enforcement of international arbitration awards and finality of litigation may be enjoined from continuing to do so.
3. Whether a federal district court has continuing “ancillary” subject matter jurisdiction to protect and effectuate its own and other federal courts’ judgments.

STATEMENT PURSUANT TO RULE 29.6

Respondent Karaha Bodas Company, L.L.C. certifies that its ultimate corporate parents are FPL Group, Inc., Caithness Energy, L.L.C., and P.T. Sumarah Dayasakti. Ten percent or more of the stock of Karaha Bodas Company, L.L.C. is indirectly owned by FPL Group, Inc., a publicly held company traded on the New York Stock Exchange.

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INTRODUCTION

Respondent Karaha Bodas Company, L.L.C. (“KBC”) respectfully submits this brief in opposition to the Petition for a Writ of Certiorari (the “Petition”) filed on November 8, 2007, by Petitioner PT Pertamina (Persero) (f/k/a Perusahaan Pertambangan Minyak Dan Gas Bumi Negara) (“Pertamina”). For all the reasons that follow, KBC respectfully submits that the decision of the U.S. Court of Appeals for the Second Circuit was correct in all respects, that there are no compelling reasons justifying a grant of certiorari by this Court, and that the Petition should be denied in its entirety.

COUNTER-STATEMENT OF THE CASE

Pertamina’s three prior attempts to bring this straightforward commercial dispute before this Court have all been rejected.¹ This fourth petition for

¹ See *Perusahaan Pertambangan Minyak Dan Gas Bumi Negara v. Karaha Bodas Co., L.L.C.*, 539 U.S. 904, 123 S. Ct. 2256, 156 L. Ed. 2d 113 (2003) (denying Pertamina’s petition for writ of certiorari to the U.S. Court of Appeals for the Second Circuit); *PT Pertamina (Persero) v. Karaha Bodas Co., L.L.C.*, 543 U.S. 917, 125 S. Ct. 59, 160 L. Ed. 2d 202 (2004) (denying Pertamina’s petition for writ of certiorari to the U.S. Court of Appeals for the Fifth Circuit); *PT Pertamina (Persero) v. Karaha Bodas Co., L.L.C.*, 127 S. Ct. 129, 166 L. Ed. 2d 35 (2006) (denying Pertamina’s petition for writ of certiorari to the U.S. Court of Appeals for the Second Circuit). On February 14, 2007, this Court also denied Pertamina’s emergency application requesting a stay of the disbursement injunction lifted the previous day by the U.S. Court of Appeals for the Second Circuit.

certiorari concerns Pertamina's improper attempt to use the courts of the Cayman Islands to nullify the arbitration award issued to KBC in 2000, as well as the final judgments of the U.S. District Court for the Southern District of Texas (the "Texas District Court") and the Fifth Circuit Court of Appeals (the "Fifth Circuit") confirming the award, and the final judgments of the U.S. District Court for the Southern District of New York (the "New York District Court") and the U.S. Court of Appeals for the Second Circuit (the "Second Circuit") enforcing that award.

On December 18, 2000, a Swiss Arbitral Tribunal issued its final decision awarding KBC \$261,166,654.92 (the "Award"). Pertamina refused to pay the Award, forcing KBC to commence confirmation and enforcement proceedings in the United States and abroad.² On December 4, 2001, the Texas District Court confirmed the Award and entered judgment in favor of KBC (the "Texas Judgment"). On October 22, 2004, the New York District Court issued a final judgment turning over to KBC the full amount of the Texas Judgment. The

² Pertamina's petition states repeatedly that the Texas District Court's judgment on the Award was "paid." It is important to note that Pertamina never voluntarily "paid" the award or resulting judgments. To the contrary, those judgments were satisfied only by virtue of the New York District Court's orders mandating a third party garnishee – Bank of America, which handles Pertamina's oil and gas revenues – to pay the judgment funds to KBC. These orders were preceded by years of contentious litigation and resistance by both Pertamina and the Indonesian Ministry of Finance.

Second Circuit summarily affirmed the New York District Court's October 2004 judgment in March 2006. On September 15, 2006, just days before this Court denied Pertamina's third petition for certiorari – a decision that would have resulted in the final distribution of the funds to KBC and that should have ended this litigation³ – Pertamina brought an entirely new lawsuit against KBC in the Cayman Islands (the "Cayman Action"). The Cayman Action sought, on the basis of a belated and meritless claim for "fraud," (a) to "vitate" the Award that the Texas District Court confirmed and that the New York District Court enforced, and (b) to enjoin KBC from using the Texas Judgment funds or distributing them to its stakeholders. The New York District Court properly viewed Pertamina's tactics as a direct threat to its jurisdiction and prior judgments (as well as to the finality of the Award and the Texas Judgment, which was registered in the New York District Court pursuant to 28 U.S.C. § 1963 at the outset of the enforcement proceedings). Consequently, on December 19, 2006, the New York District Court issued an order enjoining Pertamina from prosecuting the Cayman Action and from commencing new litigation in order to frustrate KBC's use of the Award proceeds and trap KBC in perpetual litigation. Importantly, the order also expressly protected Pertamina's right to freely

³ The New York District Court's turnover order was stayed pending adjudication of all appeals, so that no funds were actually turned over to KBC until this Court had denied Pertamina's and the Indonesian Government's respective petitions for certiorari in October 2006.

litigate its “fraud” defense in those courts that were already involved in this matter. That anti-suit injunction was upheld, with modifications, by the Second Circuit. The modified order of the Second Circuit was correct in enjoining Pertamina from continuing its perpetual litigation, and should be left undisturbed.⁴

COUNTER-STATEMENT OF THE FACTS

Pertamina’s intransigence has caused this straightforward case to take on a long and complicated procedural history. The anti-suit injunction on appeal represents the culmination of over nine years of arbitration and litigation in the United States and six other nations.

⁴ Recent events illustrate that Pertamina has no intention of discontinuing its campaign to “vitate” the judgment against it. On November 6, 2007 – two days prior to filing this fourth petition for certiorari in this matter – Pertamina’s chief executive officer, Ari Seomamo, stated that Pertamina “*will fight to the end, we will fight until the last drop of our blood.*” See “Pertamina to Appeal Karaha Case in U.S. Court – Officials” Reuters, Nov. 6, 2007 (emphasis added) (Attached at App. 1a, 2a). This approach characterizes Pertamina’s litigation conduct around the world, prolonging a straightforward commercial dispute into a nine-year procedural battle conducted in seven different countries. Courts around the world have uniformly condemned Pertamina’s litigation misconduct. See Declaration of James E. Berger, Dec. 10, 2007 (Attached at App. 4a) (quoting myriad judicial rebukes).

I. THE PRIOR PROCEEDINGS

A. The Project and the Arbitration

In 1994, KBC agreed with Pertamina to develop the Karaha Bodas geothermal energy project (the “Project”) in West Java, Indonesia. On January 10, 1998, the President of Indonesia issued a decree that effectively terminated the Project. The Project’s premature termination caused KBC to suffer substantial losses, and KBC accordingly initiated arbitration seeking damages of over \$600 million for its lost investment and lost profits. *See In re Karaha Bodas Co., L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 465 F. Supp. 2d 283, 285 (S.D.N.Y. 2006), *affirmed as modified by* 500 F.3d 111 (2d Cir. 2007). One of the most closely-contested issues during the arbitration was the size of the geothermal resource that KBC sought to develop. Pertamina argued that the geothermal yield of the Project was much lower than KBC claimed, and Pertamina cross-examined KBC’s witnesses and questioned the geothermal analyses KBC had prepared. Most notably, Pertamina expressly alleged that the principal documents prepared by KBC describing the size of the geothermal resource were “sham[s].”⁵ The Arbitral Tribunal considered and

⁵ Pertamina claims in its Petition that it “did not assert [in the Texas District Court proceedings] (because it did not then have proof) that KBC’s Notices had fraudulently misrepresented the extent of geothermal resource that KBC had confirmed” Ptn. at 6. That claim is demonstrably false. By its own admission, Pertamina had the documents it now touts as “proof” of KBC’s alleged fraud at the time
(continued...)

rejected Pertamina's fraud allegations,⁶ but agreed that the size of the resource may have been overestimated. *See Karaha Bodas Co. L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 500 F.3d 111, 113-14 (2d Cir. 2007). Thus, while the Tribunal found that KBC's geothermal projections were genuine, it nonetheless ruled largely in Pertamina's favor on the issue of the size of the resources, and reduced the amount of KBC's lost profits recovery by \$350 million. *See id.* On December 18, 2000, the Arbitral Tribunal issued its final decision awarding KBC \$261.1 million. *See Karaha Bodas Co., L.L.C.*, 465 F. Supp. 2d at 284.

B. The Confirmation and Annulment Proceedings

Pertamina has at all times adamantly refused to pay the Award, forcing KBC to commence confirmation and enforcement proceedings in the United States, Hong Kong, Singapore, and Canada. The courts of each of those nations have confirmed the Award. In the United

(...continued)

it moved in the Texas District Court for relief from the Texas Judgment under F.R.C.P. Rule 60(b).

⁶ The Second Circuit expressly found that Pertamina's fraud allegations were litigated before the Arbitral Tribunal and taken into consideration in determining the amount of the Award. *See Karaha Bodas Co. L.L.C. v. PT Pertamina*, 500 F.3d 111, 113-14 (2d Cir. 2007) ("The Swiss arbitral tribunal rejected Pertamina's allegations 'about the genuineness' of the information provided by KBC in support of its claims, but acknowledged the possibility that KBC's projections may have been 'overestimate[s].'"")

States, the Texas District Court confirmed the Award and entered judgment on December 4, 2001. The Texas Judgment was affirmed by the Fifth Circuit, whose order affirming the Texas Judgment this Court declined to review.⁷ In addition to vigorously opposing KBC's attempts to confirm the Award, Pertamina commenced annulment actions in the courts of Switzerland and Indonesia. Following the Swiss Supreme Court's dismissal of Pertamina's first annulment petition, Pertamina commenced a second annulment action in the courts of Indonesia, which was ultimately dismissed.⁸

In response to Pertamina's Indonesian annulment action, KBC sought and was granted an anti-suit injunction by the Texas District Court to prevent Pertamina from prosecuting the annulment action.⁹ On June 18, 2003, the Fifth Circuit vacated the Texas District Court's injunction on the ground that notions of international comity overrode any potential burdens arising from the Indonesian litigation. *See Karaha Bodas Co., L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 335 F.3d 357, 375-76 (5th Cir. 2003). Despite finding that "Pertamina is likely in the wrong here, and that Indonesia's injunction and

⁷ *See Karaha Bodas Co. L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 190 F. Supp. 2d 936 (S.D. Tex. 2001), *aff'd*, 364 F.3d 274 (5th Cir.), *cert. denied*, 543 U.S. 917 (2004).

⁸ *See Karaha Bodas Co., L.L.C.*, 500 F.3d at 114-15.

⁹ In March 2004, the Indonesian Supreme Court vacated the Indonesian trial court's order annulling the Award. *See Karaha Bodas Co., L.L.C.*, 500 F.3d at 115.

annulment may violate comity and the spirit of the [New York] Convention much more than would the district court's injunction," the Fifth Circuit held that because the Indonesian annulment action posed no threat to the Texas District Court's Judgment, international comity weighed in favor of allowing Pertamina to prosecute its Indonesian action.¹⁰ *Id.* at 373. Despite finding in Pertamina's favor, the Fifth Circuit's decision was harshly critical of Pertamina, stating: "Although it is always possible for Pertamina to pursue enforcement . . . in third countries, it seems extremely unlikely that any country would countenance such a claim, given Pertamina's dubious behavior throughout this process." *Id.* at 369. The Fifth Circuit further explained that Pertamina's pursuit of the Swiss annulment proceeding, its initial urging to the Texas District Court that Switzerland was the forum of primary jurisdiction, and its later abandonment of that position following the

¹⁰ While Pertamina alleges a circuit split arising in this same case based on the fact that the Fifth Circuit reversed the Texas District Court's earlier anti-suit injunction, the circumstances of that injunction are legally and factually distinct from those presently on appeal. The Fifth Circuit's decision expressly found that the Indonesian court's annulment of the Award posed no threat to the Texas Judgment because U.S. courts had the discretionary authority to "ignore" the Indonesian decision and allow KBC to recover the Award. In contrast, the Cayman Action poses an unmistakable threat to the New York District Court's (and the Texas District Court's) jurisdiction because it seeks a Mareva injunction and damages in the precise amount of the Award, essentially annulling that award by restraining KBC's use of the very funds that the New York District Court ordered turned over to KBC to satisfy the Award.

Swiss Court's dismissal of its annulment action were "sufficient grounds to find Pertamina's behavior dubious and somewhat deceptive." *Id.* at 369 n.50 (emphasis added).

C. The Execution Proceedings

On February 22, 2002, KBC registered the Texas Judgment in the New York District Court pursuant to 28 U.S.C. § 1963.¹¹ On several occasions during the four years of execution proceedings that followed, the New York District Court found that Pertamina's litigation conduct was animated by a strategy of delay.¹² There was never any doubt about Pertamina's intent:

¹¹ See *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 313 F.3d 70, 77 (2d Cir. 2002), *cert. denied*, 539 U.S. 904 (2003).

¹² In a decision issued April 30, 2007, the New York District Court sanctioned Pertamina \$500,000 for its bad-faith litigation conduct, finding that a Pertamina witness lied under oath in a deposition in an effort to frustrate the New York District Court from accurately ruling on the ownership of funds in New York bank accounts. See *In re an Arbitration Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, No. Civ. 21-MC-00098 (TPG), 2007 WL 1284903, at *6 (S.D.N.Y. April 30, 2007). The New York District Court invited KBC to make a further motion for sanctions covering Pertamina's misconduct that occurred after December 2004, when the original sanctions motion was filed. See Transcript of S.D.N.Y. Proceedings, Sept. 26, 2006, (Excerpt Attached at App. 63a, 62a)("[W]hat I am really looking for are lies, and there were some of those. And if that is repeated in this exercise there will be sanctions.") KBC filed an additional sanctions motion against Pertamina, but it has been stayed pending the outcome of this certiorari petition.

Pertamina's Finance Director, Alfred Rohimone, expressly stated in 2003 (when it was clear that payment of the Texas Judgment was likely unavoidable) that "what Pertamina is doing now is actually buying time. The objective is that KBC will be willing to negotiate so that the . . . claim can be reduced."¹³

II. THE CAYMAN ISLANDS LITIGATION AND THE ANTI-SUIT INJUNCTION

A. The Cayman Action

On September 15, 2006 – just two weeks before this Court denied Pertamina's third petition for certiorari¹⁴ – Pertamina filed a lawsuit against KBC in the Cayman Islands (the "Cayman Action"). Pertamina's pleadings in the Cayman Action sought to "vitiate" the Award as a result of purportedly "newly discovered" documents that Pertamina alleged were evidence that KBC fraudulently overstated the size of the geothermal resource of the Project.¹⁵ In its Cayman Action, Pertamina sought, *inter alia*, (a) an injunction prohibiting KBC from prosecuting any actions to enforce the Award (including the then-ongoing litigation in the New York District Court), (b) "damages" equal to any sums received by KBC pursuant

¹³ *Karuha Bodas Co. L.L.C.*, 465 F. Supp. 2d at 289.

¹⁴ See *FT Pertamina (Persero) v. Karuha Bodas Co., L.L.C.*, 127 S. Ct. 129, 166 L. Ed. 2d 35 (2006).

¹⁵ As discussed *supra* in footnote 1, this is precisely the same issue that was litigated and decided during the arbitration.

to the Award, and (c) a worldwide “Mareva” injunction freezing all of KBC’s assets up to the amount of the Award, plus interest.¹⁶

Despite the fact that the Cayman Action sought damages in the exact amount of the Award, and despite its express demand to “vitiate” the Award, Pertamina has refused to acknowledge that its Cayman Action was an attempt to annul the Award. Instead, Pertamina contends that the Cayman action is a separate and independent action, not one for annulment. *See Karaha Bodas, L.L.C.*, 500 F.3d at 122; *Karaha Bodas, L.L.C.* 465 F. Supp. 2d at 290. To counter the obvious issues regarding the timing of its “fraud” claim, Pertamina has claimed repeatedly that the documents underlying the Cayman Action were “recently discovered.” *See Karaha Bodas, L.L.C.*, 500 F.3d at 117. That claim is false. Pertamina admits that it received these documents in November 2002, but alleges that it never reviewed the documents until August 2005. *See id.* The New York District Court considered the claim that these were “newly discovered” documents to be dubious indeed, stating that “the idea that this is newly discovered evidence is so suspect that I just affirmatively say it is simply probably not true . . . I think the probabilities are very, very strong that this is a flat misrepresentation.”¹⁷

¹⁶ *See Karaha Bodas, L.L.C.*, 465 F. Supp. 2d at 289; *Karaha Bodas, L.L.C.*, 500 F.3d at 117.

¹⁷ Sept. 26 Tr. S.D.N.Y. (Excerpt Attached at App. 63a, 74a). Given Pertamina’s acknowledgement that it has already spent over \$20

(continued...)

**B. Pertamina's Concealment of the
Cayman Action from the New York
District Court**

At an August 25, 2006, hearing before the New York District Court regarding KBC's sanctions motion, KBC expressed concern that Pertamina was planning to initiate further litigation to hinder KBC's ability to receive the proceeds of the Texas Judgment. As a result, Judge Griesa asked Pertamina's counsel:

[W]hat about that? Is there any intention to have further litigation, or can we end it? If the Supreme Court denies cert., will the money simply be paid to KBC or not?

...

The question is, and I have absolutely good reason for asking such a question in view of the record here, I want to know, assuming the Supreme Court denies cert., I want to know if Pertamina will now agree to the payment of the judgment, which would mean the release of the funds which are now held to secure that judgment, immediate release.

...

(...continued)

million in legal fees in connection with its attempt to avoid paying the Award, it is simply not credible that these documents would have gone unreviewed for that long.

because even the possibility of further useless litigation is something that I want to be warned of, and I want to know if it's in the offing, in view of this long record which you are aware of.

Transcript of S.D.N.Y. Proceedings, Aug. 25, 2006, (emphasis added) (Excerpt Attached at App. 77a, 78a – 81a). Pertamina's counsel claimed in response that he could not answer the question. *See id.* at App.79a – 80a. In a letter sent on August 28, 2006, Pertamina further evaded the New York District Court's questions, stating that "in the event that the Supreme Court denies the pending petitions, and assuming that the Court issues a turnover order with respect to the restrained funds appropriate in form and amount, Pertamina will not object before this Court to the payment of the judgment."¹⁸ Pertamina – which has never denied that it was planning the Cayman Action at the time – did not disclose the Cayman Action when it submitted its letter. Judge Griesa found that "of course, Pertamina knew. It deliberately concealed its plan from this Court and deliberately failed to have its attorney disclose that plan in the August 28 letter. No other conclusion is possible."¹⁹ *Karaha Bodas, L.L.C.*, 465 F. Supp. 2d at

¹⁸ *See Letter to Judge Griesa from Henry Weisburg, Aug. 28, 2006 (Attached at App. 83a).*

¹⁹ That was not the first time that Pertamina lied to the New York District Court about the Texas Judgment. On April 19, 2004, in response to KBC's demand that Pertamina produce a deposition witness, Pertamina's former counsel wrote to the New York District
(continued...)

298. Given the subsequent filing of the Cayman Action, Judge Griesa properly found that Pertamina's letter constituted a "subterfuge" aimed at "deliberately conceal[ing]" its plan from the New York District Court. *See id.* at 298, 300.²⁰

(...continued)

Court stating that Pertamina "commits to pay the Texas Judgment in the event that its forthcoming writ of certiorari concerning the Fifth Circuit's decision is denied or otherwise unsuccessful." Letter from M. Slater to Judge Griesa, Apr. 19, 2004 (Attached at App. 85a, 86a). Based on this "promise," Pertamina asked the New York District Court to stay any further enforcement proceedings. When the Supreme Court later denied Pertamina's petition for certiorari, Pertamina reneged on its promise to pay. *See* Transcript of S.D.N.Y. Proceedings, Oct. 5, 2004 (Excerpt Attached at App. 88a, 89a) ("Your Honor . . . I regret that unfortunately I cannot effectuate that today and I cannot rely on the letter . . .").

²⁰ In hearing before the Second Circuit on May 21, 2007, Judge Cabranes questioned Pertamina's counsel regarding the deliberate concealment, stating:

JUDGE CABRANES: *Why would anyone use this curious locution before this Court if it wasn't to try to be evasive with respect to something that would transpire later? . . . I mean wouldn't the normally English language statement that if you intended to simply acquiesce to the district court's judgment and let the funds pass free and clear to KBC, you would have said something roughly like that. You wouldn't have seized upon this clever locution "not object before this Court the payment of the judgment."*

MR. SINGER: I don't know, Your Honor.

(continued...)

C. The Anti-Suit Injunction

On September 21, 2006, KBC filed a motion for an injunction preventing Pertamina from prosecuting the Cayman Action.²¹ The New York District Court conducted a hearing on the issue on September 26, 2006, and immediately issued a partial injunction barring Pertamina from taking any action in the Cayman Islands challenging the New York District Court's jurisdiction or seeking to encumber any funds that would be turned over by it. *See* Sept. 26 Tr. at App. 67a, 71a. On October 6, 2006, after this Court denied Pertamina's third petition for certiorari,²² the New York District Court

(...continued)

JUDGE CABRANES: . . . *It certainly looks curious at a minimum, perhaps even apparent that Pertamina is trying to evade the jurisdiction of the district court and to effectively to be free to move this dispute to yet another forum.*

Unofficial Transcript of Proceedings, May 21, 2007 (emphasis added) (Excerpt Attached at App. 91a, 97a – 98a).

²¹ KBC has no doubt that it would ultimately be successful in the Cayman Action, just as it was successful Hong Kong on precisely the same “fraud” issues. *See* discussion *infra* at 14. However, the full relitigation of these issues would be extremely costly and time consuming. After prevailing in every tribunal around the world, KBC should not be forced to participate in perpetual litigation.

²² *PT Pertamina (Persero) v. Karaha Bodas Co., L.L.C.*, 127 S. Ct. 129, 166 L. Ed. 2d 35 (2006).

ordered the turnover²³ of approximately \$260 million, the remaining unpaid amount of the Texas Judgment. On December 8, 2006, the New York District Court issued an opinion granting a full anti-suit injunction against Pertamina. *See Karaha Bodas*, 465 F. Supp. 2d at 283. After finding that the “main objective of Pertamina is to have the Cayman Islands court reach out to the United States and frustrate the consummation of the long and difficult litigation in the United States,” the decision enjoined Pertamina from seeking, through affirmative litigation in the Cayman Islands or elsewhere, to restrain KBC’s use of the Texas Judgment proceeds or to attempt to recoup those proceeds through affirmative litigation. *Id.* at 298-99. The Second Circuit upheld that decision, with modifications, clarifying that Pertamina’s actions warranted an anti-suit injunction under the strict standard imposed by the *China Trade* test. It is this decision that Pertamina now appeals.²⁴

²³ Pertamina claims in its Petition that it “promptly complied” with the turnover orders. Petn. at 10. That claim is utterly false: For almost eight years, Pertamina has refused to pay a single penny of the Award. Because of that recalcitrance, the turnover orders were directed not at Pertamina, but at the bank in New York that had frozen Pertamina’s funds. *See Karaha Bodas*, 465 F. Supp. 2d at 291.

²⁴ On October 11, 2007, the Cayman Court issued an order dismissing Pertamina’s claim, stating:

I am satisfied that in all the circumstances the description by the New York Court of Pertamina’s proceedings before this Court as ‘*an abusive litigation tactic*’ is entirely justified. It is clear that
(continued...)

D. The Hong Kong Action

Pertamina's "fraud" claim – the same claim that the Arbitral Tribunal decided in 2000 and that Pertamina sought to relitigate in the Cayman Action – was decisively rejected by the Court of Appeal in Hong Kong. The court there conducted a three-day hearing carefully considering the voluminous evidence and affidavits that the parties submitted. In a decision issued October 9, 2007, the Hong Kong Court of Appeals found Pertamina's claim to be "*singularly lacking in merit.*"²⁵ In rejecting the fraud claims, the Hong Kong Court found that Pertamina had not even made out a *prima facie* case for fraud, let alone demonstrated a reasonable prospect of success on the merits:

[T]his plea did not achieve the level of a 'prima facie case', much less the standard of a 'reasonable prospect of success.'

(...continued)

the proceedings amount in the circumstances to an attempt to use this Court for a collateral purpose, namely an attempt to further delay and avoid the enforcement of the arbitral award made almost 7 years ago. *In my view that was improper and unreasonable [and as] such an abuse of this Court.*

Decision, Cause No. 386 of 2006, Grand Court of the Cayman Islands (Oct. 11, 2007) (emphasis added) (Attached at App. 100a, 106a).

²⁵ Decision, Civil Appeal no. 121/2003, High Court of the Hong Kong Special Administrative Region Court of Appeal (Oct. 9, 2007), at ¶142 (emphasis added) (Excerpts Attached at App. 108a, 112a).

...

I do not think Pertamina comes anywhere near to establishing that the new evidence would have an important influence on the outcome of the arbitration. *Further, I do not think they show any fraud practiced by KBC at the court below or for that matter, at the arbitration proceedings.*

Id. at App. 110a, 114a, ¶¶ 134, 154 (emphasis added). Despite losing yet again, in yet another forum, Pertamina filed this petition for certiorari a month later, seeking to overturn the decision of the Second Circuit so that it can litigate its hopeless “fraud” allegations for a third time in the Cayman Action. If this injunction is lifted, Pertamina will no doubt seek to engage in perpetual litigation, fighting “to the last drop of [its] blood.”

REASONS FOR DENYING THE PETITION

Pertamina's certiorari petition should be denied because none of the three circuit splits it alleges is ripe for review by this Court on the facts of this case. The only deep split alleged in Pertamina's petition – that the Courts of Appeals differ over the standards for granting international anti-suit injunctions – is not implicated by the facts of this case because the lower court applied the standard most favorable to Pertamina and still found that an anti-suit injunction was warranted. Pertamina attempts to avoid this result by re-characterizing a well-known and longstanding two-way split in the lower courts as a three-way split instead, with the Second Circuit test purportedly occupying the middle ground, but this position finds no support in the numerous appellate decisions that address the issue.

The remaining splits alleged by Pertamina implicate at most one other lower court opinion apiece. Properly read, there is no actual conflict posed by either of these two pairs of opinions, as the facts of the cases differed dramatically in important respects. Moreover, even if the conflicts Pertamina alleges were genuine, the lower courts should be given additional time to sort out these issues, so that additional decisions from the Courts of Appeals can provide this Court with the benefit of additional reasoning on the issues involved before they are permanently settled in one particular way.

Finally, the decision below as it stands serves important public policy interests regarding the swift enforcement of arbitration awards and the finality of

litigation. Pertamina has vexatiously delayed this straightforward commercial dispute for almost a decade, attempting to use the specter of endless litigation to leverage a “settlement” in a case that was resolved on the merits in 2000. A grant of certiorari by this Court on any issue would serve primarily as a validation of these delaying tactics, which have been criticized by courts around the world.

III. THE SECOND CIRCUIT APPLIED THE STRICTEST STANDARD IN GRANTING AN ANTI-SUIT INJUNCTION UNDER THESE UNIQUE CIRCUMSTANCES, AND CONSEQUENTLY PERTAMINA IS NOT ENTITLED TO RELIEF REGARDLESS OF THE STANDARD USED TO GRANT SUCH INJUNCTIONS.

Although it is generally correct that there is a longstanding split among the Courts of Appeals over the standard for issuing an international anti-suit injunction, that split is not implicated by the decision below. The Second Circuit is among those courts that apply the most restrictive test, and consequently Pertamina would not be entitled to relief regardless of which test this Court might adopt as a nationwide rule. Pertamina has attempted to avoid this result by re-casting the well-known and longstanding two-way split over the standards for granting international anti-suit injunctions into a three-way split instead. Then, Pertamina attempts to place the Second Circuit among its newly-invented “middle group” in order to make it appear that a decision in favor of the most restrictive test would

allow Pertamina to return to the Second Circuit in an attempt to obtain relief under a more restrictive anti-suit injunction standard. Pertamina's re-casting of the split finds no support in the decisions of the Courts of Appeals, which have consistently noted the existence of a two-way split and placed the Second Circuit firmly on the most restrictive side. Consequently, this case is not a proper vehicle for this Court to use to settle the split over anti-suit injunction standards.

The standard used by the Second Circuit was first established more than twenty years ago, and has consistently been recognized as the most restrictive standard. The Second Circuit's *China Trade* test for issuing an injunction has two threshold requirements: "(1) the parties must be the same in both matters, and (2) resolution of the case before the enjoining court must be dispositive of the action to be enjoined." *China Trade and Development Corp. v. M.V. Choong Yong*, 837 F.2d 33, 35 (2d Cir. 1987). If these two threshold requirements are satisfied, courts may consider other relevant factors in deciding whether to grant the injunction. *Paramedics Electromedicina Comercial, Ltda, v. GE Medical Systems Information Technologies, Inc.*, 369 F.3d 645, 652 (2d Cir. 2004). Of these, two factors have "greater significance" than the others: "namely, whether the foreign action threatens the jurisdiction or the strong public policies of the enjoining forum." *Karaha Bodas Co., L.L.C.*, 500 F.3d at 126 (citing *China Trade*, 837 F.2d at 36). The Second Circuit properly weighed these factors when it upheld the anti-suit injunction issued by the New York District Court.

As courts across the nation have observed, the *China Trade* test places the Second Circuit firmly among the most conservative circuits in terms of the test it applies in determining whether and when anti-suit injunctions may issue. The Second Circuit originally adopted this extremely restrictive test precisely because it recognized and placed a high value on concerns over the damage such injunctions can do to international relations. See *Paramedics*, 369 F.3d at 652 (“[P]rinciples of comity counsel that injunctions restraining foreign litigation be ‘used sparingly’ and ‘granted only with care and great restraint.’”) (quoting *China Trade*, 837 F.2d at 36). The decision by the Second Circuit in this case is completely in accord with the important principles of comity it espoused.

The Circuit Courts of Appeals have repeatedly and recently recognized the existence of a two-way split over the standards for issuing anti-suit injunctions, and placed the Second Circuit on the conservative side of this binary split. As the First Circuit explained as recently as 2004, “[t]wo basic views have emerged. For ease in reference, we shall call the more permissive of these views the liberal approach and the more restrictive of them the conservative approach.” *Quaak v. Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren*, 361 F.3d 11, 17 (1st Cir. 2004) (citing Note, *Antisuit Injunctions and International Comity*, 71 VA. L. REV. 1039, 1049-51 (1985)). The First Circuit went on to observe that the Fifth and Ninth Circuits have adopted a liberal approach, with the Seventh Circuit expressing support for this approach in dicta. See *id.* at 17. Under the liberal approach, courts give international comity some

consideration, but tend to define comity interests narrowly and give comity concerns modest weight. See *id.* In practice, an international anti-suit injunction may issue in these more permissive circuits “whenever there is a duplication of parties and issues and the court determines that the prosecution of simultaneous proceedings would frustrate speedy and efficient determination of the case.” *Id.* (citing *Kaepa Inc. v. Achilles Corp.*, 76 F.3d 624, 627 (5th Cir. 1996), *cert. denied*, 519 U.S. 821 (1996); *Seattle Totems Hockey Club, Inc. v. National Hockey League*, 652 F.2d 852, 856 (9th Cir. 1981), *cert. denied*, 457 U.S. 1105 (1982)).

Rejecting this approach, the First Circuit expressly placed itself within the “conservative” camp, which “[f]our courts of appeals have espoused.” *Id.* “Under this approach, the critical questions anent the issuance of an international antisuit injunction are whether the foreign action either imperils the jurisdiction of the forum court or threatens some strong national policy.” *Id.* (citing *Stonington Partners, Inc. v. Lernout & Hauspie Speech Products.*, 310 F.3d 118, 127 (3d Cir. 2002); *China Trade & Dev. Corp. v. M.V. Choong Yong*, 837 F.2d 22, 36 (2d Cir. 1987)). The First Circuit explained that the conservative approach used by the Second, Third, Sixth, and D.C. Circuits imposes a presumption against international anti-suit injunctions, “is more respectful of principles of international comity,” and recognizes that issuing an anti-suit injunction is a step that should be taken only with the utmost care and restraint. *Id.* at 18. Nowhere in its opinion does the First Circuit note any tension with its decision and earlier decisions of the Third, Sixth, and Eighth Circuits,

as Pertamina alleges exists. *See* Petn. at 31. There is no language suggesting, as Pertamina does, that the First Circuit was imposing a different test than those circuits, *see* Petn. at 32-34, a test that would permit consideration of various “equitable factors” in situations where the Third, Sixth, and Eighth Circuits would not.

Nor does Pertamina’s characterization of a three-way split find support in earlier circuit decisions. In 2001, the Third Circuit also characterized the international anti-suit injunction split as binary. “The federal Courts of Appeals have not established a uniform rule for determining when injunctions on foreign litigation are justified. Two standards, it appears, have developed.” *General Electric Co. v. Deutz AG*, 270 F.3d 144, 160 (3d Cir. 2001). Just as the First Circuit would do a few years later, the Third Circuit described the Fifth, Seventh, and Ninth Circuits as generally applying the “liberal” standard, and explained that “the Second, Sixth, and District of Columbia Circuits use a more restrictive approach.” *Id.* Again, the Third Circuit specifically cited the Second Circuit’s decision in *China Trade* in support of its assertion, noting that these courts “approve enjoining foreign parallel proceedings only to protect jurisdiction or an important public policy. Vexatiousness and inconvenience to the parties carry far less weight.” *Id.* at 161. Consequently, while Pertamina asserts that the Third Circuit would not consider vexatiousness and inconvenience to the parties at all (labeling these factors “other equitable considerations”), *see* Petn. at 33-34, the Third Circuit implied just the opposite when it decided that “[o]ur Court is among those that resort to the more restrictive standard.”

General Electric, 270 F.3d at 161. Pertamina's contention that some circuits would refuse to consider other equitable factors at all appears to be the result of purposefully misreading selected dicta from various opinions.

Indeed, the Second Circuit's *China Trade* test has been consistently placed on the conservative side of the binary circuit split going back at least fifteen years. The Sixth Circuit, in a decision joining the conservative courts, observed the existing split in 1992 as involving on one side "[t]he Ninth and Fifth Circuits [that] hold that a duplication of the parties and issues, alone, is generally sufficient to justify the issuance of an international injunction" and on the other "the Second and DC Circuits [that] have held the standard for granting a foreign anti-suit injunction is whether the injunction is necessary to protect the forum court's jurisdiction or to prevent evasion of the forum court's important public policies." *Gau Shan Co. Ltd. v. Bankers Trust Co.*, 956 F.2d 1349, 1353 (6th Cir. 1992). Again, the Sixth Circuit specifically cited the Second Circuit's *China Trade* decision in support of the conservative position it adopted. *See id.* Numerous courts in between *Gau Shan* and *Quaak* have also characterized the split as binary and placed the Second Circuit on the most restrictive side. *See, e.g., Stonington Partners*, 310 F. 3d at 126-27; *Kaepa*, 76 F.3d at 627 n.12; *Allendale Mutual Insurance Co. v. Bull Data Systems, Inc.*, 10 F.3d 425, 431-32 (7th Cir. 1993). If, as Pertamina asserts, there is a third side to the split between courts that will consider other equitable factors and those that will not, it is

curious indeed that none of these courts has noticed and commented on it.

This Court should accept the lower courts' uniform characterization of this split as a binary one, and recognize, as each circuit has, that the Second Circuit's test embraces the most conservative standard. Because the New York District Court issued an anti-suit injunction against Pertamina using the most restrictive standard, which was the most favorable to Pertamina, Pertamina would not be entitled to any relief even if this Court granted certiorari and ruled in its favor on the choice of standards. Consequently, the existing split among the Courts of Appeals on anti-suit injunction standards is simply not implicated by the facts of this case, and the petition should be denied for that reason alone.

IV. ANY GRANT OF CERTIORARI IN THIS CASE WOULD THWART IMPORTANT PUBLIC POLICY AND EQUITABLE CONSIDERATIONS BY VALIDATING PERTAMINA'S HIGHLY QUESTIONABLE DELAYING TACTICS IN THIS CASE, WHICH HAVE BEEN THE SOURCE OF CONSTERNATION TO COURTS AROUND THE WORLD.

Leaving the decision below intact serves important public policy considerations that would be undermined by any grant of certiorari by this Court, even if this Court ultimately affirmed the opinion below or otherwise ruled in favor of KBC. Pertamina's attempt to pursue

the Cayman Action violated the public policies of: (1) the finality of litigation, (2) respect for arbitration clauses, (3) respect for arbitral awards, especially in the international arena, and (4) the discouragement of forum shopping and vexatious conduct. The injunction was intended to stop Pertamina from engaging in perpetual litigation around the world to thwart an arbitration award that it should have paid almost a decade ago. Any action by this Court vacating the injunction or calling its validity into question even temporarily would effectively validate Pertamina's delaying tactics and encourage other parties to engage in similarly dubious legal behavior.

A. Federal policy favors finality of litigation.

Federal law embodies a strong policy favoring finality of litigation. *See Rubin v. Manufacturers Hanover Trust Co.*, 661 F.2d 979, 996 (2d Cir. 1981) (“[S]trong policies favoring finality in litigation and conservation of judicial resources lead an appellate court to disregard contentions that a party has not asserted at trial or has failed to raise on appeal.”). Pertamina's commencement of the Cayman Action on the eve of this Court's final ruling – and its concealment of that intention from the New York District Court – demonstrate an obvious contempt for this fundamental policy. Pertamina waited until more than eight years of arbitration and litigation in this case had transpired before bringing its Cayman Action. As the New York

District Court expressly found,²⁶ if Pertamina actually believed it had been “defrauded” by KBC, it could have raised its claim much earlier by interposing it, at a minimum, in either the New York District Court or the Texas District Court proceedings.²⁷ Rather than utilize these options, Pertamina chose instead to withhold and delay its claim until the last possible minute, going so far as to actively conceal and misrepresent its intentions to the New York District Court. Given the overwhelming evidence of Pertamina’s intent to delay and the ample opportunities it had to assert its fraud claim previously, there can be little doubt that Pertamina’s litigation conduct was inimical to the strong federal policy favoring finality in litigation, and that the anti-suit injunction was necessary to properly vindicate that policy.

²⁶ *Karaha Bodas Company, L.L.C.*, 465 F. Supp. 2d at 297.

²⁷ Pertamina seemingly misunderstands the New York District Court’s discussion of Pertamina’s missed opportunity to address its claims through Rule 60(b). It is correct that Rule 60(b) is not, in and of itself, a public policy. However, it is a rule that *embodies* important national policies, seeking to reconcile “a tension between two goals: (1) that of ensuring that the court’s judgment reflect[s] an appropriate adjudication of the rights and obligations of the parties, and (2) *that of finally terminating the litigation in order to provide the parties with certainty as to the nature and extent of their rights and obligations as adjudicated.*” *In re Frigitemp Corp.*, 781 F.2d 324, 326-27 (2d Cir. 1986) (emphasis added).

B. Federal policy favors enforcement of arbitration clauses.

“Federal policy strongly favors enforcement of arbitration agreements.” *See Paramedics*, 369 F.3d at 653 (citing 9 U.S.C. § 2; *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 24-25 (1983)). The claim in the Cayman Action that KBC defrauded Pertamina during the performance of the underlying contract (the “direct fraud” claim) is, by the plain terms of the arbitration agreement between Pertamina and KBC, subject to mandatory arbitration. *See Karaha Bodas Co. L.L.C. v. Pertamina*, 364 F.3d 274, 282 (5th Cir. 2004). Instead of abiding by its agreement to arbitrate, Pertamina ignored it altogether when it commenced the Cayman Islands action. The anti-suit injunction was consequently necessary to effectuate the important federal policy in favor of the enforcement of arbitration agreements.

C. Federal policy demands that arbitration awards be enforced swiftly and efficiently.

Leaving the anti-suit injunction undisturbed is also justified by the strong public policy favoring respect for arbitration awards. *See, e.g., B.L. Harbert International, L.L.C. v. Hercules Steel Co.*, 441 F.3d 905, 913 (11th Cir. 2006) (“When a party who loses an arbitration award assumes a never-say-die attitude and drags the dispute through the court system without an objectively reasonable belief it will prevail, the promise of arbitration is broken.”). This Court has commented

frequently on the desirability of encouraging the use of arbitration as a means of dispute resolution in cases both national and international. More than twenty years ago this Court explained “we are well past the time when judicial suspicion of the desirability of arbitration and of the competence of arbitral tribunals inhibited the development of arbitration as an alternative means of dispute resolution.” *Mitsubishi Motors Corp. v. Solar Chrysler-Plymouth Inc.*, 473 U.S. 614, 626-27 (1985).

Instead, in today’s world this Court has commented that effective international arbitration is an:

almost indispensable precondition to achievement of the orderliness and predictability essential to any international business transaction. Furthermore, such a provision obviates the danger that a dispute under the agreement might be submitted to a forum hostile to the interests of one of the parties or unfamiliar with the problem area involved.

Scherk v. Alberto-Culver Co., 417 U.S. 506, 516 (1974). This Court has further explained the danger that “[a] parochial refusal by the courts of one country to enforce an international arbitration agreement would not only frustrate these purposes, but would invite unseemly and mutually destructive jockeying by the parties to secure tactical litigation advantages.” *Id.* at 516-17. This Court has even gone so far as to criticize lower courts for issuing stays that interfere with the rapid enforcement of arbitral awards, explaining that they “frustrate[] the

[federal] statutory policy of rapid and unobstructed enforcement of arbitration agreements.” *Moses H. Cone Memorial Hospital*, 460 U.S. at 23.

Disturbing the decision below would contravene this important and oft-repeated guidance from this Court, and would send the wrong message to lower courts and parties tempted to resist arbitration. The Award in this case was issued seven years ago, yet duplicative litigation in several jurisdictions continues. As the Second Circuit observed in upholding the injunction:

We have noted ‘the strong public policy in favor of international arbitration,’ and the need for proceedings under the New York Convention ‘to avoid undermining the twin goals of arbitration, namely, settling disputes efficiently and avoiding long and expensive litigation.’ *These important objectives would be undermined were we to permit Pertamina to proceed with protracted and expensive litigation that is intended to vitiate an international arbitral award that federal courts have confirmed and enforced.*

Karaha Bodas Co., L.L.C., 500 F.3d at 126 (internal citations omitted and emphasis added). This Court now has the opportunity to send the proper message regarding the desirability of swift and effective international arbitration simply by denying Pertamina’s latest certiorari petition.

D. Federal law does not countenance forum shopping or other vexatious conduct.

Finally, continuance of the anti-suit injunction is consistent with the strong federal policies prohibiting forum shopping. *See Semtek International Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 508-09 (2001) (interpreting rule to avoid resultant forum shopping); *Ibeto Petrochemical Industries Ltd. v. M/T Beffen*, 475 F.3d 56, 64 (2d Cir. 2007) (explaining that “equitable considerations such as deterring forum shopping favor the [anti-suit] injunction”). Pertamina raised its fraud allegations before the Arbitral Tribunal, which took those allegations into consideration when issuing its Award in 2000. Pertamina’s subsequent arguments concerning the propriety of the Award have been rejected by courts in every single country to consider them, including the courts of Indonesia. Although Pertamina could have raised its fraud allegations in most of these previous fora, it chose instead to file its claim alleging fraud in the Cayman Islands, a jurisdiction whose courts were unfamiliar with both the dispute and Pertamina’s prior litigation tactics.

The Cayman Action was indisputably vexatious. After almost a decade of arbitration and litigation, Pertamina waited until two weeks before the funds were likely to be paid to KBC to bring a new action that sought, on its face, to strip the New York District Court of enforcement jurisdiction and enjoin KBC from using the Texas Judgment proceeds. Because Pertamina had been in possession of the documents that allegedly

support its fraud claim²⁸ for at least four years when it filed the Cayman Action, this delay is inexcusable and impossible to consider as good faith litigation conduct. As the New York District Court noted, Pertamina had time to raise these “fraud” allegations before the Texas District Court in a “direct and straightforward” manner; instead, they chose to make these allegations in a forum that has “virtually no significance” to the dispute.²⁹

V. FEDERAL COURTS HAVE CONTINUING JURISDICTION TO PROTECT AND EFFECTUATE THEIR JUDGMENTS.

Federal courts maintain continuing jurisdiction to protect their final judgments, even after satisfaction. This Court has long held that federal courts have the power and duty to ensure that litigants retain “the substantial fruits of a judgment rendered in their favor,” and that federal courts have jurisdiction to protect a judgment “no matter how or when [a party] may attempt to evade it or escape its effect[.]” *Dietzsch v. Huidekoper*, 103 U.S. 494, 497 (1880); *Local Loan Co. v. Hunt*, 292 U.S. 234, 239 (1934) (“That a federal court of equity has jurisdiction of a bill ancillary to an original case or proceeding in the same court, whether at law or in equity, to secure and preserve the fruits and advantages of a judgment or decree rendered therein, is well settled.”); *see also* 28 U.S.C. § 1367(a) (codifying

²⁸ As noted *supra* at 14, the Hong Kong Court of Appeals carefully considered and soundly rejected Pertamina’s fraud allegations.

²⁹ *Karaha Bodas*, 465 F. Supp. 2d at 297-98.

doctrine of ancillary jurisdiction by providing that federal courts have jurisdiction over “all other claims that are so related to the claims in the action within [the court’s] original jurisdiction that they form part of the same case or controversy under Article III”); All Writs Act, 28 U.S.C. § 1651(a) (providing that federal courts “may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law”).

Pertamina has argued that the Second Circuit’s opinion supporting these propositions is contrary to the decision reached by the Eighth Circuit in *Goss International Corp. v. Man Roland Druckmaschinen Aktiengesellschaft*, 491 F.3d 355 (8th Cir. 2007). The instant petition does not pose a good opportunity for this Court to review any putative shallow split in circuit authority because the facts of the two cases differ so dramatically, rendering it difficult if not impossible to accurately gauge whether a meaningful split yet exists between the circuits. The Eighth Circuit in *Goss*, while occasionally using more expansive *dicta*, carefully limited its holding to the unusual facts of that case. Moreover, its decision was based on various factors including (1) the direct threat posed to international bilateral relations by an injunction and (2) concerns regarding the constitutional balance of powers, neither of which is present in this case.

More specifically, the *Goss* case involved a judgment issued under the Antidumping Act of 1916, which Congress prospectively repealed as a result of a dispute before the World Trade Organization (“WTO”). *See id.* at

356-359. As the repeal was prospective, it did not affect the *Goss* judgment. *See id.* at 358. Because Japan considered that prospectivity to be contrary to the United States' obligations under the WTO agreements, it enacted a Special Measures Law, a clawback statute that specifically allows Japanese entities to recover judgments awarded under the 1916 Act. *See id.* This was not a broad statute; in fact, the Special Measures Law affected only one judgment: the *Goss* decision. *See id.* at 366 (“[T]he only lawsuit possible under the Special Measures Law can be brought against *Goss* alone.”). Given the direct and pointed conflict between the U.S. and Japanese legislatures regarding the validity of the *Goss* judgment, the *Goss* anti-suit injunction “would be deeply offensive to the Japanese government.” *Goss v. Tokyo Kikai Seisakusho, Ltd.*, 435 F. Supp. 2d. 919, 929 (N.D. Iowa 2006), *vacated*, 491 F.3d 355 (8th Cir. 2007).

It is clear that the instant case does not involve such a direct international conflict between two nations. The Eighth Circuit recognized the unique circumstances of the *Goss* case and expressly limited its opinion, finding that while the anti-suit injunction could not be maintained under those circumstances, “we reach no categorical conclusion regarding the propriety of the issuance of an anti-suit injunction in all cases involving the preservation of a judgment.” *Goss*, 491 F.3d at 368 n.9. Moreover, the *Goss* Court did not cite to a single case that held that subject matter jurisdiction terminates when the judgment is paid. Instead, it cited *Peacock v. Thomas*, 516 U.S. 349 (1996), which stands only for the inverse proposition that “the district court retained ancillary enforcement jurisdiction *until* satisfaction of

the judgment.” *Goss*, 491 F.3d at 365 (emphasis in original). As noted by the *Goss* Court, this Court explained in *Peacock* the importance of the maintenance of jurisdiction after issuance of the judgment: “Without jurisdiction to enforce a judgment entered by a federal court, ‘the judicial power would be incomplete and entirely inadequate to the purposes for which it was conferred by the Constitution.’” *Peacock*, 516 U.S. at 356 (internal quotations omitted). Consequently, the rule, unchanged by the unique facts of the *Goss* case, is that federal courts maintain jurisdiction to protect a final judgment even after satisfaction. There is simply no circuit split on this issue implicated by the facts of this case.

CONCLUSION

For all the foregoing reasons, Pertamina's petition for a writ of certiorari should be denied.

Respectfully submitted,

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