

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT  
18-2797, 18-3124**

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CRYSTALLEX INTERNATIONAL CORP.,  
*Plaintiff-Appellee,*

v.

BOLIVARIAN REPUBLIC OF VENEZUELA,  
*Defendant,*  
PETRÓLEOS DE VENEZUELA, S.A. (Intervenor in D.C.),  
*Intervenor-Appellant.*

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On Appeal from an Order of the United States District Court  
District of Delaware  
C.A. No. 17-mc-00151

The Honorable Leonard P. Stark

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MOTION OF BONDHOLDERS AS *AMICI CURIAE* FOR LEAVE TO PARTICIPATE IN  
ORAL ARGUMENT

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Pursuant to Federal Rule of Appellate Procedure 29(a)(8), investment management and advising firms BlackRock Financial Management, Inc. and Contrarian Capital Management, L.L.C. (the “Bondholders” or “*Amici*”), which manage certain funds and accounts that hold bonds issued by Appellant *Petróleos de Venezuela, S.A.* (“PDVSA”), respectfully move for leave to participate in oral argument in this proceeding in support of PDVSA.<sup>1</sup>

The district court’s determination that PDVSA is an alter ego of Venezuela enables Venezuela’s creditors to access PDVSA’s assets, prejudicing PDVSA’s creditors, who would be required to share PDVSA’s limited attachable assets with creditors of Venezuela. On December 17, 2018, Bondholders moved for leave to participate in the appeal as *amici curiae* and filed an *amici curiae* brief in support of Appellant. On January 14, 2019, the Court granted the motion.

The Bondholders’ brief shows that courts give especially close consideration to the interests of third-party creditors in cases where a supposedly dominated entity’s assets are seized to pay the debts of the dominating party through “downward” veil-piercing. Specifically, as *Amici* explain in their brief and would elaborate on during oral argument, the district court erred by basing its decision entirely on the degree of control supposedly exercised by Venezuela over

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<sup>1</sup> The Court has discretion to grant *Amici* “leave to participate in oral argument.” See, e.g., *Atl. Coast Demolition & Recycling, Inc. v. Bd. of Chosen Freeholders of Atl. Cty.*, 48 F.3d 701, 709 n.14 (3d Cir. 1995).

PDVSA, even though the court explicitly found that Venezuela's purported abuse of the corporate form resulted in no unfairness to Venezuela's creditors. If the interests of PDVSA's creditors had been considered, as required, PDVSA's corporate veil should not have been breached. *First*, veil-piercing, as an equitable remedy, requires a finding of unfairness, which the district court expressly refused to make. *See First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 630 (1983). *Second*, allowing Venezuela to use PDVSA's assets to satisfy Venezuela's debts based solely on evidence that Venezuela dominated PDVSA creates perverse incentives because it rewards the parent for abusing the corporate form. *See In re Blatstein*, 192 F.3d 88, 92, 100 (3d Cir. 1999). For these reasons, courts consider the interests of the subsidiary's creditors, as well as related policy implications for future capital markets offerings by state-owned corporations, when evaluating the fairness of downward veil-piercing.

Because these important arguments are not adequately addressed in Appellant's or Appellee's briefs, *Amici* are uniquely positioned to present them to the Court. Moreover, *Amici*'s interests will not otherwise be adequately represented during oral argument. Neither Appellant nor Appellee represents the interests of *Amici*, who are Appellant's third-party creditors. Appellee opposes *Amici*'s participation in oral argument and Appellant takes no position.

For the foregoing reasons, *Amici* respectfully request leave to participate in oral argument in this matter.

Dated: March 7, 2019

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of March, 2019, I caused a copy of the foregoing Motion to be filed with the Clerk of the United States Court of Appeals for the Third Circuit via the Court's Electronic Filing Systems, and to be served electronically upon all counsel of record through that system.

Dated: March 7, 2019

/s/ Carl N. Kunz, III  
Carl N. Kunz, III, Esquire