

EXHIBIT 2402

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION

In Re Application of
THE REPUBLIC OF ECUADOR AND DR.
DIEGO GARCIA CARRION, The
Attorney General of The Republic No. 2:11-MC-00052
of Ecuador, GSA

Applicants,



DEPOSITION OF DOUGLAS M. MACKAY
Palo Alto, California
Tuesday, May 15, 2012
Volume I

Reported by:
PUA McVAY
CSR No. 12868
JOB No. 144448
PAGES 1 - 210

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION

In Re Application of
THE REPUBLIC OF ECUADOR AND DR.
DIEGO GARCIA CARRION,

No. 2:11-MC-00052

Applicants, GSA



Deposition of DOUGLAS M. MACKAY, Volume I,
taken on behalf of Plaintiff, at 1881 Page Mill
Road, Palo Alto, California, beginning at 8:00 a.m.
and ending at 3:28 p.m. on Tuesday, May 15, 2012,
before PUA McVAY, Certified Shorthand Reporter No.
12868.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES :

FOR THE REPUBLIC OF ECUADOR :

WINSTON & STRAWN

BY: C. MACNEIL MITCHELL

Attorney at Law

200 Park Avenue

New York, New York 10166

212.294.2674

cmitchell@winston.com

FOR DEFENDANT :

GIBSON DUNN & CRUTCHER LLP

BY: ETHAN DETTMER

Attorney at Law

555 Mission Street

San Francisco, California 94105

415.393.8200

edettmer@gibsondunn.com

1 APPEARANCES: (Continued)

2

3 FOR DEFENDANT:

4 GIBSON DUNN & CRUTCHER LLP

5 BY: NICHOLAS J. MUSCOLINO

6 Attorney at Law

7 555 Mission Street

8 San Francisco, California 94105

9 415.393.8200

10 nmuscolino@gibsondunn.com

11

12 FOR DEFENDANT:

13 KING & SPALDING

14 BY: KRISTI E. JACQUES

15 Attorney at Law

16 1185 Avenue of the Americas

17 New York, New York 10036

18 212.556.2187

19 kjacques@kslaw.com

20

21

22

23

24

25

1 permeable pathways, sands or fractures surrounded by
2 significant amounts of clay matrix...

3 You're referring to in general the subsurface
4 conditions in the Oriente just as a general statement?

5 MR. DETTMER: Objection. Mischaracterizes
6 testimony. Mischaracterizes the document.

7 THE WITNESS: Yeah, this is a -- as far as I
8 can tell from looking at this, this is my first cut at a
9 broad generalization about potential migration and
10 degradation mechanisms in media such as may exist at one
11 or more of the sites. So I'm just really offering a
12 draft really. I don't have evidence that the subsurface
13 is heterogenous but -- necessarily everywhere -- but
14 there's allusion of course to sands and fractures and the
15 like. So I'm just drafting up something and trying to
16 put it in context for us to think about, like whether
17 diffusion is important, how important biodegradation may
18 be, and so on.

19 BY MR. MITCHELL:

20 Q You already had your site visit, correct?

21 A Yup.

22 Q And you testified that you had reviewed a lot
23 of JI reports and underlying data?

24 A Right.

25 Q So when you refer to the subsurfaces as

1 heterogenous, possessing permeable pathways, sands or
2 fractures surrounded by significant amounts of clay
3 matrix, that's not something you made up, is it? I mean
4 this is based on your investigation so far of the
5 conditions in the Oriente?

6 MR. DETTMER: Objection. Mischaracterizes the
7 document and mischaracterizes his testimony. Too.

8 THE WITNESS: What I -- excuse me. I'm losing
9 my voice here.

10 BY MR. MITCHELL:

11 Q We're almost finished for the day.

12 A That's okay. I'm floating a hypothesis. The
13 fact of the matter is, I didn't auger in the subsurface
14 to determine heterogeneity. I did not encounter sand
15 stringers or observations of fractures in my own efforts.
16 What I did do is -- and most geologists and
17 hydrogeologists do this -- is take advantage of road cuts
18 and the like which we drove by so I could at least look
19 at what some portions of the subsurface might look like.
20 And so for example if there were absolutely no
21 heterogeneities in those, then you would figure you were
22 in a pretty heterogeneous place. And so for that reason,
23 I'm saying based on that experience, here's one sort of
24 line of general discussion we might have but without any
25 evidence that these particular pathways existed at the

1 sites I visited in the vicinity of those pits. It's
2 possible but there's no evidence or no information that
3 suggested that they did.

4 Q Well, what I don't understand and maybe you can
5 explain is if you are floating an hypothesis, which is
6 understandable, wouldn't the hypothesis be based on your
7 best understanding reading other materials, the JIs and
8 so on, and your personal inspection, rather than positing
9 something that from your own experience and what you read
10 does not appear to be the case?

11 A Well, recall, though, that at this time we were
12 responding by a report by Maest et al, who clearly
13 believe that there must be permeable pathways, and so I
14 was taking their side momentarily -- devil's advocate, so
15 to speak -- and saying, "Well, suppose they existed and
16 suppose they were important. What would we think about
17 them and how important would they be with all the things
18 that we know either about those locations based on my
19 observations in their reports or that we know from
20 literature based on what happens in these kinds of
21 media?" That's really what this is about. It's saying,
22 "Let's take the case that such pathways might exist that
23 we hadn't characterized. How important would they be?"

24 Q And the little indented subparagraphs under the
25 block paragraph on top -- Diffusion, Biodegradation,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney or any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: 6/1/12

PUA McVAY

CSR No. 12868

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION

In Re Application of:
THE REPUBLIC OF ECUADOR AND DR.
DIEGO GARCIA CARRION, The
Attorney General of The Republic
of Ecuador,

No. 2:11-MC-00052
GSA

Applicants,



DEPOSITION OF DOUGLAS M. MACKAY

Palo Alto, California
Wednesday, May 16, 2012
Volume II

Reported by:
PUA McVAY
CSR No. 12868
JOB No. 144449
PAGES 211 - 402

1 APPEARANCES :

2

3 FOR PLAINTIFF :

4 WINSTON & STRAWN

5 BY: C. MACNEIL MITCHELL

6 Attorney at Law

7 200 Park Avenue

8 New York, New York 10166

9 212.294.2674

10 cmitchell@winston.com

11

12 FOR DEFENDANTS :

13 GIBSON DUNN & CRUTCHER LLP

14 BY: ETHAN DETTMER

15 Attorney at Law

16 555 Mission Street

17 San Francisco, California 94105

18 415.393.8200

19 edettmer@gibsondunn.com

20

21

22

23

24

25

1 APPEARANCES: (Continued)

2

3 FOR DEFENDANT:

4 GIBSON DUNN & CRUTCHER LLP

5 BY: NICHOLAS J. MUSCOLINO

6 Attorney at Law

7 555 Mission Street

8 San Francisco, California 94105

9 415.393.8200

10 nmuscolino@gibsondunn.com

11

12 FOR DEFENDANT:

13 KING & SPALDING

14 BY: KRISTI E. JACQUES

15 Attorney at Law

16 1185 Avenue of the Americas

17 New York, New York 10036

18 212.556.2187

19 kjacques@kslaw.com

20

21

22

23

24

25

1 Q And this is your e-mail to Rob Hinchee, and at
2 the beginning of the second paragraph, you say: I've run
3 through the report.

4 Were you referring to whatever the current
5 draft was of your Exhibit 1 report?

6 A Yes.

7 Q And you state that: I don't think we should go
8 too broad here but really stay close to home. I.e., to
9 things we can really speak to and defend. I doubt
10 seriously that there never were any significant
11 environmental or public health impacts so don't want to
12 imply that.

13 Does the language that I just read, was that in
14 response to a draft of your Exhibit 1 report that you had
15 received and reviewed and generated the comments I just
16 read?

17 A That's correct. It looks as though I read the
18 draft that had been sent back to me, and as you see here,
19 I guess Rob's editorial assistant had worked on it and I
20 felt that somewhere in this -- and I don't recall the
21 specific wording -- that there was an overly broad
22 statement included in that draft. And I wanted to avoid
23 broad unsupportable statements because, as I think we've
24 said before, I and -- our team at least felt that the
25 Maest et al report had many such statements in them and

1 we didn't want to engage in that kind of interaction; and
2 our goals were to evaluate the sampling and analytical
3 plan and not to make broad comments about environmental
4 impacts in the Oriente, of all the various oil production
5 operations that have been going on there for years by a
6 host of different companies. So we needed to stay
7 focused to our goal and I didn't want to have those
8 general sorts of statements, whatever it must have been
9 there.

10 Q Well, from this language, it appears that the
11 general statement was a statement that at least implied
12 that there never were any significant environmental or
13 public health impacts. Is that the way you read it?

14 A I read it that way. I don't know what the
15 specific wording was. I was trying to be mindful to how
16 our report might be read or misread perhaps by others and
17 so when I edit a report, I think of it from my own terms
18 but then I try to think of it from the point of view of
19 the audiences and how wording might have a weight that we
20 didn't intend. And so this is a kind of comment I would
21 make to say, "Take it out. It's too general. It's
22 not -- it has an implication perhaps that we don't
23 intend. It's not necessary."

24 MR. MITCHELL: Let's go on to Exhibit 35. This
25 is a four-page e-mail string, 64757 through 64760.

1 to write relatively general statements and I didn't want
2 to do that. So I was saying we need to be very specific
3 to what we are doing. And in this particular case, in
4 2006, we were responding to the -- not that, but the
5 report by Maest et al and so my intent was to avoid broad
6 statements which apparently someone had drafted and which
7 could be misread as suggesting that we felt there never
8 had been any significant environmental public health
9 impacts. In fact, we didn't evaluate that. That wasn't
10 our goal. Our goal was to look at the sampling
11 analytical methods as part of the JI. So we needed to
12 restrict our statements to what we could defend.

13 BY MR. DETTMER:

14 Q At this time, in July of 2006, were you aware
15 of any evidence that Texaco had caused significant
16 environmental or public health impacts in Ecuador?

17 A I --

18 MR. MITCHELL: Objection. What time period?
19 Where and what time?

20 MR. DETTMER: July 2006. Was he aware of any
21 evidence -- let me ask it again. I'll start over.

22 BY MR. DETTMER:

23 Q In July of 2006 when you wrote this e-mail,
24 were you aware of any evidence that Texaco had caused any
25 serious environmental or public health impacts in

1 Ecuador?

2 A No, in the sense that I hadn't read documents
3 that related to time periods prior to the JI other than
4 these general documents that we've reviewed today. So
5 there's no way I could comment on that since there were
6 so many different activities going on in the Oriente with
7 TexPet, Petroecuador and other companies. So I didn't
8 want to comment on that because that simply wasn't a
9 focus of our efforts. It would have been inappropriate
10 for us to comment on it.

11 Q Are you aware today as we sit here, based on
12 all the materials that you've looked at, of any
13 significant environmental or public health impacts that
14 were caused in Ecuador by Texaco?

15 A I don't know enough about the time period and
16 so the answer is no.

17 Q Now, let me direct your attention to language a
18 little bit further on in this e-mail that we talked about
19 earlier today.

20 MR. MITCHELL: Is this Exhibit 34?

21 MR. DETTMER: Yes, we're still looking at
22 Exhibit 34.

23 MR. MITCHELL: Okay.

24 BY MR. DETTMER:

25 Q And the language that I'm pointing you to is:

1 I do think the evidence shows the in-scope or mediated
2 pits, et cetera, met criteria. Further, that the
3 likelihood is great that natural attenuation would handle
4 any residual impacts even from portions of the pits that
5 might not be as well remediated as they were supposed to
6 have been.

7 Now, the language at the end of that sentence
8 talking about pits that might not have been as well
9 remediated as they were supposed to have been, that
10 language has been quoted by Ecuador in legal briefs to
11 imply that you believed that there were locations that
12 Texaco did not remediate as they should have been
13 remediated. Is that an accurate interpretation in your
14 view?

15 MR. MITCHELL: Objection. Leading.

16 THE WITNESS: My memory of this time and of
17 this -- or at least the topics that this e-mail
18 addresses -- were -- my memory is that allegations have
19 been made in the Maest et al report, if I remember
20 correctly, that the remediation may have been imperfect,
21 that there may have been portions of the pits that were
22 less well remediated. I didn't have any evidence to
23 suggest that was true. But what I was trying to say here
24 is that even if that were true, these natural attenuation
25 mechanisms that I alluded to just before this would have

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney or any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: 6/1/12

PUA McVAY

CSR No. 12868

EXHIBIT 2403

From: Nicolas Economou [neconomou@h5.com]
Sent: Wednesday, October 27, 2010 8:45 PM
To: 'wcarmody@Purringtonmoody.com'; 'sdonziger'; <sdonziger@donzigerandassociates.com>; 'erikmoe66'; <erikmoe66@yahoo.com>
Cc: Eoin Beirne
Subject: Re: Fwd: Ecuador - Key Issues

Are you free at 9:15am ET?

Nicolas Economou
H5
340 Madison Avenue
New York, NY 10017
71 Stevenson Street
San Francisco, CA 94105
main: (212) 818 1600
direct: (917) 475 8612
mobile: [REDACTED]
neconomou@h5.com
www.h5.com

From: William Carmody [mailto:wcarmody@Purringtonmoody.com]
Sent: Wednesday, October 27, 2010 08:41 PM
To: Steven Donziger <sdonziger@donzigerandassociates.com>; Erik Moe <erikmoe66@yahoo.com>
Cc: Nicolas Economou; Eoin Beirne
Subject: Fwd: Ecuador - Key Issues

Let's discuss in the morning.

Bill Carmody
336/235-4288

Begin forwarded message:

From: "Nicol, Ash" <anicol@torys.com>
Date: October 27, 2010 10:14:09 PM EDT
To: "'William Carmody'" <wcarmody@Purringtonmoody.com>
Cc: "Nicolas Economou" <neconomou@h5.com>, "Christopher P. Bogart" <cbogart@burfordgrouppltd.com>, "cbogart@glenavycapital.com" <cbogart@glenavycapital.com>, "Bernardo Tobar" <btobar@tobarybustamante.com>, "Balfour, Richard" <rbalfour@torys.com>, "Terry, John" <jterry@torys.com>, "Cameron, John" <jcameron@torys.com>
Subject: Ecuador - Key Issues

Bill,

Further to our call and on a preliminary review of your markup, we would like discuss the following points with you as soon as possible in order to resolve these key issues:

*

Translation into Spanish and conflict provision (21.5) - This is an impossibility given the juncture of the transaction. This point has not previously been raised, the exclusivity agreements are not in Spanish and were acceptable, and we and our client have no facility on a timely basis to accomplish a binding Spanish document. However, our client is willing to agree to a translation prior to finalizing the Stage 2 execution by each of the claimants.

* Donziger's execution of the Funding Agreement - You mentioned on the call this morning that you would take this point back for further consideration. We are proceeding with Stage 1 funding without execution by the Claimants and the new powers of attorney. Therefore, before we obtain this confirmatory execution, we should be entitled to all available execution at this stage. Accordingly, Steven should execute based on his involvement in the negotiations thus far, his apparent authority to bind the claimants based on the circumstances and on the fact that he is signing on behalf of each of the plaintiffs to the action rather than in his own capacity.

* Deletion of security section (8) - The trust structure was not settled on the call today and we did not discuss our entitlement to take all possible forms of security (beyond the assignment of rights to a trust structure). Furthermore, you have deleted references to (i) the covenant that each present and future material creditor be caused to execute the intercreditor agreement (note that this point is further addressed below) (8.1(i)) and (ii) the negative pledge in respect of future security provided in respect of the claim. As you can understand, these are core provisions to protect our client's interest and are especially important in light of the two Stage funding process and the exposure our client has up until the claims are assigned to a trust. (Note that it is understood that we agreed to draft the trust structure language into the agreement and will do so)

* Revision to tax gross-up (20.1) - The agreement based on correspondence between Nicholas and Chris was that good faith efforts would be made to structure the Award and payment of the Award in a tax efficient matter. If the claimants do not make these efforts, it was agreed that Burford would have the indemnity.

* Revision to definition of Award (Schedule 3) - We have reviewed the exclusion with Chris. He recalled for us a second time a conversation that was had with Steven in which they agreed in principle that the funds that flowed to the Claimants through the Republic of Ecuador or third parties other than the Defendants would form part of the Award. We thought we were drafting to that effect and will reconsider but would like to confirm that you agree with it in principle.

Please note that these comments reflect a preliminary review of your comments on the funding agreement only.

As discussed on our brief call this evening, below is the list of the parties currently listed as creditors under the intercreditor agreement. Can you please confirm which of the parties you believe will be able to execute the intercreditor agreement for a Friday closing? We invite you to propose some other protective solution beyond the promise that no engagement agreements will be entered into with a creditor unless that counterparty becomes a party to the intercreditor agreement and such engagement agreement is subject to the terms of the intercreditor agreement. Clearly, our client cannot fund into a world where there could be multiple parties with claims potentially senior to ours and your point that contingency based fees are not payable without an agreement in place does not cover all other creditors who may exist.

Parties to the Intercreditor (please confirm who you believe will be able to sign for Friday)

- * Torvia Limited
- * Other minority funders (please let us know who these are)
- * Patton Boggs LLP
- * Donziger & Associates
- * Motley Rice LLC
- * Emery, Celli, Brinckerhoff & Abady LLP
- * Ecuador attorneys (please let us know who these are)

- * The Ben Barnes Group
- * Erik T. Moe
- * Tom Downey
- * The Honorable Willie Lewis Brown, Jr.
- * CSL Strategies LLC
- * Mark Fabiani LLC
- * H5

Also, please find attached breakaway signature pages to each of the funding agreement and intercreditor agreement. Can you please let me know as soon as possible if you have any comments and to the extent there are no comments, coordinate for execution as soon as possible for delivery in escrow? We'd like to have these all in hand in escrow by the end of business day tomorrow or Friday morning at the latest. Please ignore the Majority Funder signature block as we will update this and coordinate with our client for execution as soon as the name of this entity is confirmed.

D. Ashley Nicol
Torys LLP
Tel: 416.865.7675
Fax: 416.865.7380
<mailto:anicol@torys.com>
www.torys.com

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

----- ATTENTION: DO NOT read, copy or disseminate this communication unless you are the intended addressee. This message and any file(s) or attachment(s) transmitted with it are confidential, intended only for the named recipient, and may contain information that is a trade secret, proprietary, protected by the attorney work product doctrine, subject to the attorney-client privilege, or is otherwise protected against unauthorized use or disclosure. This message and any file(s) or attachment(s) transmitted with it are transmitted based on a reasonable expectation of privacy consistent with ABA Formal Opinion No. 99-413. If you have received this communication in error, please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you.

EXHIBIT 2404

The New York Times



February 1, 2011

'Master of Disaster' Dons New Guise as Plaintiffs' Attorney in Pollution Case

By LAWRENCE HURLEY of

Despite signing on to represent thousands of Ecuadoreans in a massive environmental lawsuit against Chevron Corp., James E. Tyrrell Jr. is not your average plaintiffs' lawyer.

In fact, over the past few decades he has become known as a go-to attorney for any major entity contemplating litigation over pollution, an area of the law known as "toxic torts."

He defended Monsanto in litigation over Agent Orange. He defended New York City and contractors against injury claims made by first responders in the aftermath of the Sept. 11, 2001, terrorist attacks. He likes to call himself the "Master of Disaster."

New York Times journalist Anthony DePalma wrote in "City of Dust," his book about the World Trade Center case, that Tyrrell is "honored by some and considered a scoundrel by others."

Clients "love him and pay mightily for his services" while opponents "accuse him of being rapacious and underhanded," DePalma added.

Put simply, if there is a case that pits the little man against Big Business or the government, Tyrrell is not generally on the side of the little man.

And yet, here he is -- in 2011 -- representing thousands of plaintiffs enmeshed in an 18-year legal battle against Chevron over alleged pollution in Ecuador.

The complex case is being fought tooth-and-nail both in Ecuador, where a judge is on the verge of issuing a final ruling, and in U.S. courts, where Chevron's lawyers are seeking to undermine the plaintiffs' case.

Tyrrell's intervention is a move that has surprised the legal community. Most lawyers would find it much easier to imagine Tyrrell representing the oil company than the plaintiffs.

"I would say it's surprising," said Andrew Klein, an Indiana University School of Law professor who specializes in toxic torts and is aware of Tyrrell's reputation.



OPEN

MORE IN EN
ARTICLES)

Save Ki
Read More

Most assume that Tyrrell and his firm -- Washington-based Patton Boggs -- have an eye only on the mind-boggling \$113 billion in damages that one expert for the plaintiffs has advocated.

Patton Boggs is due 12 percent of the 30 percent contingency fee that plaintiffs' attorneys and other investors in the case will share, according to court documents produced as part of the litigation.

As for the explanation of how the firm got involved, a Reuters report noted that Tyrrell serves as outside counsel for a British firm, Burford Capital Ltd., that finances international litigation. Burford is helping fund the Ecuadorean case, according to court filings.

Steve Donziger, the lead plaintiffs' lawyer, declined to comment on how Tyrrell came to be hired.

Tyrrell himself isn't giving much away.

Ground rules

Tyrrell agreed to speak to this reporter in the law firm's 30th floor conference room in a Manhattan skyscraper, but he would not allow the conversation to be recorded and requested that he review any quotes before they were published.

Tyrrell, looking every inch the corporate lawyer, took the line that, after 18 years in the courts -- largely as a result of creative legal maneuvering from Chevron -- his clients need some closure.

"If my clients lose, I want them to feel they had a fair shake," he said.

Tyrrell praised his colleagues for allowing him to take the case, admitting that other firms with a roster of corporate clients might not take the risk.

"Some firms are so inflexible," he said. "They wouldn't let me take on the Ecuador case."

Patton Boggs was willing because the firm is, according to Tyrrell, split 50-50 between Democrats and Republicans.

Based on campaign contributions, Tyrrell appears to tilt Republican. In the last election cycle he donated to the New Jersey Republican State Committee and then-Rep. Roy Blunt (R-Mo.), who was elected to the Senate in November, according to Federal Election Commission data.

Within Patton Boggs, there would have been serious discussions over possible conflicts with clients and the dangers of missing out on future business with Chevron and other companies,

law professor Klein said.

But, ultimately, "a lawyer will represent his or her client as zealously as possible" whoever they are, Klein said. "That's as it should be."

Tyrrell signed up primarily to help enforce any ruling against Chevron in international courts, he said. The plaintiffs would have little choice but to take that route since the oil company no longer has any assets in Ecuador.

It is for that reason that the legal battle has already shifted to U.S. courts. Chevron has been using so-called 1782 actions, which allow federal judges to order the production of evidence, including depositions, for use in a foreign court.

Chevron's lawyers at another prominent law firm, Gibson, Dunn & Crutcher, have bombarded 17 different courts with such requests as part of a larger tactic to portray the plaintiffs' lawyers and experts as dishonest.

The plaintiffs "are engaged in a concerted strategy to obstruct and delay the U.S. proceedings in order to obtain a corrupt judgment from the court in Ecuador as leverage to extort money from Chevron," Gibson Dunn attorney Randy Mastro said in a recent letter to Judge Lewis Kaplan of the Southern District of New York.

Chevron's tactic seems to be working. Donziger has already been hauled over the coals by Kaplan, who ruled that Chevron's attorneys could question him (*Greenwire*, Dec. 16, 2010).

Most damning were outtakes from a documentary about the case, called "Crude," in which Donziger was heard saying the Ecuadorean court system was corrupt and that the only way to succeed was by "pressuring and intimidating the courts."

It is that episode that has made Tyrrell wary of letting journalists record interviews. The recording could end up being subpoenaed, he said.

Tyrrell seemed somewhat taken aback by Gibson Dunn's approach, which has included an attempt to get Patton Boggs disqualified from representing the plaintiffs. He thinks it is mainly an attempt to sow confusion and doubt within the minds of judges.

"If you don't want the litigation to be about the merits of the case, you have to make the case about the messenger," he said.

Tyrrell can take it in his stride because he has seen it all before.

Parallels to Ground Zero case?

He got his break in the litigation surrounding Agent Orange in 1982. He represented the manufacturer, Monsanto, over claims made by Vietnam War veterans that they had suffered various injuries as a result of being exposed to the chemical.

His most high-profile case up until now was the World Trade Center litigation over claims from approximately 10,000 people injured by ash and dust in the aftermath of the attacks.

Tyrrell defended the city and 150 contractors and also was liaison counsel for all 536 defendants. The case eventually settled last year, with the plaintiffs due to receive at least \$625 million.

During the course of the litigation, Patton Boggs earned more than \$100 million in legal fees, according to media reports and the plaintiffs' lawyers.

Tyrrell is proud of his reputation and exhibited no unease at the way he was portrayed in DePalma's book about the World Trade Center.

In fact, he suggested this reporter read the book.

DePalma speculated in an e-mail that Tyrrell's decision to take on the Ecuador case may have been shaped by his experience in the case.

Then, Tyrrell faced an uphill battle defending claims made by sympathetic plaintiffs described as "heroes" by their lawyers at every available opportunity, DePalma noted.

"The parallels to Ground Zero seem clear to me, and perhaps to Tyrrell as well," DePalma wrote. "At this stage of his career, he may be tired of playing the 'master of disaster' and would like to see what it's like on the other side."

Others are less convinced that Tyrrell's involvement in the case indicates a change of heart.

"I'm not sure it really means anything from a moral standpoint," said Jean Eggen, a professor at Widener University School of Law, who teaches toxic torts.

The plaintiffs' team likely hired him for the simple reason that "he's just good," Eggen added.

Whatever the reason for Tyrrell getting involved, Chevron doesn't seem concerned.

"The plaintiffs' backers can hire as many law firms as they'd like," spokesman Kent Robertson said. "It doesn't change the fact that their colleagues have already corrupted this trial such that no legitimate court in the world will see it as anything but a fraud."

Back in the Patton Boggs conference room, Tyrrell remained unwilling to engage on his motivations for taking the case.

He pointedly steered clear of the standard heart-on-sleeve rhetoric used by the trial lawyers he is used to locking horns with.

"I have strong feelings that I keep to myself," he said.

Copyright 2011 E&E Publishing. All Rights Reserved.

For more news on energy and the environment, visit www.greenwire.com.

Greenwire is published by Environment & Energy Publishing. [Read More »](#)

EXHIBIT 2405



Burford Capital



Confidential Presentation Concerning Aguinda v. Chevron

*Burford Capital is the largest
and most experienced
international dispute funder
in the world.*

- Burford Capital is a London Stock Exchange traded investment fund active in commercial dispute financing
- Burford completed its \$130 million IPO in October 2009 – the largest capital raising for commercial dispute finance in history
- Burford’s major investors are the largest and most prestigious UK institutions, including Fidelity, Invesco, JPMorgan, UBS, Baillie Gifford, Scottish Widows and Eton Park
- Burford provides financial solutions for litigation and arbitration matters
- Burford is experienced and skilled in the legal, business, and financial areas, with a comprehensive and integrated international capacity in those sectors

“[With Burford’s IPO] it’s time to declare litigation financing a bona fide investment class.”

The American Lawyer, October 2009

Sir Peter Middleton, Chairman

- Former Chairman and CEO of Barclays
- Chairman of Camelot Group Plc, UK Chairman of Marsh & McLennan Companies
- Chairman, Centre for Effective Dispute Resolution; Chair, review of UK civil justice for Blair government

Hugh Steven Wilson, Vice Chairman

- Managing Partner, Tennenbaum Capital, US-based private investment business with several billion dollars of funds under management
- Former senior partner at Latham & Watkins: Chairman of the firm's National Litigation Department; Global Co-Chair of the firm's Mergers and Acquisitions Practice Group

Charles Parkinson

- Current Minister of Treasury & Resources of Guernsey
- Director of Mapeley Limited, part of Fortress Investment Group, and Dexion Equity Alternative Limited, a UK listed Guernsey company with K2 Advisers LLC as its investment adviser
- Barrister and accountant

David Lowe, OBE

- Former director with Lazards and Barclays Capital in Guernsey
- Until recently was Senior Jurat, Royal Court of Guernsey

Selvyn Seidel, Chairman

- Senior partner at Latham & Watkins until 2007; 40 years of legal experience
- Various Latham positions including Chairman of International Practice, founder and Chairman of International Litigation and Arbitration Practice Group and Chairman of New York Litigation Department
- Founding board member of the RAND Institute for Civil Justice (Europe)
- Adjunct Professor, New York University School of Law; Lecturer, Linacre College, Oxford University

Christopher Bogart, Chief Executive Officer

Law

- General Counsel, Time Warner Inc.
- Litigator, Cravath, Swaine & Moore

Business and Investment Management

- Chief Executive Officer, Time Warner Cable Ventures, a major operating business
- Executive Vice President, Time Warner Inc., the world's largest media company
- Managing Director, Glenavy Capital LLC, a global technology investment firm
- Chief Executive Officer, Churchill Ventures Limited, a public investment vehicle

Jonathan Molot, Chief Investment Officer

- Senior Obama advisor and member of Obama transition team
- Georgetown and Harvard law professor, with a focus on litigation risk transfer and management
- Cleary Gottlieb and Kellogg Huber litigator, United States Supreme Court clerk

“This is a group, in other words, with a glittery stack of resumes.”

Aviva Will, Managing Director

- Former Assistant General Counsel and senior litigation counsel, Time Warner Inc.
- Former litigator, Cravath, Swaine & Moore

Peter Benzian, Managing Director

- Former senior partner, Latham & Watkins, and head of litigation for Latham's San Diego office
- Highly experienced trial lawyer, with dozens of cases tried to verdict
- Member, National Institute for Trial Advocacy, and faculty member at numerous NITA courses
- President, Association of Business Trial Lawyers of San Diego

Peter Haje, Investment Committee Member

- Former General Counsel, Time Warner Inc.
- Former Managing Partner, Paul Weiss Rifkind Wharton & Garrison

Renee Russell, Manager, Business Affairs

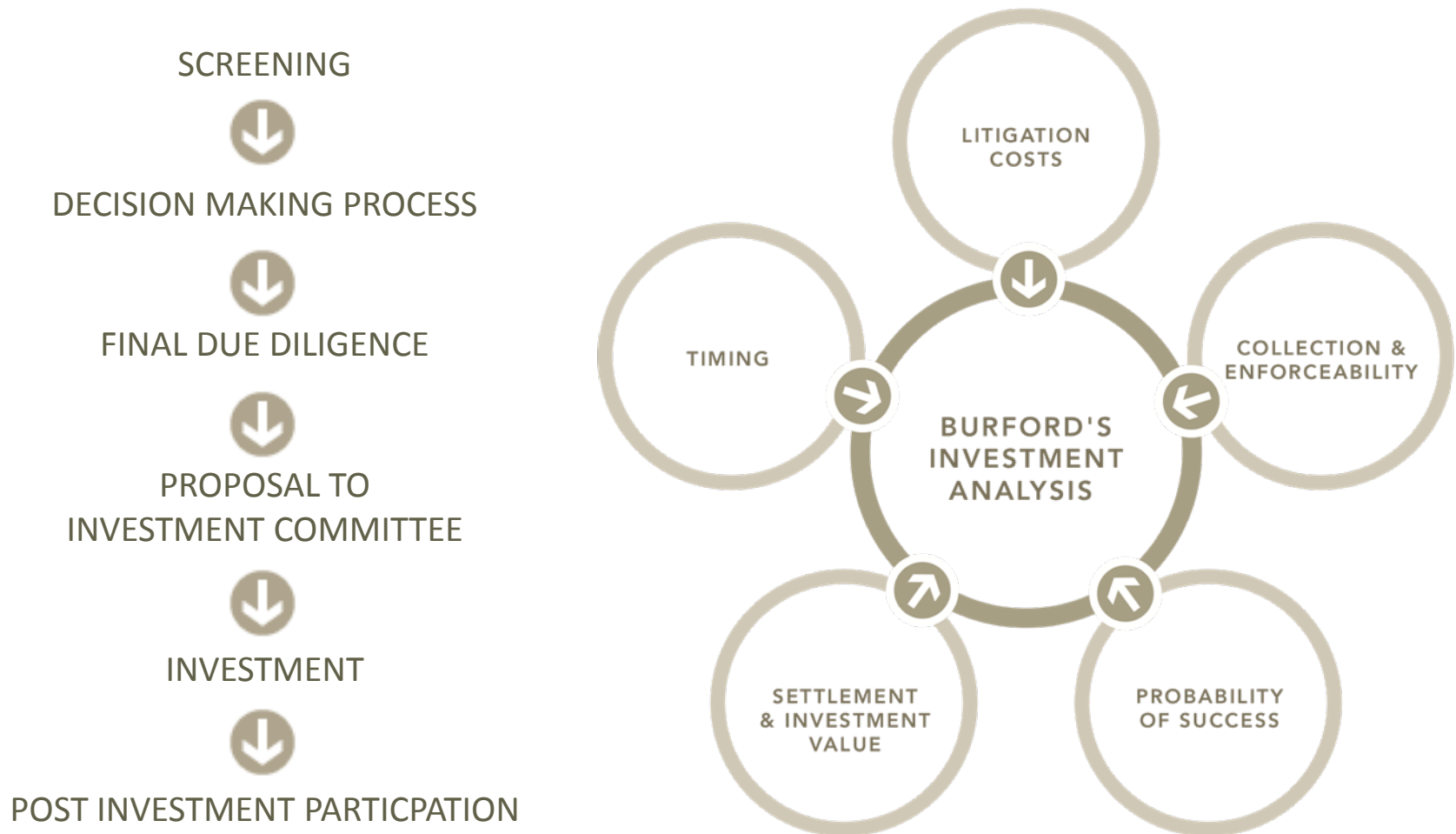
- Goldman Sachs & Time Warner background
- Howard University Law School, *cum laude* and top 5%
- Former Assistant District Attorney, New York City

Stefanie Meyenhofer-Peters, Associate

- LL.M., University of Chicago Law School
- Experienced Swiss lawyer

- Burford began working with the *Aguinda* team in October 2009
- Burford has made countless introductions to respected professionals in the US and internationally, and has been active in case strategy
- Burford has a special relationship with Patton Boggs and introduced the firm, and Jim Tyrrell, to the case
- Burford has spent hundreds of hours already working on the matter
- Burford is enthusiastic about the role it can play in bringing this matter to justice and obtaining long-overdue relief for the plaintiffs and their constituents
- Burford has a unique and extraordinary capacity to contribute to the case on an ongoing basis into the future, in light of its professional capacity and worldwide relationships
- Burford takes great pride in its commitment to supporting human rights causes, such as the *Aguinda* case

Burford operates an industry-leading underwriting and litigation assessment process. The mere fact that Burford has underwritten a case has value on its own.



- Burford combines industry-leading litigation expertise with capital
- Burford is not simply a source of capital
- Burford rarely participates in competitive bid situations (and likely would not have participated in this had it originally been presented in that manner)
- However, Steven Donziger and H5 have done a very good job for plaintiffs in keeping Burford in the process despite introducing competition
- Nevertheless, any financing proposal from Burford needs to be considered in the context of the other benefits Burford provides, as Burford is rarely the cheapest source of mere capital

- Burford has agreed with Steven and Nicolas on the basic terms for funding this matter which are reflected in the term sheet and emails exchanged
- Burford would commit \$15 million in capital, \$5 million of which would be paid out immediately and the remainder would be on call as needed (see below for details)
- Assuming agreement on some details below, Burford has accepted Nicolas' proposed pricing: 1% of recovery for the first \$2.5 million invested and a further 1% for each subsequent \$2.75 million invested

Note that Burford funds only following approval of its Board of Directors and execution of definitive documents, neither of which has occurred here. This proposal is simply a non-binding expression of interest and an expression of economic terms that Burford Group Limited, Burford Capital's investment adviser, expects after completing diligence to be prepared to recommend to Burford Capital.

~~SHOULD NEVER OCCUR: PLAINTIFFS ACCEPT AN UNNATURALLY LOW SETTLEMENT~~

- Despite offering several options, Burford has not been able to agree with Nicolas on the impact of a low recovery in this matter
- Because control of when, and for how much, to settle this case is not in Burford's control, Burford needs to be protected against an unsatisfactorily low result – which hopefully will never be relevant here
- Plaintiffs can avoid the issue entirely by not settling at such a low level as to invoke these protective provisions, but they are important to Burford's investors – and are sensible in allocating economic risk along with control
- If an unnaturally low settlement occurs, a fair resolution for this contingency is as follows:
 - Plaintiffs will not settle for less than \$900 million without Burford's consent
 - If plaintiffs proceed without Burford consent, Burford will be compensated as though the settlement were \$900 million
- Burford is willing, however, to hear alternative solutions to account for this contingency, such as:
 - Burford would receive a preferred return of 1.0x ROIC in year 1, with the ROIC rising by 0.5x per year.
 - Burford would receive a flat 1.0x ROIC preferred return coupled with a 20% minimum IRR, if the equity pricing were to be increased to Burford's earlier offer of 1% per \$2 million invested.
- As a policy, Burford believes in facilitating settlements and has a history of doing so

- In the event of a preferred return being paid, Burford agrees with Nicolas' request for 98.25% and 78.25% payout levels
- Burford agrees with Nicolas' request for a \$2.5 million priority payment from gross recoveries before net recoveries are computed
- Burford agrees with Nicolas' request that its commitment will remain available until January 1, 2011 without fee, and that \$5 million of its undrawn commitment will remain available until June 30, 2011 for a commitment fee equal to 10% of the preferred return
 - To be clear, plaintiffs are free to draw the entire \$15 million by 1/1/11 – this only applies if they elect not to do so
- Burford agrees that fees and expenses may be paid from its invested capital; the precise details await budgets, etc.
- Burford and Nicolas are agreed on a package of standard terms including a term-by-term MFN and a ROFR on future capital needs
- Burford agrees that it will bear its own Guernsey tax risk from the investment and also that jurisdiction-specific tax paid on monies collected there simply because of the litigation process (such as an "exit tax") will be treated as a proper deduction from the theoretical gross recovery; taxes paid in the US or Ecuador would be for plaintiffs' account and would not reduce gross recovery

This Document and the presentation to which it relates ("**Presentation**") do not constitute or form part of, and should not be construed as, an issue for sale or subscription of, or solicitation of any offer or invitation to subscribe for, underwrite or otherwise acquire or dispose of any securities of Burford Capital Limited (the "**Company**") nor should they or any part of them form the basis of, or be relied on in connection with, any contract or commitment whatsoever which may at any time be entered into by the recipient or any other person, not do they constitute an invitation or inducement to engage in investment activity under section 21 of the Financial Services and Markets Act 2000 ("**FSMA**"). The Document and the Presentation do not constitute an invitation to effect any transaction with the Company or to make use or any services provided by the Company. THIS DOCUMENT AND THE PRESENTATION ARE INTENDED TO PROVIDE INFORMATION TO LAW FIRMS AND LITIGANTS ABOUT THE COMPANY'S BUSINESS AND DO NOT RELATE IN ANY WAY TO THE OFFERING OF SECURITIES. As such, they may be distributed within the United States. However, THE COMPANY DOES NOT SOLICIT INVESTORS WITHIN THE UNITED STATES AND THIS DOCUMENT AND PRESENTATION ARE EXPRESSLY NOT INTENDED TO SOLICIT US INVESTORS IN THE COMPANY.

The information in this Document and the Presentation or on which this Document and the Presentation are based has been obtained from sources that the Company believes to be reliable and accurate. However, no representation or warranty, express or implied, is made as to the fairness, accuracy or completeness of the information or opinions contained in this Document and the Presentation, which information and opinions should not be relied or acted on, whether by persons who do not have professional experience in matters relating to investments or persons who do have such experience. The information and opinions contained in this Document and the Presentation are provided as at the date of this Document and the Presentation and are subject to change without notice. Neither Burford Capital Limited, its associates nor any officer, director, employee or representative of the Company accepts any liability whatsoever for any loss howsoever arising, directly or indirectly, from any use of this Document or its contents or attendance at the Presentation.

Past performance cannot be relied on as a guide to future performance.

By accepting this document and attending the Presentation you agree to be bound by the foregoing limitations, undertakings and restrictions and agree that you have solicited the information contained in this Document and disclosed at the Presentation.

BEG_CTRL_NUM : DONZ00129831
END_CTRL_NUM : DONZ00129831
ATTACH_START : DONZ00126430
ATTACH_STOP : DONZ00129831
LASTMODDATE = 06/23/2010
TIMELASTMOD : 10:44:12
FILENAME : Burford Capital Aguinda Presentation June 22 2010.pdf
TITLE : Slide 1
TEXT :
Confidential Presentation Concerning Aguinda v. Chevron

2

Burford Capital is the largest
and most experienced
international dispute funder
in the world.

3

BURFORD: THE MARKET LEADER

* Burford Capital is a London Stock Exchange traded investment fund active in commercial dispute financing

* Burford completed its \$130 million IPO in October 2009 – the largest capital raising for commercial dispute finance in history

* Burford's major investors are the largest and most prestigious UK institutions, including Fidelity, Invesco, JPMorgan, UBS, Baillie Gifford, Scottish Widows and Eton Park

* Burford provides financial solutions for litigation and arbitration matters

* Burford is experienced and skilled in the legal, business, and financial areas, with a comprehensive and integrated international capacity in those sectors

"[With Burford's IPO] it's time to declare litigation financing a bona fide investment class."

The American Lawyer, October 2009

4

BOARD OF DIRECTORS

Sir Peter Middleton, Chairman

* Former Chairman and CEO of Barclays

* Chairman of Camelot Group Plc, UK Chairman of Marsh & McLennan Companies

* Chairman, Centre for Effective Dispute Resolution; Chair, review of UK civil justice for Blair government

Hugh Steven Wilson, Vice Chairman

* Managing Partner, Tennenbaum Capital, US-based private investment business with several billion dollars of funds under management

* Former senior partner at Latham & Watkins: Chairman of the firm's National Litigation Department; Global Co-Chair of the firm's Mergers and Acquisitions Practice Group

Charles Parkinson

* Current Minister of Treasury & Resources of Guernsey

* Director of Mapeley Limited, part of Fortress Investment Group, and Dexion Equity Alternative Limited, a UK listed Guernsey company with K2 Advisers LLC as its investment adviser

* Barrister and accountant

David Lowe, OBE

* Former director with Lazards and Barclays Capital in Guernsey

* Until recently was Senior Jurat, Royal Court of Guernsey

5

PRINCIPALS

Selvyn Seidel, Chairman

* Senior partner at Latham & Watkins until 2007; 40 years of legal experience

* Various Latham positions including Chairman of International Practice, founder and Chairman of International Litigation and Arbitration Practice Group and Chairman of New York Litigation Department

* Founding board member of the RAND Institute for Civil Justice (Europe)

* Adjunct Professor, New York University School of Law; Lecturer, Linacre College, Oxford University

Christopher Bogart, Chief Executive Officer

Law

* General Counsel, Time Warner Inc.

* Litigator, Cravath, Swaine & Moore

Business and Investment Management

* Chief Executive Officer, Time Warner Cable Ventures, a major operating business

* Executive Vice President, Time Warner Inc., the world's largest media company

* Managing Director, Glenavy Capital LLC, a global technology investment firm

* Chief Executive Officer, Churchill Ventures Limited, a public investment vehicle

Jonathan Molot, Chief Investment Officer

* Senior Obama advisor and member of Obama transition team

* Georgetown and Harvard law professor, with a focus on litigation risk transfer and management

* Cleary Gottlieb and Kellogg Huber litigator, United States Supreme Court clerk

"This is a group, in other words, with a glittery stack of resumes."

The American Lawyer, October 2009

6

SENIOR TEAM

Aviva Will, Managing Director

* Former Assistant General Counsel and senior litigation counsel, Time Warner Inc.

* Former litigator, Cravath, Swaine & Moore

Peter Benzian, Managing Director

* Former senior partner, Latham & Watkins, and head of litigation for Latham's San Diego office

* Highly experienced trial lawyer, with dozens of cases tried to verdict

* Member, National Institute for Trial Advocacy, and faculty member at numerous NITA courses

* President, Association of Business Trial Lawyers of San Diego

Peter Haje, Investment Committee Member

* Former General Counsel, Time Warner Inc.

* Former Managing Partner, Paul Weiss Rifkind Wharton & Garrison

Renee Russell, Manager, Business Affairs

* Goldman Sachs & Time Warner background

* Howard University Law School, cum laude and top 5%

* Former Assistant District Attorney, New York City

Stefanie Meyenhofer-Peters, Associate

* LL.M., University of Chicago Law School

* Experienced Swiss lawyer

7

BURFORD'S HISTORY IN AGUINDA

- * Burford began working with the Aguinda team in October 2009
- * Burford has made countless introductions to respected professionals in the US and internationally, and has been active in case strategy
- * Burford has a special relationship with Patton Boggs and introduced the firm, and Jim Tyrrell, to the case
- * Burford has spent hundreds of hours already working on the matter
- * Burford is enthusiastic about the role it can play in bringing this matter to justice and obtaining long-overdue relief for the plaintiffs and their constituents
- * Burford has a unique and extraordinary capacity to contribute to the case on an ongoing basis into the future, in light of its professional capacity and worldwide relationships
- * Burford takes great pride in its commitment to supporting human rights causes, such as the Aguinda case

8

BURFORD'S INVESTMENT APPROACH

Burford operates an industry-leading underwriting and litigation assessment process. The mere fact that Burford has underwritten a case has value on its own.

SCREENING

DECISION MAKING PROCESS

FINAL DUE DILIGENCE

PROPOSAL TO

INVESTMENT COMMITTEE

INVESTMENT

POST INVESTMENT PARTICPATION

9

BURFORD'S ECONOMIC APPROACH

- * Burford combines industry-leading litigation expertise with capital
- * Burford is not simply a source of capital
- * Burford rarely participates in competitive bid situations (and likely would not have participated in this had it originally been presented in that manner)
- * However, Steven Donziger and H5 have done a very good job for plaintiffs in keeping Burford in the process despite introducing competition
- * Nevertheless, any financing proposal from Burford needs to be considered in the context of the other benefits Burford provides, as Burford is rarely the cheapest source of mere capital

10

BASIC ECONOMIC TERMS

* Burford has agreed with Steven and Nicolas on the basic terms for funding this matter which are reflected in the term sheet and emails exchanged

* Burford would commit \$15 million in capital, \$5 million of which would be paid out immediately and the remainder would be on call as needed (see below for details)

* Assuming agreement on some details below, Burford has accepted Nicolas' proposed pricing: 1% of recovery for the first \$2.5 million invested and a further 1% for each subsequent \$2.75 million invested

Note that Burford funds only following approval of its Board of Directors and execution of definitive documents, neither of which has occurred here. This proposal is simply a non-binding expression of interest and an expression of economic terms that Burford Group Limited, Burford Capital's investment adviser, expects after completing diligence to be prepared to recommend to Burford Capital.

11

A DISCRETE ISSUE RELATING TO A DEVELOPMENT THAT ALL AGREE SHOULD NEVER OCCUR: PLAINTIFFS ACCEPT AN UNNATURALLY LOW SETTLEMENT

* Despite offering several options, Burford has not been able to agree with Nicolas on the impact of a low recovery in this matter

* Because control of when, and for how much, to settle this case is not in Burford's control, Burford needs to be protected against an unsatisfactorily low result – which hopefully will never be relevant here

* Plaintiffs can avoid the issue entirely by not settling at such a low level as to invoke these protective provisions, but they are important to Burford's investors – and are sensible in allocating economic risk along with control

* If an unnaturally low settlement occurs, a fair resolution for this contingency is as follows:

- Plaintiffs will not settle for less than \$900 million without Burford's consent
- If plaintiffs proceed without Burford consent, Burford will be compensated as though the settlement were \$900 million

* Burford is willing, however, to hear alternative solutions to account for this contingency, such as:

- Burford would receive a preferred return of 1.0x ROIC in year 1, with the ROIC rising by 0.5x per year.

- Burford would receive a flat 1.0x ROIC preferred return coupled with a 20% minimum IRR, if the equity pricing were to be increased to Burford's earlier offer of 1% per \$2 million invested.

* As a policy, Burford believes in facilitating settlements and has a history of doing so

12

MISCELLANEOUS

* In the event of a preferred return being paid, Burford agrees with Nicolas' request for 98.25% and 78.25% payout levels

* Burford agrees with Nicolas' request for a \$2.5 million priority payment from gross recoveries before net recoveries are computed

* Burford agrees with Nicolas' request that its commitment will remain available until January 1, 2011 without fee, and that \$5 million of its undrawn commitment will remain available until June 30, 2011 for a commitment fee equal to 10% of the preferred return

- To be clear, plaintiffs are free to draw the entire \$15 million by 1/1/11 – this only applies if they elect not to do so

* Burford agrees that fees and expenses may be paid from its invested capital; the precise details await budgets, etc.

* Burford and Nicolas are agreed on a package of standard terms including a term-by-term MFN and a ROFR on future capital needs

* Burford agrees that it will bear its own Guernsey tax risk from the investment and also that jurisdiction-specific tax paid on monies collected there simply because of the litigation process (such as an "exit tax") will be treated as a proper deduction from the theoretical gross recovery; taxes paid in the US or Ecuador would be for plaintiffs' account and would not reduce gross recovery

13

NOTICE AND DISCLAIMER

This Document and the presentation to which it relates ("Presentation") do not constitute or form part of, and should not be construed as, an issue for sale or subscription of, or solicitation of any offer or invitation to subscribe for, underwrite or otherwise acquire or dispose of any securities of Burford Capital Limited (the "Company") nor should they or any part of them form the basis of, or be relied on in connection with, any contract or commitment whatsoever which may at any time be entered into by the recipient or any other person, not do they constitute an invitation or inducement to engage in investment activity under section 21 of the Financial Services and Markets Act 2000 ("FSMA"). The Document and the Presentation do not constitute an invitation to effect any transaction with the Company or to make use of any services provided by the Company. THIS DOCUMENT AND THE PRESENTATION ARE INTENDED TO PROVIDE INFORMATION TO LAW FIRMS AND LITIGANTS ABOUT THE COMPANY'S BUSINESS AND DO NOT RELATE IN ANY WAY TO THE OFFERING OF SECURITIES. As such, they may be distributed within the United States. However, THE COMPANY DOES NOT SOLICIT INVESTORS WITHIN THE UNITED STATES AND THIS DOCUMENT AND PRESENTATION ARE EXPRESSLY NOT INTENDED TO SOLICIT US INVESTORS IN THE COMPANY. The information in this Document and the Presentation or on which this Document and the Presentation are based has been obtained from sources that the Company believes to be reliable and accurate. However, no representation or warranty, express or implied, is made as to the fairness, accuracy or completeness of the information or opinions contained in this Document and the Presentation, which information and opinions should not be relied or acted on, whether by persons who do not have professional experience in matters relating to investments or persons who do have such experience. The information and opinions contained in this Document and the Presentation are provided as at the date of this Document and the Presentation and are subject to change without notice. Neither Burford Capital Limited, its associates nor any officer, director, employee or representative of the Company accepts any liability whatsoever for any loss howsoever arising, directly or indirectly, from any use of this Document or its contents or attendance at the Presentation. Past performance cannot be relied on as a guide to future performance. By accepting this document and attending the Presentation you agree to be bound by the foregoing limitations, undertakings and restrictions and agree that you have solicited the information contained in this Document and disclosed at the Presentation.

AUTHOR : Christopher Bogart
CUSTODIAN : Donziger, Steven
SOURCE : Inbox.pst
PAGES = 0
DOCTYPE : E-MAIL ATTACHMENT
BOX_NO = 0
ITEM_NO = 2519
UPDATEDATE = 01/20/2011
PRIV_DOC_NO = 0
NATIVELINK : M:\Production\Gibson\Chevron\CONCORDANCE DONZIGER COMPEL\DON037\NATIVES\002
\DONZ00129831.pdf

EXHIBIT 2406

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 10 MC 00002(LAK)

-----x

In re:
APPLICATION OF CHEVRON

-----x

December 22, 2010
9:31 a.m.

Continued Videotaped Deposition of
STEVEN DONZIGER, pursuant to Subpoena,
held at the offices of Gibson Dunn &
Crutcher LLP, 200 Park Avenue, New York,
New York, before Todd DeSimone, a
Registered Professional Reporter and
Notary Public of the State of New York.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S :
EMERY CELLI BRINCKERHOFF & ABADY LLP
75 Rockefeller Plaza, 20th Floor
New York, New York 10019
Attorneys for Ecuadorian Plaintiffs
BY: JONATHAN ABADY, ESQ.
jabady@ecbalaw.com
O. ANDREW F. WILSON, ESQ.
awilson@ecbalaw.com

COVINGTON & BURLING LLP
620 Eighth Avenue
New York, New York 10018-1405
Attorneys for Ricardo Reis Veiga
BY: ALAN VINEGRAD, ESQ.
avinegrad@cov.com
NATALIE MacLEAN LEINO, ESQ.
nleino@cov.com

RIVERO MESTRE & CASTRO
2525 Ponce De Leon Blvd.
Suite 1000
Miami, Florida 33134
Attorneys for Rodrigo Perez
Pallares
BY: ANDRES RIVERO, ESQ.
arivero@rmc-attorneys.com
JORGE MESTRE, ESQ.
jmestre@rmc-attorneys.com
ERIMAR VON DER OSTEN, ESQ.
evonderosten@rmc-attorneys.com
PAUL DANES, ESQ.
pdanes@rmc-attorneys.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S: (Continued)

GIBSON DUNN & CRUTCHER LLP

200 Park Avenue

New York, New York 10166

Attorneys for Chevron Corporation

BY: KRISTEN HENDRICKS, ESQ.

khendricks@gibsondunn.com

HANE KIM, ESQ.

hkim@gibsondunn.com

- and -

GIBSON DUNN & CRUTCHER LLP

3161 Michelson Drive

Irvine, California 92612-4412

BY: ANDREA E. NEUMAN, ESQ.

aneuman@gibsondunn.com

WINSTON & STRAWN LLP

200 Park Avenue

New York, New York 10166-4193

Attorneys for Republic of Ecuador

BY: C. MACNEIL MITCHELL, ESQ.

cmitchell@winston.com

FREIDMAN KAPLAN SEILER & ADELMAN LLP

1633 Broadway

New York, New York 10019-6708

Attorneys for Steven Donziger

BY: BRUCE S. KAPLAN, ESQ.

bkaplan@fklaw.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S : (Continued)

ALSO PRESENT:

MAX GITTER, ESQ., Special Master

ALETHEA S. GROSS, Assistant to
Special Master

DAVID MOYER, ESQ., Chevron Corporation

JAMES ROBERTS, Videographer

VINCE MAGGIANO, Videographer

1 DONZIGER

2 A. I don't remember specifically.

3 Q. Do you remember anything else
4 about the meeting with Dr. Rourke?

5 A. Well, one thing I remember is I
6 don't believe I was the lead person
7 interacting with him. The other lawyers
8 on the team were.

9 Q. Who did you consider to be the
10 lead person with Dr. Rourke?

11 A. Well, the Patton Boggs lawyers
12 were the lead. And I believe they hired
13 The Weinberg Group to manage the process.

14 Q. Is there a particular lawyer by
15 name that you considered to be the lead
16 with Dr. Rourke?

17 A. Well, I think there is an
18 individual at The Weinberg Group who had
19 most of the interaction with the experts,
20 and then he in turn had interaction with
21 the Patton Boggs lawyers.

22 Q. And who is this you are
23 referring to?

24 A. At The Weinberg Group?

25 Q. Yes, sir.

1 DONZIGER

2 A. A gentleman by the name of Ted
3 Dunkelberger.

4 Q. As among the Patton Boggs
5 lawyers, is there anyone who you
6 considered to be the primary person for
7 Dr. Rourke?

8 A. I think the Patton Boggs
9 lawyers who are involved in this process
10 managed all the six individuals.

11 Q. And would those be the same
12 Patton Boggs lawyers you named earlier or
13 a smaller group?

14 A. Some of them.

15 Q. Can you tell me which ones,
16 please?

17 A. I believe Mr. Tyrrell,
18 Mr. Westenberger and Mr. Small.

19 Q. Did all three of those Patton
20 Boggs lawyers participate in the work
21 meeting we've been discussing?

22 A. No.

23 Q. Can you tell me who was at that
24 meeting?

25 A. Mr. Westenberger -- among

1 DONZIGER

2 counsel, Mr. Westenberger, Mr. Small,
3 myself, and I believe Mr. Maazel from the
4 Emery Celli firm.

5 Q. Other than those four
6 individuals and Dr. Rourke, who else
7 attended the meeting?

8 A. Mr. Dunkelberger.

9 Q. Of The Weinberg Group?

10 A. Yes.

11 Q. Anyone else?

12 A. I don't believe so, no.

13 Q. What was the role of The
14 Weinberg Group in this process?

15 A. To help the lawyers locate
16 experts with relevant expertise who could
17 do the work in the limited time frame
18 allotted and then manage the process for
19 the lawyers, you know, under the
20 supervision of the lawyers, I should say.

21 Q. Was it ever anticipated The
22 Weinberg Group would provide some sort of
23 expert opinions?

24 A. I think there was some
25 discussion about that, but it ended up not

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

I, TODD DeSIMONE, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose testimony as herein set forth, was duly sworn by me; and that the within transcript is a true record of the testimony given by said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of December, 2010.

TODD DESIMONE

* * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 10 MC 00002(LAK)

-----x

In re:
APPLICATION OF CHEVRON

-----x

January 14, 2011
9:08 a.m.

Continued Videotaped Deposition of
STEVEN DONZIGER, pursuant to Subpoena,
held at the offices of Gibson Dunn &
Crutcher LLP, 200 Park Avenue, New York,
New York, before Todd DeSimone, a
Registered Professional Reporter and
Notary Public of the State of New York.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S :

EMERY CELLI BRINCKERHOFF & ABADY LLP
75 Rockefeller Plaza, 20th Floor
New York, New York 10019

Attorneys for Ecuadorian Plaintiffs

BY: JONATHAN ABADY, ESQ.
jabady@ecbalaw.com

COVINGTON & BURLING LLP
620 Eighth Avenue
New York, New York 10018-1405

Attorneys for Ricardo Reis Veiga

BY: ALAN VINEGRAD, ESQ.
avinegrad@cov.com

RIVERO MESTRE LLP
2525 Ponce De Leon Blvd.
Suite 1000
Miami, Florida 33134

Attorneys for Rodrigo Perez
Pallares

BY: ANDRES RIVERO, ESQ.
arivero@riveromestre.com
CATHERINE C. GRIEVE, ESQ.
cgrieve@riveromestre.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S: (Continued)
GIBSON DUNN & CRUTCHER LLP
200 Park Avenue
New York, New York 10166
Attorneys for Chevron Corporation
BY: RANDY MASTRO, ESQ.
rmastro@gibsondunn.com
KRISTEN HENDRICKS, ESQ.
khendricks@gibsondunn.com
MICHAEL RADINE, ESQ.
mradine@gibsondunn.com
MARY BETH MALONEY, ESQ.
mmaloney@gibsondunn.com

- and -

GIBSON DUNN & CRUTCHER LLP
3161 Michelson Drive
Irvine, California 92612-4412
BY: ANDREA E. NEUMAN, ESQ.
aneuman@gibsondunn.com

WINSTON & STRAWN LLP
200 Park Avenue
New York, New York 10166
Attorneys for Republic of Ecuador
BY: C. MacNEIL MITCHELL, ESQ.
cmitchell@winston.com

FREIDMAN KAPLAN SEILER & ADELMAN LLP
1633 Broadway
New York, New York 10019-6708
Attorneys for Steven Donziger
BY: BRUCE S. KAPLAN, ESQ.
bkaplan@fklaw.com
TIMOTHY HAGGERTY, ESQ.
thaggerty@fklaw.com
ROBERT D. KAPLAN, ESQ.
rkaplan@fklaw.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S : (Continued)

ALSO PRESENT:

MAX GITTER, ESQ., Special Master

JUSTIN ORMAND, ESQ., Assistant to
Special Master

DAVID MOYER, ESQ., Chevron Corporation

SARA McMILLAN, Chevron Corporation

JAMES ROBERTS, Videographer

VINCE MAGGIANO, Videographer

1 DONZIGER

2 Q. Were you involved in drafting
3 plaintiffs' response to this filing?

4 A. I don't believe so. Do you
5 want me to read this?

6 Q. No.

7 MS. NEUMAN: I'm going to mark
8 as Exhibit 870 an e-mail exchange dated
9 May 17th of 2010 bearing the Bates numbers
10 DONZ 31315, it is two pages, between
11 Steven Donziger, Andrew Wilson, Ilann
12 Maazel, Jonathan Abady, Eric Westenberger,
13 Jay Horowitz, Eric Daleo and Edward
14 Yennock, re "Colorado Disclosures."

15 (Exhibit 870 marked for
16 identification.)

17 (Witness perusing document.)

18 Q. Have you had a chance to read
19 Exhibit 870, Mr. Donziger?

20 A. Yes.

21 Q. The top e-mail on page 1 of
22 Exhibit 870, you wrote "Should we talk
23 about this? Seems we have a tension
24 between the strategy as outlined by Jim
25 (fight hard on all fronts all the time and

1 DONZIGER

2 concede nothing, buy as much time as
3 possible) and Hegarty's expectation as
4 outlined by Jay in his e-mail of last
5 night that something should be turned
6 over."

7 Do you see that?

8 A. Yes.

9 Q. You wrote that, sir?

10 A. Yes.

11 MR. KAPLAN: Could we just have
12 a clarification that it appears to say
13 Hegarty and that it is not my colleague,
14 Mr. Haggerty, referenced there.

15 THE SPECIAL MASTER: So
16 ordered.

17 Q. The Hegarty referred to in
18 Exhibit 870 is Judge Hegarty in Colorado,
19 correct?

20 A. Yes.

21 Q. Is the Jim referred to in
22 Exhibit 870 Jim Tyrrell of Patton Boggs?

23 A. Yes.

24 Q. At this point in time Patton
25 Boggs had not appeared as counsel of

1 DONZIGER

2 Lago Agrio plaintiffs at this time.

3 Who would you consider as lead
4 counsel for those plaintiffs at this time?

5 THE WITNESS: Well, I don't
6 know if he would agree, but from my point
7 of view it would be Mr. Tyrrell. That is,
8 in the United States.

9 THE SPECIAL MASTER: That was
10 the question.

11 (Exhibit 880 marked for
12 identification.)

13 (Witness perusing document.)

14 Q. Mr. Donziger, did I understand
15 you to say in your prior testimony that
16 the Patton Boggs firm became involved in
17 April of 2010?

18 A. I think there were discussions
19 with them that began sooner -- prior to
20 that.

21 Q. When would you say they became
22 involved?

23 A. Well, I think there were
24 initial discussions with them at the
25 beginning of 2010. But I think in terms

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

I, TODD DeSIMONE, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose testimony as herein set forth, was duly sworn by me; and that the within transcript is a true record of the testimony given by said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of January, 2011.

TODD DESIMONE

* * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 10 MC 00002(LAK)

-----x

In re:
APPLICATION OF CHEVRON

-----x

January 18, 2011
9:30 a.m.

Continued Videotaped Deposition of
STEVEN DONZIGER, pursuant to Subpoena,
held at the offices of Gibson Dunn &
Crutcher LLP, 200 Park Avenue, New York,
New York, before Todd DeSimone, a
Registered Professional Reporter and
Notary Public of the State of New York.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S :

EMERY CELLI BRINCKERHOFF & ABADY LLP
75 Rockefeller Plaza, 20th Floor
New York, New York 10019

Attorneys for Ecuadorian Plaintiffs

BY: O. ANDREW F. WILSON, ESQ.

awilson@ecbalaw.com

JONATHAN ABADY, ESQ.

jabady@ecbalaw.com

COVINGTON & BURLING LLP

620 Eighth Avenue

New York, New York 10018-1405

Attorneys for Ricardo Reis Veiga

BY: ALAN VINEGRAD, ESQ.

avinegrad@cov.com

RIVERO MESTRE LLP

2525 Ponce De Leon Blvd.

Suite 1000

Miami, Florida 33134

Attorneys for Rodrigo Perez

Pallares

BY: CATHERINE C. GRIEVE, ESQ.

cgrieve@riveromestre.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S: (Continued)
GIBSON DUNN & CRUTCHER LLP
200 Park Avenue
New York, New York 10166
Attorneys for Chevron Corporation
BY: RANDY MASTRO, ESQ.
rmastro@gibsondunn.com
KRISTEN HENDRICKS, ESQ.
khendricks@gibsondunn.com
MARY BETH MALONEY, ESQ.
mmaloney@gibsondunn.com
VIKRAM KUMAR, ESQ.
vkumar@gibsondunn.com
JEFFREY COREN, ESQ.
jcoren@gibsondunn.com

WINSTON & STRAWN LLP
200 Park Avenue
New York, New York 10166
Attorneys for Republic of Ecuador
BY: C. MacNEIL MITCHELL, ESQ.
cmitchell@winston.com

FREIDMAN KAPLAN SEILER & ADELMAN LLP
1633 Broadway
New York, New York 10019-6708
Attorneys for Steven Donziger
BY: BRUCE S. KAPLAN, ESQ.
bkaplan@fklaw.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S : (Continued)

ALSO PRESENT:

MAX GITTER, ESQ., Special Master

JUSTIN ORMAND, ESQ., Assistant to
Special Master

JAMES ROBERTS, Videographer

VINCE MAGGIANO, Videographer

1 DONZIGER

2 representations. Other than that, no.

3 Q. So you have no personal
4 knowledge of any serious danger to
5 Mr. Cabrera or his family other than what
6 Mr. Cabrera represented to you at the
7 time?

8 A. He didn't represent it to me.
9 It is what I read based on a court
10 submission, I believe.

11 Q. Based on a court submission
12 that plaintiffs' team drafted for
13 Mr. Cabrera?

14 A. I didn't testify to that. I
15 said based on the submission that he made
16 to the court outlining facts as he
17 understood them.

18 Q. But he didn't draft that
19 himself, correct?

20 A. I don't know.

21 Q. Let's see if we can refresh
22 your recollection.

23 (Exhibit 1610 marked for
24 identification.)

25 Q. Do you recognize what this

1 DONZIGER

2 made on behalf of Mr. Cabrera, correct?

3 A. No.

4 Q. You requested of Mr. Fajardo
5 that there be a submission to the court
6 addressing what you understood to be
7 Mr. Cabrera's representations, correct?

8 A. Yes.

9 Q. And Mr. Fajardo and the
10 plaintiffs' team then proceeded to draft
11 such a submission for Mr. Cabrera's
12 signature, correct?

13 A. It is possible. I don't know.

14 Q. Please look at the attachments
15 to this document on the last three pages
16 and you will see the draft of
17 Mr. Cabrera's submission that Mr. Fajardo
18 prepared on October 31, 2007 before the
19 submission in November 2007. Do you see
20 that, sir?

21 A. I don't know what I'm reading
22 here.

23 Q. Let's take you through it. It
24 is attached to Mr. Fajardo's e-mail and it
25 is dated, do you see at the top, October

1 DONZIGER

2 31, 2007, correct?

3 A. You are talking about the
4 attachment?

5 Q. Correct.

6 A. Yes.

7 MR. KAPLAN: For the record,
8 that's the attachment in Spanish?

9 MR. MASTRO: Correct. And
10 Mr. Donziger can read Spanish. And he can
11 see that the document that Mr. Fajardo has
12 attached is his draft, October 31, 2007,
13 dated before the Cabrera submission to the
14 court on November 7, 2007, of
15 Mr. Cabrera's submission.

16 Q. Correct, sir?

17 A. I see that.

18 Q. Now, sir, this is something
19 Pablo Fajardo sends to you. It is about
20 Richard Cabrera, correct?

21 A. Yes.

22 Q. Once again, this is something
23 that was responsive clearly to the August
24 subpoena, correct?

25 A. I believe so, yes.

1 DONZIGER

2 don't know if anyone else did.

3 Q. Was David Russell's name
4 mentioned in any of the conversations that
5 you could recall between plaintiffs' team
6 and the Burford Group before it decided to
7 invest in the Lago Agrio litigation?

8 A. I don't recall his name being
9 mentioned.

10 Q. Did you or anyone else on
11 plaintiffs' team -- did you or anyone else
12 on plaintiffs' team discuss with the
13 Burford Group before it decided to invest
14 in the Lago Agrio litigation that the
15 plaintiffs' lawyers were researching the
16 doctrine that courts do not punish clients
17 when their representatives have committed
18 misdeeds?

19 A. I don't know. There were a lot
20 of conversations between Mr. Tyrrell and
21 Burford that I was not part of.

22 Q. Would it be fair to say that it
23 was Mr. Tyrrell who played a leading role
24 in convincing the Burford Group to invest
25 in the Lago Agrio litigation?

1 DONZIGER

2 A. I think he probably played the
3 primary role.

4 Q. Would it also be -- strike
5 that.

6 Do you recall any specific
7 conversations that you or anyone from the
8 plaintiffs' team had with the Burford
9 Group before it decided to invest about
10 the Cabrera report?

11 A. To the best of my recollection,
12 that was very much a part of our
13 discussions.

14 Q. Did you, just you individually
15 now, did you tell anyone at the Burford
16 Group before it decided to invest in the
17 Lago Agrio litigation that plaintiffs'
18 team had drafted Cabrera's final report?

19 THE SPECIAL MASTER: That's
20 been asked and answered.

21 Q. Did anyone on the Burford team
22 before Burford decided to invest express
23 concerns about the fact that plaintiffs'
24 team had drafted Cabrera's final report?

25 A. Well, Burford assessed the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

I, TODD DeSIMONE, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose testimony as herein set forth, was duly sworn by me; and that the within transcript is a true record of the testimony given by said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of January, 2011.

TODD DESIMONE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 10 MC 00002(LAK)

-----x

In re:
APPLICATION OF CHEVRON

-----x

January 29, 2011
9:09 a.m.

Continued Videotaped Deposition of
STEVEN DONZIGER, pursuant to Subpoena,
held at the offices of Gibson Dunn &
Crutcher LLP, 200 Park Avenue, New York,
New York, before Todd DeSimone, a
Registered Professional Reporter and
Notary Public of the State of New York.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S :

MOTLEY RICE LLC

One Corporate Center
20 Church Street, 17th Floor
Hartford, Connecticut 06103

Attorneys for Ecuadorian Plaintiffs

BY: WILLIAM H. NARWOLD, ESQ.
bnarwold@motleyrice.com

COVINGTON & BURLING LLP

620 Eighth Avenue
New York, New York 10018-1405

Attorneys for Ricardo Reis Veiga

BY: ALAN VINEGRAD, ESQ.
avinegrad@cov.com

RIVERO MESTRE LLP

2525 Ponce De Leon Blvd.
Suite 1000
Miami, Florida 33134

Attorneys for Rodrigo Perez
Pallares

BY: ANDRES RIVERO, ESQ.
arivero@riveromestre.com

PAUL DANS, ESQ.
pdans@riveromestre.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S: (Continued)
GIBSON DUNN & CRUTCHER LLP
200 Park Avenue
New York, New York 10166
Attorneys for Chevron Corporation
BY: RANDY MASTRO, ESQ.
rmastro@gibsondunn.com
KRISTEN HENDRICKS, ESQ.
khendricks@gibsondunn.com
MARY BETH MALONEY, ESQ.
mmaloney@gibsondunn.com
HANE KIM, ESQ.
hkim@gibsondunn.com
YONATON BERKOVITS, ESQ.
yberkovits@gibsondunn.com

WINSTON & STRAWN LLP
200 Park Avenue
New York, New York 10166
Attorneys for Republic of Ecuador
BY: C. MacNEIL MITCHELL, ESQ.
cmitchell@winston.com

FREIDMAN KAPLAN SEILER & ADELMAN LLP
1633 Broadway
New York, New York 10019-6708
Attorneys for Steven Donziger
BY: ROBERT KAPLAN, ESQ.
rkaplan@fklaw.com
TIMOTHY HAGGERTY, ESQ.
thaggerty@fklaw.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S: (Continued)

ALSO PRESENT:

MAX GITTER, ESQ., Special Master

JUSTIN ORMAND, ESQ., Assistant to
Special Master

JAMES ROBERTS, Videographer

VINCE MAGGIANO, Videographer

1 DONZIGER

2 Q. Am I correct that Stratus did
3 not disclose in its comments that it had
4 drafted the Cabrera report on which it was
5 commenting?

6 A. I would agree that Stratus did
7 not disclose the role it played in
8 preparing materials adopted by Cabrera.

9 THE SPECIAL MASTER: That was
10 not the question. Answer the question.

11 Q. Stratus drafted portions of the
12 Cabrera report that Cabrera adopted
13 verbatim, correct, sir?

14 A. Yes.

15 Q. And Stratus did not reveal that
16 fact in the comments it prepared on the
17 Cabrera report, correct?

18 A. Yes.

19 Q. So Mr. Horowitz wrote to you --
20 strike that.

21 And I'm also correct that
22 Chevron did not know at the time that
23 Stratus had written portions of the
24 Cabrera report that Cabrera adopted
25 verbatim, correct?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

I, TODD DeSIMONE, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose testimony as herein set forth, was duly sworn by me; and that the within transcript is a true record of the testimony given by said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of January, 2011.

TODD DESIMONE

EXHIBIT 2407

From: Westenberger, Eric [ewestenberger@pattonboggs.com]
Sent: Monday, May 03, 2010 10:04 PM
To: <awilson@ecbalaw.com>; <imaazel@ecbalaw.com>; Yennock, Edward;
sdonziger@donzigerandassociates.com; lgarr@donzigerandassociates.com;
<jabady@ecblaw.com>
Cc: Daleo, Eric; Rockwell, Jason; <jabady@ecbalaw.com>
Subject: Re: Draft Affidavit

Can we unilaterally say he won't be subject to deposition? This is why we struggled with who would sign the declaration. If Steve signs, he will most certainly be deposed. Same for any other counsel in the US. We figured that with Pablo, they likely would not slow down the process by deposing him (as we would say the dep needs to go forward in Ecuador). I think it is more likely that chevron will just submit its own expert and fact affidavit if pablo signs. Plus, he can speak to the facts better than anyone else.

Any thoughts on the general paragraph that andrew suggests?

Sent from my BlackBerry Wireless Device

From: Andrew Wilson <awilson@ecbalaw.com>
To: Ilann M. Maazel <imaazel@ecbalaw.com>; Westenberger, Eric; Yennock, Edward;
sdonziger@donzigerandassociates.com <sdonziger@donzigerandassociates.com>;
lgarr@donzigerandassociates.com <lgarr@donzigerandassociates.com>; jabady@ecblaw.com
<jabady@ecblaw.com>
Cc: Daleo, Eric; Rockwell, Jason; Jonathan S. Abady <jabady@ecbalaw.com>
Sent: Mon May 03 21:55:53 2010
Subject: RE: Draft Affidavit

We need someone to give us the basic framework for how experts operate in Ecuador and in this proceeding to support the arguments we want to make about privilege and the context for how documents were given ex parte (to that end we should probably add a section re the fact that Cabrera will not be subject to a deposition or cross examination and that his principal testimony is his report).

Jim's view at the end of the meeting was to supply an affidavit that would provide this context but without specifics regarding particular disclosures.

Perhaps the way to meet this goal and Ilann's concerns is to have a summary paragraph that does not cite the letter - but, instead, says something like "all communications with Cabrera from Plaintiffs were made without sending documents to Chevron." We can decide whether to state here that Stratus materials were included amongst other materials sent to Cabrera...

From: Ilann M. Maazel
Sent: Monday, May 03, 2010 9:37 PM
To: Westenberger, Eric; Andrew Wilson; Yennock, Edward; sdonziger@donzigerandassociates.com;
lgarr@donzigerandassociates.com; jabady@ecblaw.com
Cc: Daleo, Eric; Rockwell, Jason; Jonathan S. Abady
Subject: RE: Draft Affidavit

Maybe it's because I missed the end of the mtg last Friday, but I don't quite get the purpose of this affidavit. Pablo mentions one document submission but not the other. If he's submitting an affidavit about what happened, why omit the most important part? It seems misleading at best. I just don't see how he can sign an aff. that documents his submissions to Cabrera without mentioning that he sent documents that originated from Stratus, which is the one thing the judge is going to want to know. Better for him to say nothing and not submit an affidavit than submit something half way.

-Other questions: what's the basis for his statement in par. 16 that this would all be confidential? Is there some court order about that?

-I wouldn't emphasize too much that Cabrera was independent and court-appointed. Once PF says that in an American court, we'll never be able to back off from it.

-Pablo told us he doesn't know what he submitted, because he didn't keep a copy. Are we going to say this? It doesn't look good, but it is the truth, and when the Court asks us for an accounting, we need to be able to explain to him that we just don't know.

I guess I'm just wondering what we hope to gain from this. What do others think?

From: Westenberger, Eric [mailto:ewestenberger@pattonboggs.com]
Sent: Mon 5/3/2010 8:30 PM
To: Andrew Wilson; Yennock, Edward; sdonziger@donzigerandassociates.com; lgarr@donzigerandassociates.com; jabady@ecblaw.com; Ilann M. Maazel
Cc: Daleo, Eric; Rockwell, Jason; Jonathan S. Abady
Subject: Re: Draft Affidavit

Got it on ii. Good idea.

Any other thoughts would be greatly appreciated.

Thanks everyone.

Sent from my BlackBerry Wireless Device

From: Andrew Wilson <awilson@ecbalaw.com>
To: Westenberger, Eric; Yennock, Edward; sdonziger@donzigerandassociates.com <sdonziger@donzigerandassociates.com>; lgarr@donzigerandassociates.com <lgarr@donzigerandassociates.com>; jabady@ecblaw.com <jabady@ecblaw.com>; Ilann M. Maazel <imaazel@ecbalaw.com>
Cc: Daleo, Eric; Rockwell, Jason; Jonathan S. Abady <jabady@ecbalaw.com>
Sent: Mon May 03 20:18:33 2010
Subject: RE: Draft Affidavit

As for timing - I don't think we need much more substantively from this affidavit and my blackline has suggested edits to address all these comments, subject to your views - but I think that others should weigh in before we finalize this.

As for (ii) I really meant we remove adjectives, not facts.

From: Westenberger, Eric [mailto:ewestenberger@pattonboggs.com]
Sent: Monday, May 03, 2010 8:12 PM
To: Andrew Wilson; Yennock, Edward; sdonziger@donzigerandassociates.com;
lgarr@donzigerandassociates.com; jabady@ecblaw.com; Ilann M. Maazel
Cc: Daleo, Eric; Rockwell, Jason
Subject: Re: Draft Affidavit

(i) We can work on this

(ii) Good point. We'll tone down a bit but the facts have to come from somewhere. We'll need another affidavit if we take out too much.

(iv) We'll think about and try to handle.

(v) I could go either way.

We need to resolve this tonight if we are going to have an expert rely on the declaration. I don't want to have him see anything except the final.

Sent from my BlackBerry Wireless Device

From: Andrew Wilson <awilson@ecbalaw.com>
To: Yennock, Edward; sdonziger@donzigerandassociates.com
<sdonziger@donzigerandassociates.com>; lgarr@donzigerandassociates.com
<lgarr@donzigerandassociates.com>; jabady@ecblaw.com <jabady@ecblaw.com>; Ilann M. Maazel
<imaazel@ecbalaw.com>
Cc: Westenberger, Eric; Daleo, Eric; Rockwell, Jason
Sent: Mon May 03 19:58:23 2010
Subject: RE: Draft Affidavit

This is very good - and very tricky. I have tried to give you comments quickly - but this obviously needs very careful attention. I have attached a black-line mark-up. Some of this is style, which I defer to you on. The major substantive issues I think we should do are as follows:

(i) provide more context for the other experts at the sites and related emphasis on other experts -- we should try to make this look like there are a lot of experts, and Chevron is getting a lot of experts -- Cabrera is one of many;

(ii) we should tone down the critique. if this is coming from Pablo, I think it should be as close to neutral as we can get it and save the color for the brief. We do not want this used against him for exaggeration or characterization of Chevron's activities;

(iii) exhibits - can we attach some to this? maybe some of the orders that we have relating to this process?

(iv) we should consider toning down Chevron's requests for documents (Para 17). Perhaps this is good for us because it shows that the Court treated these as protected - but the emphasis on multiple efforts to get these materials, and the Court's refusals struck me as a bit problematic. Maybe this can be handled with emphasis -- e.g. "The Court repeatedly upheld

the confidentiality of documents presented to Mr. Cabrera by refusing Chevron's efforts to access these materials in multiple motions."

(v) do we leave the form of documents for the brief? i.e. we could add that there was no limit to the kind, form or number of documents that could be submitted to Mr. Cabrera.

Thanks for your great work on this.

From: Yennock, Edward [mailto:EYennock@PattonBoggs.com]
Sent: Monday, May 03, 2010 6:43 PM
To: sdonziger@donzigerandassociates.com; lgarr@donzigerandassociates.com; Andrew Wilson; jabady@ecblaw.com; Ilann M. Maazel
Cc: Westenberger, Eric; Daleo, Eric; Rockwell, Jason
Subject: Draft Affidavit
Importance: High

All:

Attached is a draft of Pablo Fajardo Mendoza's Declaration in support of our motion to be filed in Denver.

Please review same ASAP and very carefully. Most importantly, please be sure that Pablo confirms the accuracy of the facts set forth in the Declaration.

Laura and/or Steve -- please read the Declaration to Pablo ASAP. Once we have confirmed that it is accurate and final, we can share same with counsel in Ecuador and our potential expert. Our expert will use the Declaration and any other relevant orders as the factual background to opine whether, under these facts, Chevron would not be entitled to this confidential/privileged information under Ecuadorian law.

Again, given other time constraints, please get any comments back to us ASAP so we can keep moving. Thanks.

<<INVICTUS_Fajardo_Decl__in_Support_of_Colorado_PO_Motion_.DOCx>>

Edward M. Yennock | Patton Boggs LLP
The Legal Center
One Riverfront Plaza, 6th Floor
Newark, New Jersey 07102
Phone: 973.848.5609 | Fax: 973.848.5601
eyennock@pattonboggs.com

DISCLAIMER:

This e-mail message contains confidential, privileged information intended solely for the addressee. Please do not read, copy, or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (202) 457-6000 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Thank you.

This e-mail and all other electronic (including voice) communications from the sender's firm are for informational purposes only. No such communication is intended by the sender to constitute either an electronic record or an electronic signature, or to constitute any

agreement by the sender to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed unless otherwise specifically indicated. To learn more about our firm, please visit our website at <http://www.pattonboggs.com>.

DISCLAIMER:

This e-mail message contains confidential, privileged information intended solely for the addressee. Please do not read, copy, or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (202) 457-6000 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Thank you.

This e-mail and all other electronic (including voice) communications from the sender's firm are for informational purposes only. No such communication is intended by the sender to constitute either an electronic record or an electronic signature, or to constitute any agreement by the sender to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed unless otherwise specifically indicated. To learn more about our firm, please visit our website at <http://www.pattonboggs.com>.

DISCLAIMER:

This e-mail message contains confidential, privileged information intended solely for the addressee. Please do not read, copy, or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (202) 457-6000 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Thank you.

This e-mail and all other electronic (including voice) communications from the sender's firm are for informational purposes only. No such communication is intended by the sender to constitute either an electronic record or an electronic signature, or to constitute any agreement by the sender to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed unless otherwise specifically indicated. To learn more about our firm, please visit our website at <http://www.pattonboggs.com>.

DISCLAIMER:

This e-mail message contains confidential, privileged information intended solely for the addressee. Please do not read, copy, or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (202) 457-6000 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Thank you.

This e-mail and all other electronic (including voice) communications from the sender's firm are for informational purposes only. No such communication is intended by the sender to constitute either an electronic record or an electronic signature, or to constitute any agreement by the sender to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed unless otherwise specifically indicated. To learn more about our firm, please visit our website at <http://www.pattonboggs.com>.

EXHIBIT 2408

BEG_CTRL_NUM : DONZ00045293
END_CTRL_NUM : DONZ00045293
ATTACH_START : DONZ00045293
ATTACH_STOP : DONZ00045294
DATESENT = 12/17/2007
TIMESENT = 23:33:50
RECEIVEDDATE = 12/17/2007
TIMERECEIVED = 23:33:50
FILENAME : ESCRITO DEL PERITO.msg
SUBJECT : DOCUMENT FROM EXPERT
TEXT : From: PABLO FAJARDO <pafam@ecuanex.net.ec>
Sent: Monday, December 17, 2007 11:34 PM
To: Steven Donziger <sdonziger@gmail.com>
Subject: DOCUMENT FROM EXPERT
Attach: [SECURITY OF EXPERT.doc]

Commander, this is the document submitted by the expert that you requested.

PFM

[See source document for virus scan and confidentiality statement in Spanish]

FROM : PABLO FAJARDO <pafam@ecuanex.net.ec>
RECIPIENT : Steven Donziger <sdonziger@gmail.com>
CUSTODIAN : Donziger, Steven
SOURCE : All Mail3.pst
PAGES : 0
DOCTYPE : E-MAIL
BOX_NO : 0
ITEM_NO : 5013
UPDATEDATE : 01/15/2011
PRIV_DOC_NO : 0
NATIVELINK : M:\Production\Gibson\Chevron\CONCORDANCE DONZIGER COMPEL\DON028\NATIVES\006
IDONZ00045293.msg

BEG_CTRL_NUM : DONZ00045294
END_CTRL_NUM : DONZ00045294
ATTACH_START : DONZ00045293
ATTACH_STOP : DONZ00045294
LASTMODDATE = 10/31/2007
TIMELASTMOD : 14:12:00
FILENAME : SEGURIDAD DEL PERITO.doc
TITLE : Nueva Loja, October 31, 2007
TEXT : Nueva Loja, October 31, 2007

TO:
SUBSTITUTE CHIEF JUDGE OF THE SUPERIOR COURT OF NUEVA LOJA
THIS CITY

I, RICHARD CABRERA VEGA, an expert qualified by the Public Prosecutor and appointed by this Court to act within the lawsuit entitled Oral Summary Hearing N.- 02-2003 that Attorney Pablo Fajardo, in his capacity as joint counsel for María Aguinda *et al.*, has filed against Chevron Corporation, hereby appear before you with all due respect to state the following:

Your Honor, as a man of goodwill, based on my experience in the field of research, relying on my principles of honesty, rectitude, hard work, and taking into consideration the fact that the court has authorized and ordered me to perform a task supported by other technicians or experts in various areas of science, I accepted the challenge of carrying out and being the expert to perform the expert examination, in the suit that María Aguinda *et al.* have filed against Chevron Corporation. I must admit that prior to accepting this challenge, I reflected a great deal since, having participate[d] in three court-ordered inspections, I partially understood the pressure that each one places on the parties, their strength and their capacities, and ultimately I believed that I understood the challenge I was assuming. I thought that it involved a case in which, merely by acting with rectitude, sticking to the truth, acting in accordance with the authority vested in me by law and which the judge has granted me, in accordance with the dictums of science and research, I would be able to be successful; however, today I feel that both my life, as well as the lives of my family and collaborators, are in serious danger, and I again find myself reflecting and deciding whether or not to continue with this investigation and delivering the expert report to which I committed. I never wanted to make public the pressures I have been under while involved in the expert examination, out of fear of being misinterpreted and even further affecting completion of the work. But the time has come to inform you and advise you of certain events that have me extremely worried since, as you know, I have a family, which is much more important to me than completing an expert examination...

Below, Your Honor, please allow me to recount for you some events that are the cause of my concern for my physical safety and that of my technicians or assistants in the expert examination:

a. On Wednesday, July 4, 2007, I, along with my technical team and workers, initiated the expert examination work at the Charapa 01 well; that day, being the first day of the field work, there were considerable expectations both among the parties and among public opinion as well as, logically, among the community known as Patria Nueva itself.

When I initiated the work, two individuals who say they live in the community informed me that two other individuals who work for the defendant were speaking ill of me. I chose to ignore them and continued my work. I assumed it was an isolated case.

b. On ... the young woman who came from Coca to get the field samples and take them to the laboratory informed me that a white pickup, identical to the ones used by the defendant's technicians and attorneys, had followed her during the entire trip from Lago Agrio to the city of Coca. The next day, the person responsible for receiving the samples in the field and transporting them to the laboratory told me what had occurred. I asked her whether she recognized any of the individuals who had followed her and she did not give me any further details, as she was not able to see their faces; however she confirmed to me that they had followed her the previous day and told me the vehicle in which they followed her was bearing the license plate... This young woman was so afraid that in the following days, she had to be accompanied by another person to pick up the samples from our worksite.

c. Another person who is assisting me with my work, who out of fear has asked me not to reveal her name, also informed me that several days ago she was accosted in the city of Lago Agrio by two individuals who have been identified as members of the defendant's security team. These individuals, whose names I do not know, rudely demanded and pressured my collaborator to give them information about what I do, to tell them when we would be performing the sampling in other wells. The pressure that

these two individuals exerted on my collaborator was so much that she was forced to tell them that she did not work with me. It was the only way she was able to free herself from them.

d. As you are aware, Your Honor, from the 20th to the 22nd of October 2007, I was in the city of Nueva Loja performing tasks involving the expert assignment and waiting for the ruling you would be handing down in the proceeding in which I am participating. While in Nueva Loja, I noted that at least one person was watching me practically all of the time, since whenever I left the hotel where I was staying and went to the Court of Justice, that person was always watching me and following me. On the morning of Wednesday, October 24, I was walking along Avenida Quito toward the Court of Justice. While passing by the National Police detachment, I noted that this person was following me. I decided to inform one of the policemen in the vicinity. With the information I gave him, the police officer approached the subject following me. When the subject realized that the policeman was approaching him, he began running desperately into the shopping mall across from the national police detachment on Avenida Quito, between Calle Manabí and 12 de Febrero of this city of Nueva Loja.

e. I personally feel pressured and watched, and my telephone is possibly being tapped. I am so concerned about this that I cannot speak peacefully by telephone even with my own family, since when I call my family's telephone I hear other voices in the earpiece. These things lead me to presume that my telephone calls are being intercepted.

f. Relating all these events to the numbers of insults, offenses and discrediting statements that the defendant has been making against me, both in the written press and in the very documents being submitted to the court of justice itself, leads me to presume that my life, my family's life, and the lives of the technicians and other assistants in the expert examination are in grave danger.

g. I would clarify, Your Honor, that despite all the above, I confirm my commitment to continue performing my work in the expert examination in a clear, objective, professional, impartial and transparent manner. You and the parties will be able to observe all these characteristics of my professionalism in the report I hope to be allowed to submit to you shortly, and you may then form your own conclusions on them.

Despite all of the above, Your Honor, I will continue to perform the expert examination, but not without first most fervently asking you to order the following, if you consider it appropriate:

1. That the scare tactics that I am reporting in this document be communicated to the parties.
2. That the two parties be urged to cooperate more effectively so that I may transparently and responsibly complete my work as expert.
3. That the parties and, most especially, the defendant, be urged to abandon their actions of intimidation, insults, persecution and other measures that do nothing other than affect the image of justice and my person.
4. That Your Honor consider the fact that, in the event that my physical safety and that of my collaborators or family are affected, this is the reason why. Therefore, in the event that something undesirable happens, I ask that the competent authorities be ordered to conduct a thorough investigation to discover the truth.
5. That consideration be given to providing me with personal police protection, especially during the days I am required to travel and be in Nueva Loja.

Sincerely yours,

Eng. Richard Cabrera Vega
EXPERT

AUTHOR : PABLO
CUSTODIAN : Donziger, Steven
SOURCE : All Mail3.pst
PAGES = 0
DOCTYPE : E-MAIL ATTACHMENT
BOX_NO = 0
ITEM_NO = 5014
UPDATEDATE = 01/15/2011
PRIV_DOC_NO = 0
NATIVELINK : M:\Production\Gibson\Chevron\CONCORDANCE DONZIGER COMPEL\DON028\NATIVES\006
\DONZ00045294.doc



STATE OF NEW YORK)
ESTADO DE NUEVA YORK)
COUNTY OF NEW YORK)
CONDADO DE NUEVA YORK)
ss

CERTIFICATION/
CERTIFICACION

This is to certify that the attached translation is, to the best of my knowledge and belief, a true and accurate translation from Spanish into English of the attached document.

Por la presente certifico que la traducción adjunta de español a inglés es, a mi leal saber y entender, traducción fiel y exacta del documento adjunto.

[Handwritten signature of Kathryn Wolf]
Kathryn Wolf, Project Manager/Gerente de proyectos
Geotext Translations, Inc.

Sworn to and subscribed before me/Suscrito y jurado ante mí

this 15th day of July, 20 11.
a los 15 días del mes de Julio de 20 11.

KRISTIN SANTIZO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SC6235999
Qualified in New York County
My Commission Expires February 22, 2015

[Handwritten signature of Kristin Santizo]

BEG_CTRL_NUM : DONZ00045293
END_CTRL_NUM : DONZ00045293
ATTACH_START : DONZ00045293
ATTACH_STOP : DONZ00045294
DATESENT = 12/17/2007
TIMESENT = 23:33:50
RECEIVEDDATE = 12/17/2007
TIMERECEIVED = 23:33:50
FILENAME : ESCRITO DEL PERITO.msg
SUBJECT : ESCRITO DEL PERITO
TEXT : From: PABLO FAJARDO <pafam@ecuanex.net.ec>
Sent: Monday, December 17, 2007 11:34 PM
To: Steven Donziger <sdonziger@gmail.com>
Subject: ESCRITO DEL PERITO
Attach: SEGURIDAD DEL PERITO.doc

Comandante este es el escrito que usted solicitó y que presentó el Perito

PFM

Este mensaje ha sido analizado en busca de virus y otros contenidos peligrosos y se considera que está limpio. Se deja expresa constancia que GPF Corporación no asume responsabilidad alguna por el uso que el CLIENTE dé al servicio de correo electrónico, aclarando que el CLIENTE se hace responsable no sólo de sus propios actos sino de sus dependientes, agentes, familiares o terceros. El CLIENTE deja expresa constancia de que conoce la Ley Especial de Telecomunicaciones, Ley de Derechos de Autor, Ley de Propiedad Intelectual, y otras leyes conexas, así como los Reglamentos y Resoluciones vigentes sobre la materia, y de que está ilustrado sobre las facultades, impedimentos y prohibiciones determinados en estos cuerpos jurídicos, por lo que utilizará el servicio de GPF Corporación cifiéndose estrictamente a los mismos. En consecuencia GPF Corporación no asume responsabilidad alguna, ni directa ni indirecta, solidaria o subsidiaria, sobre las eventuales infracciones a las referidas disposiciones por parte del solicitante, quien para efectos de esta obligación contractual asume el deber de informarse permanentemente sobre las leyes y sus reformas que se relacionen con el servicio que se brinda.

FROM : PABLO FAJARDO <pafam@ecuanex.net.ec>
RECIPIENT : Steven Donziger <sdonziger@gmail.com>
CUSTODIAN : Donziger, Steven
SOURCE : All Mail3.pst
PAGES = 0
DOCTYPE : E-MAIL
BOX_NO = 0
ITEM_NO = 5013
UPDATEDATE = 01/15/2011
PRIV_DOC_NO = 0
NATIVELINK : M:\Production\Gibson\Chevron\CONCORDANCE_DONZIGER_COMPELIDON028NATIVESI006
DONZ00045293.msg

BEG_CTRL_NUM : DONZ00045294
END_CTRL_NUM : DONZ00045294
ATTACH_START : DONZ00045293
ATTACH_STOP : DONZ00045294
LASTMODDATE = 10/31/2007
TIMELASTMOD : 14:12:00
FILENAME : SEGURIDAD DEL PERITO.doc
TITLE : Nueva Loja, 31 de Octubre de 2007
TEXT : Nueva Loja, 31 de Octubre de 2007

SEÑOR
PRESIDENTE DE LA CORTE SUPERIOR DE JUSTICIA DE NUEVA LOJA
PRESENTE.

Yo, RICHARD CABRERA VEGA, perito calificado por el Ministerio Público y designado por esta Corte para que actúe dentro del juicio Verbal Sumario N.- 02-2003 que el Abogado Pablo Fajardo, en calidad de Procurador Común de María Aguinda y otros siguen en contra de Chevron Corporation, a Usted, con el debido respeto comparezco y digo lo siguiente:

Señor Presidente, como hombre de bien, basado en mi experiencia en el campo de la investigación, haciendo uso de mis principios de honestidad, rectitud, hombre de trabajo, teniendo en cuenta que la corte me facultó y ordeno que yo pudiese realizar un trabajo apoyado por otros técnicos o expertos en diferentes áreas de la ciencia, yo acepté el reto de llevar adelante y ser el perito para la realización del examen pericial, dentro del juicio que María Aguinda y otros siguen en contra de Chevron Corporation. Debo admitirlo que previamente al aceptar éste reto, reflexioné mucho, ya que yo como había participado en tres inspecciones judiciales entendía parcialmente la presión que ejerce cada una de las partes, la fortaleza de ellas, la capacidad que poseen, en fin creía que yo entendía el reto que estaba asumiendo. Yo pensé que se trataba de un juicio en el cual únicamente con actuar con rectitud, apegado a la verdad, actuando en lo que la ley me faculta y con lo que el juez me dispone, con lo que la ciencia y las investigaciones dicen, podía salir adelante; sin embargo hoy que siento que tanto mi vida como la vida, la de mi familia y la de mis colaboradores están en serio riesgo me veo nuevamente en la tarea de reflexionar y decidir si debo o no continuar con ésta investigación hasta entregar el dictamen pericial tal como es mi compromiso. Jamás quise hacer público las presiones que yo he estado sufriendo mientras he estado al frente del examen pericial, por temor a que se mal interpreten y puedan afectar aún más la realización del trabajo. Pero ha llegado el momento de hacerle conocer a usted y advertirle de algunos hechos que me preocupan enormemente ya que como usted sabe yo tengo una familia que es mucho más importante que realizar un examen pericial...

A continuación señor Presidente me permito relatarle algunos hechos que son el motivo de mi preocupación para mi seguridad física y de los técnicos o ayudantes del examen pericial:

a. El día miércoles 4 de Julio del 2007, yo junto a mi equipo técnico y de obreros, inicié el trabajo de examen pericial en el pozo Charapa 01; ese día por ser el primer día de trabajo de campo existía una considerable expectativa tanto en las partes así como también en la opinión pública y por como es lógico en la misma comunidad denominada Patria Nueva.

Ya cuando se había iniciado el trabajo, dos personas que dicen habitar en la comunidad me informaron que otras dos personas que trabajan para la demandada, estaban vertiendo sendos insultos en mi contra. Yo opté por no hacerles caso y continuar mi trabajo. Asumí que era un caso aislado.

b. El día ... la señorita que venía desde el Coca a retirar las muestras del campo y llevarlas al laboratorio, me informó que una camioneta de color blanco, idénticas a las que utilizan los técnicos y abogados de la parte demandada, la persiguió durante todo el trayecto desde Lago Agrío hasta la ciudad del Coca. Al siguiente día la persona encargada de recibir las muestras en el campo y trasportarla hasta el laboratorio, me contó lo sucedido. Le pedí que me indicara si reconocía a alguno de los que le persiguieron y no me dio mayores detalles ya que no pudo verles la cara, sin embargo me confirmó de la persecución que sufrió el día anterior y me indicó que el vehículo en el cual la persiguieron portaba la placa... Fue tanto el miedo que vivió esta chica; que para los siguientes días se vio obligada a venir acompañada con otra persona a retirar las muestras del sitio que nos encontrábamos trabajando.

c. Otra persona que coopera con el trabajo que yo realizo, quien por el temor que tiene me pidió que no revele su nombre, también me hizo conocer que hace varios días atrás, fue interceptada en la ciudad de Lago Agrío por dos personas que han sido vistas como miembros del equipo de seguridad de la demandada. Estos sujetos cuyos nombres los desconozco en forma grosera le exigían y presionaban a mi colaboradora para que les entregue información sobre lo que yo hago, que les avise a ellos cuando vamos a ir a realizar el muestreo en otros pozos. Fue tanta la presión que esas dos personas ejercieron sobre mi

sobre mi colaboradora que se vio obligada a decirles que ella no trabaja conmigo. Fue la única forma de poder liberarse de ellos.

d. Como a usted le consta señor Presidente, durante los días 20 al 22 del mes de octubre de 2007, yo estaba en la ciudad de Nueva Loja realizando gestiones sobre el peritazgo y esperando la providencia que usted debía dictar en el proceso del cual estoy participando. Estando en la ciudad de Nueva Loja, me percaté que al menos una persona me estaba vigilando en forma prácticamente permanente, ya que cada momento que yo salía del hotel en el cual me hospedé y me dirigía a la Corte de Justicia, esta persona siempre estaba observándome y persiguiéndome. El día miércoles 24 de Octubre, en horas de la mañana, yo caminaba por la Avenida Quito con dirección a la Corte de Justicia. Al pasar por el frente del destacamento de la Policía Nacional, me percaté que esta persona me estaba persiguiendo. Opté por avisarle a uno de los policías que estaba en el sector. El agente de la policía con la información que yo le di se dirigía con dirección hacia el sujeto que me estaba persiguiendo. Dicho sujeto al percatarse que el policía se dirigía hacia él emprendió a correr desesperadamente por el interior del centro comercial que está ubicado frente al destacamento de la policía nacional en la avenida Quito entre la calle Manabí y 12 de Febrero de ésta ciudad de Nueva Loja

e. Personalmente me siento presionado, vigilado, posiblemente con mi teléfono interferido. Es tanto así que no puedo dialogar tranquilamente por teléfono ni siquiera con mi propia familia, al llamar al teléfono de mi familia escucho voces diferentes en el auricular del teléfono. Cosas que me hacen presumir que existe interferencia a las llamadas telefónicas que yo realizo.

f. Relacionando todos estos hechos con la cantidad de insultos, ofensas y desprestigio que ha realizado la parte demandada en mi contra tanto en la prensa escrita, como en los escrito que presenta ante la misma corte de justicia, me hace presumir que mi vida, la vida de mi familia, la vida de los técnicos y demás ayudantes del examen pericia, está en un grave peligro.

g. Aclaro señor Presidente que pese a todo lo aquí expresado, ratifico mi compromiso de continuar desarrollando mi trabajo en el examen pericial, de manera clara, objetiva, profesional, imparcial, transparente. Todas estas características de mi profesionalismo usted y las partes las podrá observar en el informe que espero se me permita presentarlo oportunamente y se podrán pronunciar sobre ellas.

Pese a todo lo expresado señor Presidente voy a continuar con la realización del examen pericial, no sin antes solicitarle a usted, para que de la manera más encarecida se digne disponer lo siguiente si usted así lo considera:

1. Que se ponga en conocimiento de las partes éstos hechos de amedrentamiento que estoy denunciando en éste escrito.
2. Que se exhorte a las dos partes a cooperar de mejor manera para poder cumplir en forma transparente y responsable con mi trabajo de perito.
3. Que se exhorte a las partes y de manera especial a la parte demandada a deponer actitudes de intimidación, insultos, persecuciones o más actos que no hacen más que afectar la imagen de la justicia y de mi persona.
4. Que se considere el hecho señor Presidente, que en el supuesto caso que mi integridad física, la de mis colaboradores o familia sea afectada, es por esta causa. En consecuencia en el caso que llegare a suceder algo no deseado, se disponga que las autoridades competentes realicen una prolija investigación hasta esclarecer los hechos en forma absoluta.
5. Que se considere el hecho de proporcionarme protección policial personalizada principalmente durante los días que me toca viajar y estar en esta ciudad de Nueva Loja.

De usted muy atentamente:

Ing. Richard Cabrera Vega
PERITO

AUTHOR : PABLO
CUSTODIAN : Donziger, Steven
SOURCE : All Mail3.pst
PAGES = 0
DOCTYPE : E-MAIL ATTACHMENT
BOX_NO = 0
ITEM_NO = 5014
UPDATEDATE = 01/15/2011
PRIV_DOC_NO = 0
NATIVELINK : M:\Production\Gibson\Chevron\CONCORDANCE DONZIGER COMPEL\DON028\NATIVES\006
\DONZ00045294.doc

EXHIBIT 2409

11-1150-cv (L)

11-1264 (CON)

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

CHEVRON CORPORATION,

Plaintiff-Appellee,

—against—

HUGO GERARDO CAMACHO NARANJO, JAVIER PIAGUAJE PAYAGUAJE,
STEVEN R. DONZIGER, THE LAW OFFICES OF STEVEN R. DONZIGER

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF APPELLANTS HUGO GERARDO CAMACHO NARANJO AND
JAVIER PIAGUAJE PAYAGUAJE IN SUPPORT OF RENEWED MOTION
TO STAY ALL PROCEEDINGS IN THE DISTRICT COURT PENDING
FINAL RESOLUTION OF APPEAL

JAMES E. TYRRELL, JR.
PATTON BOGGS LLP
1185 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10036
(646) 557-5100

-AND-

ONE RIVERFRONT PLAZA, 6TH FLOOR
NEWARK, NEW JERSEY 07102
(973) 848-5600

JULIO C. GOMEZ
GOMEZ LLC
THE TRUMP BUILDING
40 WALL STREET, 28TH FLOOR
NEW YORK, NY 10005

ATTORNEYS FOR APPELLANTS HUGO GERARDO CAMACHO NARANJO
AND JAVIER PIAGUAJE PAYAGUAJE

Dkt. 202, A7343-51.) Inherent in the Preliminary Injunction was the notion that the United States courts do not care that this analysis was undertaken by Chevron's court of choice, nor do they care that an Ecuadorian appellate court is at this very moment considering these very same issues on a *de novo* basis—in addition to the thousands of pages of new argument and evidence that Chevron *continues* to place into the appellate record. An attachment of future proceeds from the Ecuadorian court's not-yet-final judgment is rife with the same imperialism and hostility. And the hostility is not merely latent. Chevron charges that Appellants are engaging in fraudulent conduct because they “intend to shield their interests by diverting any proceeds offshore, to an Ecuadorian ‘trust.’” (Tyrrell Decl., Ex. C at 10; *see also id.* at 11 (accusing the Appellants of using an Ecuadorian “‘trust’ and other machinations” to defraud Chevron).) The referenced Ecuadorian trust is where the Ecuadorian court *ordered* any judgment proceeds to be held to best assure that the people of the Ecuadorian Amazon would benefit from them.⁶

⁶ Chevron does not like this, so it claims that the Ecuadorian Plaintiffs' lawyers actually “ghostwrote” the portion of the February 14, 2011 Ecuadorian judgment that deals with the trust issue. What is Chevron's evidence for this charge? Chevron cites only a single email, from all the way back in June 2009, in which the Ecuadorian Plaintiffs' counsel circulated amongst themselves a cut-and-pasted excerpt from a *published* Ecuadorian Supreme Court opinion dealing with a trust. (Tyrrell Decl., Ex. B at 15, n.5; Ex. D.) The email notes that this same trust-related language appears “exactly the same” in yet another Supreme Court decision—i.e., it is apparently “stock” language used by courts in similar cases. (Tyrrell Decl., Ex. D.) According to Chevron, the fact that this language *from multiple, published*

Moreover, Chevron's motion for an order of attachment does not rely only on a presumption that the *Ecuadorian* courts are too incompetent or corrupt to be taken seriously. Rather, like its bid for a worldwide Preliminary Injunction, Chevron's latest collateral attack continues to impugn every other judicial system in the world. Chevron proffers: "If Defendants had a legitimate judgment they believed could withstand honest judicial scrutiny, they would have welcomed the opportunity to litigate recognition and enforcement in this Court [the Southern District]." (Tyrrell Decl., Ex. B at 9.) Apparently, none of the judicial systems in any of the dozens of countries in which Chevron operates throughout the world can be trusted, in Chevron's estimation, to exercise "honest judicial scrutiny" as well as the district court. This notion is both offensive and absurd.

Chevron's motion for an order of attachment portends an international vicious cycle: if Chevron can walk into court in the United States and obtain an order that requires any assets collected on a lawful judgment to be returned to Chevron, what is stopping the Ecuadorian Plaintiffs from walking into another reputable court that may see things differently, elsewhere in the world, and obtaining a countervailing order? And why, in that scenario, should the consistent

Supreme Court opinions appears "largely verbatim" in the February 14, 2011 judgment in this case means that the Ecuadorian Plaintiffs lawyers must have "ghostwritten" the judgment. (Tyrrell Decl., Ex. C at 15, n.5.) The lesson to be learned here is that one must always scrutinize Chevron's exhibits.

Dated: December 06, 2011

Respectfully submitted,

By: s/ James E. Tyrrell, Jr.

James E. Tyrrell, Jr.,
PATTON BOGGS LLP
1185 Avenue of the Americas,
30th Floor
New York, New York 10036

—and—

The Legal Center
One Riverfront Plaza, 6th Floor
Newark, New Jersey 07102-0301

Julio C. Gomez
GOMEZ LLC
40 Wall Street, 28th Floor
New York, NY 10005

Attorneys for Defendants-Appellants