Fraud Findings by U.S. Courts

U.S. District Court for the Western District of North Carolina: "While this court is unfamiliar with the practices of the Ecuadorian judicial system, the court must believe that the concept of fraud is universal, and that what has blatantly occurred in this matter would in fact be considered fraud by any court. If such conduct does not amount to fraud in a particular country, then that country has larger problems than an oil spill." *Chevron Corp. v. Champ*, Nos. 1:10-mc-27, 1 :10-mc-28, 2010 WL 3418394, at *6 (W.D.N.C. Aug. 30, 2010).

U.S. District Court for the District of New Mexico: "The release of many hours of the [*Crude*] outtakes has sent shockwaves through the nation's legal communities, primarily because the footage shows, with unflattering frankness, inappropriate, unethical and perhaps illegal conduct." *In re Chevron Corp.*, Nos. 1:10-mc-00021-22, slip op. at 3-4 (D.N.M. Sept. 2, 2010).

U.S. District Court for the Southern District of California: "There is ample evidence in the record that the Ecuadorian Plaintiffs secretly provided information to Mr. Cabrera, who was supposedly a neutral court-appointed expert, and colluded with Mr. Cabrera to make it look like the opinions were his own. Thus, any privilege which existed was waived; Respondents' claim of privilege neither bars production of the subpoenaed documents nor gives [plaintiffs' technical consultant] Powers a basis for refusing to testify." *In re Applic. of Chevron Corp.*, No. 10-cv-1146-IEG(WMC), 2010 WL 3584520, at *6 (S.D. Cal. Sept. 10, 2010).

U.S. District Court for the Southern District of New York: "[T]here is more than a little evidence that [plaintiffs' lead U.S. counsel] Donziger's activities – as several courts already have held in the context of Section 1782 applications against experts involved on the Lago Agrio plaintiffs' side – come within the crime-fraud exception to both the privilege and to work product protection." *In re Applic. of Chevron Corp.*, 749 F. Supp. 2d 141, 167 (S.D.N.Y. Nov. 10, 2010).

U.S. Court of Appeals for the Third Circuit: "Though we recognize that the Lago Agrio Court may view what seems to us to be a conflict of interest differently than we do, we believe that this showing of [plaintiffs' technical consultant] Villao's dual employment is sufficient to make a prima facie showing of a fraud that satisfies the first element of the showing necessary to apply the crime-fraud exception to the attorney-client privilege." *In re Applic. of Chevron Corp.*, 633 F.3d 153, 166 (3d Cir. Feb. 3, 2011).

U.S. District Court for the Southern District of New York: "There is ample evidence of fraud in the Ecuadorian proceedings. The LAPs, through their counsel, submitted forged expert reports in the name of [technical expert] Dr. [Charles] Calmbacher. Their counsel orchestrated a scheme in which [plaintiffs' technical consulting firm] Stratus ghost-wrote much or all of [court expert] Cabrera's supposedly independent damages assessment without, as far as the record discloses, notifying the Ecuadorian court of its involvement. . . . When it became evident that the LAPs' improper contacts with Cabrera, including the pre-appointment meetings, ghost-writing, and illicit payments, would be revealed through the Section 1782 proceedings, LAP representatives undertook a scheme to "cleanse" the Cabrera report. They hired new consultants who, without visiting Ecuador or conducting new site inspections and relying heavily on the initial Cabrera report, submitted opinions that increased the damages assessment from $27 billion to $113 billion." *Chevron Corp. v. Donziger*, 768 F. Supp. 2d 581, 636 (S.D.N.Y. Mar. 7, 2011).

U.S. District Court for the Southern District of New York: "As to the crime-fraud exception, I concluded that Judge Kaplan had made findings that required application of that exception to information relating to three different subjects: (1) the report to which an expert's name had fraudulently been appended (the 'Calmbacher report'); (2) the report that was purportedly independent but had been ghostwritten by agents of the LAPs (the 'Cabrera report'); and (3) the memoranda that were purportedly independent reports intended to supercede the Cabrera report, but which in fact simply repeated that report's findings (the 'cleansing memos')." *Chevron Corp. v. Salazar*, No. 11-civ-3718, 2011 WL 3424486, at *3 (S.D.N.Y. Aug. 3, 2011).

U.S. District Court for the District of Maryland: "I do think that probable cause has been established if for no other reason than for the production of the admittedly co-authored, or documents co-authored by [interns for the plaintiffs] the Pages, which has found its way into the decision in Ecuadorian court . . . . So, at the end of the day, regardless of how I get there, and I get there, I get to the same place by at least four or five different routes. This information is very much discoverable. It is no longer privileged, and it is to be produced immediately." *Chevron Corp. v. Page*, No. RWT-11-1942, Oral Arg. Tr. at 10:17-21, 11:13-23 (D. Md. Aug. 31, 2011).

U.S. District Court for the District of Washington D.C.: "[T]here is more than sufficient evidence of a prima facie case that [plaintiffs' consultant] the Weinberg Group's work was part of a fraud upon the Ecuadorian court." *Chevron Corp. v. The Weinberg Group*, No. 11-mc-00409-JMF, slip op. at 8 (D.D.C. Sept. 8, 2011).