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

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In re:  
APPLICATION OF CHEVRON

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January 8, 2011  
9:33 a.m.

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

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

ALSO PRESENT:

MAX GITTER, ESQ., Special Master

ALETHEA S. GROSS, Assistant to  
Special Master

SARA McMILLAN, Chevron Corporation

JAMES ROBERTS, Videographer

VINCE MAGGIANO, Videographer

1

2

THE VIDEOGRAPHER: Good

3

morning. We are going on the record. My

4

name is James Roberts of Veritext

5

Reporting with offices in New York City,

6

New York. Today's date is January 8,

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2011. The time is approximately 9:33 a.m.

8

This deposition is being held at the

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office of Gibson Dunn & Crutcher located

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at 200 Park Avenue, New York City, New

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York. The caption of the case, In Re

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Application of Chevron, in the U.S.

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District Court, Southern District of New

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York, case number 10 MC 00002(LAK). The

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name of the witness is Steven Donziger.

16

This is Volume IX.

17

The witness is advised he is

18

still under oath.

19

MS. NEWMAN: Before we get

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started with the questioning, I want to

21

note for the record that we have added to

22

the live stream viewing Isabel Fernandez

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de la Cuesta and Ed Kehoe both of King &

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Spalding, both counsel of record for

25

Chevron in the Bilateral Investment Treaty

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arbitration.

MR. KAPLAN: Thank you.

THE SPECIAL MASTER: Ms. Neuman,  
may I ask you to keep your voice up.

MS. NEUMAN: Yes. Thank you.  
I'm sorry, I'm losing my voice.

\* \* \*

S T E V E N     D O N Z I G E R,  
having been previously duly sworn,  
testified further as follows:

CONTINUED EXAMINATION

BY MS. NEUMAN:

Q. Good morning, Mr. Donziger.

A. Good morning.

Q. Are you able to resume with  
your deposition today?

A. Yes.

Q. Is there any reason why you  
can't give your best testimony today?

A. No.

Q. I'm going to mark as Exhibit  
797 an order of the Lago Agrio court with  
regard to Mr. Cabrera and his duties.

(Exhibit 797 marked for

1 DONZIGER

2 identification.)

3 Q. I'm providing you with the  
4 English translation on top.

5 Mr. Donziger, were you aware  
6 when Mr. Cabrera was sworn in as an expert  
7 of the Lago Agrio court in connection with  
8 the global inspection?

9 A. Yes, at some point I became  
10 aware he was sworn in.

11 Q. And at that point in time or  
12 shortly thereafter did you review the  
13 court's order with regard to his  
14 appointment?

15 A. Are you talking about this  
16 exhibit?

17 Q. Yes, sir. Although I assume  
18 you would have looked at the Spanish  
19 originally.

20 A. I don't remember if I looked at  
21 this at the time. If you give me a  
22 moment, may I review it?

23 Q. Yes.

24 My question relates to the  
25 language that appears on the third

1 DONZIGER

2 physical page of the exhibit where the  
3 court notes "The expert states that he is  
4 not under any legal impediment whatsoever  
5 and swears to perform his duties  
6 faithfully and in accordance with science,  
7 technology and the law with complete  
8 impartiality and independence vis-à-vis  
9 the parties."

10 (Witness perusing document.)

11 A. I see that.

12 Q. And were you aware at or about  
13 this time in June of 2007 that the Lago  
14 Agrio court had ordered as regards Richard  
15 Cabrera that he was to perform his duties  
16 faithfully and in accordance with science,  
17 technology and the law with complete  
18 impartiality and independence vis-à-vis  
19 the parties?

20 A. Yes.

21 Q. The order goes on to say "At  
22 the request of the expert in this same  
23 swearing in testimony, the Chief Justice  
24 grants the expert a period of five days in  
25 addition to the period specified in the



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DONZIGER

decision of May 17th, 2007, 8:30 a.m., in order to submit his work schedule, plan of operations, techniques and procedure."

Do you see that?

A. Yes.

Q. And that work plan that Mr. Cabrera thereafter submitted was the one provided to him by the plaintiffs, correct?

A. I believe so.

Q. I don't have anything further on Exhibit 797.

I'm going to hand the witness a document previously marked as Exhibit 106, which is another order of the Lago Agrio court with regard to Mr. Cabrera. This is an order issued by the court on October 3rd of 2007 during the course of Mr. Cabrera's ongoing work.

Mr. Donziger, did you see the October 3rd, 2007 order of the Lago Agrio court at or about the time that it was issued?

A. I don't believe I did, although

1 DONZIGER

2 it is a long order, I haven't read it, but  
3 I don't believe I saw it at the time.

4 Q. Did there come a time when you  
5 became aware of the October 3rd, 2007  
6 order by the Lago Agrio court with regard  
7 to Mr. Cabrera's work?

8 A. Specifically this order, I  
9 don't believe so. Do you want me to  
10 review this document?

11 Q. You are free to review it, but  
12 I'm going to ask you questions about  
13 certain statements in it, and then if you  
14 need more context, that is fine.

15 If you look at page 2 of  
16 Exhibit 106, about a third of the way  
17 down, it says "The expert is hereby  
18 reminded that he is an auxiliary of the  
19 court for purposes of providing to the  
20 processes and to the court scientific  
21 elements of determining the truth."

22 Do you see that?

23 A. Yes.

24 Q. Was it your understanding that  
25 Mr. Cabrera was an auxiliary to the Lago

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Agrio court once he became the global expert?

A. My understanding was consistent with that, yes.

Q. The October 3rd order goes on to say "In performing his work, the expert shall refer to the technical task with which he is charged, without making any value judgments, will perform the duties in accordance with the law, and also comply with the orders pertaining to ensuring that the samples are obtained -- that the samples obtained are properly secured, sealed and signed by the parties if they wish to do so, that two duplicate samples are provided, one for the laboratory deemed appropriate by the expert, and whose results will provide the basis for supporting the expert reports, and the second one for a testing laboratory, whose results will be saved and submitted to the court at the time that the expert opinion is filed so that the results obtained by two laboratories

1 DONZIGER

2 may be compared. The transparency of the  
3 expert's work will be ensured, and the  
4 parties shall have access to that work."

5 Do you see that?

6 A. Yes.

7 Q. Were you aware that the Lago  
8 Agrio court had ordered with regard to  
9 Mr. Cabrera's work that "the transparency  
10 of the expert's work will be ensured and  
11 the parties shall have access to that  
12 work"?

13 A. I became aware at a certain  
14 point that Mr. Cabrera had represented  
15 that his work was transparent, but I don't  
16 think I was aware of this particular order  
17 until now.

18 Q. You weren't aware that the Lago  
19 Agrio court had ordered that his work be  
20 transparent?

21 A. Well, I was aware that the  
22 court had made general -- various  
23 statements about his need to be  
24 independent and transparent and he had  
25 also attested to that.

1 DONZIGER

2 Q. And did you understand, by  
3 "transparent," that Mr. Cabrera's work  
4 needed to be public?

5 A. I don't really feel like I ever  
6 understood what that meant.

7 Q. Did you inquire of the court  
8 what it meant by "transparent"?

9 A. No.

10 Q. If you look at the numbered  
11 page 6 of Exhibit 106, towards the bottom  
12 of the page, the court states "With regard  
13 to the request made by Adolfo Callejas  
14 Ribadeneira at 9:50 a.m. on 6 July 2007,  
15 add its contents to the court record, and  
16 issue an order to the expert that he must  
17 perform his work in an impartial manner  
18 and independently with respect to the  
19 parties, as well as comply with the  
20 requirements contained in the Code of  
21 Civil Procedure for the appointment and  
22 performance of experts."

23 Do you see that?

24 A. Yes.

25 Q. Were you aware that in October

1 DONZIGER

2 the Lago Agrio court had reminded Cabrera,  
3 he and the parties, that he needed to  
4 perform his work independently with  
5 respect to the parties?

6 A. Again, I was not aware of this  
7 order when it came out. But I knew  
8 generally that was a court requirement.

9 Q. That he not work with the  
10 parties, correct?

11 A. No, that he be independent.

12 Q. And you understood that to mean  
13 independent of the parties?

14 A. I think how the court and the  
15 process in Ecuador defined independent, as  
16 I understood it, based on what local  
17 counsel was telling me, was that he could  
18 take work from the parties as long as he  
19 exercises independent judgment in  
20 reviewing it and deciding whether to adopt  
21 it.

22 Q. Further down on page 6 of  
23 Exhibit 106, the court states "In  
24 reference to the persons acting as  
25 assistants to the expert in the sampling

1 DONZIGER

2 and other work being performed by the  
3 expert, these must be independent from the  
4 two parties."

5 Do you see that?

6 A. Yes.

7 Q. Were you aware that Cabrera's  
8 sampling team was required to be  
9 independent of the two parties?

10 A. Independent as defined by the  
11 process in Ecuador, yes.

12 Q. Are you aware of any court  
13 order that says that "independent of the  
14 parties" means he can interact with the  
15 parties as long as he exercises some  
16 independent judgment?

17 THE SPECIAL MASTER: That calls  
18 for a yes or no answer.

19 A. No.

20 Q. Plaintiffs were directly  
21 involved with Cabrera's sampling team,  
22 correct?

23 A. I believe there was some  
24 interaction, yes.

25 Q. And the head of Cabrera's

1 DONZIGER

2 sampling team attended the March 3rd, 2007  
3 meeting with Mr. Cabrera, correct?

4 A. I don't know.

5 Q. If you look at page 10 of  
6 Exhibit 106, a little more than halfway  
7 down, the court states "The parties were  
8 notified of the brief filed at 3:15 p.m.  
9 on 23 July '07 by Richard Cabrera, add to  
10 the record and notify the parties of its  
11 contents. In addition, the role of the  
12 expert is one of complete impartiality and  
13 transparency with respect to the parties  
14 and their attorneys."

15 Do you see that?

16 A. Yes.

17 Q. Was it your experience that  
18 when Mr. Cabrera filed things with the  
19 court, the parties were notified of those  
20 filings and provided copies?

21 A. Yes.

22 Q. If you look at page 17 of  
23 Exhibit 106, a little more than halfway  
24 down that page, the Ecuadorian court  
25 states "The expert has agreed to be



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DONZIGER

responsible for all information and conclusions contained in the expert report. The activity of the assistants is included in the sworn -- in the oath sworn by expert Richard Cabrera, who was appointed as the sole expert."

Do you see that?

A. Yes.

Q. Were you aware that the court had ordered that Mr. Cabrera had to be responsible for all information and conclusions contained in the global expert report?

A. That was my understanding.

Q. Was it your understanding that the orders with regard to Mr. Cabrera's independence and transparency and impartiality applied to his other team members as well?

A. I assume, although I wasn't aware of this order.

Q. In representing the Lago Agrio plaintiffs, did you not make it your practice to be familiar with the court's

1 DONZIGER

2 orders?

3 A. Not every one, no.

4 Q. In analyzing these issues as  
5 they relate to Cabrera, have you  
6 identified any Lago Agrio court order  
7 prior to January 30th of 2008 that allowed  
8 the plaintiffs to submit any materials to  
9 Cabrera?

10 THE SPECIAL MASTER: Yes or no.

11 A. Yes.

12 Q. What was the date of that  
13 order?

14 A. I think as I understand it  
15 there were a couple of orders. There was  
16 one in January of '08 and I believe there  
17 might have been in August of '07.

18 Q. Can you give me the date of the  
19 August '07 order, please?

20 A. I don't know it as I sit here  
21 today.

22 Q. And what are you contending  
23 this August '07 order says?

24 A. I think they were both orders  
25 by the court to solicit in some way or

1 DONZIGER

2 another from the parties materials that  
3 they wanted to give to the court expert.

4 Q. We looked at the January 30th  
5 order last time. That's the one  
6 requesting aerial photos and two other  
7 categories of information from Cabrera.  
8 Do you recall that?

9 A. Yes.

10 Q. The August order, did it  
11 request information from both parties or  
12 just from Chevron or a third party?

13 A. I'm not sure.

14 Q. Other than those orders, are  
15 you aware of any order prior to January  
16 30th of '08 that allowed the parties to  
17 submit materials to Cabrera?

18 A. Well, other than the one in  
19 August that I just referenced, no.

20 Q. And if that August order only  
21 applies to Cabrera, you are unaware of any  
22 orders --

23 THE SPECIAL MASTER: I think  
24 you misspoke.

25 Q. Chevron, I'm sorry.

1 DONZIGER

2 If that August order related  
3 only to Chevron, you are unaware of any  
4 orders prior to January 30th, '08 that  
5 permitted the plaintiffs to provide  
6 materials to Cabrera, correct?

7 A. That's correct.

8 MS. NEUMAN: I'm going to mark  
9 as Exhibit 798 an order of the Lago Agrio  
10 court, November 29th, 2007.

11 (Exhibit 798 marked for  
12 identification.)

13 Q. Were you aware of the November  
14 29th, 2007 order with regard to  
15 Mr. Cabrera's work at or about the time it  
16 was issued by the Ecuadorian court,  
17 Mr. Donziger?

18 A. I don't believe so.

19 Q. If you look at page 1 of  
20 Exhibit 798, the November '07 order, a  
21 little more than halfway down, the court  
22 states "Concerning its content and  
23 petition, the judicial decision issued  
24 October 22nd, '07, at 5:10 p.m., is  
25 expanded upon to the effect that all

1 DONZIGER

2 documents that serve as support or a  
3 source of information for the work  
4 performed by the expert must be presented  
5 together with the report. At that time  
6 all those documents will be provided to  
7 the parties. For the foregoing reason, in  
8 his report the expert is required to cite  
9 all of the scientific sources and  
10 analytical and legal documents that he  
11 uses to perform his work."

12 Do you see that?

13 A. Yes.

14 Q. Were you aware that the Lago  
15 Agrio court had ordered that Cabrera cite  
16 in his report all the scientific sources  
17 and analytical and legal documents that he  
18 used to perform his work?

19 A. I was not aware of this order,  
20 no.

21 Q. And you would agree that  
22 Mr. Cabrera did not cite in his report as  
23 filed all scientific sources and  
24 analytical and legal documents that he  
25 used to perform his work, correct?

1 DONZIGER

2 A. I think he could have been much  
3 more inclusive in his cites, but I can't  
4 speak for him. There is different  
5 opinions about whether that is true or  
6 not.

7 THE SPECIAL MASTER: Can you  
8 answer that question directly, please?

9 Q. Would you agree that  
10 Mr. Cabrera did not cite in his report as  
11 filed all scientific sources and  
12 analytical and legal documents that he  
13 used to perform his work?

14 A. Yes.

15 Q. If you look at page 3 of the  
16 November 29th, 2007 order, the bottom  
17 quarter of the page, the court states  
18 "Furthermore, in accordance with the  
19 content of the petition, the expert is to  
20 limit the use of the information contained  
21 in the previous expert reports and to use  
22 his own results."

23 Do you see that?

24 A. Page 2?

25 Q. 3.

1 DONZIGER

2 A. Yes.

3 Q. Were you aware that the Lago  
4 Agrio court had ordered Cabrera to limit  
5 the use of information contained in the  
6 previous expert reports and to use his own  
7 results?

8 A. No.

9 Q. Stratus never submitted an  
10 expert report in the Lago Agrio case,  
11 correct?

12 A. That's correct.

13 Q. Would you agree that Cabrera in  
14 fact used materials beyond his own results  
15 and those of the other filed expert  
16 reports in the Lago Agrio case?

17 A. Yes.

18 MS. NEUMAN: I'm going to mark  
19 as Exhibit 799 an order of the Lago Agrio  
20 court from April 14th, 2008.

21 (Exhibit 799 marked for  
22 identification.)

23 Q. Were you aware of this order of  
24 the Lago Agrio court, Mr. Donziger, at or  
25 about the time it was issued?

1 DONZIGER

2 A. I don't believe so.

3 Q. In this November 14th, 2008  
4 order, which actually came out after  
5 Mr. Cabrera filed his April report, but  
6 before he filed his response to comments,  
7 the court stated "With regard to the  
8 requests, the expert must conduct his own  
9 investigations which he shall use as the  
10 primary basis for his report, but he shall  
11 not be prohibited from using information  
12 contained in other expert reports."

13 Do you see that?

14 A. Yes.

15 Q. Were you aware that the Lago  
16 Agrio court had ordered Cabrera that he  
17 must conduct his own investigations which  
18 he shall use as the primary basis for his  
19 report?

20 A. I was not aware of that, no.

21 Q. Do you agree that Cabrera did  
22 not use his own investigation as the  
23 primary basis for his report?

24 A. No.

25 Q. I want to go back to the



1 DONZIGER

2 subject of the Stratus work on the  
3 peritaje global.

4 You were the one that gave  
5 Stratus the instruction to produce  
6 separate annexes by topic, correct?

7 A. Yes.

8 Q. And you instructed Stratus  
9 which topics to draft annexes for,  
10 correct?

11 A. I think we had that discussion,  
12 yes.

13 Q. And you also told Stratus which  
14 damage categories to address, correct?

15 A. I believe so.

16 Q. And in coming up with the annex  
17 topics and damage categories, did you base  
18 those on discussions with Mr. Cabrera?

19 A. No.

20 Q. Did you come up with those  
21 independently on your own?

22 A. I think it was a product of  
23 discussions with different people on our  
24 team.

25 Q. When you say "our team," you

1 DONZIGER

2 mean the plaintiffs' team?

3 A. Lago Agrio plaintiffs.

4 Q. So the annex categories and  
5 damage categories that you provided to  
6 Stratus were developed exclusively by the  
7 plaintiffs' team; is that right?

8 A. I believe so.

9 MS. NEUMAN: I'm going to mark  
10 as Exhibit 810 an outline of the peritaje  
11 global, Stratus Native 063272.

12 (Exhibit 810 marked for  
13 identification.)

14 Q. Have you seen Exhibit 810  
15 before, Mr. Donziger?

16 A. I believe I have, yes.

17 Q. This is a draft outline for the  
18 peritaje global report sent to you by Doug  
19 Beltman on or about January 4th, 2008,  
20 correct?

21 A. Yes.

22 Q. And Exhibit 810 was prepared a  
23 couple of weeks after you and Mr. Beltman  
24 and Ms. Maest had met with Mr. Cabrera in  
25 Quito, correct?

1 DONZIGER

2 A. Yes.

3 Q. Is it your understanding that  
4 this outline was drafted by Mr. Beltman?

5 A. I believe it was.

6 Q. When you received the outline  
7 from Mr. Beltman, did you send it to  
8 anyone else?

9 A. I don't remember.

10 Q. Did you provide it to  
11 Mr. Cabrera?

12 A. I don't believe so.

13 Q. Is the outline for the  
14 preparation of the summary report and  
15 annexes to make up a peritaje global  
16 report?

17 A. I'm sorry, is there a question?

18 Q. Yes.

19 Is that what the outline is  
20 for, the peritaje global report, the  
21 executive summary and annexes?

22 A. It is for materials that  
23 Stratus was going to prepare that we hoped  
24 he would adopt.

25 Q. And those materials were in the

1 DONZIGER

2 form of an executive summary with annexes,  
3 correct?

4 A. Yes. Ultimately, yes.

5 MS. NEUMAN: I'm going to mark  
6 as Exhibit 811 an e-mail exchange between  
7 Mr. Beltman and Mr. Donziger,  
8 DONZ00025752.

9 (Exhibit 811 marked for  
10 identification.)

11 Q. Have you seen Exhibit 811  
12 before, Mr. Donziger?

13 A. I believe I have.

14 Q. This is a budget provided to  
15 you by Stratus with regard to the work  
16 they were planning to do on the Ecuador  
17 case as of January 29th -- I'm sorry,  
18 January 28th, 2008, correct?

19 A. Yes.

20 Q. In Exhibit 811, Mr. Beltman  
21 writes "The attached Word file is a budget  
22 estimate for upcoming work starting in  
23 February. The work is split into two  
24 tasks, providing technical assistance with  
25 the upcoming report and providing ongoing

1 DONZIGER

2 technical support for the mediation. The  
3 cost estimate for the upcoming report is  
4 based on our meeting of last week where we  
5 developed an outline, specific list of  
6 task, and assignments."

7 Do you see that?

8 A. Yes.

9 Q. The report being referred to  
10 there is the Cabrera report, correct?

11 A. Well, the materials that they  
12 were going to prepare.

13 Q. The report that they were going  
14 to prepare, correct?

15 A. Well, the work they were going  
16 to do as reflected in that outline.

17 Q. When he uses the phrase  
18 "upcoming report," he is referring to the  
19 Cabrera report, correct?

20 A. I believe so.

21 Q. If you look at the last page of  
22 Exhibit 811, it sets out who is going to  
23 work on the matter under Stratus, what  
24 their billing rates are, and at the top of  
25 the second column, it reads Support for

1 DONZIGER

2 Preparation of PG Report and Annexes.

3 Do you see that?

4 A. Yes.

5 Q. And that refers to the  
6 preparation of the peritaje global report  
7 and its annexes, correct?

8 A. Support, yes.

9 Q. And down at the bottom there is  
10 an indication that Bill Powers is going to  
11 work on the matter. He is budgeted  
12 \$12,000. Do you see that?

13 A. Yes.

14 Q. It indicates "PE infrastructure  
15 costs; avoided costs" next to Mr. Powers'  
16 name?

17 A. Correct.

18 Q. That is the annex that  
19 Mr. Powers ultimately drafted, correct?

20 A. I believe so.

21 MS. NEUMAN: I'm going to mark  
22 as Exhibit 812 an e-mail exchange between  
23 Mr. Beltman and Stratus personnel, Stratus  
24 Native 044578.

25 (Exhibit 812 marked for

1 DONZIGER

2 identification.)

3 Q. Have you ever seen Exhibit 812  
4 before, Mr. Donziger?

5 A. I don't believe so.

6 Q. In this e-mail, Mr. Beltman  
7 indicates to others at Stratus "Just spoke  
8 with Steven. He will send us approval for  
9 our budget and SOW that was for us to  
10 provide lots of support from now through  
11 the end of March to work on all the  
12 aspects of the submittal that we've  
13 discussed."

14 Do you see that?

15 A. Yes.

16 Q. Is "the submittal" referring to  
17 the Cabrera report?

18 A. The materials that were going  
19 to be given to Cabrera, Mr. Cabrera.

20 Q. Do you know what the reference  
21 SOW refers to?

22 A. No.

23 Q. Mr. Beltman goes on to say "Jen  
24 to work with Tania, Olga, etc., on the  
25 database." Do you see that?

1 DONZIGER

2 A. Yes.

3 Q. Is that referring to Jennifer  
4 Peers?

5 A. I believe so.

6 Q. And Olga is the person on  
7 plaintiffs' technical team in Ecuador,  
8 correct?

9 A. I believe so.

10 Q. It goes on to say "and to work  
11 with Luis on the QA/QC annex." Do you see  
12 that?

13 A. Yes.

14 Q. Does that refer to Luis  
15 Villacreces?

16 A. I believe so.

17 Q. And the QA/QC annex was to be  
18 an annex to the Cabrera report?

19 A. All the annexes were to be  
20 prepared to turn over to Mr. Cabrera for  
21 his hoped-for adoption.

22 Q. Are you aware of any e-mail  
23 correspondence that discusses the concept  
24 that the materials that Stratus was  
25 preparing were going to be considered by



1 DONZIGER

2 Cabrera?

3 A. I don't know. No, not as I sit  
4 here.

5 MS. NEUMAN: I'm going to mark  
6 as Exhibit 813 an e-mail exchange from  
7 February 9th of '08, DONZ00021500.

8 (Exhibit 813 marked for  
9 identification.)

10 Q. Is Exhibit 813 an e-mail  
11 exchange that you had with Doug Beltman of  
12 Stratus and Joe Kohn?

13 A. Yes.

14 Q. In February of '08?

15 A. Yes.

16 Q. And is Exhibit 813 the e-mail  
17 by which you approved the budget Stratus  
18 submitted for its work on the peritaje  
19 global report and annexes that we  
20 previously marked as Exhibit 811?

21 A. Yes.

22 Q. Was Mr. Kohn aware of the  
23 details of the work that Stratus was doing  
24 with regard to the peritaje global report?

25 A. I don't know if he was aware of

1 DONZIGER

2 all the details.

3 Q. He was involved at least in  
4 approving the budget for that work,  
5 correct?

6 A. I believe he was involved in  
7 approving the budget on Exhibit 811.

8 Q. I'm going to mark as Exhibit --  
9 oh, it is already marked. I will provide  
10 the witness a document previously marked  
11 as Exhibit 53.

12 Have you seen Exhibit 53  
13 before, Mr. Donziger?

14 A. I assume I have based on this  
15 e-mail. I don't remember from the time.

16 Q. Exhibit 53 is a February 8th,  
17 '08 e-mail exchange from Doug Beltman to  
18 Steven Donziger, CC'd to Ann Maest,  
19 Jennifer Peers, Brian Lazar and Pablo  
20 Fajardo, attaching draft outline for the  
21 PG report. Do you see that?

22 A. Yes.

23 Q. Do you know who made the  
24 redlines on this outline?

25 A. No.

1 DONZIGER

2 Q. This is version 2 of the  
3 outline for the peritaje global report.  
4 We saw version 1 earlier. Do you know who  
5 was involved in making the changes between  
6 versions 1 and 2?

7 A. No.

8 Q. To your knowledge, was the  
9 outline for the peritaje global report  
10 edited by anyone other than plaintiffs'  
11 counsel and consultants between versions 1  
12 and 2?

13 A. No.

14 Q. The as-filed version of the  
15 Cabrera report contains all of the topic  
16 sections listed in Exhibit 53, correct?

17 A. I'm sorry, what's your  
18 question?

19 Q. If you look at the outline  
20 itself, the topics that are listed there,  
21 those are the same topics that appear in  
22 the as-filed Cabrera report, correct?

23 A. I have never compared the two.

24 Q. Is it your testimony you have  
25 never done a comparison between the

1 DONZIGER

2 executive summary and annexes that  
3 plaintiffs provided to Cabrera and what he  
4 actually filed?

5 A. I don't think I have ever sat  
6 down and looked at -- done a comparison,  
7 no.

8 Q. Is the reason that you didn't  
9 need to do a comparison because Cabrera  
10 signed the report that plaintiffs provided  
11 to him?

12 A. Well, I knew that he adopted  
13 pretty much verbatim what had been  
14 provided to him.

15 Q. I'm going to provide the  
16 witness with a document previously marked  
17 as Exhibit 149.

18 Do you recognize the document  
19 as the as-filed Cabrera report,  
20 Mr. Donziger, the main body of it?

21 A. Yes.

22 Q. With an English translation.  
23 Well, actually, it doesn't have a  
24 translation.

25 If you turn to page 3 of

1 DONZIGER

2 Exhibit 149, do you see it starts with a  
3 Declaration of Findings?

4 A. I'm looking at the Spanish  
5 version.

6 Q. Yes.

7 A. Yes.

8 Q. And that's consistent with the  
9 outline that Stratus drafted in Exhibit  
10 53?

11 A. Yes.

12 MR. KAPLAN: Objection,  
13 relevance, to this line of questioning.

14 THE SPECIAL MASTER: Overruled.

15 Q. If you look at page 7 of 60 of  
16 Exhibit 149, do you see that the next  
17 section Mr. Cabrera has in his report is  
18 consistent with the Evaluation of  
19 Contamination Caused By Chevron heading in  
20 the Stratus outline for the report?

21 A. Yes.

22 Q. If you turn to page 31 of 60,  
23 the fourth heading, you see that that is  
24 consistent with the next heading in the  
25 Stratus outline, Evaluation of Human

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Impacts?

A. Yes.

Q. If you turn to page 38 of 60 of Exhibit 149, the next section of the Cabrera report is consistent with the Stratus outline that indicates the next section will be Evaluation of Ecological Impacts, correct?

A. Yes.

Q. If you would turn to page 45 of 60 of Exhibit 149, the next section of the Cabrera report is Actions to Repair the Harm, consistent with the Stratus outline, correct?

A. Yes.

Q. And if you would turn to page 52 of 60 of Exhibit 149, the next section is Lost Value Caused By Contamination, also consistent with the Stratus outline, correct?

A. Yes.

Q. Did plaintiffs' team, including Stratus, write the entirety of the executive summary of the Cabrera report?

1 DONZIGER

2 A. I don't know the answer to  
3 that. I believe that maybe, but at a  
4 minimum the vast majority was adopted by  
5 him.

6 Q. Now, do you still have Exhibit  
7 53 in front of you, sir?

8 THE SPECIAL MASTER: Excuse me,  
9 by "adopted," you mean word for word  
10 adopted?

11 THE WITNESS: Yes, verbatim.

12 A. I'm sorry, 53, yes.

13 Q. Could you turn to the page  
14 where it says Part 2, Annexes.

15 A. Yes.

16 Q. It says List of Annexes for PG  
17 Report. Do you see that?

18 A. Yes.

19 Q. And there is a chart of sorts.  
20 It has four columns. The first column is  
21 PG Report Section, Annex, Who Will  
22 Prepare, and then Attribution in the PG  
23 Report. Do you see that?

24 A. Yes.

25 Q. Do you know who created this

1 DONZIGER

2 chart?

3 A. I assume it was Stratus.

4 Q. The "Who Will Prepare"  
5 indicates who is going to write the  
6 particular annex; is that your  
7 understanding?

8 A. The draft, yes.

9 Q. And then the Attribution in PG  
10 Report indicates whose name is going to be  
11 put on the annex, correct?

12 A. Yes.

13 Q. And in that column where it  
14 says Richard, that refers to Richard  
15 Cabrera, correct?

16 A. I believe so.

17 Q. So, for example, the  
18 contamination annex was going to be  
19 written by the Quito office of Stratus,  
20 but attributed to Richard Cabrera,  
21 correct?

22 A. Assuming he would adopt it,  
23 yes.

24 Q. If you turn to the next page,  
25 in addition to Mr. Cabrera, there is the



1 DONZIGER

2 names of other persons for different  
3 annexes. Do you see that?

4 A. Yes.

5 Q. So, for example, if you see  
6 number 4, Ecological Impacts, ecological  
7 risk assessment will be drafted by  
8 Stratus, but attributed to Lorena. Do you  
9 see that?

10 A. Yes.

11 Q. Lorena was a member of  
12 Cabrera's independent team, correct?

13 A. I don't know.

14 Q. Do you have an understanding as  
15 to how it was determined who the various  
16 portions of the peritaje global report  
17 that Stratus was drafting were going to be  
18 attributed to?

19 A. None other than an awareness  
20 that Stratus was trying to find people who  
21 had the relevant expertise in that area.

22 Q. And basically what Stratus was  
23 trying to do was if they wrote a report on  
24 a certain topic, they wanted to put on the  
25 report as the author someone who could

1 DONZIGER

2 have written it?

3 A. Well, my understanding was that  
4 would happen only after that person  
5 reviewed it and accepted the findings or  
6 conclusions that were in it.

7 Q. So were they talking to all  
8 these people at this point in time,  
9 Stratus?

10 A. I don't know. I believe at  
11 least some of them.

12 Q. Did you have a protocol with  
13 Stratus pursuant to which they would  
14 remove the names of the original authors  
15 of the materials and apply Cabrera's name  
16 instead?

17 A. I don't know.

18 Q. Do you know who Ceron is?

19 A. I don't know. I think he is an  
20 Ecuadorian expert in that topic.

21 Q. In plant surveys?

22 A. Or just biotics or something to  
23 that effect.

24 Q. You are aware he was a member  
25 of Cabrera's team?

1 DONZIGER

2 A. No.

3 Q. Do you know why the report that  
4 he drafted on biotics was not submitted as  
5 part of Cabrera's report?

6 A. No.

7 Q. Are you aware you produced a  
8 copy of that report?

9 A. I produced a copy?

10 Q. Yes, sir.

11 A. No, I'm not aware of that.

12 Q. Do you know who Gallo is?

13 A. I believe he was an Ecuadorian  
14 person who had relevant expertise in that  
15 area, but I don't know that I met him.

16 Q. When you say "that area," do  
17 you mean animal surveys?

18 A. Yes.

19 Q. Do you know whether or not  
20 Mr. Gallo was on Cabrera's team?

21 A. No.

22 Q. Do you know why Stratus had  
23 copies of the Ceron and Gallo reports?

24 A. I assume they either drafted  
25 them or they were given to them by the

1 DONZIGER

2 individuals. I don't know.

3 Q. Are you aware of Mr. -- I'm  
4 sorry, of Dr. Gallo stating that he was  
5 told by Mr. Fajardo not to provide his  
6 work to anyone?

7 A. No.

8 Q. Are you aware that the reports  
9 from these Ecuadorian scientists are not  
10 consistent with the Annex O submitted on  
11 ecological damages submitted by Stratus?

12 A. No.

13 Q. Were you involved in any kind  
14 of decision-making to reject the work of  
15 Dr. Gallo and Mr. Ceron in favor of the  
16 work by Stratus?

17 A. I don't remember. I don't  
18 think I was involved in that decision.  
19 But I might have been consulted. I don't  
20 know.

21 Q. I will provide the witness a  
22 document previously marked as Exhibit 54.

23 Have you seen Exhibit 54  
24 before, Mr. Donziger?

25 A. I don't believe so.

1 DONZIGER

2 Q. This is an e-mail in which  
3 Mr. Beltman is discussing with the Stratus  
4 team the Ecuador annex schedule. Do you  
5 see that?

6 A. Yes.

7 Q. In February 26th of '08. And  
8 we are on outline version 3. Do you see  
9 that?

10 A. Yes.

11 Q. Can you turn to the page of  
12 Exhibit 54 where the Part 2, Annex, chart  
13 appears again.

14 A. Yes.

15 Q. There is now another column  
16 that has been added called Notes. Do you  
17 see that?

18 A. Yes.

19 Q. Do you know who added this  
20 additional column to the chart?

21 A. No.

22 Q. Under "Attribution in Peritaje  
23 Global Report," the name Richard refers to  
24 Richard Cabrera, correct?

25 A. I believe so.

1 DONZIGER

2 Q. And under "Who Will Prepare,"  
3 "Quito office" is a reference to  
4 plaintiffs' office in Quito, correct?

5 A. I believe so, yes.

6 Q. Under Notes in the first  
7 column, it says "Tania is going to work on  
8 a new template that uses the stacked bars  
9 in proportion to heights. Doug gave Tania  
10 Ann's template table."

11 Do you see that?

12 A. Yes.

13 Q. Tania is Tania Naranjo?

14 A. I believe so, yes.

15 Q. And she worked on the  
16 plaintiffs' team, correct?

17 A. Yes.

18 Q. It goes on to say "Status of  
19 database on Cabrera data. Ann will work  
20 with Luis V to resolve issues with the  
21 Cabrera data."

22 Do you see that?

23 A. Yes.

24 Q. What were the issues with the  
25 Cabrera data?

1 DONZIGER

2 A. I don't know.

3 Q. Plaintiffs at this time had  
4 full access to Cabrera's data as collected  
5 during his inspections, correct?

6 A. I don't know.

7 Q. And the next entry, "Luis V"  
8 refers to Luis Villacreces?

9 A. Villacreces, yes.

10 Q. Go two pages further in to  
11 Exhibit 54.

12 THE SPECIAL MASTER: Excuse me  
13 a second.

14 That same box, and this is the  
15 Operations, referring to an annex which  
16 seems to have the title CVX Operations  
17 History, do you see that?

18 THE WITNESS: Yes.

19 THE SPECIAL MASTER: Under the  
20 column heading Who Will Prepare, it sees  
21 "Quito office (already written)"?

22 THE WITNESS: Yes.

23 THE SPECIAL MASTER: Then in  
24 the Notes, it says "Luis V gave a draft  
25 copy to Doug on 2.21." That is February

1 DONZIGER

2 21, right?

3 THE WITNESS: Yes.

4 THE SPECIAL MASTER: And it  
5 goes on to say "it is on my hard drive."

6 That is referring to  
7 Mr. Beltman; is that it? Is that what  
8 that refers to?

9 THE WITNESS: If he wrote it, I  
10 would assume.

11 THE SPECIAL MASTER: Then the  
12 next sentence reads "need to send to  
13 Steven for his review."

14 Do you see that?

15 THE WITNESS: Yes.

16 THE SPECIAL MASTER: The Steven  
17 is you?

18 THE WITNESS: I assume so.

19 THE SPECIAL MASTER: And did  
20 you review the drafts that were created by  
21 Stratus of the annexes that are listed  
22 here?

23 THE WITNESS: I reviewed some  
24 of them. I don't believe all of them.

25 THE SPECIAL MASTER: The



1 DONZIGER

2 majority, would you say?

3 THE WITNESS: I'm not sure I  
4 would say that.

5 THE SPECIAL MASTER: Okay. You  
6 were certainly aware that Stratus was  
7 drafting the annexes, correct?

8 THE WITNESS: Yes.

9 BY MS. NEUMAN:

10 Q. Could you turn two more pages  
11 into Exhibit 54, please, Mr. Donziger.

12 Are you on the page that begins  
13 with number 3, Human Impacts?

14 A. Yes.

15 Q. And under number 4, Ecological  
16 Impacts, again, we see the names of Ceron  
17 and Gallo. Do you see that?

18 A. Yes.

19 Q. Were either of those persons  
20 working directly with the plaintiffs'  
21 team?

22 A. I don't know.

23 Q. Do you know whether or not they  
24 were paid by the plaintiffs' team, either  
25 of them?

1 DONZIGER

2 A. I don't know.

3 Q. Next to their names where it  
4 says "SC has," do you know what that  
5 refers to?

6 A. No.

7 Q. Could you turn to the next page  
8 of Exhibit 54 where the chart says, number  
9 6, Lost Value.

10 A. Yes.

11 Q. And do you see underneath the  
12 chart, it says "Question for" -- "2-21-08,  
13 Questions for the Attorneys"?

14 A. Yes.

15 Q. And the first entry under that  
16 heading is "For costs to improve current  
17 PE infrastructure - 40 percent of current  
18 produced water comes from the Liberator  
19 field, which is PetroEcuador only (no  
20 Texaco). Do we include? Same for gas  
21 flares. Luis says need to ask Pablo."

22 Do you see that?

23 A. Yes.

24 Q. Were you involved in the  
25 decision to include the Liberator field in

1 DONZIGER

2 the annex on PE infrastructure despite the  
3 fact that it was only a PetroEcuador  
4 operation?

5 A. I don't believe so.

6 Q. Do you know who made that  
7 decision among the plaintiffs' attorneys?

8 A. No.

9 Q. If you turn to the next page,  
10 where the questions for attorneys  
11 continue, about halfway down, it says "How  
12 do we deal with the ongoing PEPDA cleanup?  
13 They're cleaning up scores and scores of  
14 sites, we have no or little data on how  
15 good the cleanup is. Our cost estimates  
16 assume they haven't done anything, yet  
17 they have??"

18 Do you see that?

19 A. Yes.

20 Q. You were aware that PEPDA was  
21 conducting a cleanup of the area, right?

22 A. What they called a cleanup,  
23 yes.

24 THE SPECIAL MASTER: Strike  
25 that. Answer the question.

1 DONZIGER

2 A. No, it wasn't a cleanup in my  
3 opinion.

4 THE SPECIAL MASTER: These  
5 words here, "how do we deal with the  
6 ongoing PEPDA cleanup," those words were  
7 written by Mr. Beltman, correct?

8 THE WITNESS: I already  
9 testified I don't know who wrote this  
10 document. I assume it came from Stratus.

11 THE SPECIAL MASTER: And they  
12 were the experts, correct?

13 THE WITNESS: They are the  
14 experts, yes.

15 THE SPECIAL MASTER: PEPDA  
16 stands for PetroEcuador?

17 THE WITNESS: It is a division  
18 of PetroEcuador, is my understanding.

19 THE SPECIAL MASTER: I'm sorry,  
20 Ms. Neuman, go on.

21 Q. It is then written "Luis says  
22 proceed with the data we have. We  
23 essentially ignore it." Do you see that?

24 A. Yes.

25 Q. Were you involved in the

1 DONZIGER

2 decision to have the annexes drafted by  
3 Stratus ignore the ongoing PEPDA cleanup?

4 A. I don't remember. I don't  
5 believe so.

6 Q. Do you know which Luis that  
7 would refer to?

8 A. I would assume it would be Luis  
9 Villacreces.

10 Q. If you go down under Notes on  
11 2.22, do you see that?

12 A. Yes.

13 Q. It says "Luis told me this  
14 about the PEPDA cleanup costs: The  
15 'public' value they've been using is  
16 approximately \$60 per cubic meter. But he  
17 says that some people he knows with  
18 PetroEcuador did a calculation of the real  
19 cost, since the \$60 doesn't include some  
20 things that PetroEcuador is providing  
21 (like some labor, I think). He said they  
22 told him that the real cost is  
23 approximately \$200 per square meter. Luis  
24 will see what he can do about getting this  
25 number so Richard can use it."

1 DONZIGER

2 Do you see that?

3 A. Yes.

4 Q. Do you understand Richard to  
5 refer to Richard Cabrera?

6 A. I assume.

7 Q. Was Mr. Villacreces in ongoing  
8 contact with Mr. Cabrera during this time?

9 A. I don't know.

10 Q. You don't have any idea?

11 A. I had assumed people in our  
12 office had contact with him. I don't know  
13 specifically if he did.

14 Q. And by "him," you mean Richard  
15 Cabrera?

16 A. Yes.

17 Q. It goes on to say "Maybe a  
18 pers. comm. between Richard and  
19 PetroEcuador? Luis thinks probably not in  
20 writing because of politics."

21 Do you see that?

22 A. Yes.

23 Q. Do you know whether Mr. Cabrera  
24 met personally with people from  
25 PetroEcuador?

1 DONZIGER

2 A. No.

3 Q. Did plaintiffs ever attempt to  
4 arrange for such a meeting?

5 A. I don't know.

6 Q. Did plaintiffs have contacts at  
7 PetroEcuador that they worked with on an  
8 ongoing basis?

9 A. There were ongoing contacts by  
10 the plaintiffs with PetroEcuador. I don't  
11 know if it was with a particular  
12 individual.

13 Q. Was there anybody there that  
14 you dealt with on a regular basis at  
15 PetroEcuador?

16 A. No.

17 Q. If you look back --

18 THE SPECIAL MASTER: Excuse me  
19 a second. I just thought of something I  
20 would like the answer to.

21 You said earlier that you did  
22 not regard what PetroEcuador did as a  
23 cleanup. Do you remember that?

24 THE WITNESS: Yes.

25 THE SPECIAL MASTER: Were they

1 DONZIGER

2 doing a "cleanup" pursuant to some  
3 agreement, contract, or order of the  
4 government?

5 THE WITNESS: My understanding  
6 is it was a program within PetroEcuador to  
7 clean up some of the pits.

8 THE SPECIAL MASTER: Did  
9 PetroEcuador claim that they did a  
10 cleanup?

11 THE WITNESS: It was -- well, I  
12 think the people doing the cleanup felt it  
13 was a cleanup, but we disagreed.

14 THE SPECIAL MASTER: Did you  
15 consider suing PetroEcuador for not doing  
16 what you considered to be a cleanup? Yes  
17 or no, please.

18 THE WITNESS: There has been a  
19 constant analysis as to whether or not  
20 that would be appropriate on our team, but  
21 we have chosen up to this point not to do  
22 that.

23 THE SPECIAL MASTER: In terms  
24 of this point, has someone looked into the  
25 statute of limitations to determine



1 DONZIGER

2 whether the statute has run in Ecuador?

3 Yes or no.

4 THE WITNESS: I don't know.

5 THE SPECIAL MASTER: I'm sorry,  
6 Ms. Neuman, go on.

7 Q. If you look on the same page on  
8 Exhibit 54, but back towards the top,  
9 under the questions for attorneys, it says  
10 "Need to figure out to whom Richard will  
11 attribute each of the annexes."

12 Do you see that?

13 A. I'm sorry, what page are you  
14 on?

15 Q. The same page we were just on.

16 A. Yes, I see that.

17 Q. Were you one of the attorneys  
18 involved in figuring out to whom Richard  
19 would attribute each of the annexes?

20 A. I don't know. I think I had on  
21 occasion discussions with Doug Beltman  
22 about what individuals would have the  
23 expertise that corresponded with the  
24 annexes that Stratus was preparing.

25 Q. Which individuals on Cabrera's

1 DONZIGER

2 team, you mean?

3 A. Yes.

4 Q. Did you ever discuss with  
5 Richard Cabrera whom the annexes that  
6 Stratus was drafting should be attributed  
7 to?

8 A. I don't believe so.

9 Q. I'm going to provide the  
10 witness with a document previously marked  
11 Exhibit 60.

12 Can you take a look at Exhibit  
13 60, Mr. Donziger, and let me know if  
14 that's a document you have seen before.

15 (Witness perusing document.)

16 THE SPECIAL MASTER: Ms. Neuman,  
17 the document I have has several pages in  
18 which there is Spanish without a  
19 translation. For example, page 12 of 15  
20 has an Appendix A, Quality Control  
21 Information from the Demandantes, etc.,  
22 etc. And then it reads "Por: Equipo  
23 Tecnico del" --

24 MS. NEUMAN: "Ing. Richard  
25 Cabrera."

1 DONZIGER

2 THE SPECIAL MASTER: Yes. Is  
3 there an English translation of that whole  
4 section somewhere?

5 MS. NEUMAN: You mean of just  
6 that phrase?

7 THE SPECIAL MASTER: Yes.

8 Mr. Donziger, yes, would you  
9 please, on page 12, tell me what that  
10 Spanish -- translate that Spanish for me.

11 THE WITNESS: You know what, I  
12 think the translations are actually at the  
13 very beginning. Oh, wait. So A, B and C  
14 are in English. D is in -- actually,  
15 maybe you should have my copy because it  
16 is in English.

17 MS. NEUMAN: That phrase is  
18 translated.

19 THE WITNESS: Demandantes, I'm  
20 sorry, it means plaintiffs. I think that  
21 is the only word in Spanish.

22 MS. NEWMAN: Then the phrase  
23 under the heading is translated as "by  
24 engineer Richard Stalin Cabrera Vega,  
25 expert for the court."

1 DONZIGER

2 THE SPECIAL MASTER: My  
3 colleague to my right says no, it actually  
4 means "by technical team of Richard  
5 Cabrera."

6 MS. NEUMAN: That's correct, I  
7 believe.

8 MR. CRIMMINS: It goes on to  
9 say "as a part of the expert examination."

10 THE SPECIAL MASTER: Okay.

11 Q. Is Exhibit 60 an e-mail with  
12 attachments that you received from Doug  
13 Beltman on or about March 12th of '08?

14 A. Yes.

15 Q. Mr. Beltman says he is  
16 attaching OC annex.doc, annex status  
17 table.xls. He then writes "Also sent to  
18 translator today. Updated status table is  
19 attached. Did you send the main report to  
20 Quito yet? If not, we now have a prettier  
21 formatted version."

22 Do you see that?

23 A. Yes.

24 Q. When he says Quito, he is  
25 referring to the plaintiffs' Quito office,

1 DONZIGER

2 correct?

3 A. I believe so, yes.

4 Q. And when he says "main report,"  
5 he means main body of the Cabrera report,  
6 correct?

7 A. Yeah, what's called the  
8 executive summary, I believe.

9 Q. If you turn to the second page  
10 of page 60, there is an Annex, Evaluation  
11 of Data Usability. Do you see that?

12 A. I'm sorry, page 2?

13 Q. Yes, sir. Page 2 of the  
14 exhibit.

15 A. I'm sorry, what's your  
16 question?

17 Q. Do you see the heading Annex,  
18 Evaluation of Data Usability?

19 A. Yes.

20 Q. This is an annex that Stratus  
21 has written in English, correct?

22 A. Yes.

23 Q. Underneath the English heading  
24 appears the phrase in Spanish "by the  
25 technical team of Engineer Richard

1 DONZIGER

2 Cabrera." Do you see that?

3 A. Yes.

4 Q. And it also bears the date in  
5 Spanish of March 24th, 2008. Do you see  
6 that?

7 A. Yes.

8 Q. Had you given Stratus  
9 instructions to indicate on these annexes  
10 that they were prepared by the technical  
11 team of Richard Cabrera?

12 A. I don't know if I gave them  
13 that specific instruction.

14 Q. If you look at the page that's  
15 numbered 12 of 15 of Exhibit 60, where we  
16 get to Appendix A, do you see it has that  
17 same indication?

18 A. Yes.

19 Q. And then if you flip through  
20 the next few pages of Exhibit 60, you will  
21 see that continues?

22 A. Yes.

23 Q. Were you involved in  
24 discussions where it was decided that all  
25 of the annexes that Stratus wrote would

1 DONZIGER

2 bear the legend that they were "by the  
3 technical team of Engineer Richard  
4 Cabrera"?

5 A. I don't remember. If I was, I  
6 was certainly aware that that was  
7 happening.

8 Q. And this was the protocol that  
9 Stratus used in drafting these annexes,  
10 was to put "the technical team of Richard  
11 Cabrera" on them and to predate them March  
12 24th, 2008, correct?

13 A. I have seen that on a number of  
14 these.

15 Q. And at that point in time that  
16 was the date on which Mr. Cabrera was due  
17 to file his report, correct?

18 A. I believe so.

19 Q. Can you go with me to the last  
20 page of Exhibit 60. This is the chart  
21 that is referred to in the re line of the  
22 original e-mail as annex status table.xls.

23 A. Yes.

24 Q. Do you see this chart tracks  
25 the annexes, who they were written by, the

1 DONZIGER

2 language they were written in, and whether  
3 or not the draft was finished and  
4 formatted. Do you see that?

5 A. Yes.

6 Q. Do you understand the  
7 formatting to include putting on the draft  
8 that it was written by Richard Cabrera's  
9 technical team?

10 A. At that point?

11 Q. Yes, sir.

12 A. I don't know if I did or  
13 didn't.

14 Q. And then there is a column  
15 further to the right that reads English  
16 Sent To SD For Review On, and then it  
17 indicates dates. Do you see that?

18 A. Yes.

19 Q. SD is Steven Donziger, correct?

20 A. Yes.

21 Q. Stratus was sending you the  
22 English versions of the annexes for your  
23 review, correct?

24 A. I believe so, yes.

25 Q. And the next column says



1 DONZIGER

2 Spanish Sent To SD For Review. Do you see  
3 that?

4 A. Yes.

5 Q. And then it indicates whether  
6 or not you have also received the Spanish  
7 version of each annex. Do you see that?

8 A. Yes.

9 Q. Did you review both the English  
10 and Spanish versions of the annexes  
11 drafted by Stratus?

12 A. I don't know. I don't believe  
13 so.

14 Q. You received them, however,  
15 correct?

16 A. I believe I received them. I  
17 don't know how many of them I reviewed or  
18 in what language.

19 THE SPECIAL MASTER: Are you  
20 going on to a new document?

21 MS. NEUMAN: Yes.

22 THE SPECIAL MASTER: Why don't  
23 we take a break at this point.

24 THE VIDEOGRAPHER: Off the  
25 record 10:41 a.m. This is the end of disk

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DONZIGER

one, Volume IX, deposition of Steven Donziger.

(Recess taken.)

THE VIDEOGRAPHER: Back on the record at 10:53 a.m. This is the beginning of disk two, Volume IX, in the deposition of Steven Donziger.

(Witness not present in the room.)

THE SPECIAL MASTER: Mr. Kaplan, I previously cautioned the witness several times. I'm afraid it is now my turn to caution you.

You made a relevance objection this morning. Unless I am dreaming and dreamt that I did something, which I didn't, I directed several sessions ago that all relevance objections be held until the next break. That is item one.

Item two, I didn't, at the time you made the objection, nor do I now, see the slightest basis for the objection.

What was the basis for the objection?

1 DONZIGER

2 MR. KAPLAN: That it was a  
3 waste of time for Counsel to be comparing  
4 one document with another document that  
5 did not require a witness. And the  
6 documents both speak for themselves. To  
7 the extent that the headings were  
8 consistent with each other or exactly the  
9 same words, it wasn't relevant  
10 examination, and in a normal deposition  
11 one would simply move quickly beyond it  
12 and not dwell on it.

13 I had in fact forgotten your  
14 directive. Now that you have reminded me,  
15 I will certainly obey it.

16 THE SPECIAL MASTER: I find it  
17 difficult to imagine anything that is more  
18 relevant to this case and this deposition.

19 The claim is being made here,  
20 among many others, is that the Cabrera  
21 report is a complete fraud and furthermore  
22 that it is nothing other than essentially  
23 a word by word copy of material that was  
24 drafted by the plaintiffs or the  
25 plaintiffs' experts.

1 DONZIGER

2 So the comparison of the  
3 outline with the actual findings allegedly  
4 made by Mr. Cabrera and signed by him is  
5 highly relevant. If you think it was just  
6 too long and unnecessary in that sense,  
7 that's another thing. But you are wrong  
8 about that. You were overruled.

9 Let's go on.

10 MR. KAPLAN: Shall someone else  
11 get the witness or shall I have the honor?

12 THE SPECIAL MASTER: You have  
13 the honor.

14 (Witness returns to the room.)

15 BY MS. NEUMAN:

16 Q. Mr. Donziger, do you still have  
17 Exhibit 60 handy?

18 A. Yes.

19 Q. The chart that showed the annex  
20 as going to you for review and Stratus  
21 tracking whether or not they have received  
22 comments from you, it is the last page of  
23 Exhibit 60.

24 Did anyone else on plaintiffs'  
25 legal team review the Stratus annexes

1 DONZIGER

2 before they were translated from English  
3 to Spanish?

4 A. I don't know.

5 Q. To your knowledge, did anyone  
6 else on plaintiffs' legal team review the  
7 Spanish versions of the annexes and  
8 provide comments on them to Stratus?

9 A. I don't know.

10 Q. Were you personally involved in  
11 the drafting of the executive summary of  
12 the Cabrera report?

13 A. I don't believe so.

14 Q. You didn't make edits to that  
15 document when it was in English?

16 A. I think I did make some edits.

17 Q. Do you know what DNPA is?

18 A. Is that an acronym?

19 Q. Yes, Direccion Nacional de  
20 Proteccion Ambiente, the Ecuadorian  
21 version of the EPA.

22 A. I knew it was some government  
23 agency.

24 Q. Are you aware that DNPA has  
25 approved PEPDA's remediation?

1 DONZIGER

2 A. No.

3 Q. Are you aware that local  
4 landowners near the sites remediated by  
5 PEPDA have also approved PEPDA's cleanup  
6 and signed releases?

7 A. No.

8 MS. NEUMAN: I'm going to mark  
9 as Exhibit 814 an e-mail from Doug Beltman  
10 to Steven Donziger with attachments. It  
11 is dated March 11th of 2008, Stratus  
12 Native 067410 through 067418.

13 (Exhibit 814 marked for  
14 identification.)

15 Q. Did you engage in the e-mail  
16 exchange shown on Exhibit 814 with  
17 Mr. Beltman in March of 2008?

18 A. Yes.

19 Q. If you look at the second page  
20 of the exhibit, the original e-mail in the  
21 chain is from you to Mr. Beltman on March  
22 11th saying "Do you have a copy of the  
23 overall report that I could send down to  
24 Ecuador even if complete?"

25 Do you see that?

1 DONZIGER

2 A. "Even if incomplete," I think.

3 Q. "Even if incomplete," I'm  
4 sorry.

5 A. Yes.

6 Q. You are referring to the  
7 executive summary of the Cabrera report?

8 A. I believe so.

9 Q. Was your role to interface  
10 between the plaintiffs' legal team in  
11 Ecuador and Stratus on the drafting of the  
12 peritaje global report?

13 A. I think that was not my role  
14 exclusively, but I would on occasion do  
15 that.

16 Q. Mr. Beltman responded to you  
17 saying "So here's the deal. We'll have a  
18 fairly complete version of what we (I) am  
19 doing in a couple of hours. Of the parts  
20 I'm writing, it will be missing only the  
21 infrastructure improvement costs from  
22 Powers, the unjust enrichment calcs (which  
23 are based on the costs from Powers),  
24 habitat restoration costs from Lorena, and  
25 whatever else Lorena is doing."

1 DONZIGER

2 Do you see that?

3 A. Yes.

4 Q. And Powers refers to Bill  
5 Powers, correct?

6 A. Yes.

7 Q. And Lorena refers to Lorena  
8 Gamboa of the plaintiffs' team?

9 A. I believe so.

10 Q. It goes on to say "However,  
11 there is nothing in there about human  
12 health impacts from the Maldonado and  
13 indigenous group reports. You are doing  
14 those, or at least that was the plan at  
15 one point."

16 Do you see that?

17 A. Yes.

18 Q. Were you to draft the annex on  
19 human health impacts?

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

21 Q. Were you to draft any portion  
22 of the report being submitted to Cabrera?

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

24 Q. Do you know why Mr. Beltman was  
25 under the impression that you were going



1 DONZIGER

2 to be drafting the human health impacts  
3 portion?

4 A. I believe at one point the idea  
5 was I would somehow supervise or get  
6 those -- get that work moving with whoever  
7 would do it, but not do the actual  
8 drafting.

9 Q. And in the next e-mail up, you  
10 respond "Great. I don't really want to do  
11 that part now."

12 That's referring to the  
13 drafting of the health impacts, correct?

14 A. I don't think it refers to the  
15 drafting.

16 Q. What does it refer to?

17 A. Just that aspect of the  
18 project.

19 Q. What is that aspect, if it is  
20 not the drafting?

21 A. Well, as I said, I don't  
22 believe my role was ever to actually  
23 draft. So it would be finding -- or  
24 getting that draft written by whoever  
25 would write it.

1 DONZIGER

2 Q. You go on to say "I don't have  
3 time. Let's get Juampa to do it in Quito  
4 next week under our supervision. I could  
5 also ask him now."

6 Do you see that?

7 A. Yes.

8 Q. Who is Juampa?

9 A. Juan Pablo Saenz.

10 Q. And he is a member of  
11 plaintiffs' team?

12 A. Yes.

13 THE SPECIAL MASTER: He is a  
14 lawyer?

15 THE WITNESS: That's correct.

16 Q. And then Mr. Beltman responds  
17 "Might as well ask him now so he has more  
18 time. Here's the outline with those  
19 sections highlighted in yellow."

20 And then if we look at the  
21 attachment to the e-mail, under the  
22 heading Human Impacts, do you see there is  
23 gray highlighting?

24 A. Yes.

25 Q. Where it says "human health

1 DONZIGER

2 effects, Maldonado annex and Sebastian."

3 Steven, is that a reference to  
4 yourself, Steven Donziger?

5 A. Yes.

6 Q. "Adverse health effects on  
7 human use (Steven), impacts to indigenous  
8 groups (Steven), and conclusions  
9 (Steven)."

10 Do you see that?

11 A. Yes.

12 Q. Those are all references to  
13 yourself, correct?

14 A. I believe so.

15 Q. And then under Actions To  
16 Repair Harm, "health clinics (annex)  
17 (Steven)."

18 That is a reference to you,  
19 correct?

20 A. Yes.

21 Q. Then on the next page,  
22 "territory purchase and other actions to  
23 help indigenous peoples (Steven)," that is  
24 a reference to you as well, correct?

25 A. Yes.

1 DONZIGER

2 Q. These sections of the peritaje  
3 global report that on this version of the  
4 outline had your name next to them were  
5 drafted ultimately by Juampa, correct?

6 A. I don't know.

7 Q. You don't know one way or the  
8 other?

9 A. I don't know who drafted them.  
10 As I read this, my memory is refreshed. I  
11 mean, I don't think I drafted anything,  
12 but maybe I did, I don't know. I don't  
13 really remember that being my role. I  
14 don't believe I did. But I think it was  
15 somebody else, it might have been  
16 Mr. Beltman, at the end of the day.

17 Q. Then if you look on E, Impacts  
18 To Indigenous Groups, do you see the name  
19 Maldonado?

20 A. Yes.

21 Q. Who does that refer to?

22 A. I think his name was Adolfo  
23 Maldonado.

24 Q. Is he a member of plaintiffs'  
25 team?

1 DONZIGER

2 A. He would occasionally assist us  
3 with projects, but he worked, as I  
4 understand it, with an environmental group  
5 in Quito.

6 Q. Accion Ecologica?

7 A. Yes.

8 Q. Did the plaintiffs' team ever  
9 pay Mr. Maldonado for his work?

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

11 Q. The next name, Jose Egas, who  
12 is that?

13 A. I don't know.

14 Q. Do you know whether or not he  
15 is a member of Cabrera's team?

16 A. I don't know.

17 Q. The next name, Luis C, who does  
18 that refer to?

19 A. I don't know.

20 Q. The next name, Nacho Benitas,  
21 do you know who that is?

22 A. No.

23 Q. Do you know if that is a member  
24 of Cabrera's team?

25 A. I don't know.

1 DONZIGER

2 Q. If you turn two more pages back  
3 to the page Bates numbered Stratus Native  
4 067415, you will see that the chart that  
5 we have seen in the other e-mails is still  
6 there?

7 A. Yes.

8 Q. And then there is a note at the  
9 top, "Now at least half of the annexes  
10 need to be drafted by February 29th. All  
11 draft annexes need to be finished no later  
12 than March 7th."

13 Do you see that?

14 A. Yes.

15 Q. Where did those deadlines come  
16 from?

17 A. I believe from Stratus.

18 Q. They were setting their own  
19 deadlines?

20 A. I believe so.

21 Q. If you turn on the next page,  
22 down at 2.10, Valuation of Potentially  
23 Relevant Environmental Standards, do you  
24 see that? It says "Sue H is writing."  
25 Who is that?

1 DONZIGER

2 A. I don't remember. I don't  
3 know.

4 Q. If you look at the next page,  
5 which bears the Bates number Stratus  
6 Native 067417, do you see there is a  
7 series of annexes that indicate they are  
8 complete or done?

9 A. Yes.

10 Q. Do you see that the Maldonado  
11 report on health issues, Maldonado is the  
12 author and it is to be attributed to  
13 Carlos Benes; do you see that?

14 A. Yes.

15 Q. Mr. Benes was a member of  
16 Mr. Cabrera's purported independent team,  
17 correct?

18 A. I don't know.

19 Q. On the indigenous report, it  
20 indicates that "Jose Egas, Luis C and  
21 Nacho Benitas have actually written the  
22 report and it is going to be attributed to  
23 them."

24 Do you see that?

25 A. Yes.

1 DONZIGER

2 Q. Then on the plant and animal  
3 surveys, it indicates that Ceron and Gallo  
4 have written those reports and that they  
5 are going to be attributed to them. Do  
6 you see that?

7 A. Yes.

8 Q. Now, ultimately none of those  
9 people's original work was submitted with  
10 the Cabrera report, correct?

11 A. I don't know.

12 Q. Whose job was it to analyze the  
13 credentials of the Cabrera team members to  
14 determine which annexes could be  
15 attributed to them, even if they didn't  
16 write them?

17 A. I don't remember. I think it  
18 was a combination of people, including  
19 Stratus, local counsel.

20 Q. And yourself?

21 A. I might have had some role. It  
22 is not generally what I was doing.

23 Q. Did you consider yourself to be  
24 managing this process of the drafting of  
25 the peritaje global by Stratus and the



1 DONZIGER

2 local team?

3 A. I wouldn't characterize it that  
4 way.

5 Q. To your knowledge, is there any  
6 member of Cabrera's supposedly independent  
7 team with whom plaintiffs did not work  
8 prior to the March 24th, '08 report being  
9 submitted on April 1st?

10 A. I don't know.

11 Q. Who selected the people who  
12 would be identified by Cabrera as his  
13 team?

14 A. I don't think it was any one  
15 person.

16 Q. Who was involved in selecting  
17 the members of Cabrera's team?

18 A. I think it was Mr. Cabrera, I  
19 presume. I think in terms of who was  
20 involved in selecting those that would  
21 receive the reports, I think Stratus had a  
22 role and local counsel, perhaps myself  
23 with a couple of them, I'm not sure.

24 Q. Did you personally help recruit  
25 any of the members of the people that

1 DONZIGER

2 would serve or be listed as members of  
3 Cabrera's independent team?

4 A. That generally was not my role.  
5 I might have talked to one or two of them.

6 Q. Was it the role of someone on  
7 plaintiffs' team to be in charge of  
8 recruiting the people that would be listed  
9 as members of Cabrera's team?

10 A. I don't know.

11 Q. In reality, did any work that  
12 was done by the people who were identified  
13 as being on Cabrera's team actually get  
14 submitted to the Ecuador court?

15 A. I believe so.

16 Q. Can you identify that work for  
17 me, please?

18 A. Well, I should modify that. I  
19 really don't know.

20 THE SPECIAL MASTER: As you sit  
21 here today, do you know of any of it?

22 THE WITNESS: Well, no, because  
23 I just --

24 THE SPECIAL MASTER: Not  
25 "because." My question was, do you know

1 DONZIGER

2 of any as you sit here today?

3 THE WITNESS: Know of any what?

4 THE SPECIAL MASTER: Know of  
5 any work that was done by the people who  
6 were identified as being on Cabrera's team  
7 actually get submitted to the Ecuador  
8 court.

9 THE WITNESS: I believe so,  
10 yes.

11 THE SPECIAL MASTER: I think  
12 she asked you then the question to  
13 identify whatever it was you think was  
14 drafted by a member of Cabrera's team that  
15 was actually submitted to the Ecuador  
16 court.

17 THE WITNESS: I think there  
18 were --

19 THE SPECIAL MASTER: Identify  
20 them, please.

21 THE WITNESS: I think there was  
22 the health report, the indigenous report,  
23 and some other reports, to the best of my  
24 knowledge.

25 BY MS. NEUMAN:

1 DONZIGER

2 Q. Who drafted the health report?

3 A. I don't know.

4 Q. The health report, you mean the  
5 annex on that topic, correct?

6 A. Yes.

7 Q. Who on Cabrera's team do you  
8 say drafted the indigenous report?

9 A. I think it was the person or  
10 persons who submitted it to him under  
11 whose names it is listed, I believe.

12 Q. Do you know who that would be?

13 A. I think it was the individuals  
14 listed on this chart that we just  
15 reviewed, I believe. I'm not sure,  
16 though.

17 Q. I will provide you a document  
18 that is previously marked as Exhibit 150.  
19 This is an English version of the  
20 executive summary of the Cabrera report  
21 that was posted on the Amazon Watch web  
22 site.

23 Did you provide Amazon Watch  
24 with an English version of the executive  
25 summary of the Cabrera report?

1 DONZIGER

2 A. I don't know.

3 Q. This summary was posted and  
4 identified as a translation of the Cabrera  
5 report.

6 To your knowledge, was the  
7 document posted on the Amazon web site the  
8 original English version of the executive  
9 summary or a translation?

10 A. I don't know.

11 Q. Did you ever provide Amazon  
12 Watch with a certified translation of the  
13 Cabrera executive summary?

14 A. I don't remember. I don't  
15 believe so.

16 THE SPECIAL MASTER: Excuse me,  
17 Counsel, this document bears the name  
18 under the word Exhibit "Mills 150." Is  
19 that a witness in one of the 1782  
20 proceedings?

21 MS. NEUMAN: Yes. He works for  
22 Stratus, David Mills.

23 THE SPECIAL MASTER: Are you  
24 representing that this Mills 150 is a  
25 document that was posted on the Amazon

1 DONZIGER

2 Watch web site?

3 MS. NEUMAN: Yes, sir.

4 THE SPECIAL MASTER: Did  
5 somebody testify to that in another  
6 proceeding?

7 MS. NEUMAN: No, a witness  
8 didn't testify to that, no.

9 THE SPECIAL MASTER: You pulled  
10 it from the Amazon Watch web site?

11 MS. NEUMAN: We pulled it from  
12 the Amazon Watch web site and an expert  
13 comparison was done of it.

14 THE SPECIAL MASTER: Okay.

15 MS. NEUMAN: I'm going to mark  
16 as Exhibit 815 a document which is a draft  
17 of the executive summary of the Cabrera  
18 report in Spanish bearing the Stratus  
19 Native Bates numbers 106635 through  
20 106695, and attached as the last two pages  
21 of Exhibit 815 are the metadata that is  
22 printed out from the native document.

23 (Exhibit 815 marked for  
24 identification.)

25 Q. Have you seen Exhibit 815

1 DONZIGER

2 before?

3 A. Yes.

4 Q. This is a working draft of the  
5 executive summary of the Cabrera report  
6 after it had been translated into Spanish,  
7 correct?

8 A. Yes.

9 Q. And if you turn to page 3,  
10 there is blanks for dollar amounts. Do  
11 you see that?

12 A. Yes.

13 Q. It says "for Cabrera to fill"?

14 A. I don't see that. I'm sorry,  
15 is that a question?

16 Q. Let me withdraw that.

17 The blanks were to be completed  
18 when this document was finalized, correct?

19 A. I assume.

20 Q. And these dollar amounts were  
21 filled in before this document was  
22 provided to Cabrera, correct?

23 A. I don't know.

24 Q. If you turn to page 5 of 61,  
25 where it says "I, Richard Cabrera..." and

1 DONZIGER

2 then it basically says need credentials,  
3 correct?

4 Is that a yes?

5 A. Yes.

6 Q. Did Mr. Cabrera provide the  
7 plaintiffs' team with his credentials so  
8 they could fill them in for their draft of  
9 the report?

10 A. I don't know.

11 Q. If you look at the metadata,  
12 the next to the last page of Exhibit 815,  
13 do you see there is a reference, informe  
14 sumario final prieto.doc?

15 A. Yes.

16 Q. Perito is the name of a member  
17 of the plaintiffs' local counsel team,  
18 correct?

19 A. Prieto.

20 Q. Prieto. He is a lawyer for the  
21 plaintiffs?

22 A. Yes.

23 Q. Was he editing the summary --  
24 I'm sorry, the executive summary of the  
25 Cabrera report once it was translated into



1 DONZIGER

2 Spanish?

3 A. I don't know.

4 Q. Would you have any reason to  
5 think that he wasn't doing that?

6 A. I don't know.

7 Q. Did you go down to Quito to  
8 help finalize the executive summary and  
9 annexes to the Cabrera report?

10 A. I know I was in Quito at some  
11 point in March to help Stratus complete  
12 its work.

13 Q. This version of the executive  
14 summary was created and saved on March  
15 22nd of 2008, according to the computer  
16 data. And it still has blanks to be  
17 filled in. Do you see that?

18 A. Yeah, according to this page,  
19 yes.

20 Q. Is it your understanding that  
21 the blanks did get filled in before this  
22 was provided to Cabrera?

23 A. When you say "blanks," are you  
24 referring to the numbers?

25 Q. Well, I will show you

1 DONZIGER

2 something. Go to page 53 of 61, if you  
3 can. Do you see where it says Section  
4 6.3.5, Juampa?

5 A. Yes.

6 Q. So that section isn't included  
7 yet, correct?

8 A. Yes.

9 Q. Would things like that section  
10 have been filled in before the report was  
11 provided to Cabrera?

12 A. I believe so.

13 Q. And if you turn to the next  
14 page, you will see in the chart that some  
15 dollar amounts have been filled in and  
16 others haven't?

17 A. Yes.

18 Q. And then further down there is  
19 notes. Do you see that?

20 A. Yes.

21 Q. Do you know who made those  
22 notes?

23 A. No.

24 Q. Do you know how long after  
25 March 22nd of 2008 it was before the

1 DONZIGER

2 document was finalized and given to  
3 Cabrera?

4 A. No.

5 Q. Were you in Ecuador when the  
6 report was provided to Mr. Cabrera?

7 A. I don't believe I was.  
8 "Report" meaning the executive summary?

9 Q. And the annexes.

10 A. I don't know.

11 Q. Were they all provided at once?

12 A. I don't know. I had assumed  
13 they had been provided to him on a rolling  
14 basis.

15 Q. What do you base that  
16 assumption on?

17 A. I don't know. Just my  
18 recollection, vague recollection.

19 Q. Did someone tell you they were  
20 providing information to Mr. Cabrera on a  
21 rolling basis?

22 A. I don't know.

23 Q. Do you have any current  
24 recollection of someone telling you that?

25 A. No.

1 DONZIGER

2 Q. The annexes and executive  
3 summary were not provided to Cabrera in  
4 English, correct?

5 A. My understanding is that's  
6 correct, yes.

7 Q. They would have at least been  
8 translated into Spanish first?

9 A. Yes.

10 THE SPECIAL MASTER: Excuse me.

11 Is there another exhibit with  
12 the actual translation of the technical  
13 summary report from the Spanish back into  
14 English?

15 MS. NEUMAN: Yes. We have a  
16 certified translation of it.

17 THE SPECIAL MASTER: Has that  
18 been marked as an exhibit anywhere?

19 MS. NEUMAN: In any deposition?  
20 I will have to check.

21 THE SPECIAL MASTER: Mr.  
22 Donziger, could you please look at Exhibit  
23 150. And it begins "This report was  
24 written by expert engineer Richard Stalin  
25 Cabrera Vega," correct?

1 DONZIGER

2 THE WITNESS: Yes.

3 THE SPECIAL MASTER: That is  
4 not a true statement, is it?

5 THE WITNESS: Well, the idea  
6 was to make it as easy as possible for him  
7 to adopt the materials.

8 THE SPECIAL MASTER: My  
9 question was --

10 THE WITNESS: That is certainly  
11 not how I would characterize it, no.

12 THE SPECIAL MASTER: My  
13 question was, is the following a true  
14 statement: "This report was written by  
15 expert engineer Richard Stalin Cabrera  
16 Vega." Yes or no, please.

17 THE WITNESS: I don't think it  
18 is accurate.

19 THE SPECIAL MASTER: In fact,  
20 the opposite is true, isn't it?

21 THE WITNESS: I don't think it  
22 is accurate.

23 THE SPECIAL MASTER: I'm asking  
24 you the question, the opposite of accurate  
25 is true?

1 DONZIGER

2 THE WITNESS: Well, what he  
3 adopted was written by Stratus. I have  
4 already testified to that.

5 THE SPECIAL MASTER: And edited  
6 by you in parts, correct?

7 THE WITNESS: I believe so,  
8 yes.

9 THE SPECIAL MASTER: And he did  
10 not write any of it, correct?

11 THE WITNESS: I don't know.

12 THE SPECIAL MASTER: Ms. Neuman,  
13 go ahead.

14 I'm sorry, now going back to  
15 the Spanish version, on page 54 --

16 MS. NEUMAN: Do you mean  
17 Exhibit 815?

18 THE SPECIAL MASTER: I'm sorry,  
19 now we are on Exhibit 815. On page 54,  
20 Ms. Neuman referred to a note, and it is  
21 in Spanish, and would you be good enough  
22 to translate for me what it says.

23 THE WITNESS: "I like that, but  
24 I believe that the focus is very legal and  
25 not technical. How can that be justified

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by the expert?" Or something to that effect.

THE SPECIAL MASTER: So this document as of March 22 in Spanish was still a work in progress, correct?

THE WITNESS: I believe so, yes.

THE SPECIAL MASTER: And the note was written not by Mr. Cabrera or anybody on his team, but by one of the people on your team; isn't that correct?

THE WITNESS: I assume.

THE SPECIAL MASTER: Thank you.

MS. NEUMAN: I'm going to mark as Exhibit 816 an e-mail dated February 27th, 2008 from Doug Beltman to Steven Donziger with an attachment. The subject is "Start on report text, human tox annex."

For the record, the first page of Exhibit 816 was previously marked as Exhibit 717, but without the attachment.

(Exhibit 816 marked for identification.)

1 DONZIGER

2 Q. Did you receive Exhibit 816 on  
3 or about February 27th, Mr. Donziger?

4 A. Yes.

5 Q. Mr. Beltman states "Attached is  
6 my rough start of the peritaje global  
7 report. It isn't formatted, doesn't have  
8 the tables or figures yet, and doesn't  
9 have references. Would you let me know if  
10 I'm on track in terms of tone, language  
11 level and content?"

12 Do you see that?

13 A. Yes.

14 Q. If you turn to the next page,  
15 bearing the Bates number Stratus Native  
16 069924, under Introduction, Mr. Beltman  
17 has written "This report was written by  
18 Richard Cabrera ING to provide expert  
19 technical assistance to the court in the  
20 legal case of ??"

21 Do you see that?

22 A. Yes.

23 Q. Did you instruct Mr. Beltman to  
24 write the report in the first person as  
25 though it were written by Richard Cabrera?



1 DONZIGER

2 A. I don't know.

3 Q. Do you know whether anyone on  
4 plaintiffs' legal team instructed  
5 Mr. Beltman to write the report in the  
6 first person as though it were written by  
7 Richard Cabrera?

8 A. It is -- I don't know.

9 Q. Did you ever at any time  
10 instruct Mr. Beltman that he should not be  
11 writing the report as though it were  
12 written in the first person by Richard  
13 Cabrera?

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

15 Q. ING stands for engineer in  
16 English, correct?

17 A. Yes.

18 Q. Now, given that Stratus didn't  
19 start writing the report until after the  
20 January meeting with Cabrera, they had to  
21 prepare it in a very compressed time  
22 frame, correct?

23 A. I think they felt there was a  
24 lot of work to be done in a short period  
25 of time.

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Q. I'm going to show you a document that was previously marked as Exhibit 528. It is an e-mail from Doug Beltman dated February 29th, 2008 to Ann Maest and Jennifer Peers, re "Annexes."

Have you seen Exhibit 528 before, Mr. Donziger?

A. I don't believe so.

Q. Could you let me know when you've had a chance to read it, please, sir.

(Witness perusing document.)

A. Okay.

Q. In his February 29th, '08 e-mail, Mr. Beltman writes "Yo, I finally have a drop-dead date: March 24th it has to be submitted to the court."

Do you see that?

A. Yes.

Q. Did you tell Stratus their work had to be done by March 24th so that it could be submitted to the court on that date?

A. I don't remember.

1 DONZIGER

2 Q. Mr. Beltman goes on to state  
3 "That's three weeks and a couple of days  
4 away. Given the turnaround time for  
5 translation and review and given where we  
6 are, I think we need to cut back. I have  
7 committed us to do too much. Here is what  
8 I think we need to drop."

9 Do you see that?

10 A. Yes.

11 Q. Then Mr. Beltman says "The  
12 annex on baseline. Although baseline is  
13 important as a concept, we'll rely on the  
14 Ecuadorian standards and address issues of  
15 baseline qualitatively in the text."

16 Do you see that?

17 A. Yes.

18 Q. Did Mr. Beltman have the  
19 discretion to eliminate annexes from the  
20 report based on timing?

21 A. I think he had a fair amount of  
22 discretion.

23 Q. Did Mr. Beltman discuss with  
24 you about this time the need to delete  
25 originally conceived annexes just because

1 DONZIGER

2 there wasn't enough time to do them?

3 A. I remembered some general  
4 discussions about the effect of time on  
5 the ability of Stratus to complete its  
6 work.

7 Q. Did you ever give Mr. Beltman  
8 authority to delete or not prepare  
9 annexes?

10 A. I don't think we had a  
11 discussion about authority.

12 Q. The deadline that was given to  
13 Stratus of March 24th, that was the filing  
14 deadline for the Cabrera report, correct?

15 A. I believe so.

16 Q. Did you ever have any  
17 discussions with Mr. Cabrera about his  
18 willingness to accept plaintiffs' report  
19 on the date he was due to file it?

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

21 MS. NEUMAN: I'm going to mark  
22 as Exhibit 817 e-mail correspondence from  
23 Doug Beltman to Ann Maest dated -- or CC'd  
24 to Ann Maest, to translators, dated March  
25 12th, 2008, and attaching Stratus Native

1 DONZIGER

2 058389 through 058419.

3 (Exhibit 817 marked for  
4 identification.)

5 Q. Have you seen Exhibit 817  
6 before, Mr. Donziger?

7 A. I don't believe so.

8 Q. Mr. Beltman is sending the  
9 attached peritaje global summary report to  
10 info@translatingspanish.com. Do you see  
11 that?

12 A. Yes.

13 Q. Do you know who hired those  
14 translators?

15 A. I believe Stratus.

16 Q. Were they also paid by Stratus  
17 or were they paid by the plaintiffs?

18 A. I don't know.

19 Q. In the body of the e-mail,  
20 Mr. Beltman writes "Here is our schedule.  
21 Ann and I are going to Quito on Monday to  
22 spend next week working with the team down  
23 there on the final push."

24 Do you see that?

25 A. Yes.

1 DONZIGER

2 Q. Did you also go down to Quito  
3 with Ms. Maest and Mr. Beltman to work on  
4 the final push?

5 A. I don't recollect whether I did  
6 or not, but I remember I think at an  
7 earlier day of my testimony being shown an  
8 e-mail where I indicated I was going down  
9 there that week. But I don't remember  
10 other than that e-mail.

11 Q. You don't remember whether you  
12 were in Quito finishing up the global  
13 report and annexes?

14 A. Again, I think I was there for  
15 a short period of time in March based on  
16 those e-mails, but no, other than that I  
17 don't have a recollection.

18 Q. The submission of this report  
19 was a significant event in the case,  
20 correct?

21 A. Absolutely, yes.

22 Q. But you don't remember whether  
23 you were in Quito working on it or not?

24 A. I go to Quito regularly for  
25 years, and I don't know if I was there at

1 DONZIGER

2 that time.

3 Q. Mr. Beltman goes on, "The  
4 document's main report and annexes have to  
5 go to the court on March 24th and there  
6 are other team members who have to review  
7 the report in Spanish early next week and  
8 then will make revisions in Spanish during  
9 the week."

10 Do you see that?

11 A. Yes.

12 Q. The team members Mr. Beltman is  
13 referring to are the plaintiffs' team  
14 members, correct?

15 A. I believe so.

16 Q. He goes on to state "The main  
17 report, the one attached to this e-mail,  
18 is the highest priority. We would like to  
19 be able to e-mail it to them Sunday night  
20 or Monday morning before we leave. Then  
21 they can read it Monday and we can hit the  
22 ground running with them Tuesday morning."

23 Do you see that?

24 A. Yes.

25 Q. The "them" is plaintiffs' legal

1 DONZIGER

2 team, correct?

3 A. I believe so, yes.

4 Q. And to your knowledge, did  
5 Mr. Beltman and Ms. Maest review the  
6 executive summary with the plaintiffs'  
7 legal team once it was in Spanish?

8 A. I believe they did.

9 THE SPECIAL MASTER: Can I ask  
10 the witness to leave, please.

11 (Witness departs the room.)

12 THE SPECIAL MASTER: Were any  
13 documents submitted to any court in the  
14 United States stating in substance that,  
15 and I'm just quoting now from Mills 150,  
16 "this report was written by expert  
17 engineer Richard Stalin Cabrera Vega"? I  
18 would like to know whether any documents  
19 were submitted to a United States court  
20 making that statement in words or  
21 substance.

22 Ms. Neuman?

23 Mr. Dans?

24 I'm asking the question whether  
25 any documents were submitted by anybody to



1 DONZIGER

2 a United States court stating in words or  
3 substance "this report was written by  
4 Mr. Cabrera."

5 MR. DANS: There were a series  
6 of representations made by plaintiffs'  
7 counsel to that effect. It has evolved  
8 over time. It started with complete  
9 denial and attribution to Mr. Cabrera,  
10 dissolving with each iteration of the  
11 exposure of the fraud to what has now been  
12 known as copying, or actually having  
13 written the report in toto.

14 So yes, in short, I don't have  
15 it at the ready, but I believe there have  
16 been multiple misrepresentations to United  
17 States courts to that effect.

18 THE SPECIAL MASTER: Can I  
19 have -- can somebody collect those for me,  
20 please? Were any made to Judge Kaplan or  
21 the Second Circuit?

22 MS. NEUMAN: I think that the  
23 Fajardo declaration submitted to Judge  
24 Kaplan more than implies that what  
25 plaintiffs did was submit materials to

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Cabrera attached to their February 18th filing and implies that Stratus materials were included in that February 18th filing with the Lago Agrio court in an extremely misleading way to create the impression that the Cabrera report was written by Cabrera.

THE SPECIAL MASTER: I want to know something more precise. I want to know whether this sentence at the beginning of Mills Exhibit 150, "this report was written by expert engineer Richard Stalin Cabrera Vega," was submitted in words or substance to Judge Kaplan or to the Second Circuit at any point in this proceeding.

Anyway, we will look at that and then counsel will tell me at the next break. Okay, let's call the witness back.

(Witness returns to the room.)

BY MS. NEUMAN:

Q. Mr. Donziger, do you still have Exhibit 817 in front of you?

A. Yes.

1 DONZIGER

2 Q. Now, the target deadline of  
3 March 24th we discussed before the break  
4 was the date that the Cabrera report had  
5 to be filed in court. Do you recall that?

6 A. Yes.

7 Q. And it is correct, isn't it,  
8 that Stratus was never given an earlier  
9 deadline to submit the report to Cabrera  
10 for his review?

11 A. I don't know. But I think  
12 that's correct based on the reading of  
13 this e-mail.

14 Q. I'm going to hand the witness a  
15 document that has previously been marked  
16 as Exhibit 911.

17 Exhibit 911 is a March 25th,  
18 '08 e-mail from Douglas Beltman to Juan  
19 Pablo Saenz and Steven Donziger, subject,  
20 "New pieces, 3.25 add-ins for Juampa.doc."

21 Do you see that?

22 A. Yes.

23 Q. Did you receive this e-mail  
24 from Mr. Beltman on or about March 25th in  
25 2008?

1 DONZIGER

2 A. I believe I did based on this  
3 copy in front of me.

4 Q. And were you in Quito at the  
5 time you received this e-mail  
6 correspondence?

7 A. I don't know.

8 Q. Mr. Beltman writes "Good  
9 morning, Juampa and Steven. Attached is a  
10 file with brand new or revised pieces for  
11 the Informe Principal. The paragraph on  
12 survey methods is new and the sections on  
13 PE infrastructure and value of lost  
14 rainforest are revisions of the Informe  
15 Principal text that Julio sent me  
16 Saturday."

17 Do you see that?

18 A. Yes.

19 Q. Those are all portions of what  
20 would become the Cabrera report, correct?

21 A. I believe so.

22 Q. Mr. Beltman goes on to state  
23 "As part of the revisions I deleted some  
24 sentences or phrases as well as added  
25 some. So you will have to make sure to go

1 DONZIGER

2 through it carefully."

3 Do you see that?

4 A. Yes.

5 Q. Then if you look at the  
6 attachment, they are inserts with edits.  
7 Do you see that?

8 A. Yes.

9 Q. Did you work with Juan Pablo  
10 Saenz to go through Mr. Beltman's edits to  
11 the Cabrera report or what would become  
12 the Cabrera report on March 25th of '08?

13 A. I remember working with him at  
14 some point. I don't know if it was that  
15 date.

16 Q. And this is after the report  
17 had been translated into Spanish, correct?

18 A. I don't remember.

19 Q. It is accurate that as of March  
20 25th, 2008 the report was not yet final  
21 and had not yet been provided to  
22 Mr. Cabrera, correct?

23 A. I believe that's the case based  
24 on reading this e-mail.

25 MS. NEUMAN: I'm going to mark

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DONZIGER

as Exhibit 818 e-mail correspondence between Douglas Beltman and Steven Donziger on March 30th of 2008.

(Exhibit 818 marked for identification.)

Q. The re line is "Re: What do you think?"

Is Exhibit 818 an e-mail exchange that you had with Mr. Beltman on March 30th of 2008?

A. Yes.

Q. In your original e-mail, you write "What do you think of this?" And then you show a --

A. I'm sorry, I don't know if I have the original e-mail.

Q. I'm just reading the re line.

A. Oh, okay.

Q. Your re line is "What do you think of this?" And then you have a table in the e-mail. Do you see that table?

A. Yes.

Q. That was the damage table that was going to be appear in the Cabrera

1 DONZIGER

2 report, correct?

3 A. I believe so.

4 Q. And that is something that you  
5 are working on drafting as of March 30th  
6 of 2008, correct?

7 A. I believe so, yes.

8 Q. In response to your table,  
9 Mr. Beltman writes "1. You should remove  
10 the 'Costo Minimo' column - it makes it  
11 look the minimum is zero for most of them.  
12 You could just put the range in the Costa  
13 Estimado column."

14 Do you see that?

15 A. Yes.

16 Q. Is that a change that you made  
17 before you finalized the Cabrera report?

18 A. I don't know.

19 Q. If you look down to number 3 of  
20 Mr. Beltman's e-mail, it says "The  
21 footnote on unjust enrichment isn't  
22 consistent with the text as I last knew  
23 it. In the text we say that unjust  
24 enrichment is to provide perspective and  
25 context and it also could be punitive if

1 DONZIGER

2 the court deems it appropriate. We didn't  
3 say it is actually part of the damage  
4 claim. It isn't really. It isn't the  
5 cost to repair any harm or to compensate  
6 for any losses. It is a separate category  
7 and really should be added to the others  
8 only under a punitive scenario. There is  
9 no reason why the unjust enrichment  
10 corresponds to any damages category or  
11 amount."

12 Do you see that?

13 A. Yes.

14 Q. Can you read to me in English  
15 what the Spanish footnote he is referring  
16 to says?

17 A. You don't have a translation?  
18 I feel a little uncomfortable translating  
19 documents. Do you have a translation?

20 Q. I don't.

21 A. So with the caveat that I will  
22 do my best --

23 THE SPECIAL MASTER: We  
24 understand.

25 A. "The category unjust enrichment



1 DONZIGER

2 can be utilized to close the gap between  
3 remediation and restoration if the court  
4 decides it is appropriate under the law."

5 Q. And in the copy of the Cabrera  
6 report submitted to Cabrera, it included  
7 unjust enrichment as a damage category,  
8 correct?

9 A. I believe so, yes.

10 Q. Now, this e-mail where you are  
11 working on this damage table is on March  
12 30th, 2008.

13 Was the plaintiffs' version of  
14 the Cabrera report completed on April 1st  
15 of 2008?

16 A. I don't know.

17 Q. Is it accurate that it was not  
18 completed as of March 30th, 2008?

19 A. Yes.

20 Q. Were you aware that the Cabrera  
21 report was going to be filed on April 1st  
22 before it was filed?

23 A. I believe I became aware that  
24 the deadline had been pushed back.

25 Q. The deadline was at some point

1 DONZIGER

2 moved from March 24th until I think April  
3 8th, correct?

4 A. I thought it was April 1st. I  
5 don't know.

6 Q. Well, was there a time that you  
7 became aware that Mr. Cabrera was in fact  
8 going to file his report on April 1st?

9 A. I don't remember.

10 Q. I'm going to show the witness a  
11 document previously marked as Exhibit 201.

12 For the record, Exhibit 201 is  
13 an e-mail exchange between Joe Berlinger  
14 and Michael Bonfiglio dated March 26th and  
15 March 27 of 2008.

16 Have you seen Exhibit 201  
17 before, Mr. Donziger?

18 A. I don't believe I have.

19 Q. In the original e-mail,  
20 Mr. Bonfiglio writes "Steven did have that  
21 conversation with Luis and Pablo. They,  
22 Steven, Luis, and Pablo, are not doing  
23 interviews with those guys. He also  
24 confirmed that there was a ten-day delay  
25 requested by Cabrera. But that happened

1 DONZIGER

2 last week, so they are anticipating him to  
3 turn his report in sometime next week."

4 Do you see that?

5 A. Yes.

6 Q. Did you provide Mr. Bonfiglio  
7 with that information?

8 A. It is possible.

9 Q. Did you have any conversations  
10 with Mr. Cabrera about requesting an  
11 extension for the filing deadline of his  
12 report?

13 A. No.

14 Q. Did anyone on plaintiffs' team?

15 A. I don't know.

16 Q. Did you ever discuss with  
17 Mr. Fajardo having Mr. Cabrera get an  
18 extension so that Stratus could finish the  
19 work on the report?

20 A. I don't know. I don't  
21 remember.

22 THE SPECIAL MASTER: Excuse me.

23 Was somebody on the plaintiffs'  
24 team talking to Mr. Cabrera in that period  
25 of, say, March 22nd until April 1st about

1 DONZIGER

2 when the final version would be ready for  
3 Mr. Cabrera to submit to the court?

4 THE WITNESS: I don't know. I  
5 assume there were contacts.

6 THE SPECIAL MASTER: And you  
7 assume that because he got an extension to  
8 permit that to happen; isn't that so?

9 THE WITNESS: No. I assume it  
10 because there was a mechanism to turn over  
11 to him materials that were being prepared,  
12 I assume.

13 THE SPECIAL MASTER: But you  
14 have no idea? You don't know?

15 THE WITNESS: I don't know  
16 anything about conversations related to an  
17 extension.

18 Q. What was the mechanism to turn  
19 over materials to Cabrera?

20 A. I don't know.

21 Q. Did you arrange to have the  
22 Crude film crew in Ecuador to film Cabrera  
23 turning in his report?

24 A. I was assisting them with that.

25 Q. You told them when they needed

1 DONZIGER

2 to be there?

3 A. I think I told them roughly  
4 when the report was due.

5 Q. And did they ultimately learn  
6 exactly when Cabrera would be turning in  
7 his report so they could be there to film  
8 it?

9 A. I don't know. I remember them  
10 I think being down there for several days.

11 Q. I'm going to show the witness a  
12 document previously marked as Exhibit 202.

13 Have you seen Exhibit 202  
14 before, Mr. Donziger?

15 A. No.

16 Q. For the record, Exhibit 202 is  
17 an e-mail from Mike Bonfiglio to Joe  
18 Berlinger dated March 31st of 2008,  
19 subject, "Sweet."

20 Mr. Bonfiglio writes "Just  
21 spoke with Pablo again. He was purposely  
22 being cagey earlier. He told me  
23 confidentially that Cabrera is coming  
24 tomorrow first thing in the a.m. Back to  
25 plan A."

1 DONZIGER

2 Do you see that?

3 A. Yes.

4 Q. Do you know how --

5 Mr. Bonfiglio testified that Pablo refers  
6 to Pablo Fajardo. Do you know how Pablo  
7 Fajardo was able to learn on March 31st  
8 that Mr. Cabrera would be turning in his  
9 report on April 1st?

10 A. No.

11 Q. Were you aware during this time  
12 frame that Mr. Fajardo was communicating  
13 directly with Mr. Cabrera?

14 A. I believe I was, yes.

15 Q. Who else on plaintiffs'  
16 lawyers' team was communicating directly  
17 with Mr. Cabrera during this time frame?

18 A. I don't know.

19 Q. And it is accurate that on  
20 April 1st Mr. Cabrera did in fact turn his  
21 report in, correct?

22 A. I think that was the date.

23 Q. As indicated on Exhibit 202,  
24 Pablo Fajardo knew in advance when Cabrera  
25 would file the report, correct?

1 DONZIGER

2 A. I don't know.

3 Q. Do you have any reason to  
4 believe Mr. Bonfiglio would falsely state  
5 Pablo --

6 THE SPECIAL MASTER: Strike  
7 that.

8 MS. NEUMAN: I'm going to  
9 withdraw that.

10 THE SPECIAL MASTER: I'm sorry,  
11 objection sustained.

12 Q. In light of the fact that there  
13 was a film crew and plaintiffs present  
14 when Mr. Cabrera turned in his report,  
15 Chevron raised the issue with the court  
16 that plaintiffs unilaterally knew when  
17 Cabrera was going to be filing his report  
18 and were thus obviously in collusion and  
19 communication with him. Do you recall  
20 that?

21 A. No.

22 Q. Do you recall plaintiffs filing  
23 a pleading in Lago Agrio denying that they  
24 unilaterally knew when Cabrera was going  
25 to file his report?

1 DONZIGER

2 A. No.

3 MS. NEUMAN: I'm going to mark  
4 as Exhibit 819 a pleading filed in Lago  
5 Agrio by Pablo Fajardo Mendoza on behalf  
6 of the plaintiffs on June 4th of 2008.

7 (Exhibit 819 marked for  
8 identification.)

9 Q. It includes the original  
10 Spanish of the pleading as well as an  
11 English translation.

12 Have you seen Exhibit 819  
13 before, Mr. Donziger?

14 A. I don't believe I have.

15 Q. Did you have any role in  
16 approving the pleadings that the  
17 plaintiffs filed in Ecuador before they  
18 were filed?

19 A. Generally, no.

20 Q. If you look at the last  
21 paragraph on the first page of Exhibit  
22 819, Mr. Fajardo represents to the court  
23 "Subsequently, Dr. Carvajal assures that  
24 the plaintiff learned 'unilaterally' of  
25 the completion of Cabrera's work. This



1 DONZIGER

2 would certainly mean that, according to  
3 Dr. Carvajal, that there is some type of  
4 collusion between the plaintiff and  
5 Cabrera. I strongly oppose this  
6 ridiculous affirmation, and I invite  
7 Dr. Carvajal to present the evidence which  
8 surely he must have in order to make such  
9 a heavy accusation. If he cannot produce  
10 evidence to support his statement, I also  
11 invite him to use all the capacity he has  
12 demonstrated to conjure up theories of  
13 conspiracies in a more dignified  
14 expression; make and present real legal  
15 arguments, which have some merit in order  
16 to discuss the truth in the case; and  
17 really protect the interest he  
18 represents."

19 Do you see that?

20 A. Yes.

21 Q. Did you approve that statement  
22 being filed by the plaintiffs before it  
23 was filed?

24 A. No.

25 Q. Do you understand Dr. Carvajal

1 DONZIGER

2 refers to Chevron's attorney in Ecuador,  
3 Enrique Carvajal?

4 A. Yes.

5 Q. And Dr. Carvajal was correct  
6 that plaintiffs had unilaterally learned  
7 of the completion of Cabrera's work,  
8 correct?

9 A. I don't know that to be true.

10 Q. You saw in Mr. Bonfiglio's  
11 e-mail that Mr. Fajardo told him that  
12 Cabrera would be filing his report the  
13 next day, correct?

14 A. Well, that was an e-mail  
15 between two other people. I don't have  
16 any knowledge of that. Yeah, I saw that  
17 in the e-mail.

18 Q. You didn't have any knowledge  
19 that plaintiffs knew in advance when  
20 Cabrera would be filing his report?

21 A. Not exactly, no. I thought it  
22 was a range, period of time.

23 Q. Did Mr. Bonfiglio or  
24 Mr. Berlinger call you to discuss when  
25 Mr. Cabrera would be filing his report?

1 DONZIGER

2 A. I believe we had conversations  
3 to that effect.

4 Q. And did you provide them with  
5 any information in that regard?

6 A. I think I did.

7 Q. And how did you get the  
8 information to provide to them?

9 A. I think from local counsel.

10 Q. So then you were in  
11 communication with local counsel about  
12 their knowledge as to when Cabrera would  
13 be filing his report, correct?

14 A. Yes.

15 Q. And did Mr. Fajardo tell you as  
16 he told Mr. Bonfiglio that Cabrera would  
17 file his report on April 1st?

18 A. I don't remember if he told me  
19 a specific date.

20 Q. Do you agree that Mr. Fajardo's  
21 submission to the Lago Agrio court in  
22 which he denies that plaintiffs knew in  
23 advance when Cabrera would be filing his  
24 report is false?

25 A. I don't know.

1 DONZIGER

2 Q. The consultants who drafted the  
3 portions of the Cabrera report other than  
4 Stratus, did they work at your direction?

5 A. I don't believe so.

6 Q. Whose direction did they work  
7 at?

8 A. I'm not sure.

9 THE SPECIAL MASTER: What are  
10 the possibilities? Local counsel in  
11 Ecuador, your local counsel in Ecuador?

12 THE WITNESS: Excuse me?

13 THE SPECIAL MASTER: Your local  
14 counsel in Ecuador?

15 THE WITNESS: Local counsel in  
16 Ecuador.

17 THE SPECIAL MASTER: For the  
18 plaintiffs.

19 THE WITNESS: They represent  
20 the plaintiffs in Ecuador, or possibly  
21 Mr. Cabrera himself. I don't know. I  
22 don't know what Ms. Neuman is referring  
23 to, which people.

24 Q. I'm going to be more specific.  
25 Mr. Powers, at whose direction did he

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work?

A. I believe he was contracted by Stratus.

Q. Did you supervise his work or did you leave that to Stratus?

A. I might have had some involvement, but I think generally Stratus worked with him.

Q. Mr. Powers originally produced an annex with his own name on it, correct?

A. I don't remember. I don't know.

Q. I'm going to show the witness a document previously marked as Exhibit 350. This is an e-mail exchange between Mr. Berlinger and Mr. Bonfiglio on March 31st of 2008.

Have you seen Exhibit 350 before, Mr. Donziger?

A. I don't believe so.

Q. Let me know when you've had a chance to read it, please.

(Witness perusing document.)

Q. In this e-mail exchange, at the

1 DONZIGER

2 bottom of Exhibit 350, Mr. Bonfiglio  
3 writes "Said they didn't know, Steven's in  
4 a weird spot because they want/need Kelly  
5 Hearn's articles and these guys are  
6 connected to him. Whatever."

7 Do you see that?

8 A. Yes.

9 Q. Then there is a response from  
10 Mr. Berlinger and then there is another  
11 e-mail from Mr. Bonfiglio in which  
12 Mr. Bonfiglio states "Will do. I will  
13 probably see them again tonight."

14 Do you see that?

15 A. Yes.

16 Q. Do you understand the "them" to  
17 include you?

18 A. No.

19 Q. Who do you think the "them"  
20 refers to?

21 A. I think it refers to the  
22 individuals who are making that other  
23 film.

24 Q. Mr. Bonfiglio was going to see  
25 them in Quito?

1 DONZIGER

2 A. I don't know.

3 Q. Mr. Bonfiglio goes on to write  
4 "Very irritating news. Despite the  
5 assurances from Steven and confirmation  
6 from Pablo last week that Cabrera would be  
7 coming today or tomorrow, his deadline is  
8 actually not until Monday, 4/7. Just  
9 spoke with Pablo and he confirmed this and  
10 acted like this was the case all along.  
11 Not sure what to do. Thoughts?"

12 Do you see that?

13 A. Yes.

14 Q. What assurances -- you  
15 understand that Steven to refer to  
16 yourself?

17 A. Yes.

18 Q. What assurances had you given  
19 to Mr. Bonfiglio that Cabrera would be  
20 filing his report on March 31st or April  
21 1st?

22 A. I don't remember. My only  
23 recollection is I was trying to help them  
24 figure out the range of dates that it  
25 would be most likely for the report to be

1 DONZIGER

2 turned in.

3 Q. And do you have any reason to  
4 believe that the range of dates you gave  
5 them was something other than March 31st  
6 or April 1st?

7 A. I think we had a lot of  
8 discussions about this, and I think the  
9 date -- the range of dates changed over  
10 time.

11 Q. If you look back at Exhibit  
12 202, which follows this e-mail exchange,  
13 where Mr. Bonfiglio writes "Just spoke to  
14 Pablo again. He was purposely being cagey  
15 earlier. He told me confidentially that  
16 Cabrera is coming tomorrow."

17 Do you see that?

18 A. Yes.

19 Q. Do you know why Mr. Fajardo was  
20 being cagey with Mr. Bonfiglio about  
21 Cabrera filing his report on April 1st?

22 A. I don't know.

23 Q. The other film that's being  
24 discussed in Exhibit 350, what film is  
25 that?



1 DONZIGER

2 A. I don't know. I think there  
3 were filmmakers there at the time who were  
4 talking about making a film. I don't know  
5 if it ever happened.

6 Q. Do you know what film is being  
7 referred to?

8 A. I remember there was a film  
9 that filmmakers were trying to make at  
10 that time and Mr. Berlinger was nervous  
11 about it.

12 Q. Was it a project in which you  
13 were involved?

14 A. No.

15 Q. You didn't have any interest in  
16 this other film, whatever it was?

17 A. No.

18 MS. NEUMAN: I'm starting a new  
19 topic. Do you want to take a lunch break  
20 now?

21 THE SPECIAL MASTER: Sure.  
22 Let's do that.

23 THE VIDEOGRAPHER: Off the  
24 record, 12:14 p.m. This is the end of  
25 disk two, Volume IX, in the deposition of

DONZIGER

Steven Donziger .

(Luncheon recess: 12:14 p.m.)

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A F T E R N O O N            S E S S I O N

1:08 p.m.

S T E V E N   D O N Z I G E R, resumed.

THE VIDEOGRAPHER: We are going back on the record at 1:08 p.m. This is the beginning of disk three, volume IX, in the deposition of Steven Donziger.

CONTINUED EXAMINATION

BY MS. NEUMAN:

Q. Good afternoon, Mr. Donziger. Are you okay to proceed with your deposition?

A. Yes.

MS. NEUMAN: Let me mark as Exhibit 820 an e-mail from Doug Beltman to Steven Donziger dated March 23rd, 2008.

(Exhibit 820 marked for identification.)

Q. Mr. Donziger, is Exhibit 820 an e-mail that you received from Mr. Beltman on March 23rd, 2008?

A. I believe so, yes.

Q. The subject is entitled Powers Report?

1 DONZIGER

2 A. Yes.

3 Q. That was the annex that Bill  
4 Powers wrote that became Annex O-S,  
5 correct?

6 A. Correct.

7 Q. Mr. Beltman writes "Hey Steven,  
8 I forgot to check with Pablo and Luis to  
9 make sure they got the Powers report.  
10 Would you please let me know if they did  
11 or not? It also needs to be formatted a  
12 bit and his name taken off, but they can  
13 figure that out."

14 Do you see that?

15 A. Yes.

16 Q. Was part of the protocol of the  
17 plaintiffs' team to take the names of the  
18 original authors off the various annexes  
19 and put Mr. Cabrera's team name on them;  
20 correct?

21 A. I don't think there was a  
22 protocol, no.

23 Q. When Mr. Beltman wrote to you  
24 regarding Mr. Powers' annex "it also needs  
25 to be formatted a bit and his name taken

1 DONZIGER

2 off," that wasn't part of the normal  
3 protocol to take the names off of the  
4 authors?

5 A. I don't know.

6 Q. Did you make sure that  
7 Mr. Powers' name was taken off the annex  
8 before it was submitted?

9 A. I don't remember.

10 THE SPECIAL MASTER: Are you  
11 aware of any part of the Cabrera report  
12 which has the name of Stratus or one of  
13 its people on it?

14 THE WITNESS: No.

15 THE SPECIAL MASTER: Or any  
16 part that has Powers' name on it?

17 THE WITNESS: I don't believe  
18 so, no.

19 THE SPECIAL MASTER: So putting  
20 aside the word "protocol," it is a fact,  
21 is it not, that the names of the authors,  
22 the original authors of the sections of  
23 the Cabrera report, were taken off before  
24 it was handed to Mr. Cabrera, correct?

25 THE WITNESS: Those that were

1 DONZIGER

2 prepared by Stratus, yes.

3 THE SPECIAL MASTER: What about  
4 the one -- was there an annex prepared by  
5 Mr. Maldonado?

6 THE WITNESS: I don't know.

7 THE SPECIAL MASTER: Okay.

8 Move on.

9 Q. Who is Uhl, Baron, Rana &  
10 Associates, Inc.?

11 A. It is a consultancy in New  
12 Jersey that I think does water-related  
13 issues.

14 Q. Were they hired by yourself to  
15 assist the plaintiffs?

16 A. They were hired I believe by  
17 Mr. Kohn.

18 Q. Do you know when approximately  
19 they were hired by Mr. Kohn?

20 A. I think it was approximately in  
21 the summer of 2007.

22 Q. Did they work at your direction  
23 or Mr. Kohn's or someone else's?

24 A. I think both.

25 Q. What work did Uhl, Baron, Rana

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& Associates do for yourself and Mr. Kohn?

A. They were hired to prepare a report on how to provide clean water to the people who lived in the area where Texaco operated in Ecuador.

Q. They were hired to design a potable water system basically?

A. Pretty much, yeah.

Q. Did they complete that work?

A. Yes.

Q. Did Juan Cristobal Villao Yopez work on the potable water system that Uhl, Baron, Rana & Associates designed for yourself and Mr. Kohn?

A. Yes.

Q. How do you say it, Villao?

A. Villao.

Q. Mr. Villao later became a member of Cabrera's supposedly independent team, correct?

A. I believe that's correct, yes.

Q. Do you know how it came to be that Mr. Villao was a member of Cabrera's independent team?

1 DONZIGER

2 A. No.

3 Q. Did you have any involvement in  
4 that?

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

6 MS. NEUMAN: I'm going to mark  
7 as Exhibit 821 a document Champ\_Native  
8 036262 to 3627, which is a cover page and  
9 an e-mail of July 13th, 2007.

10 THE SPECIAL MASTER: Excuse me,  
11 I'm sorry, finish identifying the exhibit.  
12 I just want to go back to something that  
13 is clearly unclear in the record.

14 What was the last name of the  
15 person that you asked about with respect  
16 to the potable water system, Ms. Neuman?  
17 How do you pronounce it?

18 THE WITNESS: Villao.

19 THE SPECIAL MASTER: That  
20 person, was he part of the company that  
21 was hired by you and Mr. Kohn?

22 THE WITNESS: I believe he was  
23 an independent consultant who was living  
24 in Ecuador.

25 THE SPECIAL MASTER: And he was



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DONZIGER

retained by that firm that you and Mr. Kohn hired?

THE WITNESS: Yes, sir.

THE SPECIAL MASTER: So he was paid by you and Mr. Kohn, or one of you, or somebody in the plaintiffs' camp?

THE WITNESS: I think he was a subcontractor to the Baron firm, so I believe he was paid by the Baron firm who was paid by Mr. Kohn.

THE SPECIAL MASTER: Okay.

(Exhibit 821 marked for identification.)

Q. Did you receive Exhibit 821, an e-mail from Charles Champ on July 13th, 2007?

A. Yes.

Q. Mr. Champ writes "Big assumption on my part, reaction to Uhl, Baron, Rana & Associates."

This is shortly before Uhl, Baron, Rana & Associates was hired by yourself and Mr. Kohn?

A. I assume.

1 DONZIGER

2 Q. In the second paragraph of the  
3 e-mail, Mr. Champ wrote "On paper they  
4 look highly qualified. Uhl's background  
5 indicates that he probably is  
6 well-respected in third world. The  
7 approach is that of a consultant. The  
8 price is fair. I do have specific  
9 thoughts on which contractors, etc. Is he  
10 aware of the lack of data, etc.?"

11 Do you see that?

12 A. Yes.

13 Q. What is Mr. Champ referring to  
14 when he says "is he aware of the lack of  
15 data"?

16 A. I don't know.

17 Q. If you go down two more  
18 paragraphs, Mr. Champ states "Now, Villao,  
19 on first look I thought that Uhl searched  
20 through the Hydrologists Association and  
21 found an individual in Ecuador. Then I  
22 noticed that they both attended the  
23 University of Arizona in 1976. Villao is  
24 interesting because of the World Bank and  
25 Ecuador government relationships. I would

1 DONZIGER

2 like to have a better handle on the  
3 potential fox in the henhouse. Probably  
4 Alejandro can get a good read on this.  
5 Philosophically it is a long way from the  
6 coast to the jungle of Ecuador."

7 Do you see that?

8 A. Yes.

9 Q. Who is Mr. Champ referring to  
10 when he said Alejandro?

11 A. I believe to Alejandro Ponce  
12 Villacis.

13 Q. That is one of the lawyers on  
14 plaintiffs' team?

15 A. Yes.

16 Q. What relationship did  
17 Mr. Villao have with the World Bank and  
18 the Ecuadorian government that is being  
19 referred to by Mr. Champ?

20 A. I don't know.

21 Q. When Mr. Champ says "I would  
22 like to have a better handle on the  
23 potential fox in the henhouse," did you  
24 know what he was referring to?

25 A. I don't know.

1 DONZIGER

2 Q. Now, this e-mail is after  
3 Mr. Cabrera has been appointed as the  
4 global expert, correct?

5 A. Yes.

6 Q. Is the reference to a fox in  
7 the henhouse -- well, withdraw that.

8 Had Mr. Villao been appointed  
9 as a member of Cabrera's team at this  
10 point in time?

11 A. I don't know.

12 Q. Now, the work that Uhl Baron  
13 did for yourself and Mr. Kohn ultimately  
14 became Annex O-R of the Cabrera report,  
15 correct?

16 A. I believe so, either verbatim  
17 or something very similar.

18 THE SPECIAL MASTER: Whose  
19 name, if anyone's, appears as the author  
20 of that annex on the final report?  
21 Mr. Donziger?

22 THE WITNESS: I don't know. I  
23 think it is either Mr. Villao or  
24 Mr. Cabrera. I'm not sure.

25 THE SPECIAL MASTER: Was

1 DONZIGER

2 Mr. Villao a consultant to the plaintiffs  
3 or to the Uhl Baron firm on this project,  
4 that is potable water?

5 THE WITNESS: He was hired by  
6 Uhl Baron, who was hired by the plaintiffs  
7 to do the report.

8 THE SPECIAL MASTER: And he was  
9 hired presumably after July 13, 2007,  
10 correct?

11 THE WITNESS: It was around  
12 that time. I don't know if he had been  
13 hired by this time or not.

14 THE SPECIAL MASTER: In any  
15 event, he was hired by the plaintiffs or  
16 the firm that the plaintiffs hired after  
17 Mr. Cabrera was appointed; isn't that  
18 right?

19 THE WITNESS: I believe that's  
20 correct, but I don't know for sure.

21 THE SPECIAL MASTER: Well,  
22 whenever he was hired -- strike that.

23 And Mr. Villao at some point  
24 became a member of the Cabrera team?

25 THE WITNESS: Yes.

1 DONZIGER

2 THE SPECIAL MASTER: So either  
3 he was consulting for the plaintiffs as a  
4 member of the Cabrera team or he was  
5 appointed to the Cabrera team after he was  
6 a consultant?

7 THE WITNESS: Yes.

8 THE SPECIAL MASTER: A  
9 consultant to the plaintiffs.

10 THE WITNESS: That's correct.

11 THE SPECIAL MASTER: You may go  
12 on, Ms. Neuman.

13 Q. Isn't it true, Mr. Donziger,  
14 that none of the members of Cabrera's  
15 supposed team were appointed by the court,  
16 they were just disclosed in his report?

17 THE SPECIAL MASTER: That is  
18 their identities disclosed; is that what  
19 you mean?

20 MS. NEUMAN: Yes, sir.

21 A. I believe that's the case.

22 MS. NEUMAN: I'm going to mark  
23 as Exhibit 822 an English translation of  
24 Annex O-R to the Cabrera report.

25 (Exhibit 822 marked for

1 DONZIGER

2 identification.)

3 Q. Look at page 4 of the physical  
4 Exhibit 822, just in Section 1.0,  
5 Objectives.

6 A. Yes.

7 Q. Do you see there that it says  
8 "The work was done in July and August 2007  
9 by a group of professionals who are part  
10 of the technical team of the expert  
11 appointed by the Superior Court of Nueva  
12 Loja to conduct an expert examination as  
13 part of the case Aguinda versus Chevron  
14 Corporation"?

15 A. Yes.

16 Q. And the references to the  
17 expert are referring to Cabrera, correct?

18 A. I believe so, yes.

19 Q. So Annex O-R as filed states  
20 that it is prepared by members of  
21 Cabrera's technical team, correct?

22 A. Yes.

23 MS. NEUMAN: I'm going to mark  
24 as Exhibit 823 --

25 Q. Did you hire Dr. Richard Clapp

1 DONZIGER

2 to work on the Ecuador case?

3 A. I don't remember if I did or  
4 Stratus did, but, yeah, he was hired to  
5 work on the case.

6 Q. Did Dr. Clapp work under your  
7 supervision on the case?

8 A. I don't know if it was me or  
9 Stratus or maybe both.

10 Q. I show you a document  
11 previously marked as Exhibit 924 and  
12 entitled Oil Extraction and its Human  
13 Health Impacts in the Former Texaco  
14 Concession in Ecuador, by Richard W.  
15 Clapp, Genevieve Howe, Shevaun Mizrahi,  
16 November 2006.

17 Have you seen Exhibit 924  
18 before, Mr. Donziger?

19 A. Yes.

20 Q. This is a report that Dr. Clapp  
21 and his colleagues authored, correct?

22 A. Yes.

23 Q. And did they author this report  
24 at your direction?

25 A. Yes.



1 DONZIGER

2 Q. This report became Annex K to  
3 the Cabrera report, correct?

4 A. I don't know.

5 Q. You were aware that Dr. Clapp's  
6 work was used in the Cabrera report,  
7 correct?

8 A. I think so, yes.

9 Q. In addition to Exhibit 924,  
10 Dr. Clapp also wrote a shorter report for  
11 the case. Do you recall that?

12 A. No.

13 Q. I want to show you Exhibit 926.  
14 Let me know when you've had a chance to  
15 look at that exhibit, please.

16 (Witness perusing document.)

17 A. I haven't read this in detail,  
18 but I recognize the document if you want  
19 to question me about it.

20 Q. Do you note in Exhibit 926 that  
21 there is an e-mail exchange between  
22 Dr. Clapp and Doug Beltman and Dave Mills  
23 of Stratus Consulting?

24 A. Yes.

25 Q. And towards the bottom of the

1 DONZIGER

2 first page of Exhibit 926, Dr. Clapp  
3 writes "Hi, Doug and Dave. I summarized  
4 the list of major health effects in a  
5 review paper on exposures in the oil  
6 extraction process and displayed the  
7 peer-reviewed articles which show related  
8 effects in the Ecuadorian Amazon region.  
9 This is on the attached file."

10 Do you see that?

11 A. Yes.

12 Q. And then attached is a document  
13 bearing the Stratus Bates numbers Stratus  
14 Native 061288 through 061291 and it is  
15 entitled Report of Richard Clapp, DSC,  
16 MPH. Do you see that?

17 A. Yes.

18 Q. And this is a short report on  
19 health impacts that Dr. Clapp prepared on  
20 behalf of the plaintiffs, correct?

21 A. Yes.

22 Q. Did you coordinate with  
23 Mr. Beltman to make sure that it wasn't  
24 known that either Exhibit 924 or Exhibit  
25 926 were part of the Cabrera April and

1 DONZIGER

2 November reports?

3 A. I don't know.

4 Q. Let me show you Exhibit 927.

5 Exhibit 927 is an e-mail exchange between  
6 Steven Donziger and Doug Beltman dated May  
7 14th, 2008.

8 Do you see at the bottom that  
9 Mr. Beltman writes "Subject: Urgent  
10 Issue. Hey, Steven, are you there? Karen  
11 wants to give the Clapp report to  
12 reporter, but we can't do that since it's  
13 an annex. I'll tell her not to because  
14 I'm not sure of the report pedigree, but  
15 we need to be careful about this. Doug."

16 Do you see that?

17 A. Yes.

18 Q. And then you responded "Getting  
19 back tonight. Call me first thing  
20 tomorrow."

21 Do you see that?

22 A. Yes.

23 Q. Karen refers to Karen Hinton;  
24 is that right?

25 A. I believe so.

1 DONZIGER

2 Q. And when Mr. Beltman says  
3 "Karen wants to give the Clapp report to a  
4 reporter, but we can't do that because  
5 it's an annex," he is referring to the  
6 fact that it became an annex to the  
7 Cabrera report, correct?

8 A. I believe so.

9 Q. And the reason that it could  
10 not be given to a reporter, Dr. Clapp's  
11 work, is because when submitted as an  
12 annex, it had Mr. Cabrera's name on it,  
13 correct?

14 A. Well, in our opinion, it had  
15 become Mr. Cabrera's work at that point.

16 THE SPECIAL MASTER: Strike  
17 that. Answer the question directly.

18 A. Could you repeat the question,  
19 please?

20 Q. And the reason it could not be  
21 given to a reporter, Dr. Clapp's work, is  
22 because when submitted as an annex, it had  
23 Mr. Cabrera's name on it, correct?

24 A. I think that was one of the  
25 reasons, yes.

1 DONZIGER

2 Q. Mr. Beltman was aware that the  
3 identities of the true authors of the  
4 annexes to the Cabrera report needed to be  
5 kept secret, correct?

6 A. I believe so, yes.

7 Q. And that's why he wrote "we  
8 need to be careful about this"?

9 A. I don't know what was going  
10 through his head.

11 THE SPECIAL MASTER: Excuse me,  
12 there is a reference in one of these  
13 documents that we have just been looking  
14 at to an Annex L.

15 Do you know whose name --  
16 Mr. Donziger, do you know whose name  
17 appears on Annex L as it was finally  
18 submitted to the court?

19 THE WITNESS: Not as I sit  
20 here, no.

21 THE SPECIAL MASTER: Do we have  
22 in the room a copy of Annex L and does it  
23 list the purported author?

24 MR. CRIMMINS: We can try and  
25 get a copy.

1 DONZIGER

2 THE SPECIAL MASTER: I want to  
3 take a short break.

4 THE VIDEOGRAPHER: Off the  
5 record, 1:35 p.m.

6 (Recess taken.)

7 THE VIDEOGRAPHER: Back on the  
8 record, 1:41 p.m.

9 BY MS. NEUMAN:

10 Q. I'm going to hand the witness a  
11 document previously marked as Exhibit 928.  
12 It is an e-mail exchange between Doug  
13 Beltman and Karen Hinton dated May 14th of  
14 2008.

15 Mr. Donziger, you do not appear  
16 to be copied on Exhibit 928. Have you  
17 seen it before?

18 (Witness perusing document.)

19 Q. Have you seen Exhibit 928  
20 before, sir?

21 A. I don't remember. I don't  
22 believe so.

23 Q. In the second e-mail down on  
24 the first page of Exhibit 928, Karen  
25 Hinton writes to Doug Beltman, "Doug, a

1 DONZIGER

2 quick question, who paid for the Richard  
3 Clapp health study? Is that the best one  
4 to give to reporter?"

5 Do you see that?

6 A. The very first page of the  
7 exhibit?

8 Q. Yes, sir.

9 A. Yes.

10 Q. And then Mr. Beltman responds  
11 "Hey Karen, I don't think we can give that  
12 one out. I'm not sure of its pedigree.  
13 I'll ask Steven and get back to you."

14 Do you see that?

15 A. Yes.

16 Q. And that was consistent with  
17 what Mr. Beltman told you in Exhibit 927  
18 he was going to tell Ms. Hinton about the  
19 Clapp report, correct, when he said "I'll  
20 tell her not to because I'm not sure of  
21 the report pedigree"?

22 A. Yes.

23 Q. Was Karen Hinton aware at this  
24 point in time that Stratus and others had  
25 drafted the executive summary and annexes

1 DONZIGER

2 of the Cabrera report?

3 A. I don't believe so.

4 Q. Had you ever told her that  
5 prior to this point in time?

6 A. I don't know.

7 Q. Ms. Hinton was in charge of the  
8 plaintiffs' press strategy; is that right?

9 A. Yes.

10 Q. And she was at this point in  
11 time issuing press releases on behalf of  
12 the plaintiffs claiming that the Cabrera  
13 report was done by an independent expert,  
14 correct?

15 A. Yes.

16 Q. Was she issuing those releases  
17 with your approval?

18 A. Yes.

19 Q. Was Dr. Clapp aware that his  
20 report that we marked as Exhibit 924 had  
21 become Annex K to the Cabrera report?

22 A. I don't know.

23 Q. Did you ever tell him that?

24 A. I don't remember.

25 Q. Is Ms. Hinton currently aware



1 DONZIGER

2 that Stratus and others drafted the  
3 executive summary and annexes of the  
4 Cabrera report?

5 A. I believe so, yes.

6 Q. Can you identify for me when  
7 she became aware of that information?

8 A. I think it was sometime after  
9 Chevron filed its first 1782 action.

10 Q. And who told her that?

11 A. I believe I did and other  
12 people.

13 Q. Why wasn't Ms. Hinton made  
14 aware at the time that the executive  
15 summary and annexes to the Cabrera report  
16 were drafted by Stratus and others on  
17 plaintiffs' team?

18 MR. KAPLAN: Objection.

19 THE SPECIAL MASTER: Sustained.

20 Q. Why didn't you tell Ms. Hinton  
21 in the April '08 time frame once the  
22 Cabrera report itself became public that  
23 Stratus and others had drafted the  
24 executive summary and annexes?

25 MR. KAPLAN: Objection.

1 DONZIGER

2 THE SPECIAL MASTER: Overruled.

3 A. We weren't really focusing on  
4 it at that time.

5 Q. You weren't focusing --

6 A. Relative to Ms. Hinton.

7 THE SPECIAL MASTER: What is  
8 the "it" in your answer, "we weren't  
9 really focusing on it at that time"?

10 THE WITNESS: The issue that  
11 has been raised by Chevron with regard to  
12 the propriety of what happened relative to  
13 Stratus creating materials that were given  
14 to Cabrera.

15 THE SPECIAL MASTER: Can you go  
16 back to Exhibit 927, please. That's the  
17 e-mail dated May 14, 2008 from Mr. Beltman  
18 to you, correct?

19 THE WITNESS: Yes.

20 THE SPECIAL MASTER: And his  
21 e-mail is marked "Urgent Issue," correct?

22 THE WITNESS: Yes.

23 THE SPECIAL MASTER: And  
24 Mr. Beltman says "Are you there? Karen  
25 wants to give the Clapp report to a

1 DONZIGER

2 reporter, but we can't do that since it's  
3 an annex. I'll tell her not to because  
4 I'm not sure of the report pedigree, but  
5 we need to be careful about this."

6 Do you see that?

7 THE WITNESS: Yes.

8 THE SPECIAL MASTER: This is  
9 dated May 14, 2008?

10 THE WITNESS: Correct.

11 THE SPECIAL MASTER: And you  
12 weren't really focusing on "it," this  
13 issue, at that time?

14 THE WITNESS: It was not a big  
15 issue to us, no.

16 THE SPECIAL MASTER: Who was  
17 the principal contact with Ms. Hinton in  
18 April and May of 2008, that is for the  
19 plaintiffs' side?

20 THE WITNESS: Myself.

21 THE SPECIAL MASTER: Go on,  
22 Ms. Neuman.

23 Q. The biggest issue for the  
24 plaintiffs in April 2008 in the Ecuador  
25 case was the Cabrera report, correct?

1 DONZIGER

2 A. Yes.

3 Q. And at this point in time the  
4 press releases and press conferences that  
5 the plaintiffs held all focused on the  
6 Cabrera report and its so-called findings,  
7 correct?

8 A. Not all, no.

9 Q. The vast majority?

10 A. Some.

11 Q. In the e-mail of May 14th,  
12 2008, which we have marked as Exhibit 927,  
13 you said that Mr. Beltman couldn't say  
14 that the annex was Clapp's work because  
15 you now at this point in time viewed it as  
16 Cabrera's work; is that right?

17 A. You are talking about my  
18 testimony?

19 THE SPECIAL MASTER: No, no,  
20 no.

21 Q. Yes, sir.

22 A. Yes.

23 Q. Why couldn't Mr. Beltman just  
24 tell Ms. Hinton that the Clapp work had  
25 become an annex and was thus now Cabrera's

1 DONZIGER

2 work, why did he have to make up a story  
3 that he wasn't sure of its pedigree?

4 MR. KAPLAN: Objection.

5 THE SPECIAL MASTER: Sustained.

6 Q. Are you aware of any reason why  
7 Mr. Beltman couldn't tell Ms. Hinton the  
8 Clapp work had become an annex and was  
9 thus now, quote, "Cabrera's work"?

10 A. Yes.

11 Q. What reason is that?

12 A. I think there was a general  
13 feeling on our team that we wanted it to  
14 be kept confidential.

15 Q. The fact that plaintiffs had  
16 written portions of the Cabrera report?

17 A. The fact that plaintiffs had  
18 written materials that were given to him  
19 and he adopted.

20 THE SPECIAL MASTER: Excuse me,  
21 that was not the question. Answer the  
22 question.

23 THE WITNESS: Could you repeat  
24 the question, please.

25 Q. The fact that plaintiffs had

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written portions of the Cabrera report?

The prior answer was "I think there was a general feeling on our team that we wanted to keep it confidential." Is it the fact that plaintiffs had written portions of the Cabrera report?

THE SPECIAL MASTER: Yes or no, sir.

A. Portions of what became the Cabrera report, yes.

Q. When you told Ms. Hinton after the 1782 proceedings started that Stratus and others had written Cabrera's executive summary and annexes, what was her reaction?

A. I don't remember.

Q. Did Ms. Hinton at that point in time express any concern about the inaccuracies of her prior press releases?

A. I don't remember her characterizing it that way.

Q. Did you have any discussions with Ms. Hinton once she became aware of Stratus' and the plaintiffs' role in the

1 DONZIGER

2 Cabrera report by issuing any corrections  
3 of her prior press releases?

4 A. I don't believe so.

5 THE SPECIAL MASTER: When you  
6 answered "I don't remember her  
7 characterizing it that way," how did she  
8 characterize it?

9 THE WITNESS: I don't remember.  
10 It was a discussion in the context of  
11 explaining legal papers that Chevron had  
12 filed.

13 Q. I'm going to hand the witness a  
14 document that was previously marked as  
15 Exhibit 931. It is an e-mail exchange  
16 dated November 5th, 2008 between Steven  
17 Donziger and Doug Beltman.

18 Is Exhibit 931 an e-mail  
19 exchange that you had with Mr. Beltman in  
20 November 2008, Mr. Donziger?

21 A. Yes.

22 Q. The first e-mail states  
23 "Subject: Important - Clapp." You wrote  
24 "Extremely important he doesn't go off the  
25 reservation and talk to the Congressman in

1 DONZIGER

2 a way that damns the Cabrera report with  
3 faint praise, if you know what I mean.  
4 Should we talk to him?"

5 When you referred to the  
6 Congressman, who are you referring to?

7 A. Jim McGovern.

8 Q. When you said "it is extremely  
9 important that he doesn't go off the  
10 reservation," you are referring to  
11 Dr. Clapp, correct?

12 A. Yes.

13 Q. What did you mean when you said  
14 "and talk to the Congressman in a way that  
15 damns the Cabrera report with faint  
16 praise"?

17 A. I think it was a question of  
18 controlling our messaging on that trip and  
19 wanting Dr. Clapp to stand by the findings  
20 in the report.

21 Q. What made you think that he was  
22 going to damn it with faint praise if you  
23 didn't talk to him?

24 A. I don't remember. I don't  
25 know.



1 DONZIGER

2 Q. The trip you are referring to  
3 is a trip that Congressman McGovern took  
4 with yourself and Dr. Clapp and  
5 Mr. Beltman to Ecuador?

6 A. Yes.

7 Q. Did you ever disclose to  
8 Congressman McGovern during this trip that  
9 Stratus and others had written the  
10 executive summary and annexes of the  
11 Cabrera report?

12 A. I don't believe so.

13 Q. Mr. Beltman writes back "I've  
14 talked to him. I think we're good with  
15 him. Doug."

16 Do you see that?

17 A. Yes.

18 Q. Did you ever discuss with  
19 Mr. Beltman the substance of his  
20 conversation with Dr. Clapp?

21 A. I might have. I don't  
22 remember.

23 Q. Do you remember what he said  
24 about that to you?

25 A. No.

1 DONZIGER

2 Q. I'm going to hand the witness a  
3 document that has previously been marked  
4 as Exhibit 930. Please let me know when  
5 you have read it.

6 It is an e-mail dated -- e-mail  
7 exchange dated November 6th, 2008 between  
8 Mr. Donziger and Mr. Beltman.

9 (Witness perusing document.)

10 Q. Have you finished reading it?

11 A. Yes.

12 Q. In Exhibit 930 you wrote to  
13 Mr. Beltman "Can you bring a copy of  
14 Clapp's study for the trip." Do you see  
15 that?

16 A. Yes.

17 Q. What are you referring to there  
18 as Clapp's study?

19 A. I believe that Exhibit 924.

20 Q. The longer version?

21 A. Yes.

22 Q. Then Mr. Beltman responds  
23 "Wait. Are you sure? He has done two  
24 reports that I know of."

25 And the "he" there he is

1 DONZIGER

2 referring to is Clapp, correct?

3 A. Yes.

4 Q. Mr. Beltman goes on "A long  
5 while back, he wrote up a summary of the  
6 toxic effects of chemicals in crude oil  
7 and drilling fluids, and it was  
8 incorporated into the expert report as an  
9 annex pretty much as is. More recently  
10 for the response to Cabrera, he wrote a  
11 more specific piece that says that the  
12 toxic effects caused by those chemicals  
13 are the same effects that have been  
14 observed in people living in the area. We  
15 sent it to Quito, but it did not appear in  
16 the Demandantes' comments on the Cabrera  
17 report, which means it will probably  
18 appear in the expert's response to  
19 comments. I don't think we should hand  
20 out either one as Clapp's, thereby  
21 distributing proof."

22 Do you see that?

23 A. Yes.

24 Q. When Mr. Beltman refers to "the  
25 expert's response to comments," he is

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referring to the response that Cabrera would subsequently file responding to the plaintiffs' so-called comments on his report, correct?

A. I believe so.

Q. And the plaintiffs were involved in drafting Cabrera's response to their own comments on his report, correct?

A. I know materials were given to Cabrera for that purpose.

THE SPECIAL MASTER: Excuse me. You keep using the phrase "materials were given." The question was, the plaintiffs were involved in drafting Cabrera's response. That's not the same as giving materials. Answer the question. Drafting a response is different from giving materials. Now answer that question, please.

THE WITNESS: What's the question?

THE SPECIAL MASTER: The question, and the plaintiffs were involved in drafting Cabrera's response to their

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own comments on his reports, correct? End of question. What's the answer to that question?

THE WITNESS: I wouldn't characterize it that way.

THE SPECIAL MASTER: I don't care how you would characterize it. Please answer the question.

THE WITNESS: No.

THE SPECIAL MASTER: Was Mr. Clapp on the payroll of the plaintiffs?

THE WITNESS: He was a consultant paid by the plaintiffs.

THE SPECIAL MASTER: And he drafted a report, correct?

THE WITNESS: Yes.

THE SPECIAL MASTER: And that draft was handed to the expert as a response to plaintiffs' own comments, correct?

THE WITNESS: I don't believe so, no.

THE SPECIAL MASTER: Did one of

1 DONZIGER

2 the Clapp reports appear in the expert's  
3 response to plaintiffs' comments?

4 THE WITNESS: I don't know.  
5 Just to be clear, in your previous  
6 question, I believe I misspoke, in your  
7 previous question I was referring to the  
8 long report, which is 924, Exhibit 924.

9 THE SPECIAL MASTER: 924 did  
10 appear as an annex to the original April  
11 report, correct?

12 THE WITNESS: I believe so.

13 THE SPECIAL MASTER: And the  
14 responses in November by the expert to the  
15 plaintiffs' comments, that included as an  
16 annex the short version of the Clapp  
17 report, correct?

18 THE WITNESS: I don't know.

19 THE SPECIAL MASTER: Go on,  
20 Ms. Neuman.

21 Q. After receiving  
22 Mr. Beltman's --

23 THE SPECIAL MASTER: Excuse me,  
24 I thought you were going to continue on  
25 this document.

1 DONZIGER

2 MS. NEUMAN: I am.

3 THE SPECIAL MASTER: I'm sorry,  
4 go ahead.

5 Q. After receiving Mr. Beltman's  
6 November 6th e-mail in which he says "I  
7 don't think we should hand out either one  
8 as Clapp's, thereby distributing proof,"  
9 did you refrain from bringing Dr. Clapp's  
10 study on the trip with Congressman  
11 McGovern?

12 A. I don't know.

13 Q. Did you ever affirmatively tell  
14 Congressman McGovern about Stratus' and  
15 plaintiffs' involvement in drafting the  
16 Cabrera report?

17 A. I don't know.

18 Q. Weren't you affirmatively  
19 keeping it a secret from him?

20 A. Well, as I testified, we felt  
21 like it was important to keep it  
22 confidential.

23 Q. And when you say "keep it  
24 confidential," you mean from everyone,  
25 including the Ecuadorian court, correct?

1 DONZIGER

2 A. Well, not exactly, no.

3 Q. Did you ever disclose it to the  
4 Ecuadorian court prior to Chevron's 1782s?

5 A. We assumed the court knew that  
6 that's how the process worked.

7 THE SPECIAL MASTER: Strike  
8 that. Answer the question.

9 THE WITNESS: The answer is no,  
10 I didn't personally.

11 Q. And no one else on plaintiffs'  
12 team did, correct?

13 A. Not that I'm aware of.

14 Q. Did you ever affirmatively tell  
15 Congressman McGovern that Cabrera was the  
16 author of his report?

17 A. I don't know.

18 THE SPECIAL MASTER: Excuse me,  
19 are you done with this Exhibit 930?

20 MS. NEUMAN: Yes, sir.

21 THE SPECIAL MASTER: I have  
22 some questions to clarify something in  
23 this exhibit.

24 First, Mr. Donziger, you see in  
25 the first -- on the first line of



1 DONZIGER

2 Mr. Beltman's e-mail back to you "a long  
3 while back he wrote up a summary of the  
4 toxic effects," etc. Do you see that?

5 THE WITNESS: Yes.

6 THE SPECIAL MASTER: Then the  
7 next sentence, "More recently for the  
8 response to Cabrera, he wrote a more  
9 specific piece that says that the toxic,"  
10 etc. Do you see that?

11 THE WITNESS: Yes.

12 THE SPECIAL MASTER: Is this  
13 more specific piece the report that's  
14 attached to the e-mails in Exhibit 926?

15 THE WITNESS: It could be. I  
16 don't know.

17 THE SPECIAL MASTER: Now,  
18 turning to the next to the last sentence,  
19 he writes "We sent it" -- "sent it," the  
20 "it" is referring to the more specific  
21 piece, right?

22 THE WITNESS: I believe so.

23 THE SPECIAL MASTER: -- "we  
24 sent it to Quito, but it did not appear in  
25 the Demandantes' comments on the Cabrera

1 DONZIGER

2 report, which means it will probably  
3 appear in the expert's response to  
4 comments."

5 Do you see that phrase, "which  
6 means that it will probably appear in the  
7 expert's response"; do you see that?

8 THE WITNESS: Yes.

9 THE SPECIAL MASTER: How would  
10 it get into the expert's response to  
11 comments?

12 THE WITNESS: It would be given  
13 to the expert by local counsel.

14 THE SPECIAL MASTER: Your local  
15 counsel?

16 THE WITNESS: Yes.

17 THE SPECIAL MASTER: To put in  
18 his response to comments, right?

19 THE WITNESS: To consider, to  
20 put into his response.

21 THE SPECIAL MASTER: But you  
22 hoped he would put it into in his comments  
23 to the response?

24 THE WITNESS: Yes, if it was  
25 done. I don't know what was done with

1 DONZIGER

2 this document, but yes.

3 THE SPECIAL MASTER: And you  
4 expected it to be done, didn't you?

5 THE WITNESS: We hoped it would  
6 be done, generally, speaking generally. I  
7 don't know about this specific document.

8 THE SPECIAL MASTER: Go on,  
9 Ms. Neuman.

10 Q. I'm going to hand the witness a  
11 document previously marked as Exhibit 929.  
12 This is an e-mail exchange dated November  
13 12th, 2008 between Doug Beltman and Steven  
14 Donziger, forwarding an e-mail from  
15 Richard Clapp.

16 (Witness perusing document.)

17 Q. Have you seen Exhibit 929  
18 before, Mr. Donziger?

19 A. I'm just reviewing it, I'm  
20 sorry.

21 (Witness perusing document.)

22 Q. In Exhibit 929, Mr. Clapp  
23 forwards an e-mail to Mr. Beltman that he  
24 had written to you, and then he says to  
25 Mr. Beltman "Hi Doug, I just got off the

1 DONZIGER

2 phone with Steve Donziger, who asked if I  
3 could write something as an op ed about my  
4 trip. I sent the message below, along  
5 with the five-page report I did for you  
6 last August."

7 Do you see that?

8 A. Yes.

9 Q. That is the same short version  
10 of his report that Mr. Beltman indicated  
11 in Exhibit 930 that should not be handed  
12 out to Congressman McGovern, correct?

13 A. I believe so, yes.

14 Q. And then Mr. Beltman forwards  
15 Mr. Clapp's -- Dr. Clapp's e-mail to you  
16 on November 18th, 2008 and he says "We  
17 have to talk to Clapp about the five-pager  
18 and how we have to limit its distribution.  
19 It," all caps, "cannot go into the  
20 Congressional Record as being authored by  
21 him. You want to talk to him or me?"

22 Do you see that?

23 A. Yes.

24 Q. And the reason that the  
25 five-pager could not go into the

1 DONZIGER

2 Congressional Record as authored by Clapp  
3 was because it had been given by Cabrera  
4 to put his name on, correct?

5 A. I assume so.

6 Q. Did either you or Mr. Beltman  
7 talk to Dr. Clapp about this issue?

8 A. I don't know. I don't have any  
9 recollection.

10 Q. You don't have any recollection  
11 of talking to him?

12 A. I have talked to him on the  
13 phone a few times. I don't know if I  
14 talked to him about this.

15 Q. And was Dr. Clapp instructed  
16 not to send his five-page document to  
17 Congressman McGovern?

18 A. I don't know.

19 Q. When you say that you were  
20 keeping the plaintiffs' role in the  
21 Cabrera report confidential, you were  
22 keeping it confidential from, among other  
23 people, Chevron, correct?

24 A. Well --

25 THE SPECIAL MASTER: Answer

1 DONZIGER

2 that yes or no.

3 A. That's correct.

4 Q. Was 3TM hired to do work for  
5 the plaintiffs?

6 A. Yes.

7 Q. Was any of 3TM's work used in  
8 the Cabrera report?

9 A. I don't know.

10 MS. NEUMAN: I'm going to mark  
11 as Exhibit 823 a document entitled Rough  
12 Outline for Texas Motion to Quash,  
13 DONZ00009504 through 9507.

14 (Exhibit 823 marked for  
15 identification.)

16 (Witness perusing document.)

17 Q. Have you had a chance to look  
18 at Exhibit 823, Mr. Donziger?

19 A. I've looked at it and not read  
20 the whole document.

21 Q. Can you tell me who drafted  
22 this document?

23 A. I don't know. I assume one of  
24 the lawyers on our team.

25 Q. Did you have any hand in

1 DONZIGER

2 drafting this document?

3 A. I don't believe so.

4 Q. Did you provide comments to the  
5 draftsman?

6 A. I don't know. I don't think  
7 so.

8 Q. On page 1 of the Rough Outline  
9 for Texas Motion to Quash, Exhibit 823,  
10 heading 3 is The Cabrera Story. Do you  
11 see that?

12 A. Yes.

13 Q. Point D, "Cabrera actively  
14 solicited information from both parties."  
15 Do you see that?

16 A. Yes.

17 Q. Is that a reference to  
18 Cabrera's court filings requesting  
19 information from the parties?

20 A. I don't know. I didn't draft  
21 this.

22 Q. Is that what you understood it  
23 to be a reference to when you received it?

24 A. Well, I don't know if I read  
25 this when I received it.

1 DONZIGER

2 THE SPECIAL MASTER: Who were  
3 the counsel of record in the Texas motion  
4 to quash?

5 THE WITNESS: I believe it was  
6 the Emery Celli firm.

7 MS. NEUMAN: That's correct.

8 THE SPECIAL MASTER: When was  
9 the Texas motion to quash?

10 MS. NEUMAN: I'm going to have  
11 to look that up.

12 THE SPECIAL MASTER: Mr.  
13 Donziger, do you know?

14 THE WITNESS: I think it was  
15 roughly May/June of this year, April  
16 maybe.

17 MS. NEUMAN: No, last year.

18 THE WITNESS: I mean last year.

19 MS. NEUMAN: It is tricky in  
20 changing.

21 THE SPECIAL MASTER: Go on,  
22 Ms. Neuman.

23 Q. Subsection G, the author wrote  
24 "How material was transmitted to Cabrera  
25 by plaintiffs. Was the material simply



1 DONZIGER

2 left for him at the courthouse? If so,  
3 argument that we may know what was sent to  
4 Cabrera, but we do not know what he  
5 'considered' may be slightly more  
6 convincing."

7 Do you see that?

8 A. Yes.

9 Q. Was an investigation done  
10 before the Texas motion to quash was filed  
11 to determine precisely how the material  
12 was transmitted to Cabrera?

13 A. Not a formal investigation, no.

14 Q. Was it determined how  
15 plaintiffs provided the executive summary  
16 and annexes to Cabrera?

17 THE SPECIAL MASTER: Excuse me,  
18 this says "information." This doesn't  
19 say -- I think the question as posed is  
20 okay. The question is, was it determined  
21 how plaintiffs provided the executive  
22 summary and annexes to Cabrera? You can  
23 answer that question.

24 THE WITNESS: I think at that  
25 time it had not been definitively

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determined.

Q. Has it since been definitively determined?

A. For the most part, yes.

Q. And how did plaintiffs provide the executive summary and annexes to Cabrera?

A. I believe they were given to him.

Q. By whom?

A. By local counsel.

Q. Who specifically among the local counsel?

A. I don't know.

Q. And has it been determined whether they were given electronically or in hard copy form?

A. I don't think so.

Q. The determination that the executive summary and annexes were given to Cabrera by local counsel, when was that made?

A. I don't remember exactly.

Q. Was it made before or after

1 DONZIGER

2 plaintiffs started making representations  
3 to U.S. courts about their interactions  
4 with Cabrera?

5 A. I don't know.

6 Q. Looking back at Exhibit --

7 THE SPECIAL MASTER: Excuse me.  
8 I want to identify the people who made the  
9 determinations that local counsel gave the  
10 summary and the annexes to Cabrera. Who  
11 was it that made that determination?

12 THE WITNESS: Well, it is a  
13 conclusion I've drawn.

14 THE SPECIAL MASTER: You did  
15 not know it at the time in April/May of  
16 2008 and then again in November of 2008  
17 that the annexes and the summary were  
18 handed to Cabrera or somehow delivered to  
19 Cabrera by local counsel?

20 THE WITNESS: Well, I had a  
21 general idea that that was the case.

22 THE SPECIAL MASTER: I want to  
23 take a short break. Counsel, stay here.  
24 Mr. Donziger, please leave.

25 THE VIDEOGRAPHER: Do you want

1 DONZIGER

2 to go off the record?

3 THE SPECIAL MASTER: Yes,  
4 please.

5 THE VIDEOGRAPHER: Off the  
6 record, 2:18 p.m.

7 (Recess taken.)

8 THE VIDEOGRAPHER: Back on the  
9 record, 2:33 p.m. This is the beginning  
10 of disk four, volume IX, in the deposition  
11 of Steven Donziger.

12 THE SPECIAL MASTER: Mr.  
13 Donziger, there has been references here  
14 to the executive summary and annexes,  
15 right? Am I correct that the executive  
16 summary together with the annexes  
17 constitute what has come to be known as  
18 the Cabrera report?

19 THE WITNESS: I believe so.

20 THE SPECIAL MASTER: Go on,  
21 Ms. Neuman, please.

22 THE WITNESS: Before  
23 proceeding, may I inquire of you?

24 THE SPECIAL MASTER: No.

25 THE WITNESS: Because I was

1 DONZIGER

2 told by my counsel that he can't confer  
3 with me.

4 THE SPECIAL MASTER: Right,  
5 during the break.

6 THE WITNESS: Well, I need to  
7 ask my counsel for legal advice.

8 THE SPECIAL MASTER: Go ahead.  
9 Now you can ask him. Now you can.

10 MR. KAPLAN: Can we go out?

11 THE SPECIAL MASTER: Yes.

12 MS. NEUMAN: Off the record.

13 THE VIDEOGRAPHER: Off the  
14 record, 2:34 p.m.

15 (Discussion off the record.)

16 THE VIDEOGRAPHER: Back on the  
17 record, 2:37 p.m.

18 BY MS. NEUMAN:

19 Q. Mr. Donziger, you are in  
20 ongoing contact with local counsel in  
21 Ecuador for the plaintiffs, correct?

22 A. Yes.

23 Q. And you have been in contact  
24 with them since at least 2003, correct?

25 A. Yes.

1 DONZIGER

2 Q. Assuming you didn't already  
3 know, you could have asked local counsel  
4 in Ecuador at any time who gave the  
5 plaintiff-drafted global expert report and  
6 annexes to Mr. Cabrera, correct?

7 A. Yes.

8 Q. Assuming you didn't already  
9 know, you could have asked local counsel  
10 in Ecuador at any time how the  
11 plaintiff-drafted global report and  
12 annexes were given to Cabrera, correct?

13 A. Yes.

14 Q. And assuming you didn't already  
15 know, you could have asked local counsel  
16 in Ecuador at any time exactly when and  
17 where the plaintiff-drafted global report  
18 and annexes were given to Cabrera,  
19 correct?

20 A. Yes.

21 Q. And is it your testimony as you  
22 sit here today that you have not asked  
23 local counsel those questions?

24 A. All the specific questions, no.

25 Q. Have you asked local counsel

1 DONZIGER

2 any of those specific questions?

3 A. Generally, I have asked --  
4 well, I asked enough to be told that local  
5 counsel was in contact with Cabrera and  
6 gave him materials. How, electronic,  
7 otherwise, I don't know.

8 Q. When you say "gave him  
9 materials," you mean the plaintiff-drafted  
10 global report and annexes, correct?

11 A. Meaning Stratus' materials.

12 Q. And those drafted by the other  
13 consultants and the plaintiffs' legal  
14 team?

15 A. I assume, yes.

16 Q. Didn't you recommend to your  
17 colleagues at Emery Celli, Motley Rice and  
18 Patton Boggs over six months ago that  
19 Mr. Fajardo be debriefed about the  
20 contacts with Mr. Cabrera?

21 A. That was a discussion we had on  
22 occasion.

23 Q. And was Mr. Fajardo ever  
24 debriefed about the contacts with Cabrera?

25 A. Not in any sort of formal,

1 DONZIGER

2 comprehensive way.

3 Q. Did anybody --

4 THE SPECIAL MASTER: Wait one  
5 second. How about in any way? Not a  
6 formal, comprehensive way. In any way?

7 THE WITNESS: Not really. He  
8 didn't want to be.

9 THE SPECIAL MASTER: I'm sorry?

10 THE WITNESS: He didn't want to  
11 be.

12 Q. Mr. Fajardo did not want --

13 THE SPECIAL MASTER: Go ahead,  
14 Counsel.

15 Q. -- to discuss his contacts with  
16 Cabrera with yourself; is that right?

17 A. He didn't feel like it was his  
18 role to answer all questions from U.S.  
19 counsel.

20 Q. Did Mr. Fajardo refuse at some  
21 point in time to answer specific questions  
22 from U.S. counsel about his contacts with  
23 Mr. Cabrera?

24 A. I don't remember.

25 Q. Were any other members of



1 DONZIGER

2 plaintiffs' Ecuadorian legal team  
3 questioned about their contacts with  
4 Mr. Cabrera by U.S. counsel?

5 A. I don't know.

6 Q. Were they questioned by you  
7 about their contacts with Mr. Cabrera?

8 A. We've had discussions about  
9 this whole process. Specifics about how  
10 materials were actually given over, we  
11 haven't really gone there.

12 Q. Based on your conversations  
13 with Mr. Fajardo, would you say he was in  
14 consistent contact with Mr. Cabrera while  
15 Mr. Cabrera was serving as the court's  
16 global expert?

17 MR. KAPLAN: Objection.

18 THE SPECIAL MASTER: Overruled.

19 A. I think there were  
20 interactions.

21 THE SPECIAL MASTER: I think  
22 you need to answer that question directly.

23 A. Can you read it back, please?

24 Q. Based on your conversations  
25 with Mr. Fajardo, would you say he was in

1 DONZIGER

2 consistent contact with Mr. Cabrera while  
3 Mr. Cabrera was serving as the court's  
4 global expert?

5 A. I think he had -- I think he  
6 had regular contact. I don't know how  
7 often.

8 Q. The assistant to the Crude team  
9 in Ecuador had Mr. Cabrera's cell phone  
10 number. Do you know how she came to have  
11 that?

12 A. No.

13 Q. Have you participated in any  
14 meetings where Mr. Fajardo was being  
15 questioned by U.S. counsel other than  
16 yourself about his contacts with  
17 Mr. Cabrera?

18 A. I don't remember. There was a  
19 meeting with other U.S. counsel. I don't  
20 remember if that issue was addressed.

21 Q. Which members of the U.S.  
22 counsel team other than yourself have met  
23 with Mr. Fajardo?

24 A. From the Emery firm, Mr. Abady.  
25 From Patton Boggs, Mr. Westenberger,

1 DONZIGER

2 Mr. Yennock, Ms. Carrasco, I believe  
3 Mr. Daleo and I believe Mr. Tyrrell.

4 Q. Do all the people you mentioned  
5 from the Patton Boggs firm who have met  
6 with Mr. Fajardo speak Spanish?

7 A. Not all, no.

8 Q. Could you tell me which ones  
9 speak Spanish, please?

10 A. I think Ms. Carrasco.

11 Q. In the meetings where  
12 Mr. Fajardo met with Mr. Abady and members  
13 of the Patton Boggs firm, did he have a  
14 translator?

15 A. I believe so.

16 Q. Was it a professional outside  
17 translator or someone else?

18 A. Well, Mr. Abady speaks Spanish.  
19 And I believe that in the one meeting I  
20 remember, I believe Ms. Garr translated.

21 Q. That would be your associate?

22 A. Yes.

23 Q. The one meeting that you  
24 remember, when was that?

25 A. Maybe April or May of last

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year.

Q. Of 2010?

A. Yes.

Q. Where was that meeting held?

A. In New York.

Q. Were the attendees at that meeting yourself, Mr. Fajardo, Mr. Abady and the members of the Patton Boggs firm that you have listed?

A. I don't think all of the people I listed were there.

Q. Can you tell me which ones were there, please?

A. I believe Mr. Abady, Mr. Maazel, maybe Mr. Wilson, I think Mr. Tyrrell, Mr. Westenberger, Mr. Daleo maybe.

Q. Yourself and Ms. Garr?

A. Myself and Ms. Garr and Mr. Yanza.

Q. Luis Yanza?

A. Yes.

Q. Was any other member of plaintiffs' Ecuadorian legal team present?

1 DONZIGER

2 A. I don't believe so.

3 Q. And at this meeting in April or  
4 May of 2010 was the topic of plaintiffs'  
5 interaction with Mr. Cabrera discussed  
6 with Mr. Fajardo and Mr. Yanza?

7 A. I believe so, yes.

8 Q. And at this meeting in April or  
9 May of 2010, did Mr. Fajardo in your view  
10 candidly describe the plaintiffs'  
11 interactions with Mr. Cabrera?

12 A. I don't remember.

13 THE SPECIAL MASTER: Is it that  
14 you don't remember whether he was candid  
15 or you don't remember whether the subject  
16 was discussed?

17 THE WITNESS: Well, I know the  
18 subject was discussed, but there were a  
19 lot of subjects discussed and I don't  
20 think we got -- what I remember, we didn't  
21 get to the level of detail that you are  
22 getting to in this deposition right now.

23 THE SPECIAL MASTER: Did  
24 Mr. Yanza discuss the contacts with  
25 Mr. Cabrera?

1 DONZIGER

2 THE WITNESS: I don't believe  
3 he did.

4 THE SPECIAL MASTER: Whether it  
5 was in the detail that Ms. Neuman asked  
6 about, was Mr. Fajardo questioned about  
7 giving the Cabrera report, the draft  
8 Cabrera report, to Mr. Cabrera?

9 THE WITNESS: I don't know if  
10 he was specifically asked that question.

11 THE SPECIAL MASTER: As of the  
12 time of that meeting, did everybody in the  
13 room know that plaintiffs' local counsel  
14 had given to Mr. Cabrera what has come to  
15 be known as the Cabrera report?

16 THE WITNESS: I think there  
17 came a time, it might have been before  
18 then, where local -- I should say U.S.  
19 counsel generally knew that Mr. Cabrera  
20 had adopted the Stratus materials. How  
21 they actually got to him, I don't know if  
22 that was known or discussed specifically.

23 THE SPECIAL MASTER: When you  
24 say Mr. Cabrera adopted the Stratus  
25 materials, we are now talking about the

1 DONZIGER

2 report, the Cabrera report, if not word  
3 for word, in every word, substantially  
4 word for word; isn't that right?

5 THE WITNESS: For those parts  
6 that Stratus drafted, yes.

7 THE SPECIAL MASTER: Well,  
8 Stratus and others. Some of them were  
9 written by Mr. Clapp, correct?

10 THE WITNESS: I believe so.

11 THE SPECIAL MASTER: And  
12 Mr. Powers, correct?

13 THE WITNESS: Yes.

14 THE SPECIAL MASTER: And others  
15 besides them, correct?

16 THE WITNESS: Yes.

17 THE SPECIAL MASTER: That is  
18 people on or hired by plaintiffs' team,  
19 correct?

20 THE WITNESS: Well, in the case  
21 of Mr. Villao, yes.

22 THE SPECIAL MASTER: And in the  
23 case of Mr. Villao, it was that Mr. Villao  
24 was hired by somebody else on plaintiffs'  
25 team?

1 DONZIGER

2 THE WITNESS: Well, he was  
3 hired by Mr. Kohn.

4 THE SPECIAL MASTER: And didn't  
5 you testify that some of the authors of  
6 sections of the report were hired or might  
7 have been hired by Stratus?

8 THE WITNESS: I don't know if I  
9 testified to that.

10 THE SPECIAL MASTER: Go on,  
11 Ms. Neuman.

12 Q. Mr. Donziger, people working on  
13 plaintiffs' technical team in Quito also  
14 wrote portions of the Cabrera report,  
15 correct?

16 A. I believe so.

17 Q. And it is also true that  
18 plaintiffs' legal team in Quito was  
19 involved in the writing of the Cabrera  
20 report, correct?

21 A. I believe so.

22 Q. And we saw documents earlier  
23 today indicating that the plaintiffs were  
24 still working on portions of the report as  
25 of March 31st, 2008. Do you recall that?



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DONZIGER

A.           Something to that effect. I don't know if it was that specific date, but yes.

Q.           The report that was -- well, would you agree that the report could not have been delivered to Mr. Cabrera until April 1st of 2008?

A.           I think the final report that he submitted to the court, I don't think that that could have been delivered to him in its totality until the earliest March 31st based on e-mails that I've seen.

Q.           And the report that Mr. Cabrera filed, the extensive -- well, the executive summary and extensive annexes, was that report physically assembled in the plaintiffs' office in Quito?

A.           I don't know.

Q.           Since the report was not delivered to Mr. Cabrera prior to April 1st, would you agree that he only had at most hours to, quote, consider whether to adopt the plaintiffs' peritaje global report on his own?

1 DONZIGER

2 A. I don't know. I assumed he was  
3 given some of these materials before that  
4 period of time.

5 Q. Do you have any documents that  
6 demonstrate that to be the case?

7 A. I don't believe I do, no.

8 Q. Do you have any personal  
9 knowledge that Cabrera even read the  
10 plaintiff-drafted peritaje global report  
11 and annexes before he signed them?

12 A. I don't know if he did or  
13 didn't.

14 Q. So you have no personal  
15 knowledge that he ever actually considered  
16 the report before he signed it, correct?

17 A. No.

18 THE SPECIAL MASTER: Is her  
19 statement correct? The question ends with  
20 the word "correct" and you answered "no."

21 THE WITNESS: I think I could  
22 say correct.

23 THE SPECIAL MASTER: I just  
24 wanted to clarify the record.

25 Q. Wasn't the report assembled by

1 DONZIGER

2 Selva Viva interns, including Ms. Garr?

3 A. I don't know if she worked on  
4 it or not.

5 Q. She worked under your  
6 supervision, correct?

7 A. Yes. But she was at that time  
8 an intern. I don't believe she was  
9 working on the project at that time. Or  
10 maybe she was, I don't know, the  
11 subsequent summer.

12 Q. At any time after the report,  
13 the plaintiff-drafted global report and  
14 annexes were provided to Cabrera, did you  
15 ever discuss the substance of the report  
16 with him?

17 A. With Mr. Cabrera?

18 Q. Yes, sir.

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

20 Q. At any time after the  
21 plaintiff-drafted global report and  
22 annexes were provided to Cabrera on April  
23 1st of 2008, are you aware of any  
24 inquiries he had of the plaintiff team  
25 about the substance of the report?

1 DONZIGER

2 A. I don't know. I assume there  
3 was ongoing interaction.

4 THE SPECIAL MASTER: Strike  
5 everything after "I assume" -- strike  
6 everything after "I don't know."

7 Q. Have you personally approved  
8 any pleadings filed in the United States  
9 claiming that plaintiffs submitted  
10 "materials" to Cabrera for "his  
11 consideration"?

12 A. Well, my role in the United  
13 States --

14 THE SPECIAL MASTER: I'm sorry,  
15 the question is, have you personally  
16 approved any pleadings filed in the United  
17 States claiming that plaintiffs submitted  
18 "materials" to Cabrera for "his  
19 consideration"?

20 It is not responsive to that  
21 question to start with "Well, my role in  
22 the United States." Now, please respond  
23 to the question as posed.

24 THE WITNESS: I can't answer  
25 that yes or no.

1 DONZIGER

2 Q. Have you been involved in any  
3 meetings where the Stratus personnel were  
4 being prepped for their depositions?

5 A. No.

6 Q. Are you aware of any meetings  
7 in which Stratus witnesses were instructed  
8 to deny writing the Cabrera report and  
9 annexes and instead use the phrase "we  
10 submitted materials to Cabrera for his  
11 consideration"?

12 A. No.

13 Q. Do you still have Exhibit 823  
14 in front of you?

15 A. Yes.

16 Q. Heading H of Exhibit 823, the  
17 Rough Outline for Texas Motion to Quash,  
18 says "Communication between Cabrera and  
19 the consultants (This point requires a  
20 great deal of consideration. Pros/cons of  
21 disclosing up front may depend on what  
22 experts think about what transpired,  
23 criminal penalties, etc.)"

24 Do you see that?

25 A. Yes.

1 DONZIGER

2 Q. Do you know, when it says "what  
3 experts think about what transpired," who  
4 is being referred to?

5 A. No.

6 Q. Have you ever had any  
7 conversations with Emery Celli about  
8 "criminal penalties" related to what  
9 transpired between the plaintiffs' team  
10 and Cabrera?

11 A. Specifically, no. We have had  
12 discussions about potential liabilities  
13 for those who are involved.

14 Q. Who did you have those  
15 discussions with?

16 A. Different lawyers.

17 Q. Could you be more specific,  
18 sir?

19 A. Mr. Kaplan.

20 MR. KAPLAN: She was asking  
21 about Emery Celli.

22 THE SPECIAL MASTER: No, I  
23 think she was asking generally now.

24 MS. NEUMAN: That's correct.

25 Q. Other than Mr. Kaplan?

1 DONZIGER

2 A. Other people in his law firm.

3 Q. Anyone outside of Mr. Kaplan's  
4 law firm?

5 A. Not in any specific way, no.

6 Q. When you say "not in any  
7 specific way," what do you mean?

8 THE SPECIAL MASTER: No, no,  
9 no.

10 How about in a general way?

11 THE WITNESS: In a general way.  
12 Well, I don't even -- there were no  
13 specific discussions about those issues  
14 with people outside Mr. Kaplan's firm, to  
15 the best of my recollection.

16 Q. Have you ever discussed with  
17 anyone at Motley Rice any criminal  
18 penalties that might apply to what  
19 transpired between the plaintiffs' team  
20 and Cabrera?

21 A. I don't know. I don't believe  
22 so.

23 Q. Have you ever discussed with  
24 anyone at Patton Boggs any criminal  
25 penalties that might apply to what

1 DONZIGER

2 transpired between plaintiffs' team and  
3 Cabrera?

4 A. We have had some discussions as  
5 to various issues and allegations made by  
6 Chevron against local counsel.

7 Q. When you say "local" --

8 A. Regarding potential criminal  
9 penalties in Ecuador.

10 Q. Have you had discussions with  
11 local counsel in Ecuador about potential  
12 criminal penalties regarding what  
13 transpired between the plaintiffs' team  
14 and Cabrera?

15 A. Yes.

16 Q. What are the substance of those  
17 discussions?

18 A. They really center on  
19 allegations and I think formal complaints  
20 made by Chevron lawyers to prosecutors in  
21 Ecuador.

22 Q. You are referring to Denuncias?

23 A. I don't know what the formal  
24 term would be. I think there were letters  
25 and there has been meetings.



1 DONZIGER

2 Q. Did you ever have discussions  
3 with anyone at Stratus about criminal  
4 penalties related to the interaction  
5 between plaintiffs' team and Cabrera?

6 A. I don't believe so.

7 Q. Have you ever discussed with  
8 counsel for the Republic of Ecuador the  
9 issue of criminal penalties related to  
10 what transpired between plaintiffs and  
11 Cabrera?

12 A. I don't believe so.

13 Q. To your knowledge, when did  
14 counsel for the Republic of Ecuador become  
15 aware of the plaintiff team drafting of  
16 the Cabrera report executive summary and  
17 annexes?

18 A. I don't know.

19 Q. Did you tell them about it?

20 A. I don't believe I did.

21 Q. Were any outside experts hired  
22 to advise the plaintiffs with regard to  
23 potential criminal penalties?

24 A. I don't believe so.

25 MS. NEUMAN: I'm going to mark

1 DONZIGER

2 as Exhibit 824 a screen shot from the  
3 outtakes.

4 (Exhibit 824 marked for  
5 identification.)

6 Q. Do you recognize yourself in  
7 Exhibit 824, Mr. Donziger?

8 A. Yes.

9 Q. The woman sitting to your left  
10 is Ann Maest of Stratus, correct?

11 A. I believe my right.

12 Q. Oh, I see, your right. To the  
13 left of you in the photo as you look at  
14 it.

15 A. Oh, yes, to the left of me.

16 Q. Now, you said earlier that you  
17 didn't remember whether Mr. Cabrera's  
18 sampling coordinator attended the March  
19 3rd, 2007 meeting that appeared in the  
20 Crude outtakes, correct?

21 A. Yes.

22 Q. Do you know Rocio Santillan?

23 A. If you are referring to a woman  
24 between Ms. Maest and myself, I have met  
25 her, but I don't know what her name is.

1 DONZIGER

2 Q. The woman in the pink shirt in  
3 Exhibit 824?

4 A. Yes.

5 Q. You are not aware that she is  
6 the person who coordinated the Cabrera  
7 sampling effort during his global  
8 inspection?

9 A. I knew she was working with  
10 him. I didn't know her role.

11 Q. Were you aware that she signed  
12 the chain of custody reports for  
13 Mr. Cabrera's sampling?

14 A. No.

15 MS. NEUMAN: For the record,  
16 Exhibit 824 is a print from CSR189-00,  
17 clip 1A, the March 3rd, 2007 meeting  
18 between plaintiffs' team and Cabrera.

19 Q. Mr. Donziger, the last day of  
20 your deposition we were discussing  
21 plaintiffs' June 21st, 2010 filing in  
22 Ecuador. Do you recall that?

23 A. Yes.

24 Q. And just so you have it, I'm  
25 going to hand you a copy of Exhibit 794,

1 DONZIGER

2 which is that filing.

3 Now, at the last session of  
4 your deposition we did not have the  
5 attachments that were being discussed in  
6 the e-mail correspondence that we had at  
7 that time. Do you recall that?

8 A. Yes.

9 Q. And since the last session of  
10 your deposition, additional documents have  
11 been produced which include those  
12 attachments and further e-mail  
13 correspondence on this pleading.

14 MS. NEUMAN: I'm going to mark  
15 as Exhibit 825 e-mail exchanges dated June  
16 of 2010 bearing the Bates numbers  
17 DONZ00031342, pages 1 of 4, DONZ00031343,  
18 pages 1 of 8, and a series of other  
19 e-mails.

20 (Exhibit 825 marked for  
21 identification.)

22 (Witness perusing document.)

23 Q. Can you turn to the page of  
24 Exhibit 825 that's DONZ00031342, page 3 of  
25 4.

1 DONZIGER

2 A. Which page?

3 Q. 3 of 4 of 31342.

4 A. It is blank on mine, 3 of 4.

5 MR. KAPLAN: The page appears  
6 to be blank on my copy.

7 MS. NEUMAN: Maybe I'm reading  
8 the wrong one, then.

9 THE SPECIAL MASTER: How many  
10 pages in from the beginning of the  
11 document, Ms. Neuman?

12 MS. NEUMAN: I'm counting.  
13 Eight, I hope -- nine.

14 Q. Are you on a page now that is  
15 an e-mail to Juan Pablo from Eric Daleo?

16 A. Yes.

17 Q. And Juan Pablo is local counsel  
18 in Ecuador and Mr. Daleo is an associate  
19 at Patton Boggs, correct?

20 A. Yes.

21 Q. Mr. Daleo writes "Juan Pablo,  
22 pursuant to Steven's e-mail, in the event  
23 you did not receive a copy, attached  
24 please find a copy of the Ecuador  
25 submission."

1 DONZIGER

2 Do you see that?

3 A. Yes.

4 Q. And the Ecuador submission  
5 being referred to is the one that was  
6 ultimately filed on June 21st in Lago  
7 Agrio, correct?

8 A. Yes.

9 Q. If you go to the next page  
10 forward, Juan Pablo replies "Thanks, Eric.  
11 But what I need is the original version in  
12 English so I can edit it according to the  
13 changes made to the Spanish document."

14 Do you see that?

15 A. Yes.

16 Q. At this point in time there  
17 were two copies of the June 21st filing,  
18 an English and a Spanish; is that right?

19 A. Apparently, yes.

20 Q. And these documents were being  
21 simultaneously edited in both languages;  
22 is that right?

23 A. Based on what Mr. Saenz says in  
24 this e-mail, I think that's true.

25 Q. Were you personally involved in

1 DONZIGER

2 the editing of these documents?

3 A. At some point in time, but I  
4 wasn't tremendously involved.

5 Q. Do you know who translated the  
6 original English into Spanish?

7 A. No.

8 Q. There were previous drafts of  
9 this submission, correct?

10 A. You mean before this e-mail was  
11 sent?

12 Q. Yes, sir.

13 A. I don't know.

14 Q. You did not produce any prior  
15 drafts in your January 3rd production.  
16 Have you searched for earlier drafts?

17 MR. KAPLAN: You mean prior to  
18 June 1, drafts prior to June 1?

19 MS. NEUMAN: Yes.

20 MR. KAPLAN: We have done the  
21 searching. So if there are prior drafts,  
22 either we produced them or we will look  
23 for them and produce them if they exist.

24 MS. NEUMAN: Thank you.

25 I'm going to mark as Exhibit

1 DONZIGER

2 826 an e-mail exchange with attachments  
3 between Steve Donziger, Laura Garr, Andrew  
4 Woods, members of the Patton Boggs firm,  
5 dated June 4th, 2010.

6 (Exhibit 826 marked for  
7 identification.)

8 (Witness perusing document.)

9 Q. Have you seen Exhibit 826  
10 before, Mr. Donziger?

11 A. I believe I have, the e-mail.

12 Q. And attached to the e-mail is  
13 the then current draft as of June 4th,  
14 2010 of the plaintiffs' June 21st filing,  
15 correct?

16 A. Yes.

17 Q. In your e-mail to the Patton  
18 Boggs lawyers, you write "Hey guys,  
19 attached is the master copy with edits of  
20 SRD and the Abady firm and track changes."

21 Do you see that?

22 A. Yes.

23 Q. When you say "the Abady firm,"  
24 you are referring to Emery Celli; is that  
25 correct?



1 DONZIGER

2 A. Yes.

3 Q. You go on to say "I have a  
4 concern that we are getting too close to  
5 'editing by committee,' which threatens to  
6 drag out this process. With that in mind,  
7 this is what I would propose in terms of  
8 process: 1. The Patton lawyers as soon as  
9 they can put this in final form taking  
10 into account all suggestions on the  
11 attached." And then there is a number 2.

12 And a number 3, you say "Send a  
13 final draft to Jim and SRD for review."  
14 And number 4, "Once approved by Jim and  
15 SRD and incorporating any changes they  
16 propose, we can send to the larger group  
17 for one final review."

18 Do you see that?

19 A. Yes.

20 Q. Does SRD refer to yourself?

21 A. Yes.

22 Q. Does Jim refer to James Tyrrell  
23 of Patton Boggs?

24 A. Yes.

25 Q. Were yourself and Mr. Tyrrell

1 DONZIGER

2 the U.S. attorneys who had final approval  
3 over the 6-21-2010 plaintiff filing?

4 A. Final approval over the draft  
5 that would be sent to local counsel.

6 Q. Now, if you turn to DONZ40274,  
7 the page 2-3, there is a deletion in the  
8 deletion box -- 2 of 8, I'm sorry.

9 A. 2 of 8, yes.

10 Q. Down towards the bottom, there  
11 is a sentence that reads "These new  
12 allegations of collusion result from  
13 so-called 'evidence' that Cabrera 'had  
14 access to plaintiffs' private databases'  
15 and that he surreptitiously incorporated  
16 these databases into his report."

17 Do you see that?

18 A. Yes.

19 Q. And then there is a deleted  
20 phrase, "but the database at issue  
21 contained technical data that this court  
22 and Cabrera previously invited plaintiffs  
23 to submit."

24 Do you see that?

25 A. Yes.

1 DONZIGER

2 Q. Do you know who deleted that?

3 A. No.

4 Q. Would it have been either  
5 yourself or the Abady firm?

6 A. I don't know. Because I don't  
7 know if this document had previous  
8 redlining from other people.

9 Q. Are you aware of any time at  
10 which the court invited plaintiffs to  
11 submit plaintiffs' private databases to  
12 Cabrera?

13 A. I don't have any knowledge of  
14 that.

15 Q. Information out of plaintiffs'  
16 database was used in the drafting of the  
17 Cabrera report that was ultimately filed,  
18 correct?

19 A. I believe so, yes.

20 Q. If you turn to page 3, there is  
21 a note at the top that starts "SRD." Do  
22 you see that?

23 A. Yes.

24 Q. Does that indicate that it is a  
25 note that you are making?

1 DONZIGER

2 A. Yes.

3 Q. Then the note you made reads  
4 "Not sure we need the following; too  
5 specific, and addressed below," with the  
6 following being "But the databases at  
7 issue contain technical data that this  
8 court and Cabrera previously invited  
9 plaintiffs to submit and the contacts with  
10 plaintiffs' litigation team are  
11 immaterial."

12 Do you see that?

13 A. Yes.

14 Q. You wanted to take that phrase  
15 out?

16 A. I don't know.

17 Q. Just after the quote, the line  
18 "the contacts with plaintiffs' team are  
19 immaterial," do you see that?

20 A. Yes.

21 Q. Is that referring to the  
22 plaintiffs' meetings with Cabrera?

23 A. I assume so.

24 Q. Can you turn to page 6 of 8 of  
25 DONZ 40274. Do you see in the second full

1 DONZIGER

2 paragraph down, it begins with the word  
3 "Finally"?

4 A. Yes.

5 Q. Then there is a sentence that  
6 reads "The only circumstances of which  
7 plaintiffs' counsel is aware where  
8 attorneys for plaintiffs were in the same  
9 immediate location of Cabrera - aside from  
10 judicial site inspections and other  
11 court-related encounters - were entirely  
12 innocuous and/or incidental, and in no way  
13 impaired the integrity of the official  
14 work being done by Cabrera."

15 Do you see that?

16 A. I'm just noticing it. Yes, I  
17 see it.

18 Q. Is that sentence referring to  
19 the March 2007 and January '08 meetings  
20 between plaintiffs' team and Cabrera?

21 A. I think it might have. I don't  
22 know.

23 Q. You would not consider those  
24 meetings to be accurately described as  
25 innocuous and/or incidental, would you?

1 DONZIGER

2 A. No, they were not incidental.

3 Q. Do you know who wrote that  
4 language, sir?

5 A. No.

6 Q. The draft then states "Early in  
7 the litigation, prior to his appointment  
8 as the expert on global damages," and then  
9 that phrase is followed by "Why emphasize  
10 this. The second meeting occurred when he  
11 was an expert."

12 Do you see that in the  
13 brackets?

14 A. Yes.

15 Q. Did you write that note?

16 A. I don't know.

17 Q. It goes on to say "Cabrera was  
18 present at a meeting where plaintiffs'  
19 counsel was receiving a briefing by  
20 various scientists and experts on the  
21 general subject of environmental  
22 remediation. At that time plaintiffs had  
23 no way of knowing Cabrera would be later  
24 nominated by the court as the expert on  
25 global damages."

1 DONZIGER

2 Do you see that?

3 A. Yes.

4 Q. That's not a correct statement,  
5 is it?

6 A. Well, I don't think there  
7 was -- I don't think it was sure that he  
8 would be appointed. But as I testified  
9 earlier, we knew there was a very good  
10 chance he would be.

11 Q. You expected that he would be  
12 by that point in time, correct?

13 A. I thought there was a very good  
14 chance he would be.

15 Q. So it is not accurate to say  
16 plaintiffs had no way of knowing he would  
17 later be nominated by the court, correct?

18 A. I don't know.

19 Q. This document is being drafted  
20 in June of 2010, so it is after the Patton  
21 Boggs and Emery Celli attorneys have met  
22 with Mr. Fajardo and Mr. Yanza in New  
23 York, correct?

24 A. Yes.

25 Q. Down towards the bottom on the

1 DONZIGER

2 right, there is a deletion that reads  
3 "But, again, this occurred in March of  
4 2007, prior to Cabrera's appointment as an  
5 expert on global damages."

6 Do you see that?

7 A. Yes.

8 Q. Do you know who took that out?

9 A. No.

10 Q. Then towards the bottom, there  
11 is a comment, "Ilann comment"; that is  
12 Ilann Maazel?

13 A. I believe so.

14 Q. Mr. Maazel writes "I am  
15 concerned about describing the first  
16 meeting in detail. This is on a video  
17 outtake and will likely be ordered to be  
18 produced, if not next week, then after the  
19 Second Circuit appeal is decided. We need  
20 to be 110 percent sure that whatever we  
21 say about the meeting will not be  
22 contradicted by the outtake. Otherwise,  
23 Chevron will later have a basis for  
24 arguing that we defrauded the Ecuadorian  
25 court and the judgment cannot be trusted.



1 DONZIGER

2 I vote for keeping the first meeting at a  
3 sufficient level of generality so that it  
4 cannot be possibly wrong -- not possibly  
5 be wrong. Are we absolutely sure this  
6 occurred before Cabrera was appointed?  
7 What is our definitive evidence of this?"

8 And then there is "SRD - I  
9 agree with Ilann, keep it general."

10 That last comment after the  
11 initials SRD is being made by you,  
12 correct?

13 A. Yes.

14 Q. At this point in time did you  
15 have the outtake of the March 3rd meeting?

16 A. I don't believe so.

17 Q. How did you know the March 3rd  
18 meeting was on a video outtake?

19 A. I don't know. But I knew.

20 Q. But you don't recall how you  
21 knew?

22 A. I don't know if Mr. Berlinger  
23 told me or if I just remembered that there  
24 were cameramen at the meeting.

25 Q. Now, if you go back to page --

1 DONZIGER

2 THE SPECIAL MASTER: Hold on  
3 one second. Excuse me, this says, in  
4 brackets, "Ilann comment. I am concerned  
5 about describing the first meeting in  
6 detail. This is on a video outtake that  
7 will likely be ordered to be produced, if  
8 not next week, then after the Second  
9 Circuit appeal is decided."

10 Do you see that?

11 THE WITNESS: Yes.

12 THE SPECIAL MASTER: Was that  
13 Mr. Maazel's comment?

14 THE WITNESS: I believe so.

15 THE SPECIAL MASTER: How did  
16 Mr. Maazel know that it would be in a  
17 video outtake?

18 THE WITNESS: I think I told  
19 him.

20 THE SPECIAL MASTER: Had he  
21 seen the video outtakes at this time?

22 THE WITNESS: Not that I know  
23 of.

24 THE SPECIAL MASTER: Did you  
25 tell him about any other video outtakes?

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THE WITNESS: Well, I didn't know what exactly was on the outtakes. I mean, I knew that Mr. Berlinger had filmed me and other people on the case for years. So I knew there was a lot of material.

THE SPECIAL MASTER: I didn't ask you that. I asked you, did you tell him about any other video outtakes, Mr. Maazel?

THE WITNESS: Mr. Maazel?

THE SPECIAL MASTER: Yes.

THE WITNESS: I don't remember.

THE SPECIAL MASTER: Go on, Ms. Neuman.

Q. Did you tell Mr. Maazel about the March 3rd meeting being a video outtake before April 27th of 2010?

A. I don't remember.

Q. Did you tell Mr. Wilson of the Emery Celli firm about the March 3rd meeting and its being in a video outtake at the same time that you told Mr. Maazel?

A. I don't know.

Q. Are you looking at page 6 of 8?

1 DONZIGER

2 A. Yes.

3 Q. The final box on the right-hand  
4 side says "Comment, EMY2." Do you see  
5 that?

6 A. Yes.

7 Q. Does that refer to Edward M.  
8 Yennock of Patton Boggs?

9 A. I don't know.

10 Q. This "Comment, EMY2" states "We  
11 are of the opinion that the contacts  
12 should be laid out in this document." Do  
13 you see that?

14 A. Yes.

15 Q. Do you understand him to be  
16 referring to the contacts between  
17 plaintiffs and Cabrera?

18 A. Yes.

19 Q. Now, this draft only discusses  
20 the March 2007 and the June -- I'm sorry,  
21 and the January '08 meeting with Cabrera,  
22 correct?

23 A. I don't know. I haven't read  
24 this draft in full.

25 Q. As of this point in time, had

1 DONZIGER

2 you told the Patton Boggs and Emery Celli  
3 lawyers about your meetings with Cabrera  
4 prior to March 3rd of 2007?

5 A. I don't believe I had.

6 Q. Do you know when you told them  
7 about those meetings?

8 A. I don't think I remembered that  
9 meeting until my deposition.

10 THE SPECIAL MASTER: I'm  
11 sorry -- I'm sorry, okay, go ahead.

12 Q. The other contacts that  
13 plaintiffs' counsel had with Cabrera on an  
14 ongoing basis, had you told the Patton  
15 Boggs and Emery Celli firms about those  
16 contacts at this point in time?

17 A. I don't remember. There were a  
18 lot of discussions.

19 Q. Did Patton Boggs ever indicate  
20 to you that they wanted to lay out all the  
21 contacts between plaintiffs'  
22 representatives and Cabrera in this  
23 filing?

24 A. I believe that was a school of  
25 thought shared by some of the lawyers on

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the team, including some lawyers at Patton Boggs.

Q. In the process of interacting with those lawyers in the drafting of the June 21st Ecuadorian plaintiff filing, did you describe for them all of the contacts between plaintiffs' representatives and Cabrera?

A. I believe all of those that I knew at the time.

Q. And that would include any that you yourself participated in, correct?

A. No, because I didn't remember the one meeting in the Hotel Quito that I testified to until my deposition.

Q. Now, in the --

THE SPECIAL MASTER: Excuse me. Could you possibly have forgotten the Mr. Bagel meeting, given its venue? I didn't mean that in a funny, joking way.

THE WITNESS: I know.

THE SPECIAL MASTER: It is not a laughing matter. I'm sorry.

1 DONZIGER

2 MR. KAPLAN: You did smile,  
3 sir.

4 THE SPECIAL MASTER: I don't  
5 think so. But, in any event, let's go.

6 Q. In his comment, Mr. Yennock of  
7 Patton Boggs continues "However, we  
8 believe that if we are to describe  
9 them" -- referring to the contacts with  
10 Cabrera -- "they need to be described in  
11 greater detail than they presently are.  
12 There is little value in going halfway.  
13 We want to be able to say in the  
14 enforcement context that when the court  
15 considered these issues, it had all of the  
16 material facts, otherwise the court's  
17 endorsement, if we get it, is hollow."

18 Do you see that?

19 A. Yes.

20 Q. Did Mr. Yennock maintain the  
21 position that he wanted to disclose in  
22 this document all of plaintiffs' contacts  
23 with Cabrera?

24 A. I don't know.

25 Q. Did Mr. Yennock ever convey to

1 DONZIGER

2 you, separate from its value in the  
3 enforcement context, that he thought it  
4 was important to inform the Ecuadorian  
5 court of the truth about all plaintiffs'  
6 contacts with Mr. Cabrera?

7 A. I don't know.

8 Q. If you look at the next page of  
9 Exhibit 826, page 7 of 8 -- I'm sorry, can  
10 you go back to page 6 of 8.

11 Mr. Yennock goes on, "As  
12 constituted, the representations  
13 (particularly regarding the second  
14 'meeting') are largely conclusory. Can we  
15 say what was discussed at the meetings, in  
16 what capacity Cabrera attended the first  
17 meeting, if not as a global damages  
18 assesment expert? Can we represent that  
19 neither plaintiffs nor their consultants  
20 had a direct conversation with Cabrera  
21 regarding his report at the second  
22 meeting?"

23 Do you see that?

24 A. Yes.

25 Q. Plaintiffs were not able to



1 DONZIGER

2 represent that neither plaintiffs nor the  
3 consultants had a direct conversation with  
4 Cabrera regarding the report at the second  
5 meeting, correct?

6 A. You've lost me. Can you repeat  
7 the question? The second meeting meaning  
8 the one at Mr. Aulestia's house?

9 Q. Yes.

10 A. Can you repeat the question,  
11 please?

12 Q. Yes.

13 Mr. Yennock was inquiring  
14 whether it could be represented that  
15 neither plaintiffs nor the consultants had  
16 a direct conversation with Cabrera  
17 regarding his report at the second  
18 meeting. That's not a representation that  
19 could be made, correct?

20 A. No, it could not be made.

21 Q. Did you inform Mr. Yennock of  
22 that?

23 A. I don't know if I did or  
24 didn't.

25 Q. Mr. Yennock goes on to state

1 DONZIGER

2 "If we cannot make detailed  
3 representations, it seems we should not  
4 spend significant time in the document  
5 trying to explain to the court that  
6 everything was okay, or ask this court to  
7 opine on the propriety of what occurred.  
8 In that case, we would be better served  
9 just to rely on the curative additional  
10 reports."

11 Do you see that?

12 A. Yes.

13 Q. When he refers to "the curative  
14 additional reports," is he referring to  
15 the new expert reports that plaintiffs  
16 were seeking leave from the Ecuadorian  
17 court to file?

18 A. I believe so.

19 Q. And the goal of the plaintiffs'  
20 team was to file new reports to cure the  
21 problem created by their interaction with  
22 Cabrera; is that right?

23 A. I wouldn't characterize it that  
24 way.

25 Q. Did any lawyer involved in the

1 DONZIGER

2 drafting of the June 21st pleading say  
3 that the Ecuadorian court needed to be  
4 fully informed of all plaintiffs' contacts  
5 with Cabrera?

6 A. Yes.

7 Q. Who said that?

8 A. Several people.

9 Q. Can you identify them?

10 A. Mr. Abady, Mr. Yennock,  
11 Mr. Maazel. I think most of the lawyers  
12 wanted to make as full a disclosure as  
13 consistent with the facts as were known at  
14 the time.

15 Q. Did they want to make that  
16 disclosure, as Mr. Yennock indicated, for  
17 strategic enforcement reasons?

18 A. I think there were a variety of  
19 reasons, that being among them.

20 Q. The lawyers who wanted to make  
21 the full disclosure, did any of them state  
22 that they felt that the plaintiffs'  
23 lawyers had an ethical obligation to make  
24 a full disclosure to the Ecuadorian court?

25 A. I don't know if that was

1 DONZIGER

2 discussed, but possibly.

3 MS. NEUMAN: I'm going to mark  
4 as Exhibit 827 a June 1st, 2010 e-mail  
5 exchange between Steven Donziger and  
6 Jonathan Abady, Andrew Wilson, Ilann  
7 Maazel and Eric Westenberger.

8 (Exhibit 827 marked for  
9 identification.)

10 Q. Have you had a chance to read  
11 Exhibit 827?

12 THE SPECIAL MASTER: Hold on a  
13 second. I have not had a chance to review  
14 it.

15 (Pause.)

16 THE SPECIAL MASTER: Counsel,  
17 is Exhibit 794 the document that was  
18 actually filed with the court in Ecuador?

19 MS. NEUMAN: 794?

20 THE SPECIAL MASTER: Yes. That  
21 is, is this a translation of the document  
22 that was actually filed with the court?

23 MR. KAPLAN: That's our  
24 understanding.

25 THE SPECIAL MASTER: Okay.

1 DONZIGER

2 MS. NEUMAN: 794, yes.

3 Q. In the e-mail at the bottom of  
4 the first page of Exhibit 827, on May  
5 31st, 2010, you wrote "Should we include  
6 all the Stratus annexes in the Pablo  
7 escrito in Ecuador? If so, we need to  
8 know exactly which ones to submit to sync  
9 up with whatever Stratus will produce.  
10 Does anyone know the answer to this  
11 question via Stratus?"

12 Do you see that?

13 A. Yes.

14 Q. What do you mean when you said  
15 "if so, we need to know exactly which ones  
16 to submit to sync up with whatever Stratus  
17 may produce"?

18 A. At that time I was not clear on  
19 which annexes Stratus had written that  
20 Cabrera had used. So I wanted to try to  
21 get the answer to that question via  
22 Stratus.

23 Q. Did you subsequently get the  
24 answer to that question via Stratus?

25 A. I don't know. I don't think

1 DONZIGER

2 that was what I was doing personally.

3 Q. Mr. Wilson responds "I think we  
4 probably should. I can find out from Joe,  
5 as I think they have gathered these for  
6 production."

7 Do you see that?

8 A. Yes.

9 Q. Did you understand that to be a  
10 reference to Joe Silver, Stratus' counsel?

11 A. Yes.

12 Q. Then Mr. Abady writes "This is  
13 a question for the group, and I want to  
14 hear from others, but I think we should  
15 include them and essentially admit that he  
16 adopted these."

17 And the "he" Mr. Abady is  
18 referring to is Cabrera, correct?

19 A. Yes.

20 Q. "Once the CO documents become  
21 public" -- that's referring to Colorado?

22 A. Yes.

23 Q. -- "including those 'given to  
24 Cabrera' - the verbatim adoption will be  
25 irrefutable. I think it's a no-brainer."

1 DONZIGER

2 Do you see that?

3 A. Yes.

4 Q. Do you agree with that?

5 A. At the time?

6 Q. Yes, sir.

7 A. I think I did.

8 Q. Then you wrote, in response to  
9 Mr. Abady "Not sure. There will be  
10 negative fall-out in a number of areas."

11 Do you see that?

12 A. Yes.

13 Q. What are you referring to?

14 A. A lot of different things.

15 Q. Can you be more specific?

16 A. Well, there was a concern by  
17 local counsel about how specific the  
18 disclosure should be, disclosures should  
19 be.

20 THE SPECIAL MASTER: You mean  
21 the local counsel in Ecuador?

22 THE WITNESS: Yes.

23 THE SPECIAL MASTER: The  
24 plaintiffs' local counsel in Ecuador?

25 THE WITNESS: Yes.

1 DONZIGER

2 THE SPECIAL MASTER: Go on.

3 Q. The --

4 THE SPECIAL MASTER: Wait a  
5 minute. I don't think the witness  
6 finished his answer. I think I  
7 interrupted him.

8 A. And I had a concern about sort  
9 of how Chevron might use the information  
10 from a public relations perspective and  
11 how that might impact our ability to  
12 represent the interests of the clients.

13 Q. When you say "local counsel had  
14 a concern about how specific to be," was  
15 local counsel unwilling to admit in a  
16 pleading to the Ecuadorian court that  
17 Stratus and the plaintiffs' team had  
18 actually written the executive summary  
19 that Cabrera signed and submitted?

20 A. I don't know, other than to say  
21 that there was a balancing act going on  
22 between the perspective, the general  
23 perspective I think of the American  
24 counsel, and the perspective of the  
25 Ecuadorian local counsel who would



1 DONZIGER

2 ultimately have the final say over the  
3 document.

4 Q. And if everything that the  
5 plaintiffs did with Cabrera was known to  
6 the Ecuadorian court, why would the  
7 Ecuadorian lawyers have a concern about  
8 being more or less specific?

9 MR. KAPLAN: Objection.

10 THE SPECIAL MASTER: Overruled.  
11 It is adopting the witness' last answer.

12 A. I don't know if I understand  
13 the question. Can you repeat it, please?

14 Q. Yes.  
15 You indicated that the  
16 Ecuadorian counsel expressed to you that  
17 they had a concern about being specific  
18 about the fact that the plaintiffs' team  
19 had written the executive summary and  
20 annexes of the Cabrera report, correct?

21 A. Well, no, I didn't say that.

22 What I am testifying to is I  
23 believe there was a tension between what  
24 the American lawyers wanted to do and what  
25 the local counsel wanted to do related to

1 DONZIGER

2 the extent of the details of the -- of the  
3 disclosure of all the details.

4 Q. When you say "of all the  
5 details," you are referring to the  
6 interactions between plaintiffs' team and  
7 Cabrera and how much of Cabrera's work was  
8 done by the plaintiffs' team, correct?

9 A. Well, I think the --

10 THE SPECIAL MASTER: The  
11 question is correct. Yes or no. It  
12 doesn't call for a speech as you gave in  
13 the last answer.

14 A. Can you repeat the question,  
15 please?

16 Q. When you say "all of the  
17 details," you are referring to the  
18 interaction between plaintiffs' team and  
19 Cabrera and how much of Cabrera's work was  
20 done by the plaintiffs' team, correct?

21 A. I think that's correct.

22 Q. If the Ecuadorian court already  
23 knew everything that the plaintiffs' team  
24 had done in interacting with and doing  
25 portions of Cabrera's work, why did the

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Ecuadorian lawyers indicate to you that they had a concern about describing that in a pleading?

MR. KAPLAN: Objection.

THE SPECIAL MASTER: You don't need to object. That question is incomprehensible to me.

Q. If the Ecuadorian court --

THE SPECIAL MASTER: I'm sorry, Counsel, you are starting off already in a way that is going to get you into trouble in the question. Break it down and do it that way, please.

Q. Which of the local counsel did you discuss this concern about being specific with?

A. I think when the -- all the local counsel, when they got the draft, it was part of the discussion as we were all working together to finalize the document. And I think it came up a number of times.

Q. Did Mr. Fajardo ever indicate -- tell you that he wanted to take out the parts of the draft that were

1 DONZIGER

2 specific about the plaintiffs having  
3 drafted the executive summary and annexes?

4 A. I don't remember specifically.  
5 It is possible.

6 Q. Did any member of the local  
7 counsel team tell you why the local team  
8 wanted to take out the specific discussion  
9 of plaintiffs having drafted Cabrera's  
10 executive summary and annexes?

11 A. I don't know if that's my  
12 testimony. I don't remember exactly all  
13 of their concerns other than there was a  
14 general, I think, difference of opinion  
15 between U.S.-based counsel and Ecuador  
16 counsel as to the degree of detail that  
17 would be in the document.

18 Q. In your discussions with  
19 Ecuadorian counsel, did you gain any  
20 understanding as to why they disagreed  
21 with the U.S. recommendation?

22 A. To an extent.

23 Q. What was that understanding?

24 A. I think that they had a  
25 different perspective based on their

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knowledge of what they understood Ecuadorian law to be and how the process was supposed to work, and I also think that they seemed to me to just approach the issue a little bit differently than U.S. counsel.

Q. Did local counsel indicate to you they were worried about being criminally charged if they admitted that the plaintiffs' team, including counsel, had written portions of the report that Cabrera filed under his name?

A. I believe that was a concern that was mentioned.

THE SPECIAL MASTER: All right, let's take our afternoon break now. It is 10 to 4.

MR. KAPLAN: After the witness leaves, may I say something on the record to the Special Master?

THE SPECIAL MASTER: Sure.

(Witness departs the room.)

MR. KAPLAN: I would respectfully ask that I be not gagged from

1 DONZIGER

2 speaking to my client during a break. If  
3 you feel, sir, that there is a topic, a  
4 document, a subject matter that should not  
5 be discussed, I will absolutely adhere to  
6 that instruction.

7 But to prevent me from saying  
8 hello, how do you feel, how is it going --  
9 you said I couldn't talk to him and I  
10 didn't talk to him. I refused to talk to  
11 him when he started to talk to me. He is  
12 my client and I would like that leeway.

13 THE SPECIAL MASTER: The answer  
14 is yes. On that one occasion that I asked  
15 you not to talk to the witness at the  
16 break, there was a line of questioning  
17 still going on and I did not want the  
18 witness being coached in any fashion.

19 MR. KAPLAN: I hope you  
20 understand that I could adhere to that  
21 instruction strictly, but he is my  
22 client --

23 THE SPECIAL MASTER: Mr. Kaplan,  
24 you are right, to the extent you felt  
25 inhibited, but in fact no harm was done,

1 DONZIGER

2 as you saw, because in fact the witness  
3 asked to speak to you, and I said go right  
4 ahead.

5 MR. KAPLAN: Thank you.

6 THE SPECIAL MASTER: Is that  
7 correct, now that you have raised it on  
8 the record, that no harm was done?

9 MR. KAPLAN: Yes.

10 THE SPECIAL MASTER: Thank you.  
11 Go.

12 THE VIDEOGRAPHER: Off the  
13 record, 3:51 p.m. This is the end of disk  
14 four, volume IX, in the deposition of  
15 Steven Donziger.

16 (Recess taken.)

17 THE VIDEOGRAPHER: Back on the  
18 record, 4:04 p.m. This is the beginning  
19 of disk five, volume IX, in the deposition  
20 of Steven Donziger.

21 BY MS. NEUMAN:

22 Q. Mr. Donziger, are you okay to  
23 continue?

24 A. Yes.

25 Q. That makes one of us.

1 DONZIGER

2 Did I understand you to testify  
3 before the break that it was the  
4 Ecuadorian counsel that had ultimate  
5 control over what would be in the June  
6 21st filing in Ecuador?

7 A. Yes.

8 Q. So they had the final say-so,  
9 basically; is that right?

10 A. Yes.

11 Q. In terms of the U.S. filings  
12 that were made on behalf of the  
13 plaintiffs, do the U.S. lawyers who signed  
14 those filings have the final say-so as to  
15 what is included in them?

16 A. I would say yes.

17 Q. Are you aware of any filing  
18 made by plaintiffs' counsel in the U.S.  
19 that has disclosed all of plaintiffs'  
20 interactions and contacts with Cabrera?

21 A. Well, I don't know.

22 Q. The 6-21 Ecuador filing was  
23 filed by U.S. lawyers in U.S. courts,  
24 correct?

25 A. I believe so.



1 DONZIGER

2 Q. And they made arguments in  
3 plaintiffs' behalf based on the June 21st  
4 filing in Ecuador, correct?

5 A. I believe so.

6 Q. During the discussions that you  
7 had with Ecuador counsel relating to the  
8 interactions with Cabrera, was it ever  
9 discussed whether or not they had written  
10 communications with him, such as e-mail?

11 A. I don't think that was  
12 discussed.

13 Q. Do you know whether or not  
14 there are any documents that memorialize  
15 any of the communications between the  
16 local plaintiffs' team and Cabrera?

17 A. I don't know.

18 MS. NEUMAN: I'm going to mark  
19 as Exhibit 828 --

20 THE SPECIAL MASTER: Excuse me,  
21 do you remember earlier today we looked at  
22 the first sentence of the Cabrera report?

23 THE WITNESS: Yes.

24 THE SPECIAL MASTER: And that  
25 first sentence stated that Mr. Cabrera

1 DONZIGER

2 wrote the report?

3 THE WITNESS: Yes.

4 THE SPECIAL MASTER: And you  
5 testified that that sentence was  
6 inaccurate, correct?

7 THE WITNESS: It is not how I  
8 would have characterized it.

9 THE SPECIAL MASTER: You  
10 actually said the statement is not  
11 accurate and then you challenged me when I  
12 asked if the opposite was true. Do you  
13 remember that now?

14 THE WITNESS: I remember we had  
15 a few interactions.

16 THE SPECIAL MASTER: Yes. Now,  
17 so do you agree with me that you testified  
18 the statement was not accurate?

19 THE WITNESS: I believe I did,  
20 yes.

21 THE SPECIAL MASTER: Has any  
22 counsel representing the plaintiffs or you  
23 in any proceeding whatsoever advised the  
24 court that the opening sentence of the  
25 Cabrera report was not accurate?

1 DONZIGER

2 THE WITNESS: I don't know.

3 THE SPECIAL MASTER: To the  
4 best of your knowledge sitting here now,  
5 are you aware of any instance in which any  
6 counsel representing you or the plaintiffs  
7 has advised any court, any arbitration  
8 panel, or any other official body that the  
9 very opening sentence of the Cabrera  
10 report was not accurate?

11 Yes or no, please.

12 THE WITNESS: I don't know. I  
13 don't think that's an opinion shared by  
14 all counsel. I'll say that.

15 THE SPECIAL MASTER: I strike  
16 that. I asked you a very specific  
17 question about to the best of your  
18 knowledge sitting here now, and your  
19 answer is you don't know; is that correct?

20 THE WITNESS: I don't know, no.

21 THE SPECIAL MASTER: Go on,  
22 Ms. Neuman.

23 MS. NEUMAN: I'm going to mark  
24 as Exhibit 828 a Spanish e-mail from  
25 Mr. Donziger to Juan Pablo Saenz, Julio

1 DONZIGER

2 Prieto, Pablo Fajardo and Luis Yanza dated  
3 June 5th, 2010 relating to the plaintiffs'  
4 6-21 filing in Ecuador.

5 (Exhibit 828 marked for  
6 identification.)

7 (Witness perusing document.)

8 Q. Did you send Exhibit 828 to  
9 local counsel in Ecuador on June 5th of  
10 2010, Mr. Donziger?

11 A. Yes.

12 Q. And this was a copy at that  
13 time of the current version of what would  
14 become the plaintiffs' 6-21 filing in  
15 Ecuador, correct?

16 A. Yes.

17 Q. Once they received this draft,  
18 did Juan Pablo Saenz -- I'm sorry --  
19 that's Julio Prieto and Pablo Fajardo  
20 engage in the drafting of the June 21st  
21 submission?

22 A. I believe there were edits from  
23 the local team. I don't remember  
24 specifically who made them. It might have  
25 been Mr. Saenz.

1 DONZIGER

2 Q. At the time of this draft, it  
3 is still being contemplated that the  
4 annexes and executive summary that the  
5 plaintiffs' team drafted would be  
6 identified for the court, correct?

7 A. I don't know. I haven't read  
8 this draft.

9 Q. If you can just look at page  
10 DONZ 40276, page 5 of 7.

11 Do you see at the bottom of  
12 that page where it says "Cabrera did adopt  
13 substantial portions of plaintiffs'  
14 proposed submissions relating to damages  
15 and valuation, including the executive  
16 summary and annexes," blank, blank, blank.

17 A. Yes.

18 Q. Does that refresh your  
19 recollection at the time it went to local  
20 counsel it was still contemplated that  
21 would be revealed to the court?

22 A. Yes.

23 Q. If you look at page 1 of 7 of  
24 DONZ 40276, there is a note that reads "We  
25 have decided not to ask the court for a

1 DONZIGER

2 reasoned" --

3 A. Excuse me, I'm not sure where  
4 you are. 1 of 7 is blank on my page.

5 Q. It repeats. I'm sorry.  
6 Because they only translate the Spanish.

7 A. I have it.

8 Q. Did you find it? Okay, great.  
9 The third paragraph, there is a  
10 note: "We have decided not to ask the  
11 court for a reasoned opinion on the  
12 propriety of our Cabrera contacts. The  
13 benefit of receiving such an opinion is  
14 outweighed by the risk that we will get no  
15 opinion at all, which will fuel Chevron's  
16 opposition in the enforcement context."

17 Do you see that?

18 A. Yes.

19 Q. Do you know who made that note?

20 A. No.

21 Q. Prior to this draft, it had  
22 been contemplated to ask the Ecuadorian  
23 court whether the contacts between the  
24 plaintiffs' team and Cabrera were  
25 acceptable, correct?

1 DONZIGER

2 A. Yes.

3 MS. NEUMAN: I'm going to mark  
4 as Exhibit 829 a June 14th, 2010 e-mail  
5 exchange including Jonathan Abady, Edward  
6 Yennock, Eric Westenberger, Eric Daleo,  
7 James Tyrrell, Ingrid Moll Steven Donziger  
8 Ilann Maazel, Andrew Wilson, Andrew Celli,  
9 someone at H5.com, and Julia Brickell.

10 (Exhibit 829 marked for  
11 identification.)

12 (Witness perusing document.)

13 Q. Can you turn to the second page  
14 of Exhibit 829, please.

15 THE SPECIAL MASTER: I'm not  
16 done yet, please.

17 MS. NEUMAN: I'm sorry.

18 (Pause.)

19 THE SPECIAL MASTER: Okay, I'm  
20 done reading.

21 Q. Could you turn to page 2 of  
22 Exhibit 829, please, Mr. Donziger. There  
23 is a June 5th, 2010 e-mail from Edward  
24 Yennock to yourself and other U.S.  
25 lawyers. Do you see that?

1 DONZIGER

2 A. Yes.

3 Q. Did you receive this e-mail?

4 A. Yes.

5 Q. Mr. Yennock writes "All, a near  
6 final draft of the Ecuadorian submission  
7 is attached. The sole open issue is the  
8 specificity with which we describe the  
9 'meetings' with Cabrera; please see note  
10 on that in the body of the attached draft.  
11 If we were to have no more certainty than  
12 we do today, we are inclined to revise  
13 this to include little or no information  
14 about the meetings, as much as we'd like  
15 to be able to use this submission to fully  
16 air the facts."

17 Do you see that?

18 A. Yes.

19 Q. Is he referring there to all  
20 the meetings that the plaintiffs had with  
21 Cabrera?

22 A. I believe so.

23 Q. And this is in June of 2010,  
24 this is after the Patton Boggs attorneys  
25 have discussed with you on at least one



1 DONZIGER

2 occasion plaintiffs' contacts with  
3 Cabrera, correct?

4 A. Yes.

5 Q. And this is after they had met  
6 with Mr. Fajardo and Mr. Yanza in New  
7 York, correct?

8 A. Yes.

9 Q. Do you have any understanding  
10 as to why Mr. Yennock is indicating that  
11 they do not have certainty as to the  
12 meetings with Cabrera?

13 A. Because nobody felt like there  
14 was certainty on our team with regard to  
15 how many meetings, how many interactions  
16 had taken place between plaintiffs'  
17 counsel and Cabrera.

18 Q. Was there any concern expressed  
19 by the U.S. lawyers that any of the people  
20 who had been involved in meetings with  
21 Cabrera were not being forthright about  
22 those meetings?

23 A. I think there was a concern  
24 that --

25 THE SPECIAL MASTER: Could you

1 DONZIGER

2 answer that question yes or no, please.

3 A. I don't know.

4 Q. Had you, as of June 5th, 2010,  
5 been forthright with the other U.S.  
6 lawyers about everything you knew about  
7 meetings and interactions with Cabrera by  
8 the plaintiffs' team?

9 A. I believe I had been, yes.

10 Q. Do you know of any efforts that  
11 Mr. Yennock took to get more clarity about  
12 the meetings with Cabrera between --

13 THE SPECIAL MASTER: "Certainty"  
14 I think is the word used.

15 MS. NEUMAN: I'm sorry, I'll  
16 rephrase.

17 Q. Do you know of any efforts that  
18 Mr. Yennock took to get more certainty  
19 about the meetings with Cabrera between  
20 June 5th and the filing of the June 21st  
21 pleading?

22 A. I don't know.

23 THE SPECIAL MASTER: Mr.  
24 Donziger, as you sit here today, do you  
25 feel confident that you have all the

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material facts about the number and content of meetings between the plaintiffs' team in Ecuador and Mr. Cabrera?

THE WITNESS: No.

THE SPECIAL MASTER: And so you don't feel that any representation could be made to a court about the nature, the substance and number of contacts that have been made by the plaintiffs' counsel and Mr. Cabrera, correct?

THE WITNESS: Not all, that's correct.

THE SPECIAL MASTER: Go on, Ms. Neuman.

MS. NEUMAN: Thank you.

Q. Mr. Yennock goes on to say "However, two events might occur to change that approach. One, the Stratus e-mails are expeditiously uploaded into a searchable format that allows us to identify any communications related to the meetings by early next week and/or we are somehow able to review the Crude

1 DONZIGER

2 outtakes."

3 Do you see that?

4 A. Yes.

5 Q. Did any of those -- either of  
6 those events happen before the June 21st  
7 filing?

8 A. I don't believe the Crude  
9 outtakes were seen before they were  
10 produced by Mr. Berlinger. I don't  
11 remember the exact date. And with regard  
12 to the Stratus materials, I believe they  
13 were searched by members of our team.

14 Q. Prior to the June 21st filing?

15 A. I don't know for sure. I was  
16 not involved in that.

17 Q. Mr. Yennock goes on to say "But  
18 if not, the pivotal nature of this  
19 submission and the potentially devastating  
20 effect of making a representation that is  
21 later proven to be wrong or incomplete by  
22 way of the e-mails or the outtakes,  
23 assuming Chevron gets them, would seem to  
24 warrant a review if it can be done quickly  
25 in light of the time pressure."

1 DONZIGER

2 Do you see that?

3 A. Yes.

4 Q. Were you involved in  
5 discussions where the lawyers decided they  
6 had to see the Stratus e-mails and the  
7 outtakes before they could make accurate  
8 representations regarding the plaintiffs'  
9 contacts with Cabrera?

10 A. I don't think that people felt  
11 they had to see that to make accurate  
12 representations. I think the concern was  
13 they didn't want to go beyond what was  
14 known at that time when submitting the  
15 document.

16 Q. Can you turn to the first page  
17 of Exhibit 829. Did you receive this  
18 e-mail from Mr. Abady on June 14th of  
19 2010?

20 A. Yes.

21 Q. And Mr. Abady included  
22 yourself, attorneys from Motley Rice and  
23 attorneys from Patton Boggs on his  
24 correspondence, right?

25 A. Yes.

1 DONZIGER

2 Q. As well as individuals from H5;  
3 is that right?

4 A. Yes.

5 Q. Are both the individuals from  
6 H5 attorneys?

7 A. No.

8 Q. Mr. Abady starts with "Can  
9 someone forward me the most recent draft  
10 ASAP, the one with the local team  
11 comments?" Do you see that?

12 A. Yes.

13 Q. Do you still have the e-mail  
14 with the local team comments? That has  
15 not been produced.

16 A. I don't know.

17 MS. NEUMAN: We would call for  
18 its production if Mr. Donziger still has  
19 it.

20 MR. KAPLAN: If it has not been  
21 produced, we will look for it, and if we  
22 can find it, we will promptly produce it.  
23 And we will check whether it has been  
24 produced.

25 Q. Mr. Abady states in his e-mail,

1 DONZIGER

2 starting in the second line of the third  
3 paragraph, "Given that, and after  
4 digesting the Stratus docs, the Maest  
5 notes and the UBR issues (to the degree  
6 currently possible), I think we take out  
7 any reference to alleged 'contacts'  
8 between Cabrera and plaintiffs' counsel  
9 and/or with plaintiffs' consulting experts  
10 and just confess to having authored  
11 specific portions of the report."

12 Do you see that?

13 A. Yes.

14 Q. Now, in the June 21st filing as  
15 filed, there is no confession to having  
16 authored specific portions of the report,  
17 correct?

18 A. I don't know.

19 Q. Mr. Abady goes on, starting  
20 with "I think," "I think we identify the  
21 annexes and executive summary as what we  
22 submitted to Cabrera for his adoption and  
23 note that he adopted these because he  
24 found them credible. The 'contacts' issue  
25 is too uncertain and gaining clarity will

1 DONZIGER

2 take too long. If we cop to having  
3 written portions of the report, the  
4 details of exactly how that might have  
5 been accomplished will be for another day,  
6 when and if the relevant people are  
7 deposed as part of 1782s, but hopefully by  
8 that time, the process of having both  
9 sides cure this with new submissions will  
10 be under way and render the details of the  
11 Cabrera report a thing of the past. We  
12 will have already admitted that we  
13 authored portions of the report. The  
14 details of how that was accomplished might  
15 be interesting for Chevron, but ultimately  
16 irrelevant because of our admission and  
17 alternative grounds for a damage  
18 evaluation."

19 Do you see that?

20 A. Yes.

21 Q. When he was talking about  
22 "curing this with the new submissions," he  
23 is referring to the expert submissions  
24 that the plaintiffs ultimately made in  
25 September of 2010?



1 DONZIGER

2 A. I believe so.

3 Q. Did you agree with Mr. Abady's  
4 proposal that the plaintiffs should simply  
5 admit that they authored portions of the  
6 report so that the details as to how that  
7 was accomplished would be irrelevant?

8 A. I don't remember whether I  
9 agreed with that at that time.

10 Q. Do you know whether or not the  
11 Motley Rice lawyers agreed with that?

12 A. No.

13 Q. Do you know whether or not the  
14 Patton Boggs lawyers agreed with that?

15 A. No.

16 Q. Do you know whether the  
17 Ecuadorian counsel agreed with that?

18 A. No.

19 Q. Mr. Abady goes on, "The path  
20 for an Ecuadorian decision will be simple.  
21 We would hope the judge would say/rule:  
22 There has been much controversy  
23 surrounding the Cabrera report, and  
24 objections to it. (Perhaps: The court  
25 did not anticipate that there was the

1 DONZIGER

2 degree of collaboration between  
3 plaintiffs' counsel and Cabrera that there  
4 may have been. Given these issues, the  
5 court is not relying on Cabrera for its  
6 ruling.) However, the court now has  
7 additional submissions from the parties as  
8 well as the results of 106 (or so)  
9 judicial inspections to base its decision  
10 on. The court finds the new report  
11 (demonstrating damages of blank billion  
12 dollars) to be persuasive, reliable, and  
13 accurate, and therefore rules..."

14 Do you see that?

15 A. Yes.

16 Q. Was that the strategy of the  
17 plaintiffs' team, to have the court not  
18 rely on the Cabrera report and instead  
19 rely on the new expert reports?

20 A. Not necessarily. I think that  
21 was Mr. Abady's opinion.

22 Q. Did you share that opinion?

23 A. No.

24 THE SPECIAL MASTER: Mr.  
25 Donziger, would you take a look at Exhibit

1 DONZIGER

2 794.

3 THE WITNESS: Excuse me, sir,  
4 what document is that?

5 THE SPECIAL MASTER: That is  
6 the June submission to the Ecuador court  
7 as finally submitted.

8 THE WITNESS: I'm not sure I  
9 have that. 794?

10 THE SPECIAL MASTER: I think it  
11 is 794.

12 MR. KAPLAN: That is the  
13 exhibit number. I have it, but my copy is  
14 marked.

15 He is going to give you one.

16 THE SPECIAL MASTER: You  
17 testified to Ms. Neuman that you weren't  
18 sure whether or not this report -- this  
19 submission included an identification of  
20 the annexes and the executive summary as  
21 to what was authored by the plaintiffs.  
22 Do you remember that?

23 THE WITNESS: Yes.

24 THE SPECIAL MASTER: Would you  
25 take a look at Section 2 of the report.

1 DONZIGER

2 And you can read it to yourself.

3 My question is, do you see any  
4 identification of the executive summary  
5 and the annexes as the portions of the  
6 report that were authored by the  
7 plaintiffs?

8 (Witness perusing document.)

9 THE WITNESS: Sir, can you have  
10 the question read back.

11 THE SPECIAL MASTER: The  
12 question is, do you see any identification  
13 of the executive summary and the annexes  
14 as the portions of the Cabrera report that  
15 were authored by the plaintiffs?

16 THE WITNESS: Not in Section 2,  
17 no.

18 THE SPECIAL MASTER: Do you see  
19 it anywhere else?

20 THE WITNESS: I don't. But I  
21 haven't read the rest of this document.

22 THE SPECIAL MASTER: Go ahead  
23 and read it. Take as much time as you  
24 need to read it.

25 (Witness perusing document.)

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THE WITNESS: No.

THE SPECIAL MASTER: That is, you don't see what I have just identified?

THE WITNESS: That is correct.

THE SPECIAL MASTER: Do you remember we saw an exhibit a little while ago including a draft of June 5 that left a space for identification of the executive summary and annexes?

THE WITNESS: Yes.

THE SPECIAL MASTER: So sometime between June 5 and the submission of this report late in June -- excuse me, and the date of this submission to the Ecuadorian court, the identification of the executive summary and annexes was omitted from the submission to the Ecuadorian court, correct?

THE WITNESS: It wasn't included.

THE SPECIAL MASTER: That is the same as omitted. All right. It wasn't included. Who made the decision to not include it?

1 DONZIGER

2 THE WITNESS: I think there was  
3 a consensus that developed --

4 THE SPECIAL MASTER: I'm asking  
5 you --

6 THE WITNESS: I don't think it  
7 was any one person.

8 THE SPECIAL MASTER: It was a  
9 collective decision?

10 THE WITNESS: I believe so,  
11 yes.

12 THE SPECIAL MASTER: And it was  
13 a consensus decision, meaning everybody  
14 agreed?

15 THE WITNESS: No.

16 THE SPECIAL MASTER: All right,  
17 Ms. Neuman, go on.

18 Q. Mr. Donziger, do you still have  
19 Exhibit 829?

20 A. Is that the Abady e-mail?

21 Q. Yes, Abady and Yennock.

22 A. Yes.

23 Q. Now, in this and a couple of  
24 the other documents on the June 21st  
25 filing, they are discussing identifying

1 DONZIGER

2 simply the annexes that Stratus wrote. Do  
3 you see that?

4 A. Yes.

5 Q. In addition to Stratus annexes,  
6 there were annexes authored by plaintiffs'  
7 team in Ecuador, correct?

8 A. I believe so.

9 Q. So just identifying the Stratus  
10 annexes and the executive summary, which  
11 Mr. Beltman drafted, would not have  
12 informed the court of all of the portions  
13 of the Cabrera report written by  
14 plaintiffs' team, correct?

15 A. I believe that's correct.

16 MS. NEUMAN: I'm going to mark  
17 as Exhibit 830 a June 14th, 2010 e-mail  
18 from Mr. Abady to other plaintiffs' U.S.  
19 counsel, including Emery Celli, Motley  
20 Rice and H5 attorneys, as well as  
21 Mr. Donziger.

22 (Exhibit 830 marked for  
23 identification.)

24 Q. Mr. Donziger, Exhibit 830 is  
25 the original e-mail, but with the

1 DONZIGER

2 attachment of the string that we discussed  
3 at the last session of your deposition.  
4 Do you recall that?

5 THE SPECIAL MASTER: Ms. Neuman,  
6 for the record, I think you need to  
7 identify the e-mail that you were talking  
8 about that was discussed at the last  
9 session, the exhibit number. It has an  
10 exhibit number?

11 MS. NEUMAN: Yes. It is --

12 THE SPECIAL MASTER: I think it  
13 was 793.

14 MS. NEUMAN: It should be 793.  
15 And it was identified in the last session  
16 of Mr. Donziger's deposition and at which  
17 time Mr. Kaplan indicated that they would  
18 be producing the attachment for the  
19 original e-mail in that string, which is  
20 this one.

21 THE SPECIAL MASTER: Yes, it  
22 was 793, all right.

23 MR. KAPLAN: There were a  
24 number of e-mails.

25 THE SPECIAL MASTER: Mr.



1 DONZIGER

2 Donziger, now that we've had this  
3 discussion, do you know what Ms. Neuman is  
4 talking about?

5 THE WITNESS: Yes.

6 THE SPECIAL MASTER: Okay. All  
7 right, why don't you answer her question,  
8 then. Hold on one second, I just want to  
9 be sure the record is accurate here.

10 Okay, go on, Ms. Neuman.

11 Q. Did you receive Exhibit 830  
12 with the attachment from Mr. Abady on June  
13 14th, 2010, Mr. Donziger?

14 A. Yes.

15 Q. Can you turn for me to the  
16 second page of Exhibit 830, which is DONZ  
17 40260, page 1 of 8.

18 A. Yes.

19 Q. In the third -- I'm looking at  
20 the right-hand column where the deleted  
21 boxes are. There is a deleted note, "We  
22 have decided not to ask the court for a  
23 reasoned opinion on the propriety of our  
24 Cabrera contacts - the benefit of  
25 receiving such an opinion is outweighed by

1 DONZIGER

2 the risk that we will get no opinion at  
3 all, which will fuel Chevron's opposition  
4 in the enforcement context."

5 Then there is a note, "Agreed,  
6 it is most likely we wouldn't get any  
7 opinion."

8 Do you see that?

9 A. Yes.

10 Q. Do you know who wrote that  
11 note?

12 A. No.

13 Q. Do you know why it was believed  
14 that there would be no opinion forthcoming  
15 from the Ecuadorian court on that issue?

16 A. I believe so.

17 Q. Why was that?

18 A. Well, I think local counsel  
19 indicated it would be unlikely the judge  
20 would rule on that point at that point in  
21 the trial.

22 Q. Then looking down further to  
23 the next deleted box with significant  
24 text, it says "We cannot use the word  
25 'report' because that 'prueba' according

1 DONZIGER

2 to the Ecuadorian law and we have agreed  
3 that we are not submitting new evidence,  
4 but our technical argument or 'criterio  
5 tecnico' - Pablo Fajardo and I spoke to  
6 Alberto Wray on this subject last week and  
7 he agreed with us."

8 Is that a note that you wrote?

9 A. I don't believe so.

10 Q. Do you know who spoke to  
11 Dr. Wray with Mr. Fajardo on this subject?

12 A. I think maybe Mr. Saenz.

13 Q. And did you understand them to  
14 be saying that it wouldn't be proper for  
15 the plaintiffs to submit new evidence with  
16 the September 2010 filings?

17 A. I think it was more of a  
18 dispute over the nomenclature, what to  
19 call it under Ecuadorian law. But it was  
20 considered proper in the view of our local  
21 counsel.

22 Q. Can you turn to page 6 of 8 in  
23 Exhibit 830.

24 In the first full paragraph,  
25 there is a sentence that reads "In

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contrast, in cooperation with the court and Cabrera, plaintiffs first delivered materials to Cabrera on February 18th, 2008."

Do you see that?

A. Yes.

Q. That's not an accurate statement, is it?

A. No.

Q. There had been deleted from that sentence, according to the box -- I'm sorry.

Further down that paragraph, there is a sentence, the last sentence in that paragraph reads "Cabrera did adopt substantial portions of plaintiffs' proposed submissions relating to damages and valuation, including a number of annexes and the executive summary."

Do you see that?

A. Yes.

Q. Cabrera adopted 100 percent of plaintiffs' proposed submissions for his report, correct?

1 DONZIGER

2 A. I don't know.

3 Q. Over on the right-hand side in  
4 the deleted boxes, there is a box that  
5 reads "I would not say that Cabrera  
6 'adopted' the executive summary, but that  
7 he 'adapted' it - whatever Stratus work as  
8 the executive summary is not the same that  
9 Cabrera submitted - even the translation  
10 helped."

11 Do you see that?

12 A. Yes.

13 Q. Do you know who wrote that  
14 note?

15 A. No.

16 Q. Did you understand the phrase  
17 "even the translation helped" to mean  
18 change the appearance of what Stratus  
19 drafted versus what Mr. Cabrera submitted?

20 A. I don't know.

21 THE SPECIAL MASTER: Excuse me,  
22 is there some way to get the answers to  
23 Ms. Neuman's questions about the authors  
24 of the various notes here? We shouldn't  
25 have to guess.

1 DONZIGER

2 And the witness is saying he  
3 doesn't know, he doesn't remember or  
4 doesn't know who made these comments on  
5 the side. Isn't there some way we can  
6 determine that without even questioning  
7 the witness? Surely there is.

8 THE WITNESS: Mr. Gitter, could  
9 I take a short break?

10 THE SPECIAL MASTER: Of course,  
11 I'm sorry. You know that you can always  
12 ask for a break.

13 THE WITNESS: Thank you.

14 THE VIDEOGRAPHER: Off the  
15 record, 4:45 p.m.

16 (Recess taken.)

17 THE VIDEOGRAPHER: Back on the  
18 record, 4:56 p.m.

19 BY MS. NEUMAN:

20 Q. Mr. Donziger, do you still have  
21 Exhibit 830 in front of you?

22 A. Yes.

23 Q. On the right-hand column of  
24 page 6 of 8 of DONZ 40260, in a deleted  
25 box, it says "Local Team: Was Chevron's

1 DONZIGER

2 only transmittal of materials to Barros  
3 contained in the January and February  
4 submissions or was there additional  
5 materials submitted?"

6 Do you see that?

7 A. Yes.

8 MR. KAPLAN: I'm sorry, I lost  
9 the page reference.

10 THE SPECIAL MASTER: 6 of 8.

11 MR. KAPLAN: Thank you.

12 Q. When it says "the January and  
13 February submissions," it is referring to  
14 submissions that Chevron filed with the  
15 Ecuadorian court, correct?

16 A. I believe so.

17 Q. Then the response to that  
18 question is written, "These were the only  
19 ones." Do you see that?

20 A. Yes.

21 Q. Confirming that the submissions  
22 that Chevron made to Barros were made on  
23 the record in Ecuador, correct?

24 A. I don't know.

25 Q. You don't know one way or the

1 DONZIGER

2 other?

3 A. No. I have never examined that  
4 issue.

5 Q. And then the large deleted box  
6 starting with "Finally, as noted above,"  
7 this is the version in which the  
8 discussion of the meetings with Cabrera  
9 were deleted from the June 21st filing,  
10 correct?

11 A. I don't know.

12 Q. Do you see all that text in the  
13 deleted box?

14 A. I haven't read it. Do you want  
15 me to read it?

16 Q. Sure.

17 (Witness perusing document.)

18 A. Is there a question pending?

19 Q. Yes. This is the point at  
20 which the meetings with Cabrera and the  
21 description of those meetings were deleted  
22 from the draft June 21st filing, correct?

23 A. I believe so.

24 Q. Now, the submission to Barros  
25 of information through the court process



1 DONZIGER

2 as done by Chevron was different than  
3 plaintiffs' interaction with Cabrera  
4 outside the court process, correct?

5 A. I don't have personal knowledge  
6 of the Barros submissions other than what  
7 I read in various briefs.

8 Q. Have you approved any briefs in  
9 which allegations have been made regarding  
10 Chevron's interactions with Barros?

11 A. I don't approve briefs.

12 Q. You never do that?

13 A. The lawyers who sign them  
14 approve them.

15 Q. And they don't need your  
16 approval to sign them?

17 A. No.

18 THE SPECIAL MASTER: Where do  
19 they get the information about Barros, if  
20 not through you?

21 THE WITNESS: Through local  
22 counsel.

23 THE SPECIAL MASTER: The other  
24 United States lawyers have direct contact  
25 with local counsel?

1 DONZIGER

2 THE WITNESS: Yes.

3 THE SPECIAL MASTER: So they  
4 are free to ask local counsel whatever  
5 they wish, correct?

6 THE WITNESS: That's correct.

7 THE SPECIAL MASTER: Do you  
8 know where they got the information that's  
9 in these drafts of the submission to the  
10 Ecuadorian court about the Barros example?

11 THE WITNESS: I believe from  
12 local counsel.

13 THE SPECIAL MASTER: So they  
14 have been free since they were retained to  
15 ask local counsel about all of the  
16 contacts that local counsel had with  
17 Mr. Cabrera, their number, their nature,  
18 the locus of the submissions, how they  
19 were submitted, and so on, right?

20 THE WITNESS: I wouldn't agree  
21 with that.

22 THE SPECIAL MASTER: They are  
23 not free to ask local counsel about that?

24 THE WITNESS: Well, they are  
25 free to do that. But generally the team

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in the United States has been dependent on me for most interactions with local counsel, but not all. Specifically with regard to Barros, there was contacts, I believe.

THE SPECIAL MASTER: I'm asking now about contacts between the plaintiffs' team and Cabrera's. The United States counsel, you testified a minute or two ago, were free to talk to Ecuador local counsel, correct?

THE WITNESS: Yes, subject to certain limitations.

THE SPECIAL MASTER: Are there some topics they are not allowed to talk about with local counsel in Ecuador?

THE WITNESS: No. But there is language issues and the sort.

THE SPECIAL MASTER: As for substance, are they free or are they not free to ask of Ecuador counsel whatever they feel is appropriate to ask?

THE WITNESS: They are free.

THE SPECIAL MASTER: All right.

1 DONZIGER

2 So they have been free, have they not, to  
3 ask Ecuador counsel about the nature and  
4 substance of all their communications with  
5 Cabrera, correct?

6 THE WITNESS: Yes.

7 THE SPECIAL MASTER: And you  
8 testified earlier that you are not  
9 confident that you have all the facts  
10 about the nature and number of  
11 communications between Ecuador counsel and  
12 Mr. Cabrera, right?

13 THE WITNESS: Yes.

14 THE SPECIAL MASTER: And I  
15 think you at least implied that the other  
16 United States counsel also are not  
17 confident of the same point, correct?

18 THE WITNESS: Yes.

19 THE SPECIAL MASTER: Thank you.

20 MS. NEUMAN: I'm going to mark  
21 as Exhibit 831 e-mail correspondence from  
22 June 15th of 2010 bearing the Bates  
23 numbers DONZ 31369, page 1 of 2, and  
24 attaching a further draft of the June 21st  
25 filing bearing the Bates numbers DONZ

1 DONZIGER

2 31370 pages 1 to 7.

3 (Exhibit 831 marked for  
4 identification.)

5 (Witness perusing document.)

6 Q. Mr. Donziger, did you receive  
7 Exhibit 831, the portion written by  
8 Mr. Yennock, on June 15th of 2010?

9 A. Yes.

10 Q. And in this e-mail, Mr. Yennock  
11 is updating Motley Rice, Patton Boggs,  
12 Emery Celli, and yourself on the current  
13 status of what would become plaintiffs'  
14 June 21st, 2010 filing, correct?

15 A. Yes.

16 Q. And in his update, Mr. Yennock  
17 states "Attached is an updated draft of  
18 the Ecuadorian filing that contains an  
19 admission that there was certainly  
20 interaction between plaintiffs and Cabrera  
21 that resulted in adoption of plaintiffs'  
22 findings, conclusions, and valuations, but  
23 does not make any specific assertion as to  
24 the nature of that interaction. We also  
25 no longer assert that our interaction was

1 DONZIGER

2 consistent with Ecuadorian law and court  
3 orders. We now state merely that  
4 Cabrera's adoption of our proposed views  
5 was not a fraud, was consistent with how  
6 Chevron interacted with other experts, and  
7 was entirely to be expected given  
8 Chevron's refusal to advocate its position  
9 to Cabrera. We believe that this  
10 submission balances the desire for a  
11 'cleansing' of some sort with the need to  
12 avoid creating any impression that what we  
13 describe here is an exhaustive list of  
14 submissions to/contacts with Cabrera - an  
15 impression with the potential to come back  
16 to haunt us in a big way."

17 Do you see that?

18 A. Yes.

19 Q. The deletion of the assertion  
20 that plaintiffs' interaction with Cabrera  
21 was consistent with Ecuadorian law and  
22 court orders, was that a deletion made at  
23 the request of local Ecuadorian counsel?

24 A. I don't know.

25 Q. When Mr. Yennock says "this

1 DONZIGER

2 submission balances the desire for a  
3 'cleansing,' " what is he referring to as a  
4 cleansing?

5 A. I don't know.

6 Q. He goes on to say, "By saying  
7 nothing, basically we avoid creating any  
8 impression that what we describe here is  
9 an exhaustive list of submissions  
10 to/contacts with Cabrera - an impression  
11 with the potential to come back and haunt  
12 us in a big way."

13 Do you see that?

14 A. Yes.

15 Q. At the time of this e-mail,  
16 June 15th, was the U.S. team of lawyers  
17 fully aware that there were many contacts  
18 with Cabrera other than the March 7th and  
19 January '08 meetings?

20 THE SPECIAL MASTER: No, March  
21 3rd, 2007 meeting.

22 A. I think there was a consensus  
23 opinion on the American team that there  
24 were other contacts, but we didn't know  
25 them all.

1 DONZIGER

2 Q. And did all of the American  
3 lawyers agree to the Ecuadorian pleading  
4 as revised as described in Mr. Yennock's  
5 June 15th e-mail?

6 A. I don't know if there were  
7 additional changes after that. I believe  
8 there were.

9 Q. At this point in time, did  
10 everyone agree to no longer asserting that  
11 the interaction with Cabrera was  
12 consistent with Ecuadorian law and court  
13 orders?

14 A. I don't know.

15 THE SPECIAL MASTER: Can  
16 somebody please advise me when the  
17 document that is Exhibit 831 was produced?

18 MS. NEUMAN: January 3rd.

19 THE SPECIAL MASTER: Is that  
20 correct, Mr. Kaplan?

21 MR. KAPLAN: I'm not sure. I  
22 could check. Mr. Haggerty of my office  
23 would know for certain and I could advise  
24 you separately, with a copy to everybody.

25 THE SPECIAL MASTER: Yes, would



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you please. In an e-mail. I don't want a letter.

Do you see in -- Mr. Donziger, do you see the sentence that says "We believe that this submission" -- referring to another draft of the submission -- "balances the desire for a 'cleansing' of some sort"? Do you see that?

THE WITNESS: Yes, sir.

THE SPECIAL MASTER: Had the word "cleansing" been used in other communications among counsel about the submission to the Ecuadorian court that was about to be made?

THE WITNESS: I don't know specifically. I mean, that was one way some people were characterizing it.

THE SPECIAL MASTER: By "some people," you mean the U.S. lawyers?

THE WITNESS: Yes, sir.

THE SPECIAL MASTER: Did you object to the use of that term, "cleansing," to any of them?

THE WITNESS: I don't think I

1 DONZIGER

2 focused on it. I think the general  
3 feeling was that if the Ecuador court --

4 THE SPECIAL MASTER: I didn't  
5 ask you that. I asked you did you object  
6 to it.

7 THE WITNESS: I don't know,  
8 sir.

9 THE SPECIAL MASTER: Go on,  
10 Ms. Neuman.

11 MS. NEUMAN: I'm going to mark  
12 as Exhibit 832 e-mail correspondence  
13 between local Ecuadorian counsel and  
14 Mr. Donziger, DONZ 31381 page 1 of 3, with  
15 an attachment and a translation.

16 (Exhibit 832 marked for  
17 identification.)

18 THE SPECIAL MASTER: Can  
19 somebody please alert me as to how I  
20 should be reading this, from the back to  
21 the front, to do it in chronological  
22 order?

23 For those of you who read this  
24 document before, tell me whether I should  
25 be reading it from the back -- it is an

1 DONZIGER

2 e-mail trail.

3 MS. NEUMAN: It goes back from  
4 the back towards the front.

5 THE SPECIAL MASTER: Okay,  
6 thank you.

7 (Witness perusing document.)

8 Q. Have you had a chance to read  
9 Exhibit 832, Mr. Donziger?

10 A. Yes.

11 Q. Could you look at the second  
12 page for me, the bottom e-mail, the one  
13 from Mr. Fajardo to yourself and the local  
14 Ecuadorian counsel.

15 THE SPECIAL MASTER: I'm sorry,  
16 what are you asking the witness and  
17 therefore me to look at, please?

18 MS. NEUMAN: Page 2 of Exhibit  
19 832. And you have to look at the original  
20 to confirm that it is an e-mail from Pablo  
21 Fajardo dated June 16, 2010 to Steven  
22 Donziger, Julio Prieto, Juan Pablo Saenz.  
23 The subject is "Escrito."

24 THE SPECIAL MASTER: Let the  
25 witness confirm that.

1 DONZIGER

2 Q. Correct?

3 THE SPECIAL MASTER: I mean, we  
4 have a record here to think about, right?

5 A. So you are asking me about the  
6 Juan Pablo e-mail?

7 Q. No. If you look at the Spanish  
8 original of DONZ 31381, it is a Pablo  
9 Fajardo e-mail of June 16th, 2010.

10 A. Right.

11 Q. To yourself, Julio Prieto, Juan  
12 Pablo. Do you see that?

13 A. Yes.

14 Q. And then to discuss the  
15 English, we would turn to page 2 of  
16 Exhibit --

17 A. I see. That is Pablo Fajardo's  
18 e-mail, English translation, on page 2 on  
19 the bottom.

20 Q. Yes, sir.

21 THE SPECIAL MASTER: Okay. So  
22 is the witness confirming that in fact the  
23 e-mail that begins on page 2 of 3 in  
24 English is an e-mail from Mr. Fajardo to  
25 all of the addressees?

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THE WITNESS: Yes, on June  
16th.

THE SPECIAL MASTER: Thank you.

Q. In Mr. Fajardo's e-mail, in  
Section B, or after the letter B, he  
states "It is my understanding the judge  
is preparing a major order; in other  
words, he is going to rule on all the  
motions that are in his office that are  
still pending."

Do you see that?

A. Yes.

Q. Do you know how Mr. Fajardo  
knew the judge was preparing a major  
order?

A. I don't think he is saying he  
knew. But no, I don't know.

Q. If you look at the next page,  
paragraph D, Mr. Fajardo writes "In  
conclusion, the pleading looks good to me  
and I think it will help us a lot. But we  
should act on our plan B urgently. I am  
sure that plan B will be the one that  
works."

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Do you see that?

A. Yes.

Q. What is plan B?

A. I don't know.

Q. You don't have any  
recollection?

A. I have recollection of some  
different ideas that were floating around,  
but I don't know what he means when he  
says "plan B."

Q. If you look at the e-mail above  
Mr. Fajardo's, the e-mail from Mr. Prieto,  
he writes "I agree. Let's continue with  
plan B waiting on the sidelines."

Do you see that?

A. Yes.

Q. Does that give you any more  
context as to what plan B was?

A. It might mean do nothing. I'm  
not sure.

Q. If you go to page 1 of Exhibit  
832, the next e-mail up, that is from Juan  
Pablo Saenz.

A. That's June 17th, it is the

1 DONZIGER

2 second e-mail down on the English  
3 translation?

4 Q. Yes.

5 A. Yes.

6 Q. Mr. Saenz states "The immediate  
7 goals of the local team and the gringo  
8 team are different. In their case, their  
9 immediate goal is to neutralize Chevron's  
10 recent actions abroad so an enforcement of  
11 judgment there will be easier."

12 Do you see that?

13 A. Yes.

14 Q. Is "the gringo team" the U.S.  
15 plaintiff lawyers?

16 A. I believe so, yes.

17 Q. Mr. Saenz goes on to say "It is  
18 here that things get complicated. I don't  
19 think the gringos pulled the number 90  
20 plus 30 out of thin air. We should never  
21 forget that if the gringos aren't able to  
22 convince that there's enough time in our  
23 proceedings to hear and resolve Chevron's  
24 'concerns,' they're going to rule against  
25 us. And if that happens, if we allow the

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2 judges there to condone a vision of  
3 Ecuador as a no man's land, a lawless  
4 country, we can forget about enforcement  
5 abroad, not to mention the effects of that  
6 on the arbitration."

7 Do you see that?

8 A. Yes.

9 Q. And the arbitration Mr. Saenz  
10 is referring to is the BIT arbitration  
11 currently going on between the  
12 plaintiffs -- I mean between Chevron and  
13 the Republic of Ecuador?

14 A. I believe so.

15 Q. Was he accurately stating that  
16 the -- I'll withdraw that.

17 The dispute between the U.S.  
18 and the Ecuadorian attorneys about how  
19 much time to ask for to submit the expert  
20 reports, the Ecuadorian attorneys  
21 ultimately decided to select the lesser  
22 period of time?

23 A. I believe so.

24 Q. If you look at the next page,  
25 towards the end of his e-mail, he writes



1 DONZIGER

2 "In the worst of cases, if the gringos  
3 insist that their figure of 90 plus 30 is  
4 necessary, I think we'll have to ask for  
5 those days. Even if the judge flatly  
6 denies it, I think it will help our image.  
7 Yes, maybe it will be six more months.  
8 But so many years of struggle can't be  
9 tossed into the garbage on account of not  
10 being able to wait six months. Believe me  
11 that I don't like the idea, but  
12 strategically it is the best. Plan B has  
13 me deeply concerned."

14 Do you see that?

15 A. Yes.

16 Q. Does that give you any more  
17 context as to what plan B was?

18 A. No.

19 THE SPECIAL MASTER: Mr.  
20 Donziger, did you e-mail these people and  
21 ask them what they meant by plan B?

22 THE WITNESS: I was dealing  
23 with so much. I don't know if I e-mailed  
24 them or not. I think I probably knew what  
25 it was, and I have a feeling it meant do

1 DONZIGER

2 nothing, but I don't know for sure.

3 THE SPECIAL MASTER: I'm sorry,  
4 would you look at the last line of that  
5 e-mail, the line that is just above JPS.  
6 "It looks like the Gabriel issue is  
7 already straightened out." Do you see  
8 that?

9 THE WITNESS: I'm sorry, sir,  
10 what page are you on?

11 THE SPECIAL MASTER: Page 2 of  
12 3 towards the very top.

13 THE WITNESS: Oh, yes.

14 THE SPECIAL MASTER: Do you see  
15 that?

16 THE WITNESS: Yes.

17 THE SPECIAL MASTER: What was  
18 the Gabriel issue?

19 THE WITNESS: I think it refers  
20 to Mr. Saenz's baby. His name is Gabriel.

21 MS. NEUMAN: I'm going to mark  
22 as Exhibit 833 --

23 THE SPECIAL MASTER: Ms. Neuman,  
24 just for your planning, I think we will  
25 break at quarter to 6 today. It is now

1 DONZIGER

2 5:25.

3 Mr. Roberts, do you have enough  
4 tape, room on the disk?

5 THE VIDEOGRAPHER: Yes.

6 THE SPECIAL MASTER: Why don't  
7 you give us five minutes' warning before  
8 that disk runs out. Thank you.

9 Q. Before I mark Exhibit 833,  
10 Mr. Donziger, when did the Patton Boggs  
11 lawyers first go to Ecuador?

12 A. I don't know exactly. I  
13 think -- several months ago. It was I  
14 believe May of last year or later.

15 Q. May of 2010?

16 A. Yes.

17 Q. And have they been to Ecuador  
18 on multiple occasions as of this point in  
19 time?

20 A. A handful of occasions.

21 Q. The Emery Celli lawyers, have  
22 they been to Ecuador?

23 A. Yes.

24 Q. Which ones?

25 A. Mr. Abady.

1 DONZIGER

2 Q. Any others?

3 A. I don't believe so.

4 Q. Which of the Patton Boggs  
5 lawyers have been to Ecuador?

6 A. Mr. Westenberger, Mr. Small,  
7 Mr. Yennock, Ms. Carrasco

8 Q. Has Mr. Tyrrell been to  
9 Ecuador?

10 A. No.

11 Q. Have any of the Motley Rice  
12 lawyers been to Ecuador?

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

14 MS. NEUMAN: I'm going to mark  
15 as Exhibit 834 a document entitled  
16 Invictus, Path Forward, Securing and  
17 Enforcing --

18 THE SPECIAL MASTER: Excuse me,  
19 I don't think there is an 833.

20 MS. NEUMAN: There isn't. I  
21 already used the sticker, but I don't have  
22 time to do that one.

23 THE SPECIAL MASTER: Then I'm  
24 glad I gave you some warning.

25 MS. NEUMAN: I appreciate it.

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(Exhibit 834 marked for identification.)

Q. Mr. Donziger, Exhibit 834, entitled Invictus, and bearing the Bates numbers DONZ 00032520 through 32551, is a 39-page memorandum. Could you tell me who drafted it?

A. Persons in the Patton Boggs law firm.

Q. Do you know which persons?

A. I think it was several people.

Q. Did you draft any portion of it?

A. No, I don't believe so.

Q. If you look at page -- the page that is numbered page 2.

A. You mean the document number page 2?

Q. Yes, sir, with the Bates number 32524.

There is a statement there that says "The trial has been marked by the questionable tactics of Chevron's lawyers and those who work for them, including the

1 DONZIGER

2 intimidation of" --

3 A. Excuse me, where are you  
4 reading from?

5 Q. I'm on page 2 of the actual  
6 document.

7 A. Where?

8 Q. The first full paragraph, the  
9 paragraph starts "After final dismissal."

10 A. Yes, I see it.

11 Q. The next sentence reads "The  
12 trial began in '03." And then the next  
13 sentence reads "The trial has been marked  
14 by the questionable tactics of Chevron's  
15 lawyers and those who work for them,  
16 including the intimidation of plaintiffs'  
17 representatives and threats directed at  
18 experts who did not appear to favor  
19 Chevron."

20 Do you see that?

21 A. Yes.

22 Q. Do you know who wrote that?

23 A. No.

24 Q. Do you know what evidence they  
25 had to support that statement?

1 DONZIGER

2 A. I don't know what they were  
3 basing it on, but I have evidence.

4 THE SPECIAL MASTER: That  
5 statement is stricken. Mr. Donziger --

6 A. I don't know.

7 Q. The reference to threats  
8 directed at experts who do not appear to  
9 favor Chevron, what expert is being  
10 referred to there?

11 A. I don't know. I didn't write  
12 it.

13 Q. Can you turn to page 5, the  
14 numbered page of the document, Bates  
15 number 32527.

16 Above the heading, the B  
17 heading --

18 THE SPECIAL MASTER: Wait one  
19 second here. Okay.

20 Q. Above the B heading, there is a  
21 paragraph that reads "Through trusted  
22 recommendations followed by careful  
23 vetting, plaintiffs' team has identified a  
24 company called Industrial Economics, Inc.,  
25 based in Massachusetts, to execute the

1 DONZIGER

2 supplemental damages submission. The  
3 company's president, Robert E. Unsworth,  
4 specializes in the fields of natural  
5 resource economics and damage assessment,  
6 and has participated in projects involving  
7 natural resource damage assessment. In  
8 addition to general expertise in measuring  
9 economic damages of all types, the company  
10 specializes in the assessment of damages  
11 recoverable by the public for harm to  
12 natural resources caused by oil spills and  
13 hazardous waste sites."

14 Do you see that?

15 A. Yes.

16 Q. Industrial Economics did not  
17 ultimately author a supplemental damage  
18 submission for the plaintiffs, correct?

19 A. That's correct.

20 Q. Did Industrial Economics reach  
21 any opinions that it provided to  
22 plaintiffs' counsel?

23 A. I don't believe so.

24 Q. Did they decline to work on the  
25 matter?



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2 A. My recollection is they began  
3 to work on the matter, but felt like they  
4 couldn't complete the work in the time  
5 frame allotted, so they decided not to do  
6 it.

7 Q. Can you look at page 27 of  
8 Exhibit 834 for me. Do you see the last  
9 paragraph on that page?

10 A. The last full paragraph?

11 Q. It is partial, I think. The  
12 one that starts "In any event."

13 A. Yes.

14 Q. This is in the discussion of  
15 the 90/10 law and how fees are going to  
16 get paid.

17 In the middle of that  
18 paragraph, the author states "Another  
19 approach the plaintiff group may consider  
20 is arranging for the receipt of any funds  
21 recovered against the judgment through  
22 payment agents in the United States and  
23 thereafter dividing those funds outside  
24 the Republic of Ecuador. This would have  
25 the practical effect of keeping funds

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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."

Do you see that?

A. Yes.

Q. Do you know who wrote that?

A. No.

Q. Do you know how the plaintiff group would arrange for the receipt of any funds recovered against the judgment through payment agents in the United States in order to keep funds outside the Republic of Ecuador?

A. I could imagine ways. It is not something I have given a lot of thought to.

Q. Prior to the other U.S. firms being brought in, did you and Mr. Kohn ever discuss keeping the monies that were obtained with regard to the Ecuador action out of Ecuador?

A. We discussed it with Chevron in a settlement context.

1 DONZIGER

2 Q. Do the plaintiffs have a  
3 current -- plaintiffs' counsel have a  
4 current plan to try and keep any monies  
5 recovered from enforcement of the judgment  
6 out of Ecuador?

7 MR. KAPLAN: Objection.

8 THE SPECIAL MASTER: Is that a  
9 privilege objection, a form objection?  
10 What kind of objection?

11 MR. KAPLAN: Whatever you deem  
12 meritorious.

13 THE SPECIAL MASTER: No, no,  
14 no. What is the basis for the objection?  
15 Privilege or form? Those are the options.  
16 Utter a word, Mr. Kaplan. The hour is  
17 getting late.

18 MR. KAPLAN: Privilege.

19 THE SPECIAL MASTER: Will the  
20 witness please leave the room.

21 (Witness departs the room.)

22 THE SPECIAL MASTER: What  
23 privilege is being evoked?

24 MR. KAPLAN: Work product.  
25 Really the objection also goes to scope,

1 DONZIGER

2 whether that is called form or not.

3 THE SPECIAL MASTER: Finish  
4 your answer on the privilege.

5 MR. KAPLAN: I'll withdraw the  
6 objection.

7 THE SPECIAL MASTER: Let's get  
8 the witness back in.

9 (Witness returns to the room.)

10 THE SPECIAL MASTER: Mr.  
11 Donziger, the objection has been  
12 withdrawn. You may answer the question.

13 THE WITNESS: Can you read it  
14 back, please.

15 (The record was read as  
16 follows:

17 "Question: Do the plaintiffs  
18 have a current -- plaintiffs' counsel have  
19 a current plan to try and keep any monies  
20 recovered from enforcement of the judgment  
21 out of Ecuador?" )

22 A. Yes.

23 Q. Why does plaintiffs --

24 THE SPECIAL MASTER: No, no.

25 Q. I'll withdraw.

1 DONZIGER

2 This document, Invictus, is  
3 undated. Do you know when it was created?

4 A. It was created over a period of  
5 time this past -- I mean, summer of last  
6 year.

7 Q. Summer of --

8 A. 2010.

9 Q. It refers to an addendum that  
10 wasn't produced. Do you have the  
11 addendum?

12 A. I don't know. I don't think  
13 so. Where does it refer? Maybe it will  
14 refresh my recollection.

15 Q. On page 17, the last paragraph,  
16 it says "Broadly, this matrix attached to  
17 this memorandum as Addendum A."

18 A. I don't think I have ever seen  
19 that.

20 Q. You indicated this document was  
21 developed over time. Did you receive  
22 prior drafts of this document?

23 A. I don't know.

24 Q. Did you ever comment on drafts  
25 of this document?

1 DONZIGER

2 A. I remember I was really not  
3 very involved in this at all. I might  
4 have been sent one draft, and I don't know  
5 if I even read it, because it was a long  
6 document.

7 Q. Have subsequent versions of  
8 this document been created after this one?

9 A. I don't know of any.

10 THE SPECIAL MASTER: Ms. Neuman,  
11 when I interrupted you after you started a  
12 question with the word "why," the reason I  
13 interrupted you was only to the form of  
14 the question. I did not mean to inhibit  
15 you in inquiring about the substance.

16 MS. NEUMAN: We would call for  
17 the production of the addendum and any  
18 other draft of Invictus that Mr. Donziger  
19 does have.

20 MR. KAPLAN: I don't think we  
21 have it, but I made a note already that we  
22 should look for it, and if we have it,  
23 promptly produce it.

24 Q. The plan to keep any monies  
25 recovered from enforcement out of Ecuador,

1 DONZIGER

2 how is that plan currently conceived?

3 A. I think largely the idea would  
4 be to create a trust account in the United  
5 States or some other country where the  
6 monies could be safeguarded and spent on  
7 the purpose of the remedy, or spent  
8 effectuating the remedy, for lack of a  
9 better term.

10 Q. Is there a current plan to  
11 provide any of the monies recovered to the  
12 named plaintiffs?

13 A. I don't believe so.

14 Q. Is there a current plan to  
15 provide any of the monies recovered to the  
16 Frente De Amazonia?

17 A. It depends. I don't know.  
18 That relates to the uncertainty  
19 surrounding the 90/10 or 100/10 law that I  
20 previously testified to.

21 Q. Is there a current plan to  
22 provide any of the monies recovered to any  
23 Ecuadorian entity?

24 A. That is contemplated, yes.

25 Q. What Ecuadorian entity or

1 DONZIGER

2 entities would that be?

3 A. Well, the idea would be to  
4 allow Ecuadorian entities, be they public  
5 or private, to participate in bidding on  
6 cleanup work, and if contracts were to be  
7 won by those entities, they would then be  
8 paid out of the trust. That's one of the  
9 scenarios that we've contemplated.

10 Q. It is currently conceived that  
11 U.S. entities would actually manage the  
12 money; is that right?

13 A. There would be some combination  
14 of client-based representation and  
15 trustees.

16 Q. Is it currently conceived that  
17 any of the judgment money would go to the  
18 Republic of Ecuador?

19 A. No.

20 Q. Has the Republic of Ecuador  
21 funded any of the plaintiffs' activities  
22 in Ecuador?

23 A. I believe I have already been  
24 asked that, but I will answer it again.  
25 Not that I know of.



1 DONZIGER

2 Q. Can you look at page 11 of the  
3 document for me, please.

4 Do you see the bold heading  
5 that says "Chevron's Fraudulent Signatures  
6 on Documents Filed in Ecuador  
7 Proceedings"?

8 A. Yes.

9 Q. What documents filed in Ecuador  
10 proceedings is this referring to?

11 A. I don't know.

12 Q. Do you have any knowledge of a  
13 signature being forged on a document that  
14 Chevron filed in Ecuador?

15 A. I think I do.

16 Q. Can you tell me what document  
17 that is, please?

18 A. I don't know what is referred  
19 to by the writer of this, but I think it  
20 relates to chain of custody documents in  
21 the trial.

22 Q. You mean chain of custody forms  
23 for sampling results?

24 A. Yes.

25 Q. From the judicial inspections?

1 DONZIGER

2 A. That, yeah, I believe so.

3 Q. And whose signature is it  
4 contended that Chevron has forged?

5 A. I don't know. I'm basing that  
6 on a recollection I have from the tapes of  
7 Diego Borja.

8 Q. This is somehow related to  
9 things that Mr. Borja has said?

10 A. I believe so.

11 Q. Have you interviewed any  
12 witness who has indicated that their  
13 signature has been forged on some document  
14 filed by Chevron in Ecuador?

15 A. No.

16 Q. Would you look at page 7 of the  
17 document for me, please.

18 Do you see the heading just  
19 above the heading C that says "Damages for  
20 Losses to the Indigenous People and the  
21 Ecosystem"?

22 A. Yes.

23 Q. That paragraph reads  
24 "Significant factual evidence should  
25 support a substantial dollar figure. This

1 DONZIGER

2 includes damages to the health of the  
3 people and losses for same, cancer, infant  
4 mortality, and others. An independent  
5 toxicological analysis should support  
6 these claims."

7 Do you see that?

8 A. Yes.

9 Q. Plaintiffs have not submitted  
10 an independent toxicological analysis in  
11 Ecuador, correct?

12 A. I don't know what that means.

13 Q. Have you submitted an expert  
14 report from a toxicologist?

15 A. I don't believe so.

16 Q. Did you try to get a  
17 toxicologist to give an expert report in  
18 the Ecuador matter?

19 A. I don't know. I didn't.

20 Q. Do you know from your  
21 discussions with other counsel whether  
22 they were turned down by toxicologists for  
23 whom they attempted to get opinions for  
24 this matter?

25 A. I don't believe so. I mean, I

1 DONZIGER

2 haven't had that discussion with other  
3 counsel.

4 Q. Who hired Fein & Associates  
5 Inc.?

6 A. I did.

7 Q. And did you manage their work?

8 A. Yes.

9 Q. Are you aware of the opinions  
10 from the Ecuadorian court authenticating  
11 the recordings of the Judge Nunez  
12 meetings?

13 A. Yes.

14 Q. So you are aware that they have  
15 been independently authenticated?

16 A. Yes.

17 MS. NEUMAN: It is 5:45.

18 THE SPECIAL MASTER: Excuse me  
19 a second. I want to finish reading this.

20 Mr. Donziger, was Exhibit 834  
21 prepared for the purpose of submitting it  
22 to potential financial backers?

23 THE WITNESS: I believe so,  
24 yes.

25 THE SPECIAL MASTER: Has it

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been submitted to potential financial backers?

THE WITNESS: Yes.

THE SPECIAL MASTER: The plan that you described for protecting, so to say, any judgment in some country other than Ecuador, is that plan in writing?

THE WITNESS: Are you referring to a section of this report?

THE SPECIAL MASTER: I'm referring to your testimony that there is a plan to put any judgment in trust in a country outside of Ecuador.

THE WITNESS: I believe that Mr. Kohn created a document, more of a draft legal document that would have created such a trust.

THE SPECIAL MASTER: Is that the plan that is referred to in this Invictus document?

THE WITNESS: I don't think so. I think it is just a plan. I don't know if it is in writing. There has been discussions along the lines of what I have

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testified to. And I believe it was put in writing by Mr. Kohn in a document.

THE SPECIAL MASTER: When was this plan conceived, that is to keep the money, any judgment, enforced judgment, outside of Ecuador?

THE WITNESS: It has been talked about for quite a period of time, at least three or four years, I would estimate.

THE SPECIAL MASTER: Apart from Mr. Kohn's draft, is there any other writing that evidences this plan?

THE WITNESS: I don't know.

THE SPECIAL MASTER: And what was the reason that this plan was created in order to keep the funds outside of Ecuador, or the reasons?

THE WITNESS: I think there was a concern by our clients, and I think this was shared by Chevron, that there was a lack of trust in terms of the Ecuadorian government being able to administer the funds for the benefit of the client base.

1 DONZIGER

2 THE SPECIAL MASTER: Do you  
3 mean fairly administer the funds or  
4 honestly administer the funds or just  
5 administer the funds?

6 THE WITNESS: Well, administer  
7 them honestly and efficiently.

8 THE SPECIAL MASTER: I have no  
9 further questions for today. Go ahead,  
10 Ms. Neuman.

11 Q. Has the plan to keep the  
12 monies, any monies that would be recovered  
13 from the enforcement of a judgment out of  
14 Ecuador, ever been discussed with any of  
15 the named plaintiffs?

16 THE SPECIAL MASTER: I'm sorry,  
17 I didn't hear that and I don't have  
18 anything on my screen.

19 Q. Has the plan to keep any monies  
20 that would be recovered from the  
21 enforcement of a judgment out of Ecuador  
22 ever been discussed with any of the  
23 individually named plaintiffs?

24 A. I believe so.

25 Q. Which ones?

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A. I don't know. I believe Mr. Fajardo, who had those discussions generally, told me about it.

MS. NEUMAN: We can be done for the day.

THE SPECIAL MASTER: All right.

THE VIDEOGRAPHER: Off the record, 5:48 p.m. This is the end of disk five and concludes today's portion of the deposition of Steven Donziger, Volume IX.

[TIME NOTED: 5:48 p.m.]

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STEVEN DONZIGER

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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Notary Public



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## I N D E X

WITNESS	EXAMINATION BY	PAGE
DONZIGER	NEUMAN	2403

## E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE
Exhibit 797	Lago Agrio court order	2403
Exhibit 798	Lago Agrio court order	2417
Exhibit 799	Lago Agrio court order	2420
Exhibit 810	STRATUS_NATIVE063272-063276	2423
Exhibit 811	DONZ00025752 page 1 of 2 through page 2 of 2 and 00025753	2425
Exhibit 812	STRATUS_NATIVE044578	2427
Exhibit 813	DONZ00021500 page 1 of 2 and page 2 of 2	2430
Exhibit 814	STRATUS_NATIVE067410-067418	2467
Exhibit 815	STRATUS_NATIVE106635-106695	2483
Exhibit 816	STRATUS_NATIVE069906-069931	2492
Exhibit 817	STRATUS_NATIVE058389-058419	2498
Exhibit 818	E-mail from Beltman to Donziger dated 3/30/08	2507
Exhibit 819	Document entitled To The President of the Superior Court of Justice of Nueva Loja	2517
Exhibit 820	STRATUS_NATIVE063676	2528
Exhibit 821	CHAMP_NATIVE03626-03627	2534

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## E X H I B I T S (Continued)

EXHIBIT	DESCRIPTION	PAGE
Exhibit 822	Document entitled Exhibit R, Evaluation of Costs of Supplying Water in the Provinces of Sucumbios and Orellana, Ecuador	2539
Exhibit 823	DONZ00009504-0009507	2571
Exhibit 824	Photo	2599
Exhibit 825	DONZ00031342 page 1 of 4 through page 4 of 4 with attachments	2601
Exhibit 826	DONZ00040273 page 1 of 2 through page 2 of 2 with attachments	2605
Exhibit 827	DONZ00031341 page 1 of 2 and page 2 of 2	2625
Exhibit 828	DONZ00040275 page 1 of 1 with attachments	2641
Exhibit 829	DONZ00040258 page 1 of 3 through page 3 of 3	2644
Exhibit 830	DONZ00040259 with attachments	2660
Exhibit 831	DONZ00031369 page 1 of 2 and page 2 of 2 with attachments	2674
Exhibit 832	DONZ00031381 page 1 of 3 through page 3 of 3 with attachments	2679
Exhibit 833	(Withdrawn)	
Exhibit 834	DONZ00032520-32551	2690

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DIRECTIONS NOT TO ANSWER

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CERTIFICATION

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

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

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

IN WITNESS WHEREOF, I have hereunto set  
my hand this 8th day of January, 2011.

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TODD DESIMONE



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