

IN THE SUPREME COURT OF THE UNITED STATES

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EXXON MOBIL CORPORATION, :

EXXON CHEMICAL ARABIA, INC., :

AND MOBIL YANBU PETROCHEMICAL :

COMPANY, INC., :

Petitioners :

v. : No. 03-1696

SAUDI BASIC INDUSTRIES :

CORPORATION. :

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Washington, D.C.

Wednesday, February 23, 2005

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
10:58 a.m.

APPEARANCES:

GREGORY S. COLEMAN, ESQ., Austin, Texas; on behalf of the
Petitioners.

GREGORY A. CASTANIAS, ESQ., Washington, D.C.; on behalf of
the Respondent.

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1 P R O C E E D I N G S

2 (10:58 a.m.)

3 JUSTICE STEVENS: We will now hear argument in
4 Exxon Mobil against Saudi Basic Industries.

5 Mr. Coleman, I trust you will soon tell us why
6 the case is not moot or whether you think it's moot, and
7 if -- if not, why not.

8 ORAL ARGUMENT OF GREGORY S. COLEMAN

9 ON BEHALF OF THE PETITIONERS

10 MR. COLEMAN: Good morning, Justice Stevens.
11 May it please the Court:

12 I will begin with that, if you would like.

13 This case is not moot because there is an
14 ongoing case or controversy between the parties. There is
15 a judgment, it is true, from the Delaware State court,
16 which has now been affirmed by the Delaware Supreme Court.
17 But preclusion doctrines not Rooker-Feldman and not
18 mootness govern the resolution of the claims that we
19 asserted first --

20 JUSTICE O'CONNOR: Well, what financial
21 interests do your clients have to keep litigating today in
22 another court?

23 MR. COLEMAN: I don't know the --

24 JUSTICE O'CONNOR: What's going on? I mean,
25 it's very confusing.

1 MR. COLEMAN: Well, certainly, Justice O'Connor,
2 we've not yet recovered on our judgment and that judgment
3 is still there. It is still in existence. We've not yet
4 collected on it.

5 But I don't believe that mootness turns on
6 whether you have, in fact, collected on a judgment. There
7 are very few cases out there in which a party has, in
8 fact, obtained two judgments, one from a State court and
9 one from a Federal court, usually because a party waived
10 the application of preclusion doctrines. And -- and we
11 have conceded previously that that's not our interest.

12 What is our interest here is that we have
13 asserted Federal jurisdiction. This case was brought in
14 Federal court by SABIC. During the course of discovery,
15 we found some things out that they had been overcharging
16 us and we indicated that we were going to bring claims
17 against them in Federal court. They ran down to Delaware
18 court by forum shopping in order to try to obtain a
19 shorter statute of limitations, which turned out for them
20 to be a strategic blunder of monumental proportions.

21 But the Federal case, when we filed it, those
22 claims had original jurisdiction in Federal court. They
23 have not yet been resolved in a proper way. We --

24 JUSTICE GINSBURG: But do you have a continuing
25 case or controversy? That was -- that -- that's a bedrock

1 Article III requirement, and if you've got all the relief
2 that you were seeking -- let's put it this way. Suppose
3 your opponent SABIC says, here's the check for the \$417
4 million and we undertake that we're not going to pursue
5 any further relief. Would you have a case or controversy
6 left?

7 MR. COLEMAN: Yes, Your Honor. We might not
8 have an interest in pursuing the case, but we have a legal
9 interest in terms of Article III case or controversy. It
10 is well established that the -- the fact of taking a
11 judgment does not make a case moot. In fact, if there
12 were a holding that we think that the Federal case were
13 moot --

14 JUSTICE GINSBURG: But if you've got all the
15 relief to which you are entitled, that does make a case
16 moot.

17 MR. COLEMAN: In terms of cases that involve
18 injunctive relief where it is impossible for a court to
19 give you the relief that you have -- that you are seeking,
20 that is true. But when you are seeking money damage, it
21 is at least theoretically possible -- we're not saying
22 that we're going to ask for that, but at least
23 theoretically possible that the Federal district court
24 could still give us relief. And therefore, what we are
25 asking for is --

1 JUSTICE STEVENS: What relief could it give you?

2 JUSTICE SOUTER: But what for?

3 JUSTICE STEVENS: What relief? If you're paid
4 in full, what -- what relief are you entitled to?

5 MR. COLEMAN: Well, we think the relief that
6 we're entitled to, in terms of this, is for the case to be
7 remanded for the district court to resolve these issues
8 under preclusion doctrines.

9 JUSTICE STEVENS: But what issues would -- would
10 the district court resolve?

11 MR. COLEMAN: Preclusion.

12 JUSTICE SOUTER: Well, if you win on the
13 preclusion --

14 JUSTICE SCALIA: Who cares?

15 JUSTICE SOUTER: -- what do you get then in
16 substance?

17 MR. COLEMAN: We don't necessarily intend to
18 take a -- another judgment in Federal court.

19 JUSTICE SOUTER: Then what do you intend to do?
20 If you win on preclusion, what do you do then?

21 MR. COLEMAN: Well, hopefully we'll win on
22 preclusion with respect not only to this suit, the New
23 Jersey II suit, but also the New Jersey I suit, which we
24 say the district -- or the Delaware judgment precludes.

25 JUSTICE KENNEDY: Well, I think we'd like an

1 answer. Justice Ginsburg gives us -- gives you a
2 hypothetical case. You've got the money. The judgment
3 has been discharged in the State courts. What is left to
4 do in the Federal court?

5 MR. COLEMAN: It is likely --

6 JUSTICE KENNEDY: Now, the one answer I heard
7 you give, well, we're interested in preclusion to say --
8 well, that's all historical at that point. Who cares?

9 MR. COLEMAN: It -- it is likely, Your Honor --
10 and we have previously said -- that we may very well
11 dismiss the case of our own accord. But that doesn't
12 mean --

13 JUSTICE KENNEDY: We're looking for -- we're
14 looking for something that makes the case live.

15 MR. COLEMAN: Our claims are alive. There are
16 claims there that seek relief --

17 JUSTICE KENNEDY: But we're -- we're questioning
18 why that is and we're asking you what relief you need to
19 get that you wouldn't get in the hypothetical that Justice
20 Ginsburg posed.

21 MR. COLEMAN: We thought we would not seek
22 further monetary relief.

23 JUSTICE BREYER: So what --

24 JUSTICE SCALIA: Do you know how many claims in
25 this case that -- that were not in the Delaware case?

1 MR. COLEMAN: We have affirmative defenses to
2 the New Jersey I, but -- but the claims in New Jersey II
3 and Delaware are the same, Your Honor.

4 JUSTICE KENNEDY: Is your answer that you might
5 want equitable relief, an injunction to continue making
6 payments in the future, or something like that?

7 MR. COLEMAN: No, Your Honor. We're not seeking
8 additional monetary or equitable relief.

9 JUSTICE GINSBURG: You -- you would be stuck
10 anyway because you made a counterclaim and -- and it would
11 be -- on which you prevailed. And in that counterclaim
12 you would be precluded if you didn't ask for everything
13 that you could get.

14 But -- but at this stage at least, the -- the
15 door -- there -- there is still conceivably an avenue of
16 further litigation because, SABIC hasn't yet said that
17 it's not going to do anything more, that it isn't going to
18 petition for cert, for example.

19 MR. COLEMAN: And, indeed, Your Honor. I mean,
20 SABIC has represented to the Court that it likely intends
21 to seek certiorari relief from this Court in the Delaware
22 suit.

23 JUSTICE GINSBURG: So it has --

24 JUSTICE BREYER: So if they do, it's not
25 finished.

1 MR. COLEMAN: It is not finished --

2 JUSTICE BREYER: Yes, all right. I'll ask them
3 that.

4 MR. COLEMAN: Getting back to the Rooker-Feldman
5 issue, which is the issue on which the Court granted cert,
6 Rooker-Feldman is a narrow, limited doctrine, but it bars
7 only appellate review not parallel litigation in Federal
8 district courts. Rooker-Feldman is not a theory of
9 vanishing original jurisdiction, nor is it a
10 jurisdictional substitute for the preclusion analysis
11 mandated by Congress in the Full Faith and Credit Act.

12 The expansive interpretation asserted by SABIC
13 misperceives the fundamental nature of appellate review.
14 It's untethered to any natural negative implication in 28
15 U.S.C. 1257. It illegitimately displaces the application
16 of section 1738, the Full Faith and Credit Act, in most
17 cases to which it is traditionally applied, and it serves
18 absolutely no useful purpose.

19 JUSTICE BREYER: Well, the problem that bothers
20 me -- and I don't know that there's an answer to it -- is
21 you have plaintiff. Plaintiff goes into State court. He
22 brings a lawsuit, a tort suit, a contract suit. And then
23 he decides he'd also like to go to Federal court. He
24 brings exactly the same suit. And here we have two suits
25 and exactly the same thing running along at the same time.

1 Now, I know there are principles from this Court's case
2 law that says, well, that's what's supposed to happen.
3 They've always bothered me.

4 But now let's take a special instance. The
5 special instance is that in court one in the State, the
6 plaintiff loses. Now, what he decides to do is to say to
7 the Federal court, we want you to review what they did in
8 the State court. Can't do that. Right?

9 MR. COLEMAN: Yes, Your Honor.

10 JUSTICE BREYER: Okay. So he brilliantly
11 figures out I will omit the word review from my -- from my
12 motion. I will ask for precisely the same thing just not
13 use that word review. I will ask them to go and make
14 their decision which happens to be -- in my opinion should
15 be -- 100 percent the opposite of what the State court did
16 showing they're wrong. But I won't use the word review.
17 Now, you say because he cut the word review out, he can do
18 it.

19 MR. COLEMAN: No, Justice Breyer. It's not
20 because he cut the review out. Rooker-Feldman is an issue
21 of appellate -- the exercise of appellate jurisdiction.
22 So what does appellate jurisdiction mean? Well,
23 appellate --

24 JUSTICE GINSBURG: Mr. Coleman, would you
25 clarify, I think, in response to Justice Breyer's inquiry?

1 Rooker-Feldman both involved State court litigation that
2 was over and done with. Then you come to the Federal
3 court. You have two parallel cases would be -- brought
4 within a month of each other?

5 MR. COLEMAN: Within 2 months of each other.
6 Within a month of each other, Your Honor.

7 JUSTICE GINSBURG: And isn't the standard
8 defense of the person who has started the other suit
9 first, well, Your Honor, prior action pending, please hold
10 the case that started second in abeyance till we get done?
11 And if we win in the first case, then it will be
12 precluded. Then the second case -- the parallel case will
13 be precluded. That's not Rooker-Feldman territory.

14 MR. COLEMAN: That's -- that's -- Your Honor,
15 that's our position that -- concurrent jurisdiction is a
16 separate issue from the appellate review issue that
17 Rooker-Feldman raises.

18 Justice Breyer, the answer to your hypothetical
19 is that appellate review is something different from
20 having a parallel action. Appellate review is probably
21 best defined by two characteristics that I'll try to flesh
22 out for you.

23 The first is that the proponent alleges some
24 sort of injury-causing error by the trial court and not by
25 the adversary and then seeks an order reversing, vacating,

1 or otherwise nullifying that lower court order. When a
2 party alleges an injury by his adversary rather than the
3 trial court, the most that can really be said is that you
4 are continuing on a parallel litigation but not that you
5 are seeking appellate review. You do not have what looks
6 like appellate review. You're not alleging errors by the
7 lower court. You're not seeking an order that directly
8 nullifies or otherwise undoes the State court judgment.

9 JUSTICE SOUTER: No, but the argument -- it
10 seems to me the argument is that in a de facto sense, when
11 you try to litigate the Federal case, after losing the
12 State case, you in effect are asking the Federal court in
13 some sense to review what happened in the State court.
14 Justice Ginsburg's answer to that is preclusion is the
15 answer. Is that your answer?

16 MR. COLEMAN: Absolutely.

17 JUSTICE SOUTER: Because if that -- if that is
18 -- if we accept that as the answer, then there's no
19 argument for saying you should expand Rooker-Feldman to
20 include the de facto review as opposed to the -- the very
21 strict sense of review that you're talking about.

22 MR. COLEMAN: That is absolutely our position,
23 Justice Souter, that preclusion addresses all of these
24 issues.

25 JUSTICE BREYER: Well, but can you -- can you

1 expand on this a little? I'm not taking a view on it.
2 I'm trying to clear up what's a confusion in my mind. I
3 see how you could do this on the parallel business with --
4 with delaying it on the docket and using the doctrine of
5 preclusion. I understand that.

6 But we've still got this doctrine called Rooker-
7 Feldman out there, and as long as you have that doctrine,
8 it strikes me as odd if -- say, it weren't a plaintiff.
9 Say it was the losing party, you know, that was asking the
10 Federal judge, Judge, you have this case on your docket.
11 Let's move it up. Let's decide it now. He doesn't use
12 the word review, but everything else is the same. He
13 wants a decision out of that court that is going to be the
14 opposite of what the State court did. And what's
15 concerning me -- maybe I shouldn't be concerned, but
16 what's concerning me is whether he can get it or not seems
17 to turn completely on whether he uses the word review in
18 the petition.

19 MR. COLEMAN: I don't -- I don't think that that
20 is true. It should not and does not turn on the words
21 that you use in your petition. What it turns on is the
22 fundamental nature of the injury that you claim and of the
23 relief that you seek.

24 One reason why you don't need to be necessarily
25 concerned about this is that in all of these cases in

1 which one case has gone to judgment and there is a --
2 either a continuation or a new case, preclusion is going
3 to cover these.

4 The only extension of Rooker-Feldman that SABIC
5 is asking for is what they call the actually litigated
6 test. That is the heart of the Full Faith and Credit Act.

7 JUSTICE GINSBURG: Rooker-Feldman, if I
8 understand it correctly, is a subject matter jurisdiction
9 bar. Is that --

10 MR. COLEMAN: Yes, Your Honor. It --

11 JUSTICE GINSBURG: Yes. And --

12 MR. COLEMAN: -- it arises from a negative
13 implication taken from section 1257 and a second negative
14 implication from 1331.

15 JUSTICE GINSBURG: Well, to -- so if the two
16 lawsuits, the State court suit and the Federal suit --
17 they're proceeding concurrently or one is held in abeyance
18 waiting the other, there is certainly subject matter
19 jurisdiction in the Federal court of the Federal action.

20 MR. COLEMAN: Yes.

21 JUSTICE GINSBURG: To apply Rooker-Feldman in
22 that context would say you had subject matter jurisdiction
23 at the outset, but then you lost it somewhere down the
24 line.

25 MR. COLEMAN: And -- and -- yes, Justice

1 Ginsburg. And that's a distinction between your
2 hypothetical and Justice Breyer's. Justice Breyer's, as I
3 -- if I understand it correctly, is that the Federal suit
4 starts after the State court is done. Yours is where you
5 have parallel actions at the same time. And where the
6 Federal claims are parallel or even filed first, as in our
7 case, you can't say that the moment you file those that
8 you're seeking review of some nonexistent State court
9 judgment. You're simply asking for relief from something
10 that your adversary did to you.

11 And the argument that SABIC makes that the court
12 relinquishes jurisdiction has no basis or justification in
13 anything this Court has ever said. It is a theory of
14 vanishing jurisdiction that I cannot understand.

15 JUSTICE KENNEDY: Suppose --

16 JUSTICE STEVENS: Mr. Coleman, can I interrupt
17 with a question?

18 MR. COLEMAN: Of course.

19 JUSTICE STEVENS: Is it your position that what
20 should have been done in this case, not in the
21 hypothetical case, is the trial court should have just
22 stayed the action pending the outcome of the Delaware
23 case?

24 MR. COLEMAN: And, in fact, that's what the
25 Federal district court had done, Your Honor.

1 JUSTICE STEVENS: And that's what -- he did --
2 that was correct.

3 MR. COLEMAN: Yes, Your Honor.

4 JUSTICE STEVENS: And then when the Delaware
5 case was over, then what should he have done?

6 MR. COLEMAN: Well, we could either ultimately
7 dismiss it or the Federal district court could say, looks
8 like your Delaware case is over. SABIC brings a motion --

9 JUSTICE STEVENS: And -- and he has given you
10 all the relief your entitled to. Therefore, you go ahead
11 and dismiss the case.

12 MR. COLEMAN: Yes, or SABIC brings a motion --

13 JUSTICE STEVENS: And therefore, my next
14 question is why shouldn't we do exactly that now.

15 MR. COLEMAN: Because the question before the
16 Court today is a question of jurisdiction, not of
17 practical consequences other than the mootness question
18 that SABIC has raised. But practical consequences are
19 that what we may --

20 JUSTICE STEVENS: Well, maybe we could vacate
21 the judgment of the court of appeals, say that was wrong,
22 but still, order it dismissed after we vacate the
23 judgment.

24 MR. COLEMAN: I think, as in Feldman, that's a
25 question that should be first addressed by the district

1 court. Certainly we hope that you will vacate or reverse
2 the Third Circuit's judgment and allow the district court
3 to address those issues. Perhaps we dismiss it.

4 JUSTICE STEVENS: But if you don't tell us what
5 issue remains, I don't know why we shouldn't just direct
6 the suit to be dismissed.

7 MR. COLEMAN: There -- there is a live -- in --
8 in the terms of Article III, there are live claims that
9 remain pending before the district court. And while it is
10 true --

11 JUSTICE SOUTER: And I take it that's because
12 you don't have the cert period expired yet in the first
13 action and you don't have the check.

14 MR. COLEMAN: At the very minimum --

15 JUSTICE SOUTER: Okay. It's -- if the 3 months
16 is expired and the check is in your hand and it's
17 certified, what's left?

18 MR. COLEMAN: As a practical matter, we have no
19 intention. As a jurisdictional matter, there's still --

20 JUSTICE SOUTER: I'm not asking about your
21 intention. Let's assume you do intend to litigate
22 further. What for?

23 MR. COLEMAN: If we did intend to litigate
24 further, SABIC would be entitled to go to the district
25 court and say they can't. They are precluded.

1 JUSTICE SOUTER: I want -- I want an answer to
2 my question. What are you going to litigate for? What's
3 left?

4 MR. COLEMAN: Well, again, setting aside our
5 intentions and hypothetically, there are cases in which --

6 JUSTICE SOUTER: I'm talking about your case.
7 What's left?

8 MR. COLEMAN: We -- we do not seek -- will not
9 seek any further review from the district court.

10 JUSTICE SOUTER: Nothing is left.

11 MR. COLEMAN: Yes, Your Honor.

12 JUSTICE BREYER: Now, suppose you don't have the
13 check. What's left?

14 MR. COLEMAN: Well, the case is still up in the
15 air.

16 JUSTICE BREYER: Why?

17 MR. COLEMAN: Because --

18 JUSTICE BREYER: You have a judgment.

19 MR. COLEMAN: -- the case -- the case is not
20 over. Indeed, because the State --

21 JUSTICE BREYER: I never heard of a case that
22 isn't over until you get the check. I thought the case is
23 over when you have the judgment.

24 (Laughter.)

25 JUSTICE BREYER: And then if they don't give you

1 the check, you have a different matter. We have to get it
2 enforced.

3 MR. COLEMAN: There is a different matter.

4 But as a matter of Article III jurisdiction,
5 Your Honor, the -- the mootness doctrine does not apply to
6 a situation where you have a judgment and it doesn't
7 necessarily apply the moment you get paid.

8 JUSTICE KENNEDY: Suppose that you lost in the
9 State court and the judgment is final. You then go to
10 Federal court. Are -- is there a context in which Rooker-
11 Feldman might then be applicable? This is all
12 hypothetical.

13 MR. COLEMAN: Our argument is that it would be
14 applicable only if the injury that we claimed in our
15 Federal suit was an injury caused by the State court --
16 the court itself or the judge rather than our adversary
17 and we sought relief from that judgment. That would
18 obtain the nature of appellate jurisdiction rather than we
19 say, well, SABIC did us wrong, we'd like a judgment. And
20 then SABIC can come in and say, well, they're precluded.
21 They already tried that.

22 JUSTICE KENNEDY: In other words, if you had
23 some ongoing relation and, in this hypothetical, the State
24 court ruled against you and you went in to try to reverse
25 that ruling, that would be -- that would Rooker-Feldman.

1 MR. COLEMAN: Yes. If we alleged harm from the
2 court and sought relief from the court's judgment.

3 JUSTICE GINSBURG: There were only the two
4 cases, Rooker and Feldman, that established this.

5 MR. COLEMAN: Yes.

6 JUSTICE GINSBURG: Has this Court ever said
7 anything to suggest that Rooker-Feldman, as apart from
8 preclusion doctrine, applies to parallel litigation
9 instead of you go into Federal court after the State court
10 is over and you're trying to undo what the State court
11 did?

12 MR. COLEMAN: I don't think this Court has ever
13 held any such thing, and I think it would be inconsistent
14 with at least Feldman itself. The idea of -- of appellate
15 jurisdiction over the constitutional claims in Feldman
16 that were held not to be barred comes down in the end --
17 SABIC says, well, those claims weren't actually litigated.
18 But the opinion itself on page 467 points out that the Mr.
19 Feldman had raised his constitutional claims in front of
20 the D.C. Court of Appeals in terms of asking for his
21 waiver. And when I checked the oral argument transcript
22 from the Feldman case, it was mentioned specifically in
23 terms of Mr. Feldman had raised the constitutional claims
24 in front of the D.C. Court. And that's on pages 9, 14,
25 and 16 of the LEXIS version of the oral argument

1 transcript.

2 JUSTICE GINSBURG: But there's no preclusion
3 unless they're also decided.

4 MR. COLEMAN: Yes. Well, yes. The district
5 court could then decide whether in fact they were
6 precluded, and -- and it's likely that they were. I
7 didn't follow up on what happened when the case went back
8 down on remand.

9 But the Court said, we're not going to decide
10 that. We will allow the district court to address that in
11 the first instance.

12 And so we think that the actually litigated
13 revision of Rooker-Feldman is simply inconsistent with
14 Feldman itself, that it improperly displaces full faith
15 and credit that is not true to the negative implication
16 from section 1257 which has to be a very narrow
17 implication, indeed, because 1257 gives this Court
18 jurisdiction, and it's only appellate jurisdiction, to
19 suggest that another court doesn't have that appellate
20 jurisdiction must be -- must be narrowly limited to the
21 context, the type of lawsuits that this Court would seek,
22 which is not simply they did me wrong, please -- please
23 give me money, but rather, that lower court erred. It
24 violated my rights. It is structurally or in some -- in
25 violation of Federal rights or something that the court

1 did and that you have been asked to fix. That, we think,
2 is consistent with the proper negative implication from
3 1257, but overrunning most of preclusion law simply is
4 not.

5 For these reasons, we would ask the Court to
6 reverse.

7 And, Justice Stevens, I would like to reserve
8 the remainder of my time.

9 JUSTICE STEVENS: You may do so.

10 Mr. Castanias. I hope you'll tell us also
11 whether you think the case is moot before you're through.

12 ORAL ARGUMENT OF GREGORY A. CASTANIAS

13 ON BEHALF OF THE RESPONDENT

14 MR. CASTANIAS: Justice Stevens, and may it
15 please the Court:

16 This case is moot. There is nothing for Exxon
17 Mobil to get at this --

18 JUSTICE BREYER: Well, you're still asking for
19 cert.

20 MR. CASTANIAS: That's right, and that's --

21 JUSTICE BREYER: Well, then why is it moot?
22 Because something could happen. We might get this case in
23 theory, take it on cert, and discover a jurisdictional
24 problem that somehow destroys the case without a decision,
25 and should that happen, there luckily for them they have

1 this other case going. So as long as -- you're prepared,
2 I take it, to say you're going to ask for cert. If that's
3 what you're going to say, I don't see how the case is
4 over. It's up to you.

5 MR. CASTANIAS: Okay. Well, I'm -- I'm not
6 going to take the Hobson's choice, Your Honor, but I am
7 going to tell you, first of all, that SABIC is going to
8 apply for cert. At least that's my current understanding.

9 And second of all, that shows why this case is
10 not justiciable at this point because if the most likely
11 event in the -- in the event of this Court's review of the
12 Delaware determination, is a reversal on a statute of
13 limitations problem. That's the reason this suit was
14 brought as the, quote, insurance policy that the Third
15 Circuit identified, which was if the Delaware Supreme
16 Court or the Delaware Superior Court had kicked this suit
17 on the ground of the 3-year statute of limitations -- and
18 if you look at page 20a of the supplemental brief, the
19 corrected supplemental brief that we filed with the Court,
20 including the Delaware Supreme Court's opinion, you'll see
21 that they had a whale of a time getting over the plain
22 language of their own statute.

23 JUSTICE BREYER: All right. If for -- somehow
24 you won on that, even though it sounds a little like a
25 State law issue, but nonetheless, if you won on that and

1 they reversed it as a statute of limitations, then what
2 they're saying is, well, that's just why we filed in
3 Federal court. We didn't want the Federal court to review
4 the State court. We wanted our Federal court suit as an
5 insurance policy in case something goes wrong with the
6 State court suit. It has nothing whatsoever to do with
7 Rooker-Feldman. It is parallel adjudication, just what he
8 said. Now, what's your response?

9 MR. CASTANIAS: My response, Justice Breyer, is
10 twofold. First of all, with regard to the mootness
11 question, if that eventuality occurs, that's the time when
12 there may be a justiciable issue for a Federal district
13 court. Not now. We've been talking about ifs and
14 hypotheticals and what may happen in the future.

15 JUSTICE GINSBURG: Mr. Castanias, was there a
16 proper case in the district court when the complaint was
17 initially filed there some 2 months after you filed in
18 Delaware?

19 MR. CASTANIAS: We've never disputed that,
20 Justice Ginsburg.

21 JUSTICE GINSBURG: All right. So you can bring
22 two cases, identical cases, in two different courts, and
23 that's an everyday thing, and the defense is prior action
24 pending.

25 MR. CASTANIAS: Right.

1 JUSTICE GINSBURG: Now, you are urging that
2 Rooker-Feldman which this Court never applied when you had
3 parallel litigation be extended into a domain which is
4 ordinarily taken care of by preclusion doctrine. Why
5 would you want to mix those two things up that now seem to
6 me rather clear, that if you have Rooker-Feldman, when you
7 rush into a Federal court and say, Federal court, undo
8 that State court judgment, I don't like it? Rooker was
9 just a paradigm case of that. Why would you want to
10 spread that doctrine? What is -- what is there that
11 preclusion doctrine doesn't accomplish?

12 MR. CASTANIAS: Well, Justice Ginsburg,
13 preclusion doctrine may accomplish this in a certain
14 number of cases, but I think it's important -- and I think
15 I have to correct my colleague on the other side here with
16 regard to the state of the record. Yes, there was a stay
17 of the New Jersey II trial court litigation, but it wasn't
18 because of the Colorado River application that we made.
19 In fact, if you'll look in the appendix to the petition --

20 JUSTICE GINSBURG: Well, I'm not talking about
21 anything fancy like Colorado River. Prior action pending
22 is a familiar defense. You've got two actions. They
23 could even be in different districts of the same State and
24 one says, Your Honor, this case started second, the other
25 one is going forward, hold it abeyance because there's a

1 prior action pending. That's not Colorado River
2 abstention or anything like that.

3 MR. CASTANIAS: Well, I -- I think, Your Honor,
4 you will see that that is a component of Colorado River,
5 and that was part of the application that we made to the
6 district court in this case under Colorado River. And my
7 only answer -- the only reason that I'm bringing this up,
8 Justice Ginsburg, is that if you'll look in the appendix
9 to the petition for certiorari, you will see that SABIC,
10 my client, made an application for Colorado River
11 abstention, and the district court denied that. The
12 district court denied that in this case.

13 JUSTICE GINSBURG: Well, sometimes district
14 judges rule incorrectly, but -- but what happened here is
15 the district court case did not go on because the two of
16 you, both sides, said, okay, the district court -- they're
17 all bollixed up with this Foreign Sovereign Immunity Act,
18 so we're going to agree. You agreed that the case would
19 go forward in Delaware, the trial in Delaware. Is that
20 not so?

21 MR. CASTANIAS: Well, it was -- it was -- if
22 you'll look at -- I believe this is at page 8a of the
23 addendum to the red brief. You'll see that it was Exxon
24 Mobil that pushed in Delaware, but that actually happened
25 before the ruling on sovereign immunity, that -- that they

1 elected to go forward in Delaware.

2 JUSTICE GINSBURG: Well, when you say they
3 pushed in Delaware, you brought them into Delaware and a
4 -- in a reverse suit. You wanted a declaration of non-
5 liability.

6 MR. CASTANIAS: Right.

7 JUSTICE GINSBURG: They brought their case for
8 liability in the Federal forum. They were forced by you
9 into the Delaware forum, and now you're saying you were
10 pushed, that Exxon pushed. You brought the case in
11 Delaware. They didn't.

12 MR. CASTANIAS: We -- that is true that we
13 brought the initial case, but the case was eventually
14 tried on their counterclaims. The case was inverted to
15 make them the party plaintiff. They went first at trial
16 and is it -- at the page I cited to you, that was where
17 they decided to go forward with the Delaware case.

18 JUSTICE GINSBURG: But it was your preferred
19 forum, not theirs. When they filed their complaint, they
20 filed it in New Jersey where they had a related case
21 pending. So you chose the forum.

22 MR. CASTANIAS: That -- that is absolutely the
23 case with regard to the Delaware matter.

24 But I think what your question is getting at --
25 and I think I have to go back a couple of minutes in our

1 colloquy here to talk about why abstention won't do the
2 work in this case. In the lion's share of cases, it
3 probably will, Your Honor, but in this case it didn't.

4 And this brings me back to Justice Breyer's
5 question which said -- in which he said that -- that
6 concurrent jurisdiction has always bothered him because
7 what you're ending up with is a race to judgment. But
8 it's important again, Justice Breyer. It's a race to
9 judgment.

10 JUSTICE BREYER: Well, that's -- you see,
11 Justice Ginsburg answered that. I -- I mean, she wasn't
12 answering my question, but she did say what was a
13 perfectly satisfactory approach, that -- that the second
14 person says, you know, Judge, there's another one pending
15 and the judge says, okay, we'll let that go first except
16 in some unusual instance.

17 JUSTICE KENNEDY: Which happens thousands of
18 times in -- in all of the courts. It's very common and I
19 don't know why we're over-designing this vehicle. It's
20 simply other action pending. End of case.

21 MR. CASTANIAS: Justice Kennedy --

22 JUSTICE KENNEDY: Or end of argument, not end of
23 case.

24 (Laughter.)

25 JUSTICE BREYER: So why isn't it that the end?

1 I mean, here it's not moot. They filed the other action.
2 You point out that you not only think something could
3 wreck the State claim, you would love it to wreck the
4 State claim. And -- and therefore, they have this
5 insurance policy in Federal court which they'll gear up if
6 and when the State claim does get wrecked as you hope.

7 MR. CASTANIAS: Justice Breyer, I think this is
8 the point in the argument where I want to turn to the
9 definition of review as this Court has -- has put it forth
10 in cases like ASARCO. This is a case that Exxon Mobil
11 dismisses in their reply brief as mere dictum. I don't
12 think that this -- the discussion of Rooker-Feldman and
13 the ASARCO case can be dismissed as dictum in that it was
14 a specific response to a specific proposal by the United
15 States appearing as amicus to dismiss the case for lack of
16 standing and instead remit plaintiffs to pursuing a second
17 suit.

18 In that case, the Court wrote that to re-
19 adjudicate -- and I'm quoting here from the opinion, and I
20 don't have the particular page here -- to re-adjudicate
21 the very same issues that were determined in the State
22 court proceedings would be -- again quoting -- in essence,
23 an attempt to obtain direct review of the Arizona Supreme
24 Court's decision in the lower Federal courts.

25 In ASARCO, there was no reference to what the

1 intent of the plaintiffs was. There was no reference to
2 what the timing of the lawsuits was. It was simply that
3 identical issues actually litigated.

4 JUSTICE GINSBURG: So perhaps the Court, if it
5 had been more cautious, would have spoken not in terms of
6 Rooker-Feldman or review, but in terms of this matter has
7 been decided. It is claim-precluded. That's what
8 preclusion doctrine is supposed to do. So in that
9 context, maybe this Court used the wrong word. Maybe it
10 should have said, you litigated it, it's over and done
11 with, now it's precluded. Why do you need to interject
12 the word review?

13 Isn't that -- unless you're going to say every
14 time court A decides a case and then you're in court B and
15 someone is raising the same claim, that is a review of
16 court number one rather than you're precluded in court two
17 because of what is -- has been litigated and decided in
18 court one.

19 MR. CASTANIAS: Well, first of all, Justice
20 Ginsburg, I'm hesitant to say that this Court was
21 incautious in its use of words. This was --

22 JUSTICE GINSBURG: It is sometimes.

23 MR. CASTANIAS: But -- understandably, but --
24 but with regard to -- with regard to Rooker-Feldman, it
25 was not just -- it was not just an accidental --

1 incidental invocation of it. It was the reason for the
2 rejection of the argument. The reason was not res
3 judicata. The reason was respect for the dignity of the
4 State court's work in the case, and that's ultimately --

5 JUSTICE GINSBURG: That's why one has preclusion
6 because you are giving respect, full faith and credit, to
7 a decision elsewhere. That's what preclusion doctrine is
8 all about. We respect the judgment of the court that
9 rendered it. We, therefore, give it full faith and
10 credit. That's what preclusion doctrine is about, is
11 about respect and credit. Isn't that so?

12 MR. CASTANIAS: That's -- that's -- that is --
13 that is generally right, Justice Ginsburg, but at the same
14 time, there -- we all agree -- Exxon Mobil, SABIC, and the
15 decisions of this Court -- that there has to be some
16 overlap with regard to Rooker-Feldman and SABIC -- and --
17 excuse me -- and -- and preclusion doctrine. The -- the
18 argument made by Exxon Mobil, which is, in essence, the
19 same question you're asking me, would have destroyed any
20 reason whatsoever for the Rooker and the Feldman cases, as
21 well as the ASARCO case. There's also a significant body
22 of law that's body of law that's been built up over the
23 last 85 years in the lower courts in -- in this regard.
24 And --

25 JUSTICE GINSBURG: But you --

1 JUSTICE O'CONNOR: So some of the lower courts
2 have given a broad interpretation to Rooker-Feldman and
3 have turned it into something other than the narrower view
4 of it. And I think that's why we granted cert in this
5 case, to decide whether to give it a broad or a narrow
6 interpretation. The Third Circuit applies a rather broad
7 interpretation of it.

8 MR. CASTANIAS: Well, I -- I guess in that
9 respect, Justice O'Connor, I disagree because the Third
10 Circuit, admitted by its own words, applies a very narrow
11 version of Rooker-Feldman. And, in fact, using this case
12 as the vehicle to decide this, the -- the definition of
13 Rooker-Feldman in this instance amounts to no more than
14 barring jurisdiction in a second Federal suit over the
15 identical claims. This is not a case where you have to
16 worry about claims that might have been brought, the sort
17 of things that footnote 16 in Feldman dealt with.

18 JUSTICE O'CONNOR: But maybe that isn't a proper
19 application of Rooker-Feldman where the complaint is not
20 about something the State court has improperly done.

21 MR. CASTANIAS: Well --

22 JUSTICE O'CONNOR: It isn't. And so in that
23 sense, the Third Circuit has a rather broader view of it
24 I'd say.

25 MR. CASTANIAS: Well, to be sure, Justice

1 O'Connor, the Third Circuit's view is broader than that
2 which appears to be adopted by the Ninth Circuit, as well
3 as the Seventh Circuit.

4 And I think this brings me back to the
5 definition of review. The -- the Ninth and Seventh
6 Circuits' views in our estimation are wrong because they
7 strictly look to the subjective intent of the plaintiff
8 and as to whether the plaintiff is, in fact, seeking
9 reversal. That -- that's the term that's used in these
10 cases. Noel says seeking to set aside.

11 But section 1257 --

12 JUSTICE STEVENS: Of course, that's the language
13 that was used in both Rooker and Feldman too I think.

14 MR. CASTANIAS: And that's because, Justice
15 Stevens, that's -- that was the particular fact pattern of
16 this -- of that case.

17 JUSTICE STEVENS: And that's the only fact
18 pattern any of our cases have dealt with.

19 MR. CASTANIAS: That's -- in the Supreme Court,
20 that's right.

21 JUSTICE SOUTER: And the -- and the concern is I
22 think -- at least as I understand the -- the concern with
23 it, it -- it boils down to something like this. Somebody
24 comes along and says, don't apply claim preclusion. Don't
25 apply it because, for whatever reason, there's this --

1 there's something wrong here, and -- and Federal court
2 should determine the -- in fact, the -- the claim
3 preclusion of the State judgment should not apply. The
4 answer to that is, look, that's an issue to be raised by
5 way of appeal of your State judgment. You don't appeal
6 State judgments in Federal court. Out.

7 There's no such claim being made here. The only
8 claim that's being made here or the only conceivable
9 claim, I guess, that can be made here is that we might
10 want to do some litigating in the Federal case after the
11 State case is over. There's no claim here that claim
12 preclusion should not apply in that instance, and because
13 there's no such argument that claim preclusion does not
14 apply, the answer to the problem that you're worried about
15 is simply claim preclusion doctrine. There's no reason to
16 add a perihelion or something onto Rooker-Feldman to deal
17 with what is really a very simple problem and that is, if
18 they try to relitigate anew in Federal court, as Justice
19 Ginsburg says, you -- you plead claim preclusion. Simple.
20 Why do we need to complicate it beyond that simplicity?

21 MR. CASTANIAS: Well, Justice Souter, I -- I
22 don't have any qualms with the application of claim
23 preclusion here. The -- the Third Circuit, though, was
24 being -- was being sensitive to the interests of the State
25 courts, as well as sensitive to the fact that it had

1 another jurisdictional issue in front of it, which was
2 subject matter jurisdiction under the FSIA. And I'm --
3 I'm certain, as certain can be, that that court would have
4 reached the same result if res judicata had been before
5 it.

6 But the -- the fact is that Rooker-Feldman is
7 there and, again, as -- as with my response to Justice
8 Ginsburg earlier, your -- your question would effectively
9 rub out any need for even Rooker and Feldman themselves.

10 JUSTICE SOUTER: Well, no, because the -- it --
11 it would not rule out the need to have some answer when
12 someone in a Federal court comes along and says, don't
13 apply claim preclusion, whatever the reason may be. Don't
14 apply the claim preclusion rules. There's something
15 unfair about doing it here. The answer to that is, look,
16 what you're really asking us to do, when you say don't
17 apply claim preclusion, is to review what happened in the
18 State court, and we don't sit as an appellate court on
19 State courts. So there's still something for Rooker-
20 Feldman to do on, as it were, Justice -- Justice
21 Ginsburg's claim preclusion argument.

22 MR. CASTANIAS: Well, Justice Souter, I think
23 again, with respect to the hypothetical that you've put to
24 me, the claim preclusion is appropriately --

25 JUSTICE SOUTER: It'll get the -- it'll get the

1 job done that you say will need to be done if you get to
2 that point.

3 MR. CASTANIAS: It -- it should get the job
4 done.

5 JUSTICE SOUTER: Why won't it?

6 MR. CASTANIAS: Well, there -- there are --
7 first of all, there are no guarantees. The -- the
8 preclusion doctrines are -- are riddled with exceptions.

9 JUSTICE SOUTER: Then -- then you --

10 MR. CASTANIAS: The preclusion doctrine --

11 JUSTICE SOUTER: Then -- then you appeal. Don't
12 ask for a new body of law. Just say, look, you got the
13 application of claim preclusion wrong in this case. We're
14 going to appeal.

15 MR. CASTANIAS: I -- I disagree, Justice Souter,
16 that -- that we're asking for anything like a huge, new
17 body of law or that the Third Circuit was making a huge,
18 new body of law.

19 JUSTICE GINSBURG: Well, you're asking us to
20 extend Rooker-Feldman beyond where this Court has taken
21 it, and if I recall correctly, you really didn't ask for
22 this. The Third Circuit injected Rooker-Feldman into the
23 case. Is that not true?

24 MR. CASTANIAS: Well, that's true, Justice
25 Ginsburg, but it's true because of the briefing cycle.

1 When we briefed the case, there was no Delaware judgment.

2 And it was only on the eve of oral argument --

3 JUSTICE SCALIA: Ms. Castanias --

4 MR. CASTANIAS: Yes.

5 JUSTICE SCALIA: -- could -- could I come back
6 to mootness? One -- one could say that not only is claim
7 preclusion the answer to Rooker-Feldman, it's also the
8 answer to the asserted mootness here. I mean, you -- you
9 don't have to move to dismiss it as moot. All you have to
10 do is move to dismiss because of a prior adjudication that
11 has resolved this question.

12 Do you know of any case in which the existence
13 of a prior judgment in another court has been held to
14 render a suit that someone wants to press to get a second
15 judgment moot? I mean, you'd think there would be a case
16 on that, and I suppose the reason there isn't is that
17 because the other side is always going to plead res
18 judicata.

19 MR. CASTANIAS: Well, or the other side is going
20 to give up.

21 JUSTICE SCALIA: Or give up.

22 But is there any case in which mootness is
23 established by the fact that there is a prior judgment of
24 another court giving you what you are asking for from this
25 Court?

1 MR. CASTANIAS: Well, Justice Scalia, in the --
2 in the realm that we're talking about here, the Fourth
3 Circuit's decision in the Friedman's case came to a
4 mootness conclusion. We've also cited in our brief -- and
5 I don't recall the names of them off the top of my head --
6 two cases in which the Court either -- either dismissed or
7 remanded for consideration of mootness in light of another
8 State court judgment. So I think there is -- there is a
9 body of law, but I also know that it is -- as recently as
10 yesterday looking at Wright and Miller on this issue, that
11 when complete relief has been accorded by another
12 tribunal, that is the classic case of mootness.

13 JUSTICE SCALIA: Well, I -- I don't know why --
14 well, if it's -- if it were so classic, there would be a
15 lot of cases, and I don't -- I'm not sure that any of
16 yours are right on point. And -- and I think the reason
17 is that you don't need it, that claim preclusion is -- is
18 the remedy for the party who wants to get out of it.

19 MR. CASTANIAS: Well, and again, I'm -- I'm
20 certainly not going to fight claim preclusion because this
21 is a suit that should not be here. This is -- this has
22 had moving parts since we -- since the petition was
23 granted with the Delaware Supreme Court ruling and now
24 with yesterday's denial of reargument in the Delaware
25 Supreme Court. What --

1 JUSTICE BREYER: Why is it moot? Or even on --
2 why does claim preclusion apply? I mean, if you win, from
3 what you've said -- somehow convince us that this refusal
4 to apply the State statute of limitations properly
5 violated some Federal law, let's say -- then that would
6 show that the State statute of limitations applied and
7 barred their claim. Would that be sufficient to knock out
8 the Federal suit too?

9 MR. CASTANIAS: I'm not sure I understand the
10 question, Justice Breyer.

11 JUSTICE BREYER: I mean, is -- does the State
12 statute of limitations, if -- if it applied to the State's
13 case, does it also apply in the Federal cases, the
14 identical ground that everybody agrees that the State
15 statute governs?

16 MR. CASTANIAS: The -- the -- there could be --
17 there could be issue-preclusive grounds on such a ruling,
18 Justice Breyer, but -- but --

19 JUSTICE BREYER: I mean, if you -- if you win,
20 then -- then -- if you win your State case, because of the
21 argument you made, do you also automatically win the
22 Federal case? Is it the same issue?

23 MR. CASTANIAS: I -- I don't think I could say
24 that at this point because --

25 JUSTICE BREYER: So it may not be the same

1 issue. Then -- then they say, okay, it's not going to be
2 claim preclusion, and you'd have to say insofar as it's
3 not the same issue, it's not claim preclusion. And
4 therefore, they could proceed with their Federal case,
5 which is what they want to do I guess.

6 MR. CASTANIAS: And -- and that is a future
7 event.

8 JUSTICE BREYER: Yes. So we can't say it's moot
9 in any -- and we can't say there's an alternative basis
10 where they'd win, can we?

11 I mean, I'm saying -- I'm thinking if we get
12 into conference, we're discussing this case, and I say,
13 well, I have to think this through, is it the case that if
14 you're right and you end up winning in this Court, that
15 their case in Federal court is over? I think no, it may
16 not be. The answer is it may not be. Then this is not
17 moot at all. This is not claim-precluded at all. They
18 then might proceed with their Federal claim.

19 MR. CASTANIAS: Well, I -- I guess, Justice
20 Breyer --

21 JUSTICE BREYER: Is that right or not?

22 MR. CASTANIAS: I don't think it's right.

23 JUSTICE BREYER: Because?

24 MR. CASTANIAS: And -- and I think the reason
25 it's not right is because that just shows that there's no

1 live controversy right now. That's a controversy that
2 might happen in the future.

3 JUSTICE BREYER: Oh, well, but that -- that
4 isn't fair to them because, for all I know, they filed the
5 Federal case because there's a different statute of
6 limitations, say, that governs it that will have expired
7 if you don't let them file it by the time -- until this
8 whole thing is over. They just wanted it as protection.

9 MR. CASTANIAS: Well, two answers to that,
10 Justice Breyer. First of all, that seems to be a -- a
11 place for State doctrines of tolling to apply, not Federal
12 law.

13 Second of all, this Court in -- in Heck against
14 Humphrey, which we cited in our brief, solves this --

15 JUSTICE BREYER: That's explaining the unclear
16 by the incredibly hard to understand.

17 MR. CASTANIAS: I'm sorry. I'm sorry, Justice
18 Breyer.

19 JUSTICE BREYER: It's explaining the unclear by
20 reference to the incomprehensible. But go ahead.

21 (Laughter.)

22 JUSTICE SCALIA: I think I wrote that opinion.

23 (Laughter.)

24 MR. CASTANIAS: And indeed, you did, Justice
25 Scalia.

1 JUSTICE SCALIA: I never did like it.

2 (Laughter.)

3 MR. CASTANIAS: I -- I've also gotten that
4 impression.

5 But -- but Heck I think teaches an important --
6 Heck teaches an important lesson for this case as well,
7 which is that Heck was just a suit for money damages, just
8 like this suit. And -- and yet, this Court said that
9 there's going to be no cause of action under section 1983
10 because of the intersection of 1983 and habeas. Well, we
11 have the same result here. There should be no Federal
12 court case here because of the intersection of section
13 1257 --

14 JUSTICE GINSBURG: No, no, because it's where
15 you walk in the door. And you started out by saying this
16 case, I think as you must, was a proper Federal case. It
17 was properly filed in -- and it was properly filed in
18 Delaware. So you can't talk about a case that says, if
19 you've got this kind of case, you go in this door. If
20 that kind of case, you go in that door. You have a case
21 here that could go in either door, the Federal, the State.

22 The usual rule is, is it not, that if Federal
23 jurisdiction attaches, it doesn't get lost because of
24 subsequent events. For example, if a defendant moves into
25 the plaintiff's State and the only basis for Federal

1 jurisdiction is diversity, subject matter jurisdiction
2 isn't lost, is it?

3 MR. CASTANIAS: No, and in fact, the case that's
4 cited against us for that proposition, the Freeport-
5 McMoran case, makes clear, in the portion of it not cited
6 by Exxon Mobil, that that rule is limited to the diversity
7 context. And it's not -- it -- it does not have its
8 genesis in statute, but it's in policy. We don't want to
9 keep people from moving across State lines. We don't want
10 to -- want to impede their -- their free movement. So
11 we're going to look at it at the time of filing.

12 But what we have here is a case where maybe it
13 was original jurisdiction when the case was filed, but
14 it's not original anymore.

15 JUSTICE GINSBURG: Maybe. It's not -- it's not
16 maybe --

17 MR. CASTANIAS: Well, in this case, yes. In
18 this case, yes. But original jurisdiction when the case
19 was filed but not anymore because there's nothing original
20 about it.

21 JUSTICE GINSBURG: A case can become moot, but
22 we've already expressed considerable doubt whether that is
23 the fate of this case.

24 The notion -- you used it derisively -- the
25 insurance policy. Lawyers bring protective actions all

1 the time, don't they? There's nothing wrong with doing
2 that.

3 MR. CASTANIAS: Well, I guess I come back to --
4 to where I started with Justice Breyer on the -- on the
5 merits of the Rooker-Feldman issue this morning, which is
6 that the concurrent jurisdiction is something to be dealt
7 with. This Court has an uneasy body of law in the
8 abstention area dealing with the issue of concurrent
9 jurisdiction, but what it doesn't have is anything that
10 deals with judgments, once you get to a judgment.

11 JUSTICE STEVENS: May I ask you? It's perhaps
12 an unfair question. The Chief Justice generally likes to
13 confine our attention to cases of this Court rather than
14 the courts of appeals for our primary guidance, and most
15 of the Rooker-Feldman law is court of appeals law, as we
16 -- we both know. Going back just to Rooker and to
17 Feldman, those two cases, and putting aside ASARCO for a
18 minute, which of those two cases do you think provides you
19 the stronger support, if indeed any support, between
20 Rooker and Feldman?

21 MR. CASTANIAS: Well, I -- I would have to say
22 that Feldman, of the two of them, is probably stronger
23 support.

24 JUSTICE STEVENS: And that is the case in which
25 the court of appeals was itself a party to the litigation.

1 MR. CASTANIAS: That's right. But at the same
2 time, the -- the Rooker case also dealt with relitigation
3 of the identical issues.

4 And if I could just sum up here, seeing that the
5 light is on here, the issue in this case is limited to
6 identical lawsuits, identical claims. The Third Circuit's
7 decision in this case, if it constitutes an extension of
8 Rooker-Feldman at all, is only a modest extension because
9 it recognizes, consistent with ASARCO, consistent with
10 Heck, and consistent with the very notion, Justice Souter,
11 of de facto appeals, not actual appeals, but de facto
12 appeals being prohibited by the doctrine -- it recognizes
13 that claims actually litigated in a State suit to a
14 judgment, if they are litigated anew in the Federal court,
15 that is de facto appellate review.

16 The judgment of the Third Circuit should be
17 affirmed.

18 JUSTICE STEVENS: Thank you, Mr. Castanias.

19 Mr. Coleman, you have 8 and a half minutes left.

20 REBUTTAL ARGUMENT OF GREGORY S. COLEMAN

21 ON BEHALF OF THE PETITIONERS

22 MR. COLEMAN: And I'll take just a few of them,
23 Your Honor.

24 I believe the concession that the Federal court
25 exercised original jurisdiction at the time our case was

1 filed is an important concession because I simply do not
2 see yet still any rationale for this idea of vanishing
3 original jurisdiction.

4 I also see the concession made in response to --
5 to your question, Justice Breyer, about what happens if
6 they win on the statute of limitations issue. Well, one
7 of the cases they cite on page 12, footnote 5 of their
8 brief, the Northern Natural Gas case itself makes clear --
9 and there are other cases. They went to Delaware to apply
10 the Delaware statute of limitations. They conceded in
11 front of the Delaware Supreme Court that even if they had
12 won that, it wouldn't bar another lawsuit in a different
13 forum applying a different statute of limitations. The
14 only way they could even hope to get the shorter statute
15 was in Delaware. The Delaware statute would never apply
16 to our Federal claims, so that if somehow it went back on
17 that procedural ground, it would not bar a trial in
18 Federal court. We don't think that that's likely to
19 happen, but that is another explanation yet of why it's
20 moot.

21 We also cited to the Court the Male case. It is
22 an old case, but it does make clear that when there is the
23 question of jurisdiction before the court and some other
24 court rules on the merits, that does not make the case
25 moot. In fact, you really wouldn't have a need for claim

1 preclusion if that were the rule in -- in mootness,
2 because once the case is final over there, they'd all be
3 moot, and you wouldn't need to apply --

4 JUSTICE SCALIA: Well, that depends on who wins.

5 MR. COLEMAN: You're right.

6 JUSTICE SCALIA: I mean, if you lost in the
7 other suit, your claim here wouldn't be moot. I mean, it
8 -- it would be precluded, but it's certainly not moot.

9 MR. COLEMAN: I -- I think that's right.

10 I'd also like to address, just very briefly, the
11 ASARCO question. The language that the Court used in
12 there we don't necessarily think was loose or
13 inappropriate, Justice Ginsburg, and the reason was the
14 Court cites at that point an amicus brief by the United
15 States and it cites a particular footnote. And what that
16 footnote says is it's a recommendation that the mining
17 company in that case could file a Federal lawsuit seeking
18 a judgment that the invalidation of the statute was not
19 necessary. But by challenging the invalidation itself,
20 that -- that looks more like a direct challenge to the
21 State court judgment. It's not simply a relitigation. So
22 that behind the Court's language there -- and of course,
23 it was really just addressing standing. It was not
24 directly addressing Rooker-Feldman. But the U.S.'s
25 suggestion in that case was a suit challenging the State

1 court judgment, and in that situation, it looks more like
2 appellate review, more likely to infringe upon Rooker-
3 Feldman-type interests.

4 In the end, we believe that preclusion doctrines
5 adequately cover all of this, that it is not true --

6 JUSTICE STEVENS: Mr. Coleman, I don't mean to
7 take your time, but in the ASARCO case, was the State
8 court judgment final at the time in dispute?

9 MR. COLEMAN: Your Honor, there's a question
10 about that. I mean, the Court kept jurisdiction, but
11 there was a determination that the statute was invalidate
12 -- was invalid and then a remand back to the district
13 court for further proceedings.

14 JUSTICE STEVENS: Because if the judgment were
15 final, then that would fit right into your -- your
16 analysis, if the judgment of the State court were final.

17 MR. COLEMAN: Yes, Your Honor, it would.

18 JUSTICE STEVENS: Yes.

19 MR. COLEMAN: In the -- at the end of the day,
20 we believe that this Court's preclusion jurisprudence is
21 not riddled with vagaries, that it's not difficult to
22 understand, and that it's certainly not more vague or
23 difficult than the borrowing that they are attempting to
24 do to bring existing preclusion doctrines into -- in order
25 to expand Rooker-Feldman.

1 Preclusion is the answer in this case. We
2 believe that the district court should be permitted to
3 address that in the first instance, and we would ask the
4 Court to reverse the judgment of the Third Circuit.

5 Thank you.

6 JUSTICE STEVENS: Thank you, Mr. Coleman.

7 The case is submitted.

8 (Whereupon, at 11:52 a.m., the case in the
9 above-entitled matter was submitted.)