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BY HAND

June 20, 2011

Keith Loken, Esq.
Office of the Legal Adviser
Office of Private International Law
United States Department of State
2430 E Street, NW (Suite 357)
Washington, DC 20037

Re: *Chevron Corp. v. Maria Aguinda Salazar, et al.*, 11 Civ. 3718 (S.D.N.Y.) (LAK) and *Chevron Corp. v. Donziger*, 11 Civ. 0691 (S.D.N.Y.) (LAK)

Dear Mr. Loken:

I write on behalf of Chevron Corporation to follow up on your recent request to meet with Chevron, in response to the approach made to the U.S. Department of State by American lawyers purportedly representing a group of Ecuadorian citizens in litigation against Chevron. I understand that these lawyers sought to prompt the Department to involve itself in legal proceedings now pending before the United States District Court for the Southern District of New York (the "New York Litigation"). We appreciate the invitation to meet with you and intend to set the record straight.

In advance of our June 28 meeting, I am enclosing two binders that provide some of the most important documents necessary to understand the New York Litigation. Specifically, Binder 1 includes: (a) Judge Kaplan's thorough 128-page order entering a preliminary injunction against attempts to enforce the fraudulently obtained $18.2 billion Ecuadorian judgment;[1] (b) Chevron's TRO and preliminary injunction briefs; and (c) various other court orders supporting Chevron's position. Binder 2 includes Chevron's First Amended Complaint, annotated to identify specific evidence supporting Chevron's allegations, as well as a sampling of some of the key pieces of evidence. So that you have access to all the underlying exhibits referenced in the annotated amended complaint, I am also enclosing disks that contain electronic copies of those exhibits, including video files documenting the fraud at issue. Collectively, these materials powerfully demonstrate the fraud being perpetrated by the Lago Agrio Plaintiffs ("LAPs") and their U.S. handlers and funders. At your request, I am providing all of these documents to you in triplicate. We anticipate providing you with some additional materials next week, and of course we can provide further updates as events

1 Judge Kaplan's opinion is publicly reported as *In re Chevron Corp.*, -- F. Supp. 2d --, 2011 WL 778052 (S.D.N.Y. Mar. 7, 2011).

warrant, or as you request, in this fast-developing matter. This letter summarizes some of the pertinent factual and legal issues raised by these proceedings.

We are confident that once you review this evidence you will come to the same conclusion provisionally reached by Judge Kaplan in entering the preliminary injunction: The overwhelming—and wholly unrefuted—evidence shows that the Ecuadorian judgment at issue is the end-product of an extortionate scheme, conceived and executed primarily by U.S. citizens, led by New York attorney Steven Donziger. The factual and legal bankruptcy of the Lago Agrio Judgment is clear from, among other things, the plaintiffs' own videotapes, emails, and internal documents, which record in detail the fraud, judicial corruption, and government collusion that produced this unprecedented award. It has nothing to do with the merits of any environmental "claim" against Chevron. To be clear, there was no "environmental disaster" in Ecuador. There were properly conducted, legally sanctioned oil production operations—in an area that remains in use to this day (decades later) by Ecuador's state-owned oil company, producing oil and providing billions of dollars per year to that country. In view of the unrebutted evidence of fraud and extortion, the preliminary injunction ordered here represents the proper exercise of the court's well-established authority to prevent the enforcement of fraudulent judgments by the LAPs and their attorneys, and various agents. And it in no way intrudes on the rights of any foreign sovereigns, since it does not prohibit the LAPs from taking any actions in Ecuador, and there currently are no actions seeking to litigate the enforceability of the judgment other than in New York.

The particulars of this ongoing scheme have come to light recently through Chevron's successful litigation efforts in federal courts throughout the United States to obtain discovery revealing the fraud. Throughout, Chevron has sought to keep relevant authorities apprised of the situation. It has made numerous submissions to an arbitration panel of the U.S.-Ecuador Bilateral Investment Treaty, to the Lago Agrio court itself, and to U.S. government authorities. These revelations have even caused Donziger's co-counsel publicly to "disassociate" themselves from his misconduct "because what he did is not defensible," and "potentially improper and unethical, if not illegal."[2] Nevertheless, the American lawyers purporting to represent the LAPs—who include Donziger to this day—have somehow continued to press for entry and enforcement of an Ecuadorian judgment they must or should know was procured by fraud.

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[2] *Chevron Corp. v. Donziger*, 11 Civ. 0691 (S.D.N.Y.) Feb. 8, 2011, Hearing Tr. at 31:7-10 (LAP Representatives' counsel Sheldon Lobel before Judge Kaplan); August 9, 2010, Letter from Joseph Kohn to LAP Ecuadorian counsel Pablo Fajardo and others.

I. The Fraudulent Lago Agrio Judgment

The facts underlying this dispute are laid out in great detail in, among other places, the opinion entered in the New York Litigation on March 7, 2011, preliminarily enjoining the LAPs from enforcing any judgment in the Lago Agrio Litigation against Chevron. *See In re Chevron Corp.*, 2011 WL 778052, at *3-*26. For your convenience, we provide the following brief summary of the relevant history.

The Lago Agrio Judgment ostensibly stems from oil production carried out in Ecuador from 1964 to 1990 by TexPet, a subsidiary of Texaco. Ecuador, through its state-owned oil company, Petroecuador, became the majority stakeholder in the TexPet consortium in 1976 and took over as the sole operator in 1990. In 1994, as part of ending their business relationship, Ecuador, Petroecuador, and TexPet entered into a Memorandum of Understanding to "negotiate the full and complete release of Texpet's obligations for environmental impact arising from" its operations in Ecuador, and in 1995, they executed a settlement agreement fully releasing TexPet from all claims of environmental impact in return for its participation in a remediation plan that stretched from 1995 to 1998. During that time period, Ecuador issued a series of *actas* (decrees) certifying TexPet's compliance with the remediation plan based on the independent auditing of TexPet's actual remediation work, culminating in an *Acta Final* in 1998 that fully "release[d], absolve[d] and discharge[d] TEXPET." Texaco spent more than $40 million on these remediation efforts and other social programs in the region, and, at the time, all relevant provincial and municipal governments in the region endorsed the remediation, participated in the settlement process, and released TexPet from further liability. Indeed, Hugo Camacho, one of the LAPs currently suing Chevron, went so far as to write a letter to the CEO of Texaco, presenting him with "a testimony of real gratefulness to Texaco Petroleum Company for the environmental remediation work" conducted near his town.

The LAPs' revisionist version of this history is baseless. For example, Donziger told the United States Court of Appeals for the Second Circuit that Judge Kaplan should have considered "the tens of thousands of men, women, and children who are still waiting for non-toxic water to drink . . . ." Donziger Brief at 4. But not only did the LAPs never make this argument to Judge Kaplan, but ***every*** drinking water source at ***every*** inspection site was tested during the underlying Ecuadorian litigation and all were well within the guidelines and standards established by WHO and U.S. EPA for petroleum hydrocarbons. Indeed, the LAPs did not even ask a court-appointed expert to test the drinking water, because they knew it contained no petroleum. Instead they point to the discharge of produced water as part of operations from 1967 through 1990, which they claim was "toxic," and a violation of industry

practices. This, too, is baseless. The U.S. EPA has concluded that produced water is not "hazardous"[3] and its discharge to surface water was a standard industry practice around the world during the 1970s and 1980s, which continues in some areas today.[4] Since 1990, Petroecuador has exclusively run all the operations that are alleged to be causing environmental harm in the Lago Agrio Litigation, and it continued to discharge produced water into Ecuadorian surface waters until 2004—releasing more water in the region than TexPet discharged during the entire span of its former operations. Moreover, Petroecuador has drilled 411 new oil and gas wells in the region since 1990, and its operations have spilled 4.6 million gallons of crude oil, according to reports in the Ecuadorian media.

Hoping for a lucrative case against Texaco, a group of U.S. plaintiffs' attorneys, including Steven Donziger and Joseph Kohn, filed a putative class action in New York in 1993, seeking damages for "property damage, personal injuries, and increased risk of disease" allegedly caused by the consortium's operations. In 1996, the district court dismissed the action on grounds of *forum non conveniens*, a result that was ultimately affirmed by the Second Circuit in 2002. *See Aguinda v. Texaco, Inc.*, 303 F.3d 470, 472 (2d Cir. 2002). As a result, the plaintiffs' lawyers were required to pursue any cognizable claims in Ecuador. Ecuador, though, had no class action procedure and any claims for harm to the environment belonged exclusively to Ecuador. Plaintiffs' attorneys never refiled the 86 individual claims and none of those 86 Ecuadorians has ever been shown to have suffered from any health issue related to petroleum exposure—nor have they claimed any personal injuries in the Lago Agrio Judgment.

In response to the dismissal of their New York action, the U.S. plaintiffs' lawyers colluded with the Republic of Ecuador to pass a new bill, enacted in 1999 as the Environmental Management Act ("EMA"), creating a new private cause of action to enforce "collective environmental rights"—the same rights Ecuador, Petroecuador, and the relevant municipal and provincial governments had already released.

In May 2003, under the EMA, Donziger and other contingent-fee lawyers filed the Lago Agrio Litigation asserting claims, not for damages for individual injury as alleged in *Aguinda*, but for remediation of public lands—the very claims that were released by Ecuador, and that the LAPs had told the Southern District of New York that they could not bring under then-existing Ecuadorian law. The conspirators brought the new action not against

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3 Argonne National Laboratory, *A White Paper Describing Produced Water from Production of Crude Oil, Natural Gas, and Coal Bed Methane Prepared for the U.S. Dep't of Energy* (Jan. 2004), at 25.

4 For example, more than 1.2 billion barrels of produced water was discharged in the U.S. in 1985. John A. Connor, *Regarding Remediation Activities and Environmental Conditions in the Former Petroecuador-Texaco Concession, Oriente Region, Ecuador* (Sept. 3, 2010), at 22-24.

Texaco or TexPet, but only against Chevron. Chevron has never operated in Ecuador, but years after TexPet ceased operations in Ecuador, after the 1998 Final Release, and after the dismissal of *Aguinda*, one of Chevron's subsidiaries merged with Texaco, TexPet's ultimate parent company.

Although the LAPs' complaint proposed that a Donziger-affiliated group called the Amazon Defense Front (the "Front") be the sole recipient of all funds recovered, Ecuador's Prosecutor General later announced that the government would receive 90% of any judgment against Chevron. The Republic has severely underinvested in health and human services infrastructure in the region for decades, however, despite extracting billions of dollars in oil wealth, and there is little reason to believe that it would not similarly misappropriate any funds obtained in a windfall litigation award. Furthermore, the U.S. lawyers and their allies reportedly expect to receive up to 30% of the judgment and have developed plans to "keep the proceeds out of Ecuador," by placing the funds in a "trust" outside of the country, under the exclusive control of a trustee they approve. In fact, Donziger has estimated that he personally is in line for a payout of $200 million or more.

Throughout the Lago Agrio Litigation, Defendants have exploited the Ecuadorian judiciary's weaknesses, bullying judges, and using political connections to obtain favorable rulings based on judges' fears rather than on the facts or the law. The strategy, in Donziger's words, was to "mobiliz[e] the country, politically, so that no judge can rule against us and feel like he can get away with it in terms of his career."

Although Defendants planned these underhanded tactics behind closed doors, they allowed a film crew to record some of those discussions. Donziger solicited U.S. filmmaker Joseph Berlinger to make a movie about the litigation (later released under the title *Crude*) and granted his team extraordinary access, thinking that a movie would completely change the dynamic in Ecuador and in the United States. And in the (mistaken) belief that Berlinger could not be subpoenaed to tell what he knew or to produce his outtakes, Defendants even allowed Berlinger's crew to film them as they planned their self-described "pressure tactics" to intimidate the Ecuadorian court.

Chevron, however, sought access to these film clips pursuant to U.S. statute, and the court in New York held that Berlinger could be subpoenaed and ordered him to produce hundreds of hours of unreleased footage. In July 2010, the Second Circuit directed the filmmaker to comply with the lower court's order. The release of those outtakes, as one U.S. court has observed, "sent shockwaves through the nation's legal communities, primarily because the footage shows, with unflattering frankness, inappropriate, unethical and perhaps illegal conduct."

Among other things, the outtakes reveal that the LAPs and their counsel purposefully and routinely sought to capitalize on, in Donziger's words, the "institutional weakness in the [Ecuadorian] judiciary, generally, and of this court, in particular," employing a variety of scare and pressure tactics. In one shocking exchange, Donziger is told that "the judge will be killed" if he rules against them, to which he responds, "Maybe not killed. But he thinks he will be, which is just as good." In another revealing scene, Donziger schemes with his Ecuadorian cohorts, including Luis Yanza, President of the Front, and their coconspirators at Amazon Watch, to raise their "own army," a "specialized group" detailed "to watch over the court," for which, "if we need weapons, we can provide weapons." Concerned about the discussion being caught on tape, Atossa Soltani of Amazon Watch asks whether "anybody can, uh, subpoena these videos," advising, "I just want you to know that it's—it's illegal to conspire to break the law." Donziger assures her that "[w]e don't have the power of subpoena in Ecuador." Believing that the outtakes could not be subpoenaed, Donziger speaks openly, saying that they need an army to "send a message to the court that, 'don't fuck with us anymore—not now, and not—not later, and never.'"[5]

The Republic of Ecuador itself, moreover, is now at the heart of this conspiracy, all the way to President Correa himself. Over a decade ago, the U.S. plaintiffs' attorneys struck a quid pro quo bargain with Ecuador, promising not to sue Ecuador or Petroecuador in exchange for the government's public and private support of the litigation. In 1996, Donziger's then-colleagues Joseph Kohn and Cristobal Bonifaz signed a notarized waiver, on behalf of the plaintiffs in the *Aguinda* action, stating that, "we hereby expressly waive the right to file any claim against the Ecuadorian State [or] PETROECUADOR," and further stating that if Texaco were to obtain a judgment against Ecuador or Petroecuador, the plaintiffs would "reject" that decision and waived any rights to "collect any amount whatsoever arising from such decision." And Bonifaz has subsequently testified that this release was not limited to *Aguinda*, nor was it limited to claims brought in the United States or Ecuador.

In exchange, Ecuador agreed to intervene on the plaintiffs' behalf in the *Aguinda* action, and has been a public and private supporter ever since. For example, the office of the Attorney General conspired with the LAPs' attorneys to invalidate the 1998 Final Release—a

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[5] In part on the basis of the remarkable evidence of fraud found in the Berlinger footage, and with further support from similarly damning evidence obtained in over a dozen other discovery proceedings around the country, Chevron subsequently obtained discovery from Donziger himself, in another proceeding before Judge Kaplan. *In re Application of Chevron Corp.*, No. 10 MC 00002 (LAK), 2010 WL 4118093 (S.D.N.Y. Oct. 20, 2010). The Second Circuit affirmed Judge Kaplan's order granting Chevron that discovery, and stated in its opinion, "we wish to note the exemplary manner in which the able District Judge has discharged his duties. There is no question but that all concerned, not least this Court, are well served by the careful and comprehensive analysis [of the] District Court[.]" *Lago Agrio Plaintiffs v. Chevron Corp.*, Nos. 10-4341-cv, 10-4405-cv (CON), 2010 WL 5151325 (2d Cir. Dec. 15, 2010).

flagrant breach of its contractual obligations to Texaco. In 2005, Martha Escobar, a deputy to the Attorney General, engaged in email communication with Bonifaz, Pablo Fajardo, Luis Yanza and others that "all of us working on the State's defense were searching for a way to nullify or undermine the value of the remediation contract and the final acts [i.e., the 1998 Final Release.]" The result of this collusion was the baseless criminal indictment of two Chevron employees, on the grounds that the 1998 Release had been procured by fraud. This indictment was only reached under intense political pressure from President Correa and his staff, after multiple prosecutors rejected it for lack of evidence, and it has since been dropped with no explanation. Donziger, who pushed for the indictments for years, knew how essential Correa's support for them was, exclaiming after Correa gave a speech demanding indictment, that the signers of the 1998 Final Release "are shittin' in their pants right now." Further evidence of the ongoing collusion abounds in the video and documentary record. For example, in a *Crude* outtake, Ecuador's Minister of the Environment assures Donziger directly that the government is "giving the support that we can do," and that she had a "very close of, friend of the [Front] working with me doing all this."

This brazen political interference is laid on top of a judicial system known for its corruption. For example, the World Bank's Worldwide Governance Indicators for 2009, compiled from 21 independent sources, ranked Ecuador below the 10th percentile of all countries surveyed with respect to the "rule of law"—down from the 31st percentile in 2003. Ecuador's score is -1.28, which places it below North Korea (-1.25) and well below Iran (-0.90). The Department's own annual Human Rights Report published in March 2010 also noted that "there continued to be serious problems" with respect to "corruption and denial of due process within the judicial system" and that the judiciary was "susceptible to outside pressure and corruption." Similarly, on July 15, 2010, the U.N. Special Rapporteur on extrajudicial executions described Ecuador's judicial system as "almost universally condemned for its inefficiency and mismanagement."[6]

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[6] These critical assessments are well deserved, especially in light of the events of the last several years in which the lack of independence of Ecuador's judiciary has become painfully apparent. Commencing in 2004, the Ecuadorian Congress and then-President Gutierrez essentially took over the Supreme Court, twice purging it to fill it with their chosen members. In turn, the Supreme Court arrogated to itself the power to appoint lower court judges. When President Correa was elected in 2006, he accelerated the centralization of power to his own office, eliminating the Congress and further purging judges that did not support his political agenda. In 2010, he issued an official directive that any judge who enjoined a government ministry and was later overturned on appeal was to be sued for damages. Most recently, on April 5, 2011, his government declared the U.S. Ambassador persona non grata after WikiLeaks disclosed State Department wires that claimed high-level police officers and President Correa were condoning corrupt justice-system practices. And just last month, the Correa administration, railing against endemic judicial corruption, rammed through a referendum giving President Correa control over judicial appointments.

In addition to this naked exertion of fear and political pressure on a judicial system that is already susceptible to corruption, the LAPs:

- Fabricated reports that they falsely attributed to Dr. Charles Calmbacher, a U.S. expert they selected, and with whom they then cut their ties when they did not agree with the results of his findings upon evaluating four of the sites at issue.

- Trumpeted the preliminary findings of yet another U.S. expert, David Russell, long after Russell pointedly told the LAPs that a $6 billion remediation estimate "is too high by a substantial margin, perhaps by a factor of ten, or more."[7]

- Worked to cover up much lower estimates of the remediation costs. When one expert proposed a number lower than Donziger liked, Donziger wrote him: "GUARD THAT NUMBER WITH YOUR LIFE PLEASE. DO NOT TELL ANYBODY."

- Arranged, through improper private meetings with the then-presiding judge, the appointment of Richard Stalin Cabrera Vega ("Cabrera") as the Ecuadorian court's sole expert to conduct a "global damages assessment." They secretly met with Cabrera, even before he was officially appointed by the Ecuadorian court,[8] to plan his report, and then ghostwrote the report and annexes that Cabrera adopted "pretty much verbatim." Their U.S.-based consultants then drafted "comments" purporting to criticize "the Expert's work and conclusions," even though they had written his initial report themselves. These same U.S.-based consultants then ghostwrote "Cabrera's" responses to their own "comments," increasing his fake damage assessment to more than $27 billion.[9] The LAPs also drafted

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7 In fact, Russell himself disavowed the report, writing: "If subpoenaed, I will tell the truth about what I know about the existing costs, how the cost estimate was prepared, and what the differences in unit costs might be to cleanup contamination in Ecuador. . . . That 2003 cost estimate is a ticking time bomb which will come back to bite you, and very badly if anyone attempts due diligence on it." Donziger responded "I don't care what the f[**]k that guy says."

8 The *Crude* outtakes captured Cabrera meeting the LAPs' counsel and experts in a several-hour strategy meeting to plan the "Global Damages Assessment" three weeks before he was officially appointed in March 2007. Then, the very next day, Donziger is captured on film talking with several of the LAPs' experts about their "bizarre" session with Cabrera where, in front of him, they openly discussed that "all of us" would write his report. When then told of the absence of water contamination evidence in the LAPs' testing data, Donziger responded that "for the Court, it's all smoke and mirrors and bullshit. We have enough to win, to get money."

9 In meetings recorded on video, LAP attorney Fajardo made clear that they were the ones who would actually be writing Cabrera's report, explaining, "the work isn't going to be the expert's. All of us bear the burden." Someone asked whether the final report was going to be prepared only by the expert Cabrera. Fajardo responded that the expert will "sign the report and review it. But all of us . . . have to contribute to

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the other pleadings that "Cabrera" would file with court. And knowing their interaction to be improper and illegal, both Cabrera and the LAPs vehemently denied their interactions in contemporaneously filed pleadings in the Lago Agrio litigation.

- Used a secret bank account to funnel funds directly to Cabrera. In order to avoid suspicion, the LAPs and their counsel used a code name for Cabrera: "Wao." Indeed, in a classic FCPA violation, they showered Cabrera, as the court-appointed expert, with bribes, including money to buy his silence and continued cooperation in their scheme, insurance, and office space, among other things of value. They even memorialized this in an agreement, yet Cabrera later lied to the Ecuadorian court, denying any such "agreement" or collusion with the LAPs' counsel.

- Used an Ecuadorian laboratory, HAVOC, which fabricated the test results that the Judgment and the LAPs continue to rely on and prevented the inspection of that lab during the underlying Ecuadorian litigation by pressuring the judge who has ordered the inspection to rescind his order because, as Donziger privately admitted, an inspection of HAVOC would have been a "DISASTER" for the LAPs' case.

- Conspired with prosecutors to bring trumped-up criminal charges against Texaco's attorneys in Ecuador even though they "scour[ed] the penal code to find any provision that could be used against" the attorneys "and really could find none . . . ." In fact, the LAPs' attorneys were captured on *Crude* outtakes conspiring to pressure Chevron into settling by pursuing these bogus criminal charges that, in their own words, "we could facilitate going away at the right time."

Through its efforts in the U.S. courts, Chevron has uncovered substantial and compelling evidence of every element of this fraud and much more, as detailed in the enclosed materials.

Donziger and his confederates, moreover, know that they are engaged in a fraud. As one of the Ecuadorian lawyers told Donziger at the time, "the effects" of disclosing what they have done "are potentially devastating in Ecuador (apart from destroying the proceeding, all of us, your attorneys, might go to jail)." U.S. counsel agreed, admitting in a remarkable series of internal emails that "it appears . . . that Cabrera and plaintiffs can be charged with a 'fraud' respecting the former's report. . . ." Donziger has admitted that he and the LAPs' other agents have engaged in tactics that are "something you would never do in the United States. . . . But Ecuador, you know . . . this is how the game is played, it's dirty," be-

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that report." LAPs consultant Ann Maest of Stratus asked, "Together?" and Fajardo confirmed. Maest then stated, "But not Chevron," and everyone laughed.

cause "there's almost no rules here" and that "the only language that I believe, this judge is gonna understand is one of pressure, intimidation and humiliation. And that's what we're doin' today. We're gonna let him know what time it is. . . . We're going to scare the judge, I think today." Donziger and his confederates also employed blackmail to get what they wanted. For example, they "wrote up a complaint [alleging sexual misconduct] against [Judge] Yanez, but never filed it, while letting him know [they] might file it if he does not adhere to the law and what [they] need." And on a task list he prepared in February 2006, Donziger wrote: "accuse [Judge] of being involved in corruption with Chevron; ask for recusal."

This evidence, moreover, was obtained notwithstanding the LAPs' ongoing efforts to thwart discovery and conceal their fraud, both in the U.S. and abroad, as further detailed in the enclosed documents.

Without this extensive fraud, there would be no Lago Agrio Judgment. We understand that the LAPs and their allies are taking the position that the Lago Agrio Judgment was independently developed and is free of the pervasive fraud discussed above. In reality, as Patton Boggs' Eric Westenberger admitted in damning emails, the LAPs engaged in an extensive "effort to 'cleanse' any perceived impropriety related to the Cabrera Report." But rather than conduct an independent investigation or analysis, the LAPs merely found, in Donziger's words, "new expert[s]" to bless the "Cabrera report in and of itself" and the data they put in there. As intended, the "new" experts relied heavily on the Cabrera Report, although they did not verify the Cabrera Report's data or standards, and had no view about whether they were accurate.

In fact, forensic expert evidence obtained after the issuance of the preliminary injunction shows that the LAPs secretly participated in drafting the judgment itself, significant portions of which are based on the LAPs' internal materials that were not part of the public trial record. For example, the judgment's discussions of corporate successor liability match exactly much of the text of an LAP internal memorandum (produced under federal court order in the Donziger discovery litigation)—similarities that cannot be explained by the judgment's source documents. Forensic analysis has further established that the "data points cited in the Lago Agrio Court Decision were copied, cut-and-pasted, or otherwise taken directly from the Selva Viva Data Compilation," an internal database controlled by the LAPs' team but not made part of the court record. Indeed, the judgment even replicates the same "data irregularities in the Selva Viva Data Compilation." The LAPs' lead Ecuadorian attorney Fajardo has now publicly admitted that the Lago Agrio Judgment includes these non-public materials, bizarrely suggesting that Chevron somehow provided the Ecuadorian court the secret, LAP-generated evidence used against it.

Donziger and his associates, moreover, have not been content to leave their U.S.-conceived fraud in Ecuador. Instead, with the help of Patton Boggs and its strategy memo titled "Invictus," they have concocted a scheme to commence worldwide enforcement proceedings in potentially dozens of countries, all with the aim of disrupting Chevron's operations around the world and forcing it to pay them off. Or, as Donziger has put, "[t]his could end up being one of the biggest forced asset seizures in history and it could have a significant disruptive impact on the company's operations."[10]

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[10] We also understand that you would like further information about the meritless suit that Patton Boggs is pursuing against Chevron and its counsel Gibson, Dunn & Crutcher LLP in the U.S. District Court for the District of Columbia. The district court dismissed Patton Boggs's lawsuit, denied leave to amend, and stated that "Patton Boggs misunderstands the law." *See Patton Boggs, LLP v. Chevron Corp.*, No. 10-01975(HHK), -- F. Supp. 2d --, 2011 WL 1474866, at *3 (D.D.C. Apr. 19, 2011). Patton Boggs is now seeking reconsideration of that ruling—and, at the same time, has inexplicably re-filed virtually the same complaint in the same court in an apparent effort to harass Chevron by forcing it move to dismiss yet again.

Patton Boggs asserts two general claims for relief, both of which have been squarely rejected by the federal court. The first claim seeks a declaratory judgment that no court in the United States may disqualify Patton Boggs from representing the Ecuadorian plaintiffs based on the firm's conflict of interest. In 2010, Patton Boggs acquired the Breaux Lott Group, a firm of lawyer-lobbyists that had previously represented Chevron in matters relating to the Ecuadorian litigation. After this acquisition—but before Patton Boggs had publicly surfaced in this case—Patton Boggs had improperly attempted to convince Chevron to sign a blanket conflicts waiver without disclosing that it was secretly representing the Ecuadorian plaintiffs.

The district court rejected Patton Boggs's claim, finding that "Chevron's arguments are persuasive." 2011 WL 1474866, at *5. The court held that the claim was not ripe because Chevron had never attempted to disqualify Patton Boggs because of the conflict. The court further held that it would be improper for one court to issue an order barring other courts from disqualifying Patton Boggs from proceedings in their own courtrooms. The court pointedly noted that "Patton Boggs has not identified a single case in which a court has granted relief of the type it seeks here." *Id.* at *7.

Patton Boggs's second claim is that Chevron and Gibson Dunn "tortiously interfered" with the relationship between Patton Boggs and its nominal clients, the Ecuadorian plaintiffs, by making statements in court papers and in the press pointing out the fraudulent nature of the underlying claims in Ecuador. Although Patton Boggs claims that Chevron and Gibson Dunn have "undertak[en] efforts to cut off the Ecuadorian Plaintiffs' source of funds, causing the Ecuadorian plaintiffs to breach their contract with Patton Boggs by non-payment of Patton Boggs' legal fees and expenses," the Ecuadorian plaintiffs do not appear to be responsible for paying Patton Boggs. Rather, this litigation is being funded by the Burford Group—an investment group whose sole purpose is to bankroll litigation. The Burford Group will not only receive a healthy percentage of any collected award or settlement, it is guaranteed a minimum recovery of nearly $60 million before Patton Boggs's nominal clients—the Ecuadorian plaintiffs themselves—see a dime. Indeed, if the plaintiffs settle the case for what Burford deems "an unnaturally low" amount, Burford may take the major share of the settlement.

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After independently reviewing these and other aspects of the case against Chevron in Ecuador, both the U.S. District Court for the Southern District of New York and an international arbitral tribunal convened in the Hague under the U.S.-Ecuador Bilateral Investment Treaty have entered preliminary orders to prevent enforcement of the Lago Agrio Judgment. But, as discussed below, Chevron is still at risk because the LAPs have made clear that they will ignore these orders. As they strategized in an internal memorandum, the LAPs intend to create chaos for Chevron by bringing their fraudulent judgment to "multiple enforcement fronts" around the world in an effort to either collect on their malfeasance or coerce an unjust settlement.

II. The Scope of the Southern District of New York Injunction

In view of the overwhelming—and entirely unrefuted—evidence of the LAPs' and the Lago Agrio court's misconduct, it is both appropriate and necessary for a U.S. company like Chevron to request that this country's independent judiciary protect it from fraudulent foreign judgments. For more than a century, it has been clear that every U.S. court has the inherent authority to enjoin the parties before it from perpetrating or continuing their fraud. *See, e.g., Marshall v. Holmes*, 141 U.S. 589, 599-600 (1891) (holding where a court was faced with another jurisdiction's fraudulently obtained judgment, although the court could not set aside the foreign judgment, "it may, as between the parties before it . . . adjudge that [the judgment creditor] shall not enjoy the inequitable advantage obtained by his judgments. A decree to that effect would operate directly upon him . . . . It would simply take from him the benefit of judgment obtained by fraud."); *Vail v. Knapp*, 49 Barb. 299 (N.Y. Sup. 1867) (enjoining New York citizens from seeking attachment in Vermont in evasion of New York law); *Title Ins. & Trust Co. v. Cal. Dev. Co.*, 171 Cal. 173, 192-210 (1915) (affirming order enjoining party from taking any action to enforce a fraudulently obtained Mexican judgment); *accord Western Union Telegraph Co. v. Tompa*, 51 F.2d 1032, 1035 (2d Cir. 1931) (enjoining enforcement of a not-yet-issued judgment from a foreign jurisdiction where "it already appears that it will inevitably be against equity and good conscience to permit [the potential judgment creditor] to collect it").

[Footnote continued from previous page]

The district court rejected Patton Boggs's "tortious interference" theories as well. The court held that Patton Boggs had failed to state a claim for tortious interference with contract because it had not alleged that any contract was actually breached. 2011 WL 1474866, at *3. It further held that all of Patton Boggs's other tort claims were derivative and failed for the same reason. Id. at *4. Patton Boggs is now seeking reconsideration of the dismissal order and has re-filed the dismissed complaint (with minor modifications) as a purportedly "new" action. Chevron and Gibson Dunn are opposing reconsideration and have moved to dismiss the new action as barred by res judicata, and because Patton Boggs's various theories continue to be baseless as a matter of law.

In these circumstances, courts have long recognized that they are empowered to issue injunctions to prevent the fraud from coming to fruition: "[W]hen a case is presented fairly calling for the court to exercise this power 'extreme delicacy should not deter the court from controlling the conduct of a party within its jurisdiction, to prevent oppression or fraud. No rule of comity or policy forbids it.'" *Cole v. Cunningham*, 133 U.S. 107, 121 (1890) (quoting *Vail v. Knapp*, 49 Barb. at 305); *see also Alliance Bond Fund, Inc. v. Grupo Mexican de Desarrollo*, SA, 143 F.3d 688, 693 (2d Cir. 1998) (in action involving extraterritorial fraud, "[a] court of equity may direct any defendant upon whom process has been served in New York to perform whatever acts are commanded in the decree, notwithstanding the fact that some or all of such acts may require performance outside the jurisdiction.") (quoting 55 N.Y. Jur. 2d Equity § 14 (1986 & Supp. 1997), rev'd on other grounds 527 U.S. 308 (1999).[11]

These cases are entirely consistent with the well-recognized power of federal courts to preserve their jurisdiction to decide a case or legal issue between parties properly before the court by enjoining the parties and lawyers from bringing litigation elsewhere on the same subject matter. Importantly, both these decisions and the Preliminary Injunction in this case do not purport to exert control over a foreign court, only the parties themselves who are already subject to the court's jurisdiction. And of course these issues and more will be fully explored in the briefing and trial in the New York Litigation, which will be subject to review by the Second Circuit and the United States Supreme Court.[12]

The settled authority of U.S. courts to enjoin the foreign enforcement of fraudulent judgments reflects interests of exceptional importance to the United States and to U.S. companies doing business abroad: the rule of law and the equal treatment before that law of U.S. parties in foreign courts. These important interests are increasingly under siege abroad, and if left unchecked these attacks will have dire consequences, both for U.S. companies but also for investment in developing nations. In *Osorio v. Dole Food Co.*, 665 F. Supp. 2d 1307, 1336, 1345 (S.D. Fla., 2009), *aff'd*, 635 F.3d 1277, 1279 (11th Cir. 2011), for example, the district court denied enforcement of a $97 million Nicaraguan judgment issued under a law which "targets a handful of United States companies for burdensome and unfair treatment to

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[11] The United States is not exceptional in this regard. Courts of many other countries similarly have the authority to issue and do issue injunctions to protect litigants from fraudulent foreign judgments. *See, e.g., Ellerman Lines, Ltd. v. Read*, [1928] 2 K.B. 144, 147, 151-54 (English court issuing injunction to restrain judgment creditor from enforcing fraudulently obtained Turkish judgment worldwide and requiring repayment of sums he had already managed to extort); *Beckkett Pte Ltd v Deutsche Bank AG*, [2011] 1 SLR 52 (Singapore) (entering world-wide anti-suit injunction to restrain enjoined party from commencing or continuing any further proceedings in Indonesia or anywhere in the world against Deutsche Bank, its agents and/or employees in relation to the dispute in question).

[12] Indeed, the LAP Representatives tried to get the Second Circuit to stay those proceedings, pending their appeal of the preliminary injunction order, and the Second Circuit denied their "emergency" application.

which domestic Nicaraguan defendants are never subjected." The court found that enforcement would have "undermine[d] public confidence in the [Florida] tribunals. . . , in the rule of law, in the administration of justice, and in the security of individuals' rights to a fair judicial process." 665 F. Supp. 2d at 1347.[13]

The Department has long sought to protect a U.S company's right to international due process and access to impartial tribunals, in part through Bilateral Investment Treaties with dozens of other nations, including Ecuador. Accordingly, Chevron, a U.S. company which employs over 60,000 people, has initiated international arbitration under the United States-Ecuador Bilateral Investment Treaty, seeking relief from the Republic of Ecuador's violations of international law and treaty obligations in connection with Ecuador's failure to honor its contractual agreements.[14] The tribunal in that action has issued an interim measures order directing the Republic of Ecuador "to take all measures at its disposal to suspend or cause to be suspended the enforcement or recognition within and without Ecuador of any judgment against [Chevron] in the Lago Agrio case." *In the Matter of an Arbitration Before a Tribunal Constituted in Accordance with the Treaty Between the United States of America and the Republic of Ecuador Concerning the Encouragement and Reciprocal Protection of Investments*, PCA Case No. 2009-23 (Feb. 9, 2011).

The interim measures order and the U.S. court injunction are important protections, but their enforcement is under serious threat. In response to the interim measures order, President Correa of Ecuador asked the Ecuadorian National Assembly to *terminate* the Bilateral Investment Treaty itself, which the Assembly subsequently did. *See* U.S. Dep't of State, *Investment Climate Statement: Ecuador* 2 (Mar. 12, 2011), *available at* http://www.state.gov/e/eeb/rls/othr/ics/2011/157270.htm. And the LAPs' lead Ecuadorian

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13 *See also Mejia v. Dole Food Co., Inc.*, Los Angeles Superior Court Case Nos. BC340049, BC379820 (June 17, 2009) at pp. 4, 24 (issuing terminating sanctions against related Nicaraguan plaintiffs because of the blatant fraud, "intimidation," and "physical threats against witnesses"); Melissa Bell, BP sued for violating rights of nature, http://voices.washingtonpost.com/blog-post/2010/11/bp_sued_for_violating_rights_o.html; Expert Report of Vladimiro Alvarez Grau in *Chevron Corp. v. The Republic of Ecuador*, PCA Case No. 20009-23 ¶ 57 (Sept. 2, 2010) (describing corruption and expropriation of Filanbanco S.A's assets); *id.* at ¶ 58 (describing dismissal of judges who had the temerity to rule in favor of a Brazilian company in a $100 million tax dispute); id. at 59 (recounting Ecuadorian political criminal prosecution of Norberto Odebrecht, a German corporation, to resolve a contract dispute between Norberto Odebrecht and Ecuador).

14 Ironically, considering their attack on Judge Kaplan's preliminary injunction, the LAPs and their attorneys themselves sought, unsuccessfully, to use the powers of the Southern District of New York to stay the BIT Arbitration, *Yaiguaje et al. v. Chevron Corp. and Texaco Petroleum Co.*, No. 10 CV 316 (LBS) (S.D.N.Y. Jan. 14, 2010). In that action, the LAPs' counsel even referred to the possibility that Chevron could invoke New York State's Foreign Money Judgments Recognition Act, N.Y. C.P.L.R. art. 53 as "an escape hatch in case of misconduct, fraud, or other problems." Br. for Pls.-Appellants at 15, *Republic of Ecuador v. Chevron Corp.*, Nos. 10-1020-cv(L), 10-1026-cv(CON) (2d Cir. May 18, 2010), Docket Entry 77.

attorney, Pablo Fajardo, has stated that he does not believe the district court order can be enforced: "The judge cannot order and require something that is outside of United States territory, as such. Therefore, that injunction is completely. . . unenforceable, inapplicable for countries other than the United States." Thus, Chevron is continuing to expend considerable resources in its ongoing legal defense against the fraud perpetrated by the LAPs' attorneys.

III. Conclusion

As the shocking evidence Chevron has collected to date demonstrates, the Lago Agrio Judgment is nothing more than the culmination of a long-running scheme to extort billions of dollars from an American company by means of a litigation funded by and designed to benefit American lawyers. Under these circumstances, the LAPs' suggestion that it is somehow improper for an American court to exercise its authority to contain the harm caused by this fraudulent judgment is entirely baseless. To the contrary, the Southern District of New York is perfectly positioned to adjudicate the multiplicity of complex factual and legal considerations at issue.

On behalf of Chevron, we respectfully submit that there is no need for the Department to reverse its earlier decision to forego direct involvement or comment in the New York court proceedings.[15] We further submit, however, that the Department has every interest in seeing that international treaty obligations are met, defending the orders issued by U.S. courts and international tribunals enforcing treaties to which the U.S. is a party, and protecting the interests of U.S. companies doing business in foreign jurisdictions. Thank you for your consideration.

Respectfully submitted,

Randy Mastro /lbh

Randy M. Mastro

Enclosures

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15 *See* Letter of Assistant United States Attorney John D. Clopper to Judge Lewis A. Kaplan "on behalf of the United States Department of State in the above referenced case" dated February 15, 2011, filed in *Chevron Corp. v. Donziger*, 11 Civ. 0691 (LAK) as Docket Entry 114.