Testimony of Steven Donziger- lead attorney sponsoring the environmental lawsuit against Chevron in Ecuador
Tom Lantos Human Rights Commission (a special committee of the House of Representatives) on April 28, 2009

The following is a rebuttal to the most egregious passages of Mr. Donziger's testimony.

Donziger Testimony	**Facts**
"It is undisputed that Texaco, as the operator of an oil consortium in Ecuador, deliberately dumped billions of gallons of toxic waste directly into the Amazon to save money. Most of this waste was "production water" which contains in Ecuador a stew of highly toxic hydrocarbons, including the carcinogen benzene."	The only accurate portion of this statement is that Texaco (more specifically, its subsidiary, Texaco Petroleum) was the operator for the oil consortium. What Mr. Donziger calls "toxic waste" is actually "produced water" – brackish water found in naturally occurring pools within geologic formations that comes to the surface with crude oil during production. Produced water is not considered "toxic waste" in the United States. Consistent with Ecuadorian regulations of the time and with current industry practices in many places in the world today, Texaco Petroleum separated out the crude oil and treated the produced water before safely discharging it into the environment.
"Six indigenous groups inhabited the land where Texaco operated – the Cofan, Secoya, Huaorani, Siona, Quicha, and Tetete. These groups have prospered for millennia before oil began to be extracted in the rainforest. Today, oil contamination has robbed them of their ancestral lands and devastated their cultures."	Contrary to Mr. Donziger's assertion, the population of the five main indigenous groups in the former concession area in the Oriente have actually *increased* or remained the same since the beginning of oil exploration in Ecuador. Western-borne diseases at the arrival of explorers and missionaries in the 16th century, and again at the turn of the 19th century, caused precipitous drops in the indigenous population, decades and even centuries before Texaco Petroleum began operations in Ecuador. However, Ecuador government census data and all peer-reviewed published population data agree that the population of the five indigenous groups identified by plaintiffs has either increased or remained stable since Texaco Petroleum began operations in Ecuador. For example, demographic studies presented by Dr. Eduardo Bedoya (a Ph.D. in Anthropology from New York University who has consulted for the ILO, CARE-Perú, WINROCK Corporation, the World Bank, and the IUCN) indicate that the Cofán population has more than tripled from about 300 inhabitants in 1960 to 1,044 in the official government of Ecuador census of 2001. Census data and other available statistics show that the populations of the Siona-Secoya and Huaoroni have also increased starting in the 1960s (concurrent with the beginning of oil exploration and production in the Oriente). The sixth group, the Tetete, were not mentioned in the 2003 *demanda* of the plaintiffs, and this allegation made by Mr. Donziger is completely without merit. By the time Texaco made its major discovery in Ecuador in 1967, only three elderly Teteté had been encountered for several years by missionaries and anthropologists, so clearly their demise was not the result of Texaco Petroleum's operations.
"I have seen how the due process rights of Amazonian residents have been violated by an abuse of the judicial process, intimidation of court personnel, and maneuvers designed to ensure that the legal process stretches indefinitely."	As Chevron spelled out in detail in its 2007 motion for dismissal, the plaintiffs' attorneys have waged an unprecedented campaign to disrupt the judicial process, to cause delays and to deny Chevron its right to due process. Once independent court experts filed a report agreeing that Chevron had conducted a good remediation at SA-53 meeting all government requirements, the plaintiffs' representatives and the government of Ecuador began to go to extraordinary lengths to exert pressure on the court and to deny Chevron its right to a fair trial. For example, On June 14, 2006, plaintiffs and their supporters organized a protest in the streets outside the Lago Agrio courthouse. The protesters assailed the judge directly in his chambers, demanding a verdict. The following month, plaintiffs' advocates stepped up their efforts, proclaiming on their "Amazon Defense Coalition" website that two of the Superior Court judges were being investigated for corruption and accusing them of being improperly influenced by Chevron. Plaintiffs' representatives admitted that these tactics were intended to pressure the court, and Mr. Donziger himself announced that "the country's social organizations would be creating a coalition to put pressure on and keep an eye on the conduct of the judges overseeing the case." Mr. Donziger later admitted in the film *Crude* that "[employing pressure tactics on the judge] is something you would never do in the United States, but Ecuador, you know, this is how the game is played, it's dirty."
"In 1993 the Amazon communities filed a class-action lawsuit against Texaco in the	It is incorrect to say that this case was transferred to Ecuador. This case was dismissed on four separate occasions by U.S. Courts and was subsequently refiled (not transferred) in Ecuador

U.S. federal court in New York… The case was eventually transferred to Ecuador in 2002."	
"Based on the extension evidence generated from these inspections, an independent court expert, working with a team of 14 scientists, found that Chevron is liable for up to $27 billion in damages. Numerous qualified scientists have reviewed this report and found its conclusions reasonable…"	This so-called "independent" expert – Richard Cabrera – a mining engineer with no background in oil-field remediation was paid solely by the plaintiffs' representatives, worked alongside the plaintiffs' representatives, and in fact copied whole passages from plaintiffs' reports for use in determining the $27 billion damage assessment. Mr. Cabrera's "damage" recommendations have no basis and no foundation whatsoever in law or science. Mr. Cabrera was not neutral and he followed neither an expert process nor the process ordered by the court. Additionally, Mr. Cabrera ignored the results of his own fieldwork in inventing environmental remediation needs. He ignored the hundreds of pages of environmental audits, remediation plans, and remediation costs submitted to the court by Petroecuador and approved by the Ecuadorian Ministry of Environment. Instead, Mr. Cabrera used fabricated "evidence" and clean-up standards that are not applicable under any law to come up with outrageous costs unrelated to oilfield remediation. He violated court orders by conducting fieldwork at only a small fraction of the 335 wells and production stations in the former concession area, and he manipulated and altered findings to produce false conclusions. These activities culminated in an April 1, 2008, recommendation that the court assess damages against Chevron in excess of $16 billion. In response to Mr. Cabrera's report, Chevron addressed Mr. Cabrera's numerous fundamental errors, while the plaintiffs predictably insisted that his damages assessments should be higher and should include additional categories of damages. In his second report, delivered in November 2008, Mr. Cabrera did not even address Chevron's response. Instead, Mr. Cabrera nearly doubled his earlier damages amount without identifying *any* new "evidence," increasing his recommendation to more than $27 billion solely at plaintiffs' instigation. Mr. Cabrera's cancer claim is one of the most shocking examples of the absurdity of his work. First, this is an environmental remediation case, and none of the 48 named plaintiffs have claims for cancer-related damages. Second, despite recommending $9.5 billion in damages for alleged "excess" cancer deaths, Mr. Cabrera did not identify a single victim or provide a single medical report. He relied solely upon the responses to a survey—which it appears was conducted by plaintiffs' supporters—that asked leading questions like "what [do] you think should be demanded of Texaco as relief of the damages suffered?" Third, Mr. Cabrera did not distinguish among different types of cancer and identified no evidence linking crude oil to stomach or uterine cancer—the two most common cancers reported in the surveys (and also the two most common cancers in Ecuador). Fourth, Mr. Cabrera's conclusions are contradicted by official Ecuador statistical data on cancer mortality, which show no increased cancer risk in the oil-producing areas of the Oriente. Finally, in increasing the damages figure from his initial report to the dollar amount requested by the plaintiffs, Mr. Cabrera simply cut-and-paste portions of plaintiffs' rebuttal into his own supplemental report. In addition to his cancer assessment, every other aspect of Mr. Cabrera's damages recommendation is wildly exaggerated and unrelated to either the claims or evidence in the case or to Ecuador law: • More than a billion dollars in soil remediation for sites that he never visited and the conditions and dimensions of which he cannot know. Even though official Government data indicate that the average cost necessary to remediate a pit is roughly $85,000, Mr. Cabrera arbitrarily assessed an average of more than 25 times that amount, or $3.1 million per pit. • $428 million to improve Ecuador's potable water system even though Mr. Cabrera did not take a single drinking water sample. • $3.2 billion for groundwater remediation at plaintiffs' request, even though Mr. Cabrera acknowledged that he did not have enough data to develop a groundwater remediation plan. Instead, Mr. Cabrera hypothesized this figure based on four incomparable groundwater projects that he read about on the Internet. • Half a billion dollars for healthcare facilities even though Mr. Cabrera admits that this "goes beyond the treatment of the conditions and illnesses directly and strictly caused by Texaco Petroleum's operations." • More than $8 billion for "unjust enrichment" and "punitive" damages, concepts that have no basis in fact, and do not even exist under Ecuador law. • Approximately 90 percent of Mr. Cabrera's $27 billion figure was allocated to issues unrelated to remediation of the sites operated by the former Consortium, including improving public services, modernizing Petroecuador's infrastructure, and fostering indigenous cultures—even assessing nearly half a billion dollars to create a husbandry farm that would raise and release wild animals that the indigenous people could hunt.
"It is our assessment that Chevron has not adequately or accurately disclosed the	Chevron has disclosed complete, accurate and material information about this litigation in its periodic SEC filings. In fact, the amount of information that Chevron has made available to investors, the public, the news media and other interested parties is probably without equal in the annals of corporate litigation. The company has addressed this litigation in the past 5 proxy statements; has presented information to shareholders at the last five shareholder meetings; has spoken at length to the news media and investor groups, and maintains a voluminous website

financial risk to shareholders of this potential liability…"	in both English and Spanish.
"Texaco also built 916 unlined, open-air waste pits and filled them with "drilling muds." This is an industry term used to describe heavy metals, oil and formation waters that are the product of well perforation and maintenance process. These oil byproducts and other liquids which contained heavy metals and synthetic chemicals were systematically drained via a system of pipes into nearby streams and rivers… Texaco's pipeline ruptures alone dumped 17 million gallons of oil into the environmental… In judicial inspections of 94 former Texaco sites conducted in Ecuador from 2005-2009, soil samples revealed that 100% were contaminated. Sites Texaco claimed to have remediated were as contaminated as those that were never touched."	First, Mr. Cabrera fabricated the pit count of 916, misidentifying things like trees and shadows as pits. Furthermore, he backdated photographs to implicate Texaco Petroleum for pits created after Texaco left the country. With respect to the practice of using pits, it is important to note that the use of open-air, unlined earthen pits to store drilling fluids was a standard oil industry practice in both the United States and Latin America during the time of the Petroecuador- Texaco Petroleum concession. For example, in the U.S. state of Louisiana, 81,933 open-air, earthen, unlined pits were constructed between 1970 and 1985. According to the USEPA, in 1984 there were 125,000 open pits in the United States, of which 97.6% did not have synthetic liners. Only 2.4% were lined with synthetic material; 27% had natural liners (clay, much like in Ecuador), and all of the others were not lined. The existence of earthen pits continues to be prevalent throughout Latin America today. In Argentina, for example, it has been reported that there are more than 24,000 oilfield pits. In Venezuela, PDVSA reported in 2001 that they had in previous years constructed 12,366 earthen pits without synthetic lining. Indeed, the results of the judicial inspections during the current trial demonstrate that Texaco Petroleum's operations – and its subsequent remediation – were safe and effective. Chevron took 1,426 water and soil samples and had all of them analyzed at accredited U.S. laboratories. In comprehensive reports for 45 different sites, Chevron's experts concluded that 98 percent of the remediation performed by Texaco Petroleum met the requisite standards and that there is no significant risk to human health at the remediated well sites. Likewise, 99 percent of drinking water samples met U.S. Environmental Protection Agency (USEPA) and World Health Organization (WHO) guidelines for hydrocarbons and metals. The science clearly demonstrated that none of the remediated areas contained levels of hydrocarbons or heavy metals that could pose a risk to health: • Benzene has not been detected in any sampling. • Polycyclic aromatic hydrocarbons (PAHs) have been detected only at levels below USEPA soil screening levels. • Heavy metals, like chromium 6, are either not present or are present at levels consistent with background concentrations and do not exceed USEPA soil screening guidelines. Indeed, the highest concentration of chromium 6 found in any soil sample was 0.129 mg/kg, which is less than one-tenth of one percent of typical cleanup levels in the United States and is not considered harmful. With respect to the claim of 17 million gallons of oil spilled, it should be noted that the overwhelming majority of the oil that was spilled during the period in which Texaco Petroleum was operator was caused by a massive earthquake which ruptured – and then buried under a mountain collapse – the pipeline that carried crude oil from the Oriente to the west coast of Ecuador. Much of the oil that was spilled was buried under the avalanche. What oil could be recovered was remediated by Texaco Petroleum.
"Texaco's operation was substandard by any measure – it violated standards at the time, basic Environmental law, the company's contract with Ecuador's government, basic human decency, and as we learn today, several international human rights instruments."	Texaco Petroleum's operations in Ecuador were fully compliant with Ecuadorian law, standard industry practices around the world, its own contract with Petroecuador (and its predecessor company, CEPE) as well as the laws of other oil-producing nations, including the U.S.
"The expert (Richard Cabrera)… reviewed all the data in evidence as well as several peer-reviewed health studies… Using conservative measures, the team's final	Here Mr. Donziger's admits that estimates of the health impact are incomplete; that there is no oncology equipment in the region and residents have little or no access to health care; and it is "near-impossible" to know how many residents are suffering from cancer. Yet he defends with absolute certainty the veracity of Mr. Cabrera's health claims. This despite the fact that neither the plaintiffs' attorneys nor Mr. Cabrera have ever provided the court with even a single health record or death certificate.

report found at least 1,401 excess cancer deaths in the region due to oil contamination. Significantly, the report concluded that the closer people lived to the sources of the contamination, the more likely it was that they would suffer from cancer. Other peer-reviewed scientific studies have found elevated rates of oil-related health problems such as spontaneous miscarriages and genetic defects. Anecdotal stories of cancer are frighteningly common… various health studies of the region that show an increase in oil-related cancers and health problems. "These estimates of the health impact are necessarily incomplete; there is not a single piece of oncology equipment in the region and the residents have little or no access to health care. As such, it is near-impossible to know how many residents are actually suffering from cancer and other health problems."	It should be noted that Cristobal Bonifaz, who along with Mr. Donziger is the original architect of the ongoing lawsuit, was fined and sanctioned by a federal court in San Francisco after Chevron proved that the Ecuadorian cancer claims he brought before that court were fabricated.
"The lead lawyer for the rainforest communities, Pablo Fajardo, has been subjected to death threats. A brother of Mr. Fajardo was murdered in 2004, about a year after the trial began, under mysterious circumstances that some think was a case of mistaken identity."	This is a dishonest effort to implicate Chevron in a crime that Mr. Donziger and the plaintiffs' representatives know had nothing to do with Chevron or this litigation. The fact is that Chevron had neither any awareness of the murder of Mr. Wilson Fajardo, and certainly had nothing to do with it. We suspect that Mr. Donziger is aware of police reports that identify the individuals responsible for Mr. Fajardo's murder, and the circumstances under which the crime occurred. He is also aware of a signed statement presented to the police by Pablo Fajardo in which he describes his understanding of the circumstances related to his brother's murder. In no police report is there any suggestion that the murder of Wilson Fajardo was related to the trial or that the crime was a case of mistaken identity. The fact that Mr. Donziger is referring to this scandal that was long ago shown to be a localized crime, shows the desperation of his efforts to convert people to the story he's telling about Chevron.
"Not content with its preferred court in Ecuador, Chevron began to attack the trial process when the evidence started to	Contrary to the statements of Mr. Donziger, the plaintiffs began attacking the trial process as soon as the evidence started coming back in Chevron's favor. In their report on Sacha 53, the court's settling experts concluded that the plaintiffs had failed to substantiate their claims of environmental contamination and specifically found that the remediated areas at Sacha 53 posed no significant risk to human health. The settling experts were immediately denounced as traitors. Facing the prospect of similar reports at other sites and with less than half of the judicial inspections completed, plaintiffs embarked upon a plan to shut down the judicial-inspection process in its entirety. First, the plaintiffs brought the work of the settling experts to an immediate

point to its culpability. It has hired lobbyists in Washington… to try to use our nation's foreign policy to "punish" Ecuador…"	halt by defying a court order to fund their share of those experts' work. Next, they sought to "withdraw" from 64 of the site inspections and move directly to a modified version of the global assessment, thereby evading their burden of proof. Plaintiffs' clear strategy in the case was to avoid legitimate evidence and science in favor of pursuing their goals through other means. Moreover, the plaintiffs' representatives have hired their own lobbyists and consultants in Washington, D.C., and over the course of this litigation, the plaintiffs have written letters to or met with the Department of State, the Federal Trade Commission, the Office of the U.S. Trade Representative, the Securities and Exchange Commission, as well as numerous members of Congress – all in an attempt to exert extrajudicial pressure on Chevron. The fact is that the plaintiffs – led by Mr. Donziger – have undertaken a well-orchestrated campaign to ally with Ecuadorian President Rafael Correa in an attempt to exert pressure on the court and on Chevron. As a matter of fact, Mr. Donziger was a guest at President Correa's inauguration, and in an infamous scene from the film, "*Crude*," Mr. Donziger is seen whispering in President Correa's ear.