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Path Forward: Securing and Enforcing Judgment and Reaching Settlement*

* This summary is intended solely to provide information regarding the action plan of Plaintiffs' litigation team, and to identify the various issues that might arise as the case progresses. This summary is not a guarantee that Plaintiffs' litigation team will successfully obtain a judgment, collect on a judgment, or reach a settlement. Any statements concerning the merits of the parties' respective positions are opinions based on the facts as known by way of Plaintiffs' litigation team. Any such statements are intended to be informational, and do not constitute a guarantee of any outcome.

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I. INTRODUCTION AND BACKGROUND

A. Indisputable Damage

From 1964 to 1992, Chevron Corporation's ('Chevron") predecessor, Texaco Petroleum ("TexPet"), owned an interest in an approximately 1,500 square-mile concession in Ecuador that contained numerous oil fields and more than 350 well sites. Beginning in 1964 and continuing at least until June 30, 1990 – when it ceased its role as operator of the concession area – TexPet deliberately dumped many billions of gallons of waste byproduct from oil drilling directly into the rivers and streams of the rainforest covering an area roughly the size of Rhode Island. The company gouged more than 900 unlined waste pits out of the jungle floor – pits which to this day leach toxic waste into soils and groundwater. It burned hundreds of millions of cubic feet of gas and waste oil into the atmosphere, poisoning the air and creating "black rain" which inundated the area during tropical thunderstorms. Chevron's operation was grossly substandard by any measure: it violated, *inter alia*, then-current U.S. industry standards, Ecuadorian environmental law, the Company's contract with Ecuador's government – which prohibited Chevron from using production methods that contaminated the environment – and international law. Even Chevron's own internal audits of its environmental impacts, conducted in the early 1990s by independent outside consultants and placed in evidence in the *Lago Agrio* trial, found extensive contamination at Chevron's oil production facilities.

The underlying scientific evidence has long been the strength of Plaintiffs' case – and the weakness of Chevron's. Any visitor to the region can see the *prima facie* evidence in striking terms: old Texaco barrels mired in hundreds of giant, unlined, open-air pits of oily sludge that leach their contents via pipes built by the oil company into nearby streams and rivers. Evidence demonstrates that the company never conducted a single environmental impact study or health evaluation in the decades it operated in the Amazon, even though thousands of people lived in and around its oil production facilities and relied on rivers and streams that the company used to discharge toxic waste. Hundreds of waste pits left by Texaco have been tested extensively by Chevron, the plaintiffs, and various third parties, revealing levels of total petroleum hydrocarbons and heavy metals hundreds and sometimes thousands of times higher than allowable norms in Ecuador and the U.S. Chevron's own documents prove that, as the communities have long alleged, Texaco never re-injected or safely disposed of "produced water," and instead directed it via an elaborate system of pipes into surrounding streams and rivers which local residents still use for drinking and bathing. The company also engaged in deliberate malfeasance: a 1972 memo from Texaco's head of Latin American production issued a blunt directive to the company's acting manager in Ecuador to destroy previous reports of oil spills and to forego documenting future spills in writing unless they were already known to the press or regulatory authorities.

B. History of the Litigation

In 1993, the Amazon communities filed a federal class-action lawsuit against Texaco in the United States District Court for the Southern District of New York. Plaintiffs "sought money damages under theories of negligence, public and private nuisance, strict liability, medical monitoring, trespass, civil conspiracy, and violations of the Alien Tort Claims Act," as well as "extensive equitable relief to redress contamination of the water supplies and environment." *Aguinda v. Texaco,*

Inc., 303 F.3d 470, 473 (2d Cir. 2002). From the lawsuit's inception, Chevron fought vigorously to re-venue the case from the Southern District of New York to the courts of Ecuador. Chevron's motion on *forum non conveniens* and international comity grounds rested on two principal assertions: first, that the Ecuadorian courts provided an adequate, fair, and neutral forum; second, that the evidence and the witnesses were in Ecuador. For nine years, Chevron touted the virtues of the Ecuadorian judicial system, submitting numerous affidavits from experts and its own counsel, and repeating these assertions in extensive briefing. Chevron also argued repeatedly that the case did not belong in the United States, because the evidence and the witnesses were in Ecuador. The Court of Appeals for the Second Circuit ultimately agreed – the cases was dismissed on the condition that Chevron would consent to the jurisdiction of the courts of Ecuador.

After final dismissal of the *Aguinda* action in 2002, the Plaintiffs re-filed the case in Lago Agrio, Ecuador. The trial began in 2003. The trial has been marked by the questionable tactics of Chevron's lawyers and those who work for them, including the intimidation of Plaintiffs' representatives and threats directed at experts who do not appear to favor Chevron. The record contains more than 200,000 pages of evidence, roughly 63,000 chemical sampling results produced by laboratories contracted by both parties and the court experts, testimony from dozens of witnesses, and tens of judicial field inspections of former Chevron wells and production sites conducted over a five-year period under the oversight of the court in Lago Agrio, Ecuador. Soil samples from the production wells and separation stations inspected reveal extensive contamination in violation of Ecuadorian law.

As previously noted, Chevron's defense is more legal and technical than factual, given that the facts indisputably reveal damage for which Chevron's predecessor simply must have been responsible, at least in part. Chevron's arguments can be summarized as follows, as excerpted from its most recent 10-Q filing:

> As to matters of law, the company believes first, that the court lacks jurisdiction over Chevron; second, that the law under which plaintiffs bring the action, enacted in 1999, cannot be applied retroactively; third, that the claims are barred by the statute of limitations in Ecuador; and, fourth, that the lawsuit is also barred by the releases from liability previously given to Texpet by the Republic of Ecuador and Petroecuador. With regard to the facts, the company believes that the evidence confirms that Texpet's remediation was properly conducted and that the remaining environmental damage reflects Petroecuador's failure to timely fulfill its legal obligations and Petroecuador's further conduct since assuming full control over the operations.

Chevron's legal and factual defenses have generally been rebutted and exposed as lacking credibility throughout the trial. Consequently, while Chevron will undoubtedly continue to vigorously exhaust these defenses in Ecuador, it has taken the fight outside of that country with the hope of finding a more sympathetic ear.

C. Chevron's Attempts to Undermine the Jurisdiction of the Ecuadorian Court

In or around the latter part of 2009, Chevron retained the law firm of Gibson Dunn & Crutcher LLP as its lead U.S. counsel on the Ecuador matter. Gibson Dunn was hired based on its recent success in *Sanchez Osorio, et al., v. Dole Food Company, et al*, where the firm helped to uncover an

alleged fraud by the attorneys for Nicaraguan plaintiffs, and thwarted plaintiffs' efforts to enforce a Nicaraguan judgment in the United States, convincing U.S. courts that Nicaragua failed to provide the defendants with due process. Gibson Dunn now holds itself out as the go-to law firm for U.S. companies that face tort liability overseas. After retaining Gibson Dunn, Chevron embarked on a strategy of filing collateral attacks on the Ecuadorian litigation in the United States District Courts and in the context of private, international arbitration aimed at rendering the Ecuadorian litigation a nullity. The purpose of Chevron's strategy is two-fold: (1) to infinitely delay the courts of Ecuador from entering a judgment against it; and, (2) to poison the well with respect to Plaintiffs' enforcement of any judgment against Chevron outside of Ecuador, where the company holds no assets against which a judgment could be enforced.

Notwithstanding an over 200,000 page trial record in Ecuador and the close of the evidentiary phase of the trial, Chevron has filed a contemporaneous wave of 28 U.S.C. § 1782 applications in District Courts across the United States. These proceedings, targeted at Plaintiffs' American lawyers and environmental experts, are aimed at uncovering the basis for a global damages assessment expert report prepared by Ecuadorian engineer and Court-appointed expert Richard Cabrera Vega (the "Cabrera Report"). Cleverly using the lens of U.S. norms to distort what transpired in Ecuador, Chevron has used its findings regarding Plaintiffs' involvement with the Cabrera Report to create the impression that it is the victim of an injustice in Ecuador. Notwithstanding the fact that there is every reason to believe that Chevron dealt directly with experts in Ecuador and that its lawyers were responsible for drafting reports, and notwithstanding the fact that the Ecuadorian court invited Chevron to supply Mr. Cabrera with information in advocacy of its position, Chevron now claims that Plaintiffs' case must be thrown out due to their involvement with the Cabrera Report. Chevron has filed no less than thirty motions attacking Mr. Cabrera and demanding the striking of his report and/or the dismissal of Plaintiffs' case. It is clear that these motions are filed not because there is any belief that the Ecuadorian court will be persuaded by Chevron's bluster; rather, Chevron will use the Court's rejection of its many motions in an enforcement proceeding as "proof" of the bias of the Ecuadorian court. More broadly, Chevron's singular fixation on the Cabrera Report, which is only one component of an enormous record based on several years of litigation, appears designed to change the public narrative and remove the focus from the undisputable damage on the ground. Chevron and its lawyers would very much like to make this case *Dole* Part II – but here, there can be no faking of injuries. The damage is plain to see, and notwithstanding any media mileage that Chevron is able to get from its Cabrera Report story, it cannot undermine the soundness of Plaintiffs' science.

Chevron also recently filed a Notice of Arbitration pursuant to the U.S.-Ecuador Bilateral Investment Treaty ("BIT"). Essentially, Chevron argues that the existence of the trial violates the BIT insofar as the BIT prohibits unfair treatment of American companies investing in Ecuador. Chevron seeks, *inter alia*, a declaration that a release received from the Republic of Ecuador in exchange for (substandard and deceptive) remediation completed by Texaco in the mid-1990s actually prohibits the Plaintiffs' lawsuit. Indeed, Chevron has requested that this private commercial arbitration panel, convening in The Hague and consisting of two private lawyers and a law professor, order the government of Ecuador to interfere with the judiciary and simply order the court to dismiss the Lago Agrio Litigation altogether. The Tribunal has not yet determined whether it has jurisdiction to proceed on the merits, and an application to enjoin the proceedings outright is currently pending before the Second Circuit. The BIT arbitration remains a threat to the Lago Agrio

litigation to some extent, but it does not appear likely that Chevron will get precisely what it is looking for, if anything at all. As one would imagine, the scope of the release applies only to claims held by the Republic of Ecuador and expressly did *not* release the company from liability for third-party claims such as those brought by the plaintiffs – it is difficult to conceive of how a government could effectively release the claims of its citizens through a private agreement with a tortfeasor. Moreover, the Second Circuit, in hearing oral argument on the jurisdiction of the arbitral panel to decide such issues, has expressed a good deal of skepticism directed at Chevron's forum-shopping. One judge on the three-judge panel told Chevron's lead counsel: "You liked the Ecuadorean courts when they were in the pocket of the oil companies," identifying the fact that Chevron changed its mind now that "they're under a populist regime." Another judge expressed concern that Plaintiffs could be deprived of their claims in a proceeding to which they are not a party: In general, the court appeared extremely concerned that Chevron would continue to press the arbitral panel to order the Lago Agrio litigation shut down. A decision is expected from the Second Circuit in the coming months.

* * *

Facing an unscrupulous adversary with vast resources and a seemingly limitless appetite for litigation, Plaintiffs' modest litigation team has admirably managed to shepherd the case through the past seventeen years to the eve of judgment. The case now enters its most critical phase – Chevron, emboldened by public relations victories resulting from its collateral discovery actions, has become even more aggressive than it has been in the past. In the remaining months leading up to judgment, it is imperative that Plaintiffs' Team operate at full capacity, and take the offensive. There is much work to be done both in Ecuador and in the United States on the litigation front, including offensive discovery actions targeted at exposing Chevron's misconduct, which will ultimately aid in enforcement and make settlement more likely. Plaintiffs must plan for anticipated enforcement actions across the globe. The public relations and public policy components of Plaintiffs' strategy must also come to the foreground. The goal is to create the optimal environment for settlement once a judgment is entered, before Chevron becomes firmly entrenched in enforcement litigation. With the remainder of this memorandum, we provide an overview of the anticipated path forward to judgment and beyond, and highlight the critical issues that will be addressed by Plaintiffs' Team as the process unfolds.

II. SECURING A FAVORABLE AND ENFORCEABLE JUDGMENT IN ECUADOR

A. Supplemental Damages Assessment

As noted above, Chevron's attacks on the Cabrera Report have been relentless, and in May 2010, Chevron threatened the Ecuadorian court that if it proceeded to judgment before Chevron deemed its "investigation" into Cabrera closed, it would consider this a denial of due process. Cognizant of the fact that Chevron would use the Cabrera Report as a means of stringing the case out indefinitely and of muddying the record, on June 21, 2010, Plaintiffs filed with the Ecuadorian Court a petition requesting that each party be permitted to present, in short order, a supplemental submission outlining its position on damages. Plaintiffs argued that although the Cabrera Report is sound, it was clear that Chevron would never rest, and thus, affording the company an opportunity to get a final *constructive* word on damages – rather than merely attacking the procedure by which the Cabrera

Report came about – would be a fair way to bring the case to resolution. Indeed, on August 2, 2010, the Ecuadorian Court granted plaintiffs' motion, permitting both parties to file an additional submission on damages, within forty-five business days following the order. The Court's ruling represents a significant tactical victory for the Plaintiffs, insofar as it substantially weakens Chevron's argument that it has been frozen out of the damages assessment process. Chevron is now forced either to participate meaningfully (in contrast to its boycott of Cabrera's work) or waive the ability to assert that it was deprived of an outlet to advocate its position.

Through trusted recommendations followed by careful vetting, Plaintiffs' Team has identified a company called Industrial Economics, Inc., based in Massachusetts, to execute the supplemental damages submission. The company's President, Robert E. Unsworth, specializes in the fields of natural resource economics and damage assessment, and has participated in projects involving natural resource damage assessment. In addition to general expertise in measuring economic damages of all types, the company specializes in the assessment of damages recoverable by the public for harm to natural resources caused by oil spills and hazardous waste sites.

B. A Foundation for Damages in the Existing Record

The expert firm that executes the new damages assessment will not need to rely on the Cabrera Report to quantify damages, although that document will of course be taken into consideration. The factual record in the Ecuadorian Court is replete with independent evidence of the extensive damages caused by Chevron's predecessor, TexPet. The expert will review and analyze all of the relevant, independent factual evidence. Although Chevron disputes many of the causes of the damages at issue, and further argues that is not responsible for whatever damage may have occurred in the Amazon basin, there is significant evidence that shows extensive damage has resulted from oil operations commenced by TexPet in 1972. Thus, we will rely on our expert to analyze and model the factual record to generate a damage calculation that relies on a variety of sources. Notably, significant categories of damages have not yet been analyzed by any expert, despite existing data to support such damages (*e.g.*, deforestation, groundwater, sediments, etc).

The independent sources of damages that are part of the record include, among others:

- The expert report of Court-appointed neutral expert Gerardo Barros (the "Barros Report"), endorsed by Chevron to determine the damage caused by Petroecuador. Although the Barros Report was ostensibly written to determine the damages caused by Petroecuador, it generally concludes that there were significant damages to the environment, and does not reliably explain how these damages were caused by Petroecuador as opposed to Texpet. Moreover, the Barros Report only looked at the history of spills by Petroecuador, which clearly could not be the only source of the damages. Indeed, because Texaco did not document any spills that occurred while it was drilling, it is not surprising that Barros only relied upon Petroecouador's spill records. Barros's report was filed in four parts, the latest of which was submitted in June of 2010.
- Two audits that were conducted by TexPet in 1992, prior to the transfer of the drilling operations to Petroecuador, which detail the significant damage caused by TexPet.

- The 106 reports that were submitted into evidence in connection with judicial site examinations (including those submitted by Chevron and those submitted by plaintiffs).
- Health studies conducted by Harvard University and other respected institutions (one of these studies is entitled "Cancer in the Amazon").
- A 1998-2001 report issued by the Ecuador Comptroller, which determined that Chevron did not perform its duties under the release it executed with the Ecuadorian Government pertaining to clean-up of the concession, and moreover, that the scope of the release was fundamentally flawed
- Letters written to Chevron in 2003 indicating significant damage to the ground water.
- Numerous cultural/anthropological studies that detail damages to the indigenous people of the Amazon basin and to their culture.

The independent sources in the record provide factual evidence of the following types of damages for analysis by our expert:

Remediation of the pits. The costs of remediating and cleaning the 912 pits where Texpet dumped its oil waste. According to our Ecuadorian legal team, some factual evidence cited in the Barros report supports significant damage numbers:

- Barros suggests that Chevron's prior ineffective and incomplete efforts to remediate the pits in 1992-93 were an appropriate clean-up of the pits. Based on the total figure of $40 Million that Chevron spent on the remediation of 156 pits, Chevron spent $250,000 to clean up each pit. But if one multiplies the $250,000 cost per pit times the total number of pits that were actually damaged – 916 – the resulting cost is estimated to be $229,000,000. Furthermore, because Chevron only remediated the pits to a TPH standard of 5,000 parts per million – well bellow even the most liberal standard of 1,000 parts per million level mandated by any environmental regulatory body – the cost of remediation to an acceptable level of contamination could increase significantly. Our expert can provide the modeling and analysis necessary to illustrate this, using the factual underpinning of a Chevron-sponsored expert.
- Barros finds that there was significant contamination of the mud that occurred *at the time the wells were drilled.* These damages could only have been caused by TexPet, as it was the entity which performed the drilling in the early 1970s. Aside from the fact that the Barros report is flawed by suggesting such damages could be attributable to Petroecuador, which clearly did not perform the original drilling, it also provides additional evidence of damages that could be relied upon and analyzed by our expert.

Damages to the surface water.

- The Cabrera Report estimate is approximately $2 billion – other independent evidence supports significant damages
- Our local Ecuadorian team also reported that the Barros report incorporates by reference a USAID study that estimates the cost of providing clean water at $230 per person, assuming the water can be directed to the affected people from an untainted source of water. If that $230 figure is multiplied by the number of affected people in

the provinces – 120,000 people – the total cost goes up to $27,600,000. Moreover, as Barros recognizes, because the $230 per-person figure assumes that there is a viable untainted source from which to draw the water, the per person cost in this case would increase significantly as there is no such viable water source in this case. This would again be something that our expert could use to generate an additional model that is supported by facts from a Chevron sponsored expert report.

Damages to the ground water. This is a potentially significant source of damages that has not been fully assessed by any expert. Based on record factual evidence, there is potential support for significant damages. Examples of such record evidence are found in letters to Texaco documenting same.

Deforestation damages. One expert report issued after the Cabrera Report memorialized the significant deforestation that has occurred, without attaching any dollar amount to remediating the problem. Our expert may use the facts from this report, and other factual evidence of deforestation, to generate a damages model.

Damages for losses to the indigenous people and the ecosystem. Significant factual evidence should support a substantial dollar figure. This includes damages to the health of the people and losses for same - cancer, infant mortality and others. An independent toxicological analysis should support these claims.

C. The Alegato Finale

Shortly before judgment, the Ecuadorian judge will issue an *autos para sentencia*, essentially a notice in which the judge literally demands that the evidence be brought to him for final judgment. With the issuance of an *autos para sentencia*, the parties receive a bit of time to prepare and submit their alegato finale – essentially a closing argument and a summary of their positions on the critical issues in the case, including damages.

Plaintiffs' U.S. legal team will be working closely with its Ecuadorian counterparts to craft an Alegato Final that serves its purpose not only in Ecuador, but also in enforcement courts in the United States and throughout the world. The document offers Plaintiffs' Team the opportunity to tightly package its arguments, and to dispel Chevron's many distortions of the truth and the law, in a single forum.

D. The Appellate Process in Ecuador

In Chevron's recent quarterly filing with the SEC (July 2010), the company stated that it would expect to pursue appeals in Ecuador following any unfavorable judgment. Our understanding of the Ecuadorian appellate process suggests that Chevron's anticipated appeal of an adverse ruling would not substantially delay enforcement.

The justice system in Ecuador is administered by four basic types of courts: (1) Supreme Court of Justice, which hears certain appeals, has original jurisdiction in certain cases such as those relating to contracts made by executive, accusations against high functionaries, etc., and exercises general supervision over courts; (2) superior courts which hear appeals from lower courts and have certain additional functions; (3) criminal judges in each province, having jurisdiction in criminal matters; (4)

local judges in provinces and cantons, who have jurisdiction in civil matters. (Organic Judiciary Law, as codified by Decree 891 of Sept. 2, 1974 *as am'd*). *ECUADOR LAW DIGEST 6.01.*

Ordinary civil procedure in Ecuador is based on Roman legal tradition, also called the European continental written or civil tradition. Although the system is primarily written, some stages of the process involve oral advocacy. The Constitution of 1998 mandated oral procedure in all areas, and a constitutional provision set August 2002 as the deadline for introducing the new system. The main procedural stages are: suit, settlement hearing, evidentiary stage, pleadings, sentence, and challenges.

After the sentence stage, any party wishing to contest the sentence will file a challenge. Depending on the kind of motion or appeal filed, either the judge who issued the sentence or the first appeal judge will intervene. Assuming Chevron files a challenge to a judgment in favor of plaintiffs, it is expected that the first appeal will be heard by an intermediate appellate court composed of three judges. This appellate court sits in proximity to Lago Agrio, and we do not anticipate that the three judges of this court will have a bias toward Chevron.

It is our understanding that the initial appeal is not a lengthy process, and that the standard of review is not *de novo*. However, during the pendency of that appeal, the judgment is not deemed enforceable under Ecuadorian law, and thus, would not appear to be enforceable anywhere else. Beyond this initial level of appeal, it is our understanding that Chevron would be required to post an appellate bond equivalent to 100% of the judgment. Thus, assuming an outcome on appeal favorable to Plaintiffs, it seems likely that Chevron will pursue no further recourse in Ecuador.

III. PROTECTING/AUGMENTING THE ECUADORIAN JUDGMENT IN THE CONTEXT OF COLLATERAL PROCEEDINGS

A. Offensive Discovery in the United States Pursuant to 28 U.S.C. 1782

Under 28 U.S.C. §1782, foreign litigants can apply directly to a United States federal district court for an order directing a witness in the United States to produce documents or give testimony for use before a foreign tribunal. As previously noted, Chevron has utilized – indeed, abused – this provision by launching a massive discovery campaign that is designed less to obtain discovery for use in Ecuador than (a proper use of Section 1782) than to make a public relations splash by unfairly placing Ecuadorian procedure under the lens of U.S. norms. With additional resources, Plaintiffs' Team can—and indeed, must—rely upon Section 1782 to take aggressive discovery of Chevron and other persons and entities within the United States for purposes of anticipating and countering Chevron's ongoing attempts to undermine and evade the Ecuadorian judgment. Our discovery strategy would begin with the following, *non-exhaustive*, areas of inquiry:

The so called "Ecuadorian corruption video." As has now been extensively reported in the media, Chevron has acquired video recordings that purportedly reveal a $3 million bribery scheme implicating Judge Juan Nunez who, until September 2009, presided over the Ecuadorian proceedings and representatives of the Ecuadorian government and its ruling party. The recordings allegedly depict, among other things, Judge Nunez remarking that he will rule against Chevron in the Ecuadorian case, even though trial was still pending and evidence was still being received. Chevron argues that these recordings are further proof of the illegitimacy of any future Ecuadorian judgment

against the company and raise "questions about corruption, executive branch interference and prejudgment of the case that demand a full investigation." Following the release of the videos, Judge Nunez denied any wrongdoing, but voluntarily recused himself from the case. According to Chevron, the video recordings were surreptitiously made by Diego Borja—who Chevron describes as an "Ecuadorian pursuing business opportunities in Ecuador"—and Wayne Hansen, an American businessman. Chevron claims that Borja and Hansen secretly recorded these videos out of a sense of civic duty to expose institutional corruption in Ecuador. The company insists that these videos were recorded without Chevron's advance knowledge and that Borja and Hansen did not receive any compensation for these recordings.

Over the past year, it has become apparent that Chevron's account of the origin of these video recordings is rife with discrepancies, inaccuracies, and misrepresentations. Fine and Associates, Inc., an investigatory company based in San Francisco, has uncovered evidence suggesting that Chevron may have been intimately involved—both logistically and financially—in the planning and execution of the creation of these video recordings. Among other things, Fine has acquired six hours of recorded conversations between Diego Borja and a fellow Ecuadorian, during which Borja brags about both his long-standing relationship with Chevron and the company's ongoing efforts to unfairly delegitimize the Ecuadorian proceedings. Although Fine has done commendable work in investigating Chevron and the circumstances surrounding the creation of these videos, Fine's investigation has been unavoidably limited by a lack of formal subpoena power. Building upon Fine's work, the Aguinda Plaintiffs can use 28 U.S.C. 1782's formal discovery mechanisms to drill deeper into the real story behind these video recordings and Chevron's relationship with Borja and Hansen. Our strategy would involve seeking documents and depositions with respect to the following, non-exhaustive, areas of inquiry:

- *Scope of Chevron's involvement in the creation of the video recordings* – Contrary to Chevron's initial insistence that the videos were made without the company's knowledge, we have unearthed evidence suggesting that Chevron may have helped plan and arrange the recordings. Tim Cullent of Jones Day—one of Chevron's top outside counsel on the Ecuadorian matter—has publicly admitted that he and other Chevron lawyers met with Borja only days before Borja recorded meetings with alleged representatives of the Ecuadorian government and its ruling party. During the recorded meetings, Borja sought to bribe these officials in an attempt to paint the Ecuadorian government as corrupt. The Aguinda Plaintiffs should seek to depose Chevron's lawyers and outside counsel (as well as other witnesses and co-conspirators) to determine whether Chevron violated the Foreign Corrupt Practices Act ("FCPA") by helping Borja devise and execute a plan to entrap Ecuadorian officials in this bribery scheme. It also is vital to explore whether Chevron provided or promised to provide any payment or business opportunities to Hansen and Borja in exchange for the video recordings. Taking discovery of these issues would turn up the heat on Chevron, as the company is highly motivated to downplay any suggestion that it has (once again) violated the FCPA. As recently as November 2007, Chevron paid $30 million to settle charges brought by the Securities and Exchange Commission ("SEC") under the FCPA, alleging that Chevron participated in a kickback scheme in connection with the Oil for Food program in Iraq. If the Aguinda Plaintiffs delve into Chevron's conduct with respect to the Ecuadorian bribery scheme (and any possible FCPA violations), Chevron likely would face increased scrutiny from the SEC.

- *Chevron's failure to disclose the complete story about its long-standing relationship to Borja* – Despite what Chevron would have the public believe, the company's relationship with Borja—the man behind the video recordings—is complicated and spans many years. As noted, Fine and Associates has been able to acquire six hours of recorded conversations between Borja and a friend, during which Borja lays out the full details of his relationship to Chevron. Borja's family has been involved with Chevron for several decades. His wife has worked for Chevron for the past four years and his uncle has been employed by the company for nearly 30 years. Borja himself has toiled for Chevron for anywhere between four to nine years. He has been assisting Chevron with the Ecuadorian proceeding since 2004 and has signed numerous court documents in that litigation. Chevron's legal team in Ecuador shares office space with Borja, his wife and uncle.

  When Borja first began working for Chevron, the company instructed him to create four shell companies through which Chevron funneled money to him. These shell companies were formed to conceal the fact that Borja was working directly for the company. Chevron continues to provide Borja with benefits and payments to this very day. Among other things, Chevron is: helping Borja locate employment in the United States; paying the legal fees of a prominent San Francisco-area criminal defense attorney to represent Borja; and giving Borja a regular salary, vehicle, and personal security services. Chevron also reportedly provides Borja and his family with a $6,000-a-month house located in a gated community only a few minutes from Chevron corporate headquarters in San Ramon, California. Borja now admits that Chevron promised to make him a "business partner" in exchange for turning over the tapes. He also concedes that that he never bribed Judge Nunez and boasts that he was able to do in two days what Chevron had been attempting to accomplish for more than a year—namely, getting Judge Nunez removed from the case. As is obvious from these recent revelations, it is critical that Plaintiffs take discovery into Chevron's historical relationship with Borja; the various shell companies created by Borja at Chevron's direction; and Borja's involvement in the creation of the video recordings.

- *Chevron's manipulation and editing of the so-called Ecuadorian corruption videos* –For more than a year, Chevron has refused to disclose either unedited versions of the video recordings made by Borja and Hansen or its experts' forensic analysis of these recordings. Chevron instead has provided edited versions of these videos on its YouTube channel. There is reason to believe that the company has made significant edits to these publicly available video recordings to make them consistent with Chevron's claims regarding institutional corruption in Ecuador. Indeed, Chevron's own forensic analysis expert—Dr. Durand Begault—admits that the publicly available recording contain only fragments of video and were edited by Chevron before being publicly disclosed. To date, these recordings have never been independently authenticated and the company refuses to release the names of the individual(s) who edited them

- *Chevron's relationship to convicted felon and drug trafficker, Wayne Hansen* – Following a thorough investigation, Fine and Associates uncovered that Wayne Hansen—who, along with Borja, created the video recordings for Chevron—is a convicted felon and drug trafficker. According to public documents, Hansen pled guilty in U.S. federal court to conspiring to

> import more than 275,000 pounds of marijuana from Columbia to the United States—an amount that today would have a street value of $275 million according to the Drug Enforcement Agency. Hansen was sentenced to three years in prison for his crime. Fine's investigation into Hansen has unearthed other evidence and information that further calls Hansen's character into question. It therefore would be prudent to explore the extent of Chevron's relationship to—and past dealings with—Hansen. It is worth noting that Chevron recently offered to pay the legal fees of Mary McNamara, a prominent criminal defense attorney, to represent Hansen in connection with the bribery scandal.

Chevron's fraudulent signatures on documents filed in the Ecuador proceedings. We have reason to believe that on numerous occasions, Chevron filed documents with fraudulent signatures in the Ecuadorian case. Using the discovery vehicle available under 28 U.S.C. 1782, the Aguinda Plaintiffs can explore the circumstances surrounding the creation and filing of these fraudulent documents, thus turning the spotlight on Chevron's wrongful practices.

Chevron's improper use of non-independent laboratories to analyze potentially contaminated samples in connection with the Ecuadorian proceedings. Diego Borja claims to have evidence proving that Chevron consistently engaged non-independent laboratories (in some cases, laboratories owned or controlled by Chevron) to perform environmental analyses in the Ecuadorian case. Fine and Associates has been able to independently corroborate certain of Borja's claims. Among other things, Fine located a chain of custody document revealing that Borja and his wife, Sara Portilla, served as representatives of Severn Trent Laboratories, a so-called "independent laboratory" used by Chevron to test for contamination.

B. Shareholders' Derivative Action

In its Second Quarter 2010 10-Q, consistent with previous filings, Chevron uses its complaints about the Cabrera Report as a basis for claiming that no possible loss can be estimated:

> The ultimate outcome, including any financial effect on Chevron, remains uncertain. Management does not believe an estimate of a reasonably possible loss (or a range of loss) can be made in this case. Due to the defects associated with the engineer's report, management does not believe the report has any utility in calculating a reasonably possible loss (or a range of loss). Moreover, the highly uncertain legal environment surrounding the case provides no basis for management to estimate a reasonably possible loss (or a range of loss).

Chevron's refusal to quantify liability based on its own stance on the Cabrera Report seems misguided – the question relevant to investors is not whether Chevron's management agrees that the Cabrera Report should be considered, but rather, whether it appears that the *Court* agrees with Chevron's assertions that it should be thrown out. Notwithstanding Chevron's more than thirty motions attacking Mr. Cabrera and his Report, there is no indication that the Court agrees with Chevron. Thus, there is a question of whether Chevron is misleading its shareholders. There also exists the related question of whether Chevron's accountants, Price-Waterhouse, have performed their due diligence in ascertaining potential liability, or whether they have merely accepted the assertions of Chevron management at face value.

These issues are compounded by the existence of evidence in the record – separate and apart from the Cabrera Report – that might establish a minimum level of liability as to which there is sufficient certainty to give rise to a reporting requirement. Indeed, accounting rules require Chevron to report at least the low range of possible liability. To that end, Plaintiffs' Team will review the historical data implicating damage caused by TexPet's operations in the Amazon Basin – particularly the draft reports prepared by Texaco's own contractors in the early 1990's to determine whether they clearly establish some baseline of damages stretching back to the inception of the lawsuit. If that is indeed the case, and the amounts are material, Texaco (and later Chevron) may have been required to disclose this potential liability to investors. Plaintiffs' Team will attempt to establish that Texaco/Chevron mislead both the SEC and investors concerning its awareness of liability – and perhaps that proper disclosure thereof would have substantially affected the terms of Chevron's acquisition of Texaco.

Chevron's net income for the Second Quarter of 2010 stood at $5.41 billion, compared to only $1.75 billion for the same period last year. Clearly, the $27 billion in damages identified in the Cabrera Report is material to Chevron. Plaintiffs' team will perform a thorough analysis of Texaco's and Chevron's current and historical representations to investors and to the SEC to determine whether any potential violation has occurred. To the extent that Chevron has been less than candid, the team will use Chevron's indiscretion as a point of leverage with respect to settlement. Moreover, in the event that a shareholder's derivative suit were to be initiated, such a suit might serve as a fruitful basis for discovery into the machinations of Chevron management vis à vis the Ecuadorian litigation.

IV. ENFORCING THE ANTICIPATED JUDGMENT ON MULTIPLE FRONTS

If and when an enforceable judgment is entered in Ecuador, Plaintiffs' Team expects to be engaged quickly, if not immediately, on multiple enforcement fronts – in the United States and abroad. Here, we outline our action plan for the months leading up to the entry of judgment. The work to be performed in selecting jurisdictions that offer the path of least resistance to enforcement may indeed be the most critical step in the enforcement process. However, notwithstanding the procedural complexities of multi-jurisdictional approach to enforcement, the overriding substantive strategy before any court will be "keep it simple." The Plaintiffs will be judgment creditors. They seek no more than enforcement of their legitimate rights to the damages awarded to them after many years of complex litigation. Particularly critical is avoiding – to the extent possible – relitigation of the merits of the case. We need to take the position that those issues, *as Chevron vehemently urged they should be*, have been definitively determined by the Ecuadorian Courts and are not open for re-examination. With those concepts in mind, we lay out the fundamental contours of the Plaintiffs' Team's strategy and identify key issues that the Team will consider.

A. Enforcement of a Judgment in the United States

Obtaining recognition of an Ecuadorian judgment in the United States is undoubtedly the most desirable outcome. It clearly is the locus of a high concentration of Chevron assets, and if there remained a need to look outside the borders of the United States to secure sufficient assets, a

favorable ruling in the United States will surely imbue the judgment with a credibility that should significantly grease the wheels of enforcement elsewhere.

1. ***Primary Elements of the U.S. Enforcement Framework***

- **The Full Faith and Credit clause.** The Full Faith and Credit clause of the United States Constitution obviates the need for simultaneous multi-jurisdictional enforcement in the United States. If an Ecuadoran judgment is converted to a domestic judgment by one U.S. Court, that judgment may be enforced throughout the country. Thus, Plaintiffs' Team will not look to enforce the judgment in the jurisdiction housing the most Chevron assets, but rather, will bring an enforcement proceeding in a suitable jurisdiction that offers the strongest chance for recognition of the judgment.

- **Identifying favorable state enforcement law.** In the United States, the framework for the recognition and enforcement of foreign judgments is a creature of state, rather than federal, law, and can vary significantly between jurisdictions. This is so even where states have adopted the Uniform Foreign Money Judgments Recognition Act ("UFMJRA"), which lays out the standards by which a U.S. court must evaluate a foreign judgment to determine whether it merits conversion to a domestic judgment. Plaintiffs' Team will evaluate the variances in statutory language interpretational case law in each feasible U.S. jurisdiction. We will take a particularly close look at the issue of reciprocity. While the UFMJRA does not make the likelihood that the foreign court would recognize a U.S. judgment a determinative factor in the recognition analysis set forth therein, some courts will give weight to reciprocity, particularly those in which the common law still governs. Depending on our analysis of the track record of Ecuadorian courts faced with U.S. judgments, the team may either seek out or avoid jurisdictions that consider reciprocity, particularly the small number that have made it an absolute prerequisite to enforcement. Certain States have also created additional discretionary factors not contemplated by the UFMJRA. For example, California permits a court to consider whether "the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court," a seemingly amorphous query which suggests that California may not be an ideal venue for enforcement – despite the obvious concentration of Chevron assets there.

- **State or federal court.** Where a favorable U.S. jurisdiction has been located, there remains a question of whether to seek recognition of the judgment in federal or state court. Certainly, the federal court is likely to be more sophisticated, well-staffed, and experienced in the realm of foreign judgments. Nonetheless, issues such as docket backlog should also be considered. Moreover, the team will determine whether the federal court's interpretation of state law is a favorable one.

- **Plaintiff-friendly jurisdictions.** Each year, the American Tort Reform Association issues a publication that identifies jurisdictions that have consistently demonstrated an anti-corporate leaning. Given the likelihood that many courts will have personal jurisdiction over Chevron, the team will take a particularly close look at such jurisdictions to determine initially whether judges – not only juries – tend to be plaintiff-friendly. We

note that Chevron, by way of public disclosure on its corporate website, has notable attachable assets located in a number of these jurisdictions, including Alabama, California, Southern Louisiana, Mississippi, Nevada, and New Mexico. Dependent upon the peculiarities of the foreign judgment recognition law in these jurisdictions, among other considerations, the aforementioned states may prove to be especially attractive for enforcement. The question that the team must analyze is whether a leaning toward American plaintiffs will translate into a leaning in favor of similarly situated residents of a foreign country.

2. *Pre-Judgment Attachment*

Consistent with their aggressive approach, Plaintiffs' Team will look for ways to proceed against Chevron on a pre-judgment basis, largely as a means of attaining a favorable settlement at an early stage. Various laws and procedures within and outside of the United States may permit the attachment of Chevron's assets prior to successful recognition of the Ecuadorian judgment. Pre-judgment attachment would undoubtedly compound the pressure already placed on Chevron vis à vis an international enforcement campaign, and force Chevron to focus its resources on the proceedings initiated by the Plaintiffs, rather than its own sideshows. Undoubtedly, the availability of pre-judgment attachment mechanisms will play a critical role in our decision to enforce the judgment in a particular U.S. jurisdiction.

- **State Law Pre-Judgment Attachment.** The procedures for obtaining prejudgment attachments in the United States are governed by state statutory law. Although there is substantial overlap among states' procedures regarding prejudgment attachment, there are, more importantly, numerous differences. These distinctions in state law, and courts' interpretation thereof, may affect the likelihood of successfully obtaining prejudgment attachment. Accordingly, an analysis of prospective forums' prejudgment attachment frameworks will be a crucial factor dictating where enforcement will be sought. The following represents a sampling of the Team's findings in this area to date.

  - **California.** California law concerning prejudgment writs of attachment is marked by procedural hurdles and rigid statutory interpretation. Unlike some other states, California courts require that a hearing take place before a writ of attachment is issued. Moreover, detailed and fact-intensive evidentiary affidavits or declarations must support the application for attachment. Although courts in every jurisdiction recognize that prejudgment attachment is only warranted in limited circumstances, an overview of the California case law suggests that courts in that jurisdiction are particularly unwilling to grant the relief.

  - **Iowa.** Iowa's statutory framework is fairly basic, relative to other jurisdictions. Case law, however, has markedly shaped prejudgment attachment law in Iowa. Indeed, two very notable opinions concerning prejudgment attachment in Iowa were recently issued. In *Estate of Lyon v. Heemstra, et al.*, the court denied issuing a prejudgment attachment where the underlying suit was for wrongful death reasoning that Iowa has not extended pre-judgment attachments to *tort* actions. 2010 WL 200454, at *3 (Iowa Ct. App. Jan. 22, 2010). Similarly in *Cedar Rapids*

Lodge & Suites, LLC, the Northern District of Iowa held that "the prejudgment attachment procedure set forth in Iowa Code chapter 639 is not available in actions sounding in tort "because the statute was intended to apply to actions where "there is a 'fair assurance' of the amount due." 2010 WL 1030497, at *4-6 (N.D. Iowa Mar. 8, 2010). However, the *Cedar Rapids* Court also noted that prejudgment attachments under Iowa's statutory law were instead intended to apply to "a known and disputed debt, such as an *action to enforce a foreign judgment.*" *Id.* at *6. (emphasis added). Thus, although the *underlying* Ecuadorian judgment would arise out of an action akin to a tort claim, the fact that the enforcement proceeding in the United States would actually be an action to recover a predetermined, fixed sum suggests that prejudgment attachment would be feasible.

- **New York.** Despite New York's policy choice to strictly and narrowly construe prejudgment attachments, the remedy has been granted in a variety of circumstances, perhaps more broadly than in a jurisdiction such as California. For instance, under N.Y. CPLR § 6201, along with the standard bases for obtaining a writ of attachment, New York's statutory law specifically identifies the availability of prejudgment attachment in the context of enforcing a foreign judgment. N.Y. CPLR § 6201(5). Pending further analysis, this suggests that prejudgment attachment in New York may be viable.

- **Connecticut.** Unlike several other jurisdictions, Connecticut allows plaintiffs to obtain a prejudgment attachment at the outset of a lawsuit. Conn. Gen. Stat. § 52-278c. Accordingly, an order of attachment may potentially be obtained without a prior hearing, thus securing plaintiffs' interest in defendants' property before the case begins. In such circumstances, process is served on the defendants while simultaneously attaching defendants' property. A feature such as this may, insofar as it affords a defendant less advance notice of the prospect of attachment, confer a strategic advantage upon plaintiffs.

- **"Rule B" Maritime Attachment.** The Federal Rules of Civil Procedure include the Supplemental Rules for Certain Admiralty and Maritime Claims for use in such cases. Under Rule B of the Supplemental Rules, plaintiffs may obtain security for maritime claims by "freezing" a defendant's assets in the jurisdiction pending a final judgment. The assets may be attached by way of an *ex parte* proceeding, making Rule B an extremely attractive option for obtaining leverage early in a case. Rule B attachment is appealing for a number of reasons, but as described below, may prove difficult to execute:

  - **Property Subject to Attachment.** Because the plaintiff initiates the action by seizing the defendant's property, and not simply by serving process on the defendant, maritime attachment under Supplemental Rule B permits a court to exercise *quasi-in-rem* jurisdiction over the defendant. Supplemental Rule B permits a plaintiff to obtain the attachment or garnishment of either "tangible or

intangible property-up to the amount sued for-in the hands of garnishees named in the process." Fed. R. Civ. P. Supp. B(1)(a).

- **Applicability.** In contrast to the practice under many state laws (which permit attachment only for contractual claims), maritime attachment is available whether the maritime claim sounds in contract or tort, an important factor given the clearly tortious nature of the Invictus suit. *See Bjolstad v. Pacific Coast S.S. Co.*, 221 F. 692 (N.D. Cal. 1914).

- **A "Maritime Claim".** The fact that the culpable conduct in the underlying case impacted the tributaries and headwaters of a navigable body of water—the "Upper" Amazon River and the quality of waters flowing out to the Atlantic Ocean—may permit a good-faith argument that a "maritime claim" exists, but is by no means settled. Despite credible factual arguments that Chevron's conduct harmed the navigable Upper Amazon and by extension the waters of the Atlantic, a federal court may find that because the underlying action in Ecuador was not framed as a maritime claim, it cannot fall within maritime jurisdiction for Supplemental Rule B purposes.

- **Proper Forum.** Maritime attachment is only available under Supplemental Rule B if the defendant "is not found within the district."" The 2005 Amendments to Supplemental Rule B clarified that the "time for determining whether a defendant is 'found' in the district is set at the time of filing the verified complaint that prays for attachment and the affidavit required by Rule B(1)(b)." But while the defendant must not be "found" within the district for the plaintiff to utilize Supplemental Rule B, the property the plaintiff seeks to attach or garnish must be located within the geographic boundaries of the judicial district. It may prove difficult to identify a district in which a far-reaching company like Chevron has assets, yet at the same time cannot be "found." There may, however, be a potential argument to be made for Rule B attachment with respect to U.S. territories, whereby docked Chevron vessels could be targeted for attachment. At a minimum, this type of aggressive action would lend momentum to the Plaintiffs' enforcement efforts, and would force Chevron to take such efforts seriously.

3. *Anticipating Chevron's Attempt to Disclaim Successor Liability*

As it has done so before, Chevron likely will continue asserting that it is not a proper party to the Ecuadorian proceedings and that the Ecuadorian courts improperly have exercised jurisdiction against the company. Among other arguments, Chevron will claim that: (1) Chevron is not a successor-in-interest of—but rather a distinct corporate entity from—the allegedly tortious parties, TexPet and Texaco, Inc. (collectively, "Texaco"); (2) the Merger Agreement in question did not merge Chevron and Texaco, but instead merged Texaco and a wholly owned subsidiary of Chevron called Keepep, Inc. (3) Chevron never operated the oil consortium in question and was never a party to any of the underlying contracts; and (4) it was Texaco—not Chevron—which consented to

Ecuadorian jurisdiction in connection with the United States federal district court's decision (which the Second Circuit affirmed) dismissing the claims against Texaco on *forum non-conveniens* grounds.

To rebut these claims, the Aguinda Plaintiffs will need to establish that not only is Chevron a successor-in-interest and therefore liable for Texaco's past misconduct in Ecuador, but Chevron also implicitly subjected itself to jurisdiction in Ecuador through the company's participation in the U.S. proceedings. Generally a successor corporation is liable for a predecessor's debts and liabilities where: (1) the successor corporation explicitly or impliedly agrees to assume the predecessor's liabilities; (2) the transaction is a per se or de facto merger; (3) the successor, in effect, is a mere continuation of the predecessor; or (4) the transaction is fraudulent. In the case of Chevron and Texaco, Chevron represented to the U.S. federal courts on numerous occasions that "Texaco [had] merged with Chevron." Chevron also—in its annual reports and press releases—made frequent public statements confirming its absorption of Texaco. Chevron even changed its name to "Chevron Texaco Corporation" following the merger of the two companies. In addition, Chevron's officers testified that in the aftermath of the Merger Agreement, Chevron and Texaco shared officers and directors; Texaco's liquid assets were transferred daily into Chevron's accounts; Texaco regularly received capital and cash contributions from Chevron to satisfy its obligations; Chevron owned all of Texaco's capital stock and Texaco became a "non-operating company"; and Texaco and Chevron shared counsel for many of Texaco's appearances in connection with the U.S. proceedings. In light of Chevron's public statements and the deposition testimony of its officers, Chevron likely will not prevail in its attempt to avoid successor liability. But in order to ensure that Chevron's successor liability arguments are defeated, it will be necessary to conduct a thorough review of the Merger Agreement between Chevron and Texaco and—using 28 U.S.C. 1782—to take additional offensive discovery of key Chevron and Texaco witnesses with knowledge of the negotiation, execution, and implementation of the Merger Agreement. As to Chevron's participation in the U.S. proceedings, it is worth nothing that following execution of the Merger Agreement, Chevron's in-house counsel appeared in federal court and affirmed his agreement with the court's decision dismissing the case on *forum non-conveniens grounds* on the condition that Texaco consented to Ecuadorian jurisdiction.

B. International Enforcement Plan

Plaintiffs' Team will proceed with the understanding that there are no guarantees of U.S. recognition and enforcement. Indeed, our experience with U.S. courts in the context of Chevron's domestic collateral discovery actions filed under 28 U.S.C. § 1782 suggests that they may view proceedings in a Latin American nation with more of a jaundiced eye than most other tribunals would. Moreover, non-U.S. jurisdictions may, for a variety of reasons, offer the prospect of a more expedient resolution than could be obtained in the U.S.

Plaintiffs' Team has developed, and has continues to develop, a Decisional Matrix for the international choice of forum analysis, designed to inject a reasonable level of consistency and objectivity into a multi-layered decision. Broadly, this matrix (attached to this Memorandum as Addendum A) accounts for: (a) considerations of enforceability; (b) limitations on recovery/fees; (c) practical considerations regarding Chevron's influence; (d) advantages held by Plaintiffs' Team; and (e) the potential effect of the BIT arbitration, assuming it survives. While the fruits of this analysis

will become apparent in the coming months leading to judgment, below, we lay out the essential elements of our strategy.

1. *The "Keystone Nation" Strategy*

As with the domestic enforcement analysis, proceeding as an initial matter in a jurisdiction housing the highest concentration of Chevron's domestic assets would offer certain obvious advantages, including efficiency. Nonetheless, it is more important for Plaintiffs to proceed *initially* in a jurisdiction that promises the most favorable law and practical circumstances. To that end, Plaintiffs' Team will identify and potentially target certain "keystone" nations – that is, nations that enjoys reciprocity – or better yet, are part of a judgment recognition treaty – with nations that serve as the locus for greater Chevron assets. For instance, while enforcing western judgments in the Middle East is notoriously challenging, certain countries in that region, including Egypt, have entered into relevant treaties with European nations. If the Aguinda Plaintiffs are able to obtain conversion of the judgment in one of those European nations, this *may* open the door to enforcement in the Middle Eastern target nation.

2. *A Complex Choice of Forum*

As a major international corporation, Chevron has substantial assets located in many different parts of the world which might be available for attachment and/or payment of the Aguinda Plaintiffs' judgment. The "choice of forum" question is substantially complicated by the availability of multiple international forums for judgment enforcement. The law varies widely from country to country as to the willingness of courts to enforce judgments entered in foreign tribunals – the relevant considerations are too diverse to fully explore here. Some of the more notable considerations:

- **Treaty Requirement.** On the extreme end of the spectrum, a handful of countries will generally not enforce a judgment issued in a nation with which it has not entered into an enforcement treaty. Notably, this list includes Saudi Arabia, Russia, and the Netherlands, all of which are the locus of considerable Chevron operations.

- **Reciprocity.** While the potential for a reciprocity requirement is certainly an issue with respect to U.S. enforcement, it looms even larger with respect to international enforcement. Non-U.S. common law countries, including the United Kingdom and Singapore (both the locus of substantial Chevron assets), emphasize reciprocity by way of their respective foreign judgment statutes. Thus, Plaintiffs' Team will analyze Ecuador's historical treatment, if any, of judgments rendered in such nations.

- **Peculiarities of Civil Law.** Civil law countries, including certain Latin American nations where Chevron conducts significant affairs, have their own peculiarities with respect to foreign judgment recognition. In these nations, intermediate and high appellate courts may have exclusive jurisdiction over recognition ("exequatur") proceedings, and it is less likely that proceedings will evolve into a full-blown review of the merits. However, these nations also may not allow the losing party to appeal the court's decision with respect to enforcement of the foreign money judgment.

- **Public Policy of the Enforcement Nation.** In light of the fact that most nations' foreign judgment enforcement frameworks incorporate a catch-all "against public policy" provision among their list of justifications for denying enforcement, the Team will analyze whether a judgment coming out of Ecuador might be offensive in some way to the public policy of each target country. Significantly, many countries inherently find large personal injury/property damage awards repugnant.

- **Role of the Executive.** Patton Boggs' current and former representation of numerous, geographically diverse foreign governments means that barriers to judgment recognition in a given country may not necessarily preclude enforcement there. Certain countries require that a government agency weigh in on the legality of the foreign judgment sought to be enforced, and thus, Patton Boggs' connection to the sovereign in such nations will play an especially critical role. Plaintiffs' Team may – within the bounds of international, ethical propriety – leverage the firm's relationship with governments of foreign nations in which Chevron does business. Moreover, understanding the reality that judicial systems in some nations may be more susceptible to the political winds than others, Patton Boggs will use its political connections and strategic alliances to ascertain which nations' governments are not beholden to Chevron, so as to minimize the prospect of adverse government interference in the enforcement process.

3. *International Forums of Particular Note*

As noted above, our international "choice of forum" analysis will be guided by the decisional matrix for international enforcement that we have developed, and continue to refine. However, we expect that the following *non-exhaustive* list of nations will be of particular interest.

- **The Philippines**. Chevron touts that it has made more than $2 billion in capital investments in the Phillipines, including natural gas, geothermal power, and operational assets. Ambassador Frank G. Wisner, currently a Foreign Affairs Advisor with Patton Boggs, formerly served as ambassador to the Phillipines, among other sovereigns, during his career with the State Department. The Phillipines was also formerly a client of Patton Boggs, and the firm has affiliations or relationships with law firms and public affairs firms within the Philippines.

- **Singapore**. Chevron publicly asserts that "Singapore plays a critical role in [its] global operations." The nation serves as its Asia-Pacific headquarters for downstream operations, and is home to no less than seven core refineries, two chemical plants, and the largest lubricant additives manufacturing facility in Asia. Former U.S. ambassador to Singapore (1994-97), Hon. Timothy A. Chorba, is currently a Partner at Patton Boggs. Patton Boggs also has affiliations or long-standing relationships with law firms and public affairs firms within Singapore. As noted above, Singapore enforcement law – specifically, the Reciprocal Enforcement of Foreign Judgments Act – emphasizes reciprocity, although the reciprocity may be prospective or assumed, not necessarily historical. Singapore's Minister of Law ultimately makes the reciprocity determination with respect to the nation where the judgment was issued. Patton Boggs' uniquely strong ties to this potentially important nation increase the likelihood that our arguments in this regard will be heard.

- **Australia**. Chevron touts itself as the largest holder of prospective natural gas resources in Australia. Chevron maintains multiple liquefied natural gas projects and multiple oil fields in Australia. Patton Boggs has a long history in Australia and maintains relationships with various ministries of the Government of Australia; on several occasions, the firm has been consulted by the Embassy of Australia in Washington, D.C. for advice relating to bilateral trade issues. In addition to our long-standing relationships with prominent Australian law firms and public relations firms, certain Patton Boggs attorneys are natives of Australia and currently practice there.
- **Argentina, Brazil, Colombia,** and **Venezuela**. Critically, all four countries have ratified the *Organization of American States' Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards*, a fact which should have the effect of significantly streamlining the enforcement process in these nations. Colombia and Venezuela have both been clients of Patton Boggs, and the firm has long-standing relationships with law firms and public affairs firms within these four Latin American nations. That is not to say, however, that enforcement will be met with no resistance. For instance, Brazil may decline to entertain an enforcement action involving a non-resident debtor. And the fact that Chevron has agreed to "play ball" in Venezuela, while the company's peers have universally rejected the unfavorable contract terms imposed by the Chavez government, may portend difficulty there. Nonetheless, the populist Chavez government remains a natural ally of the Aguinda Plaintiffs. The prospect of enforcement in this and other Latin American nations will receive serious, early consideration. Chevron's operations in these Latin American nations are significant and broad-based. Chevron asserts that it is the third-largest producer of oil in Argentina, and also produces natural gas and sells finished products there. Brazil is home to Chevron's newly operational, $3 billion offshore deepwater project known as the Frade Field. Chevron boasts that it supplies approximately 60 percent of Colombia's domestic natural gas demand, and has three primary natural gas fields in that nation. Chevron remains essentially the last major U.S. oil company standing in Venezuela, and has partnered with Venezuela's nationalized oil and gas company with respect to several major projects throughout the country.
- In addition, the following nations – wherein Chevron also conducts substantial affairs and likely has substantial assets – are currently, or have been at some point, clients of Patton Boggs. Moreover, in most cases, Patton Boggs also has affiliations or long-standing relationships with law firms or public affairs firms within these nations: **Angola, Canada, Chad, China, Kazakhstan, Kuwait, Nigeria, Saudi Arabia, South Africa**, and **South Korea**. Although enforcement of the Ecuadorian judgment in countries like Saudi Arabia and China, which do not have a favorable track record of enforcing western judgments, may be a relatively remote possibility, the firm's current and extensive representation of these nations' interests may be a significant boon to the Aguinda Plaintiffs' efforts in a variety of ways, as previously discussed.
- Finally, Patton Boggs has affiliations or long-standing relationships with law firms or public affairs firms within each of the following additional nations, wherein Chevron conducts substantial affairs and likely has substantial assets: **Belgium, Indonesia,** the **Netherlands, New Zealand, Russia, Trinidad & Tobago**, and the **United Kingdom**.

C. Chevron Asset Location

1. *Identification of Accounts and Assets Potentially Subject to Attachment*

Identifying Chevron's assets worldwide will be a critical step to be taken at the outset of Plaintiffs' judgment enforcement efforts. As Chevron acknowledges on its website "[w]e conduct business all around the globe." On the same webpage, Chevron lists 27 sovereign countries in which its "work is more extensive." In addition to the United States, where it is headquartered in San Ramon, California, these nations with purportedly "extensive operations" include Angola, Argentina, Australia, Azerbaijan, Bangladesh, Belgium, Brazil, Cambodia, Canada, Chad, China, Columbia, Indonesia, Kazakhstan, Kuwait, the Netherlands, New Zealand, Nigeria, the Philippines, Russia, Saudi Arabia, Singapore, South Africa, South Korea, Thailand, Trinidad and Tobago, the United Kingdom, and Venezuela. Based on Chevron's own admissions, it is clear that the company conducts business and maintains holdings in many more countries not included in that list. Furthermore, it could be expected that Chevron might strategically choose to withhold from public view information about the location of property that it believes may be at-risk in any judgment enforcement action. Concomitantly, those nations where Chevron maintains the best relations and feels least threatened by judgment enforcement action may have intentionally been counted among its more "extensive" places of operation.

The fact that Chevron maintains both exploration and production operations (i.e. "upstream operations") in other sovereign states is demonstrated even by its 2009 Annual Report Supplement filed with the U.S. Securities and Exchange Commission ("SEC"), which documents that several other countries host Chevron's upstream operations, including: exploration and production in Norway, Denmark (and its territory Greenland), production in Turkey and Vietnam; and other upstream operations in Cameroon, Democratic Republic of Congo, Poland, Myanmar (Burma), and Republic of the Congo. In addition, Chevron "downstream" operations—including refining, marketing, and transportation—exist in many more foreign states. Chevron (Ireland) Limited engages in distribution and marketing of gasoline, diesel, home heating oil, and lubricants in the Republic of Ireland. In 2006, Chevron changed the name of Texaco (Ireland) Limited to Chevron (Ireland) Limited. In Greece, Chevron maintains interests in aviation through HAFCO (Hellenic Aviation Fuel Company), a subsidiary of Avinoil, which is itself a wholly owned subsidiary of Motor Oil (Hellas) S.A., and Chevron Hellas. Further exhibiting the widespread downstream presence, Chevron Global Aviation, a subsidiary of Chevron Products Company, supplies jet fuel and aviation gasoline to more than 1,000 airports in 70 countries. The company also markets an extensive line of lubricant and coolant products under brand names that include Havoline, Delo, Ursa, Meropa and Taro.

In the downstream refining sphere (aside from countries where Chevron otherwise operates), Chevron owns partial interests in refinery operations in various places, such as its 11.5% ownership share of a refinery in Martinique and 12% of a refinery in Pakistan, as well as stakes in refineries in the African states of Kenya and Cote d'Ivoire.

What is also evident is that Chevron's many affiliates are continually acquiring, exploring, and divesting properties and development licenses. This occurred within Libya in 2009 when Chevron drilled an exploration well that did not yield hydrocarbons and subsequently relinquished its

exploration rights. Similarly, in April 2009, the large Russian oil and gas corporation Gazprom Neft acquired a Chevron Italia S.p.A. lubricants production facility, based in Bari, Italy, from Chevron Global Energy. Chevron Italia S.p.A. was subsequently renamed Gazprom Italia S.p.A. Illustrating the changing fluidity of its upstream holdings, Chevron divested leased property rights in Germany during 2008 and acquired its rights in Libya during 2006 and in Poland during 2009. In recent years, Chevron divested its leased holdings in the Eastern European state of Georgia in 2007 and its holdings in Equatorial Guinea in 2005.

In equal (50/50) ownership with ConocoPhillips Corporation, Chevron owns CPChem, an entity which produces commodity petrochemicals. Among operations and holdings in many other countries where Chevron already operates, Chevron owns 49% of a production facility in Mesaieed, Qatar through CPChem. In Venezuela, Chevron owns between 25 percent and 40 percent of each of three entities engaged in exploration and production activities. In West Africa, Chevron owns 36.7% of the West African Gas Pipeline Company Limited. In South Korea, the company operates through its 50 percent-owned affiliate, GS Caltex, and in Australia through its 50 percent-owned affiliate, Caltex Australia Limited.

Chevron's wholly-owned subsidiary Chevron Oronite, which develops, manufactures, and markets performance-enhancement additives for lubricating oils and fuels, owns a production plant in Gonfreville, France, as well as an 82% stake in a plant in Omaezaki, Japan, 50% of a plant in Chennai, India, and 40% of a plant in San Juan del Rio, Mexico. Chevron Oronite is headquartered in Paris, France, and from there manages its development, manufacturing and distribution operations of fuel and lubricant additives throughout Europe, Africa and the Middle East.

With respect to mining, the company owns and is the operator of a surface coal mine in Kemmerer, Wyoming, an underground coal mine, North River, in Alabama, and a surface coal mine in McKinley, New Mexico. The company continues to actively market for sale its coal reserves at the North River Mine and elsewhere in Alabama. Chevron decided in late 2009 to suspend production at the McKinley Mine, and conduct reclamation activities there in 2010. The company also owns a 50 percent interest in Youngs Creek Mining Company LLC, which was formed to develop a coal mine in northern Wyoming. Coal sales from wholly owned mines in 2009 were 10 million tons, down about 1 million tons from 2008.

All materials uncovered suggest that Chevron wholly or partly owns a diverse and expansive array of businesses. As its SEC filings suggest, Chevron's hundreds of subsidiaries and operating units can be grouped into 23 businesses spread across the world. In addition, Chevron has eight major service units that assist in carrying out its operations (such as Chevron Business and Real Estate Services, Chevron Technology Ventures, Chevron Information Technology Company, etc.), as well as three funding subsidiaries that handle debt financing and commercial paper issuance.

Because Chevron has ownership interests in more than 1,000 subsidiaries, branches, divisions, partnerships and affiliates, it will be essential to conduct a large-scale investigation of the company to ascertain the location and corporate ownership structure of valuable assets. This would most likely be accomplished through specialized firms that provide business intelligence services and other investigatory capabilities. In the past, Patton Boggs was retained to coordinate the recovery of vast sums of money unlawfully removed from the treasury of the Government of Qatar. The task

involved a coordinated effort in nine countries, including litigation, intersection with banks, banking authorities, and prosecutorial officials. By working closely with consultants around the world, Patton Boggs orchestrated the entire global recovery effort. In any asset identification work undertaken as part of judgment collection efforts, Patton Boggs will explore retaining the same or similar consultants.

With respect to profiling outside firms as candidates for the engagement, it has become apparent that Kroll, perhaps the most recognized name in this field, has been engaged by Chevron. Highly competent firms remain, however, including Spain Information Services UK Ltd. ("SIS Ltd."), which reportedly maintains offices in London (UK) and Spain, as well as associated offices in Paris, Lisbon, Rabat, and the Netherlands. SIS Ltd. markets itself as being "dedicated to fighting all types of economic fraud matters, by taking on high profile and complex Investigations, . . . [and] locat[ing] hidden assets, moneys, [and] bank accounts anywhere in the World, offshore, etc." Among the potential advantages of retaining of SIS Ltd. is that the Invictus litigation team would be favorably served by a firm capable of working in either Spanish or English. In addition, as a firm based in Europe that may have no ties to U.S. oil interests, approaching SIS Ltd. would be a less risky than other firms.

2. *Addressing the Multiple Entity Issue*

In addition to researching and selecting the preferred jurisdictions in which to initiate enforcement actions against Chevron Corporation, it may also be prudent to identify the specific Chevron-related entities (parents, subsidiaries, joint ventures, or otherwise) that can also be the target of such enforcement actions. This process involves a number of practical, strategic, and legal considerations. The preferred approach of course is to enforce the judgment directly against Chevron Corporation—the entity named in the Ecuadorian matter. For various reasons, however, it may further the Aguinda Plaintiffs' interests to file multiple enforcement actions against other Chevron-related entities as well. For instance, the Aguinda Plaintiffs could increase their chances of recovering the full Ecuadorian judgment—anticipated to be $27 billion—by bringing enforcement claims against an array of Chevron-related entities. Likewise, if an entity related to Chevron is present in a jurisdiction with potentially advantageous enforcement laws—as well as a flexible interpretation of the "piercing the corporate veil" doctrine—it may benefit the Aguinda Plaintiffs to bring an enforcement action against such an entity. Under such circumstances, Plaintiffs' Team may be able to employ "reverse veil-piercing" to hold the Chevron-related entity liable for the actions of Chevron Corporation. Whereas traditional veil-piercing holds individuals liable for the actions of a corporation they control, reverse veil-piercing enables the assets of a corporate entity (e.g. a subsidiary) to be used to satisfy the debts of its legal and/or equitable owner (e.g., a parent corporation). Reverse piercing cases generally are guided by the same principles as traditional veil piercing matters. Although reverse veil-piercing is rare, the doctrine is guided by equitable principles and is largely discretionary and fact-specific. Therefore, we will not be able to assess the likelihood of success of our reverse veil-piercing arguments until we have conducted a thorough analysis of Chevron's multi-layered corporate structure and the veil-piercing law in the forums (both domestic and international) in which Aguinda Plaintiffs can bring enforcement actions against Chevron-related entities.

D. Setting the Table through Public Policy Work

Chevron and/or its subsidiaries reportedly spent $5.3 million in the fourth quarter of 2009 to lobby the federal government on trade issues in Ecuador, a variety of environmental bills and other issues – more than double the $2.4 million that Chevron spent in fourth quarter of 2008. Among other things, the company has used its lobbyists to convince the U.S. State Department and the office of the U.S. Trade Representative to adopt reporting language – quite obviously spun by Chevron's legal team – that raises doubts about the fairness of Ecuador's judicial system. In circular fashion, Chevron cites to this language in its Section 1782 discovery proceedings, and will surely do so in opposition to any enforcement proceeding, as evidence that the Ecuadorian courts should be accorded no respect or deference.

In the near term, Plaintiffs' Team must call upon its considerable lobbying and public policy resources to change the playing field with regard to the existing public commentary on Ecuador's judiciary. Moreover, Plaintiffs' Team will track and take action to oppose any specially-erected regulatory hurdles, quasi-legislative acts, or collateral proceedings that may crop up in foreign states to prevent recovery of any judgment against Chevron. If and when these obstacles arise, Plaintiffs' Team will consult with colleagues in Patton Boggs' Overseas Enforcement of U.S. Laws specialty practice, where broad experience has been developed in issues relating to the enforcement and execution of arbitration agreements for both foreign and domestic clients. At that time, we may consider retention of outside local lobbyists, or we may choose to proceed on the strength of Patton Boggs' direct relationships.

From an offensive perspective, Plaintiffs' team will consider initiating lobbying efforts aimed at the promotion of natural resource damages and personal injury recovery for environmentally-sensitive geographic areas such as the Amazon and rainforests generally. Further, exertion of influence on trade policy may assist in smoothing out formal and informal resistance to enforcement of a judgment based on damages incurred as the result of an American company's malfeasance overseas. Although such offensive public policy endeavors would likely be primarily undertaken within the United States, we may also consider using them in other countries that are legally and ethically amenable to lobbying efforts.

In the public policy arena, Plaintiffs' Team will also carefully evaluate the potential jurisdictions for enforcement to ascertain Chevron's standing with the public, and more importantly, the government. Obviously, we will look to avoid enforcement in jurisdictions where Chevron appears to have a foothold in local communities, employs vast numbers of local workers, and appears to have especially favorable relations with the government. In contrast, we will seek out other jurisdictions where Chevron may have inflicted environmental damage and is thus unpopular, or where Chevron may have fallen out of favor with the government.

In sum, Plaintiffs' Team believes that an early emphasis on public policy work is critical to set Plaintiffs up for success on the litigation front.

E. Retention of Experts

In addition to the natural resources damages expert discussed at Section II(A), *supra*, Plaintiffs' Team anticipates engaging – and indeed, in some cases has begun vetting or has already retained – consulting and/or testifying experts in the following fields during the coming months:

- **Ecuadorian Law and Procedure.** It will be necessary to retain at least one expert on Ecuadorian law and procedure. Preferably, any testifying expert in this regard will be an Ecuadorian outsider, preferably an American. We do not want to make the expert vulnerable to Chevron's mantra that he is merely the product of the very same corrupt system that he has been hired to defend. Plaintiffs' Team has received a list of the pre-eminent American scholars in this area from Professor George Bermann of Columbia Law School, and are currently in the process of vetting candidates. Plaintiffs' Team has also worked with local Ecuadorian lawyers, and are presently considering several respected Ecuadorian firms to serve as consulting experts on matters of Ecuadorian law.

- **International Enforcement of Judgments.** Plaintiffs' team has initially retained Columbia Law School Professor George Bermann to serve as their consulting expert in the realm of international judgment enforcement. Professor Berman appears to be an invaluable resource; his expertise is broad-based and his connections are formidable – we anticipate that he will lead us to the ideal expert on a variety of discrete topics as needs arise. Prof. Bermann's expertise lies in the areas of comparative law, international governance, and international arbitration. He holds the position of President of the International Academy of Comparative Law and Co-Editor in Chief of the American Journal of Comparative Law, and has in the past held the position of President of the American Society of Comparative Law. At Columbia, his present courses and research areas include: Comparative law and European law, International trade contracts, WTO dispute resolution, Government and public official liability, European Union law, Transnational litigation and arbitration, and Administrative law.

- **International Arbitration.** The arbitration currently pending pursuant to the United States-Ecuador Bilateral Investment Treaty may persist beyond the issuance of a judgment by the Superior Court of Nueva Loja in the *Lago Agrio* proceeding. For that reason, the team may need to consult an expert regarding the impact of the pendency of – or an adverse decision in – the BIT arbitration on the enforcement of any Ecuadorian judgment. It is expected that Professor Bermann will fill this role, although additional consultants and/or testifying experts will be considered.

- **International Tax Issues.** An expert will be retained to assist Plaintiffs' Team in analyzing the tax laws in various enforcement jurisdictions, in order to determine where there is favorable law with respect to the collection on any judgment.

- **Private Investigations Firm.** A firm specializing in private investigations may be necessary to assist Plaintiffs' Team in uncovering illegal activities undertaken by Chevron in connection with the *Lago Agrio* proceedings. As noted above, Chevron has already retained a notable firm in this capacity, but strong candidates remain.

- **Toxic Tort.** Although Plaintiffs' Team will endeavor to enforce the judgment in countries where enforcement proceedings are unlikely to touch extensively on the merits, a testifying expert in the realm of toxic tort judgments may be useful to assist Plaintiffs in demonstrating the propriety of any award from the Ecuadorian court.

- **Anthropology.** Given the nature of the claims and damages inflicted upon indigenous peoples in this case, Plaintiffs' Team may consult with an anthropologist to assist in understanding, communicating, and providing the best possible representation to our clients.

- **Ethics.** In light of Chevron's unscrupulous conduct before and during the *Lago Agrio* litigation, in addition to the serious allegations of impropriety levied e by Chevron against Plaintiffs and their counsel, it is highly probable that expertise regarding Ecuadorian ethical norms will be required. In the event that any of Plaintiffs' conduct is subject to criticism, an ethics expert may explain why such actions could have been necessitated in the face of corruption and other abuses perpetrated by Chevron in Ecuador.

F. The Ecuadorian "90/10" Law

One potential, although seemingly manageable, risk associated with the collection of an Ecuadorian judgment is the existence of Ecuador's so-called "90/10" law. The English-translation of this law, formally known as Title VI (Protection of Environmental Rights), Chapter 1, Art. 43 of the Environmental Management Act, states:

> Art. 43. Natural or legal persons or human groups, linked by a common interest and directly affected by the harmful action or omission, may file with the judge of competent jurisdiction actions for monetary damages and for deterioration caused to health or the environment, including biodiversity and its constituent elements.
>
> Without detriment to other available legal actions, the judge shall order the party responsible for the harm to pay damages to the community directly affected and to repair the harm and damage caused. [The Judge] shall also order the responsible party to pay to the moving party ten per cent (10%) of the value of the damages.
>
> Without prejudice to said payments and in the event the directly injured community cannot be identified or it is the community as a whole, the judge shall order the civil redress to be paid to the institution responsible for embarking on the reclamation work pursuant to this Act.
>
> In any event, the judge shall determine in his judgment, in accordance with the expert conclusions, the amount required to repair the damage provoked and the amount to be paid over to the members of the directly injured community. He shall likewise determine the individual or legal entity to receive said payment and carry out the reparation work.

> Claims for damages arising from harm to the environment shall be heard through summary oral proceedings. *Envtl. Mgmt. Act*, Art. 43.

Several ambiguities arise in interpretation of the law. First, it is not clear that the law envisions a true 90/10 split. In relevant part, Art. 43 states "the judge shall order the party responsible for the harm to pay damages to the community directly affected and to repair the harm and damaged caused. The judge shall also order the responsible party to pay to the moving party ten percent (10%) of the value of damages." Thus, it appears that the ten percent could be awarded on top of whatever *already* would have been recovered by the "community," which could theoretically be the plaintiffs in the case.

Second, Art. 43 further states "[w]ithout prejudice to said payments and in the event the directly injured community cannot be identified or it is the community as a whole, the judge shall order the civil redress to be paid to the institution responsible for embarking on the reclamation work pursuant to this Act." It is unclear whether plaintiffs could qualify as an "institution responsible for embarking on the reclamation work," but, if so, it is possible that the plaintiffs could receive the entire award even if the court decides to split the judgment.

Third, the law appears to provide a significant amount of flexibility to the judge. Art. 43 provides "[i]n any event, the judge shall determine in his judgment, in accordance with the expert conclusions, the amount required to repair the damage provoked and the amount to be paid over to the members of the directly injured community. He shall likewise determine the individual or legal entity to receive said payment and carry out the reparation work."

It is difficult to predict how the provisions of the law would operate in practice. There has been no significant judicial interpretation of the statute since its enactment in 1999. The Ecuadorian law experts with whom we have consulted cannot shed much light. Nevertheless, the law does not appear to create a pure 90/10 split of any potential award. Further, the law appears to provide an avenue where the judge could award the entire award to one party. Thus, in addition to arguing that they should be designated as the "institution responsible for embarking on the reclamation work" or that they are the "individual[s] or legal entity to receive said payment and carry out the reparation work," Plaintiffs would simply continue the trial theme that, as the "directly injured community," they are deserving of nearly the entire award. Although Art. 43 presents some measure of risk that a substantial portion of the judgment could be awarded to a presently uninvolved—and therefore unforeseen—agency or public authority, the likelihood of this happening seems low given that the provision of Art. 43 is untested and vague and because an outcome where injured Plaintiffs do not receive the bulk of the award would be highly inequitable and poorly-received by the Ecuadorian public.

In any event, because Art. 43 states that "the judge shall determine in his judgment . . . the amount to be paid over to the members of the directly injured community," the Plaintiff group should be aware of any mandated fee-splitting under Art. 43's provisions at the time of entry of a judgment. Thus, any division of fees will be subject to direct appellate challenge in the Ecuadorian courts, and will present an opportunity to immediately correct any inequitable outcome. Another approach the Plaintiff group may consider is arranging for receipt of any funds recovered against the judgment through payment agents in the United States and thereafter dividing those funds outside the

Republic of Ecuador. This would have the practical effect of keeping the funds outside the immediate reach of Ecuadorian law upon recovery and would permit any adjudication of fee-splitting to take place in a carefully considered forum. Moreover, there is no indication that the law could apply to settlements.

V. NEGOTIATING AN ACCEPTABLE SETTLEMENT AT AN EARLY STAGE

Plaintiffs' Team has reason to believe that Chevron recently engaged Gregory Craig, President Obama's former White House Counsel, for the purposes of settlement negotiations in this case. This appears to be a promising development for Plaintiffs – Mr. Craig is not a natural fit for Chevron, and his selection suggests a genuine interest in obtaining a resolution through the settlement process.

Upon entry of judgment, Plaintiffs' team will move quickly to bring Chevron to the table (if it is not already there) and negotiate a favorable settlement before Chevron becomes entrenched in fighting enforcement. Although Chevron will argue that any judgment from the Ecuadorian court is illegitimate and the product of corruption, undoubtedly, Chevron's discomfort with having an enforceable judgment on the books, and with the uncertainty surrounding the manner in which Plaintiffs will seek to enforce that judgment, will create a window of opportunity for settlement. Plaintiffs' team contemplates several elements of an effective settlement strategy:

- **Public Relations/Media Push.** As noted above, Plaintiffs' team is confident that offensive discovery will yield a great deal of fruit concerning Chevron's questionable practices vis à vis the Lago Agrio litigation. The press clippings relevant to these findings will be featured as part of a settlement presentation designed for maximum visual impact.
- **Lineage of the Case.** Plaintiffs' settlement opening pitch will appeal to the intuitive notion that the case has simply gone on too long – it must come to an end, and neither party wishes to engage in a global enforcement fight.
- **Present Plaintiffs' Formidable Legal Team.** It is anticipated that he unveiling of Plaintiffs' full U.S. litigation team will occur shortly before the parties begin to engage in meaningful settlement talks. Chevron's realization that it cannot bully its way to defeating enforcement, and that it faces an adversary with global capabilities and influence, will undoubtedly provide a strong incentive toward settlement.
- **Potential Personal Injury Lawsuits in the United States.** Plaintiffs' Team is presently contemplating the possibility that after entry of a judgment in Ecuador (which does not recognize personal injury actions), injured Plaintiffs might be able to file personal actions in the United States, and point to the Ecuadorian judgment as *res judicata*. This would leave only a trial on damages. The existence of such claims may provide a degree of settlement leverage.
- **Urgency Arising From Potential Purchase of BP Assets.** In the event that Chevron seeks to acquire a piece of BP in the wake of that company's disaster in the Gulf of Mexico, an unaddressed environmental crisis of its own makes Chevron a less than ideal

white knight. Plaintiffs' settlement pitch will make this point, and Plaintiffs' PR team will be sure to emphasize it.

- **Invitation to Chevron to Resume Operations in Ecuador.** Plaintiffs' team will think creatively about ways to make settlement more palatable to Chevron. One idea that Plaintiffs' team will explore is the possibility that the Republic of Ecuador could be brought into the fold, and in the context of a settlement with Plaintiffs, Chevron might be permitted to re-enter Ecuador to resume operations to some extent – in a responsible fashion.

VI. CONCLUSION

After approximately seventeen total years of litigation in the United States and in Ecuador, the case against Chevron now enters its most critical, multi-faceted, and labor-intensive phase. As described herein, there are challenges and risks, but all are manageable. With the ultimate goal of effecting a swift and favorable settlement in mind, the strategy of Plaintiffs' Team over the coming months preceding and following entry of a judgment will incorporate the following components:

- Securing a defensible and enforceable judgment in Ecuador by executing an effective *alegato finale* and submitting a persuasive, thoughtful submission on damages that will, in many ways, moot Chevron's criticism of the Cabrera Report.

- Working with Ecuadorian counsel top shepherd the case through the necessary level of appeal in order to render the judgment enforceable.

- Managing the public relations impact of Chevron's manipulation of the Cabrera narrative, including the initiation of Section 1782 discovery proceedings targeted at uncovering Chevron misconduct and placing the Cabrera Report in the context of the larger trial.

- Exploring creative ways to put pressure on Chevron to act responsibly, including an examination of its potential lack of candor with investors concerning the potential liability arising out of Ecuador, and including an examination of Chevron's conduct in light of the Foreign Corrupt Practices Act.

- Identifying jurisdictions globally that are most hospitable to an enforcement action, with the goal that careful selection and an investment of time on the front end will simplify the process substantially on the back-end.

- Identifying Chevron's most vulnerable assets and determining whether pre-judgment attachment is a viable option for placing settlement pressure on Chevron in the various jurisdictions where enforcement is contemplated.

- Retaining pre-eminent U.S. and international experts to assist in all facets of the process, in order to lend maximum credibility to enforcement of any judgment.