IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL CONSTITUTED
IN ACCORDANCE WITH THE TREATY BETWEEN THE U.S.A. AND THE REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT, SIGNED AUGUST 27, 1993
(THE "TREATY")

and

THE UNCITRAL ARBITRATION RULES 1976

In the Matter of Arbitration Between:	
CHEVRON CORPORATION (U.S.A.), TEXACO PETROLEUM COMPANY (U.S.A.), Claimants,	PCA Case No. 2009-23
and	
THE REPUBLIC OF ECUADOR, Respondent.	Volume 1

TRACK 2 HEARING

Tuesday, April 21, 2015

The World Bank
700 18th Street, N.W.
J Building
Conference Room JB1-080
Washington, D.C. 20003

The Hearing in the above-entitled matter convened at 9:00 a.m. before:

MR. V.V. VEEDER, Q.C., President

DR. HORACIO GRIGERA NAÓN, Arbitrator

PROFESSOR VAUGHAN LOWE, Q.C., Arbitrator

Registry, Permanent Court of Arbitration:

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MR. RAYMUNDO TREVES

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C O N T E N T S

P R O C E E D I N G S

PRESIDENT VEEDER: Good morning, ladies and gentlemen. This is the resumed Hearing in Phase II of the arbitration between Chevron Corporation and the Texaco Petroleum Company as Claimants and the Republic of Ecuador as the Respondent.

I think there's no need to renew old acquaintances, but we do welcome Dechert and Professor Mayer for the Respondent, and you will see on my extreme left Ms. Jessica Wells, the additional Secretary to the Tribunal.

Now, we thank the Parties for planning out the map of this Hearing; and, from that, we understand that today will be given over to the Parties' opening oral submissions, the Claimants in the morning, the Respondents in the afternoon, not to exceed more than four hours.

There are certain procedural matters which remain outstanding. We'd like those to be taken up, if you wish to, during your oral submissions rather than starting with the procedural disputes at the outset of this morning, but we would like to complete the submissions today and start with the Witness clean tomorrow morning.

There are two minor housekeeping matters. One is that we will need mid-morning breaks and mid-afternoon breaks for the shorthand writers and for the interpreters;

09:01 and, as to that, we'd like to leave it to counsel when it least interrupts their submissions to decide when those breaks would be taken. They would be about 15 minutes or so.

If you speak very fast and the interpreters and shorthand writers get very tired, we may need two breaks, but again we'll come to that later.

And the second matter is, are there any housekeeping matters which require us to address them now at this stage before the Claimants start their opening oral submissions?

We ask the Claimants first.

MR. BISHOP: Mr. Chairman, there are obviously some procedural issues outstanding. We do not believe they need to be taken up today. We believe that they could be taken up tomorrow. We're not planning on making submissions on those as part of the Opening Statements, but we agree that we should not slow down the course of the day by taking those up.

PRESIDENT VEEDER: Thank you very much.

And the Respondent?

MR. BLOOM: We agree that whatever procedural matters are pending probably are best left not for today. I think we're going to be having a very long day as it is.

PRESIDENT VEEDER: I think we're all concerned

about that. It will be inevitably a long day.

Without more, we give the floor to the Claimants. And is that you, Mr. Pate?

MR. PATE: I think first the introduction from Mr. Bishop.

PRESIDENT VEEDER: Mr. Bishop.

OPENING STATEMENT BY COUNSEL FOR CLAIMANTS

MR. BISHOP: Yes, thank you. Mr. Chairman, yes, Mr. Pate, the General Counsel of Chevron will make a very short statement at the beginning of our presentation, and then Professor Paulsson will give our introduction, and then I will make a presentation after that. That's the way in which we will begin.

There will be a natural break, I think, around a little over two hours into our presentation, maybe two hours and ten minutes. If the Tribunal wishes to break earlier, obviously we can, but I think that would be about a natural break after my presentation.

PRESIDENT VEEDER: Thank you.

MR. PATE: Thank you, Mr. President, Members of the Tribunal.

This is my sixth opportunity to address you at the outset of a tribunal proceeding, so I begin with a few observations about where we have been and where we are today.

When I first addressed you in 2010, the evidence of the Cabrera fraud was just coming to light, and there was hope that Ecuador would decide to end its allegiance with Steven Donziger and his co-conspirators.

Remember: The Party line during that period even as late as 2012 in Ecuador was that the Lago Agrio Litigation was purely private and did not involve the Government of Ecuador.

By today, however, we have the Foreign Minister of Ecuador confirming on video that enforcement of a plainly fraudulent judgment is a top foreign policy priority of the nation. When I appeared before the Tribunal in 2012, Chevron at least hoped that Ecuador would obey the lawful Orders of this Tribunal, which ordered Ecuador, as you will recall, to use all means "at its disposal" to prevent enforcement of the fraudulent judgment, and then later, to use "all means necessary" to do so. Ecuador flouted the Tribunal's orders. It now even proclaims in advance that it will not obey future Orders and attacks the Tribunal as corrupt, saying in official Government publications that this Tribunal issues "illegal rulings" that, "trample law and justice."

For the next three weeks we will sit together with civility and professionalism to review the ever-growing mountain of evidence of fraud, bribery, and corruption that

has become the subject of a 500-page United States District Court opinion, as well as the rulings of other courts. We will revisit the forged Expert Reports, the bribes from the self-described secret account, the cook and the waiter, then the puppet and the puppeteer, the "go to jail" e-mail, the Honey & Honey restaurant bribe meeting that even Steven Donziger admits he attended, the typo-for-typo inclusion of the Plaintiffs' private material in the sham judgment from Lago Agrio, and, most importantly, the Government of Ecuador's white-washing and endorsement of the whole sordid scheme as national policy.

The vast bulk of the fraud evidence is uncontested, and no serious alternative narrative will be presented. What we will hear instead is Ecuador attacking Chevron for doing what was necessary to expose the corruption, but every time Ecuador does this, it proves Chevron's case. Ecuador commits a denial of justice through its stubborn failure to address the corruption evidence that Chevron has exposed, and the unrepentant words and actions of its highest officials put the lie to its cynical arguments about the exhaustion of illusory remedies.

There is no blinking that the outcome of these proceedings will send a message to the international investing business community and to host countries as well.

The message will be either that there is a right to justice guaranteed by international law and made effective by neutral tribunals or instead that, notwithstanding overwhelming evidence that an official Government policy of promoting a corrupt Judgment in defiance of lawful international injunctions is beyond the power of international law to redress.

Now, naturally, much care must be given when assessing serious allegations against any sovereign, but if the institutions charged with applying international law cannot call what happened here by its name--a denial of justice--an outcome entitled to no international effect, then it would be difficult to see that investor-State arbitration serves any purpose.

And with that, may I ask that the Tribunal invite Mr. Paulsson to begin our counsel's presentation.

PRESIDENT VEEDER: Thank you, Mr. Pate.

Mr. Paulsson.

MR. PAULSSON: Members of the Tribunal, nothing like this case has ever been seen before. There have, of course, been cases of fraud, cases of political corruption, cases of failure of due process, but not all of these so lamentably pervasive in a single case. If you take a special interest in the subject of denial of justice, as I have, you can read the multitude of decisions of Tribunals

and Commissions in the 19th and 20th centuries. You can read the more recent judgments of international courts of human rights or awards of investment treaty tribunals. You will never come across such comprehensive and brazen violations of due process.

Manufactured evidence, bribery, intimidation, a ghostwritten Judgment, and all of the evidence documenting this malfeasance cynically ignored by Ecuador's higher courts and prosecutors without even the beginnings of a plausible excuse for this determined indifference to such shameful conduct.

But that is far from all. Ecuador's Head of State has vociferously applauded this judicial debasement, publicly demanding punishment of the foreigners and branding all of those who dare to give them legal advice as traitors to the homeland, "vende patrias." These are not occasional outbursts, but an obsessive feature of the Saturday addresses which have become a fixture of President Correa's tenure. With his face filling the country's television screens, he blames all of the problems of the Oriente, not on the Ecuadorian Government's policies with respect to agriculture, resettlement, and land distribution, not on the abysmal negligence of Petroecuador in environmental matters over the past 23 years, but on foreign scapegoats, the first of

which, as he refers to Chevron, is "Texaco."

Apparently, it is not enough for Petroecuador to shirk its own remedial obligations under the Settlement and Release Agreements. Ecuador would now, with its joint and several liability theory, have Chevron serve as indemnitor for Petroecuador's current and future oil operations in the area.

President Correa needs no evidence. He's the Head of State and knows whom to punish. Emblematic of the case's political prominence, in January 2014, the Vice Minister of Foreign Affairs stated that enforcement of the Judgment, I quote, "is one of the issues that we're going to promote as part of Ecuador's foreign policy." That's Exhibit C-2152. The meaning of all this has not been lost on the judges hearing Chevron's appeals. The pattern of threats, sanctions, and removals of judges who dare to rule against the Government is clear. The question, gentlemen, is not, as Ecuador would have it, how one could find a denial of justice. The challenge is rather how anyone could explain why this is not.

Here, the Ecuadorian judiciary, improperly influenced by the Executive, turned itself into the instrument of a fraudulent scheme, a shakedown to extort billions of dollars from Chevron. As the forensic evidence conclusively shows, the Judge at first instance

allowed the Plaintiffs' lawyers to draft the billion-dollar Lago Agrio Judgment. The appellate Court perpetuated the denial of justice by affirming every jot and tittle of the ghostwritten judgment, without taking any steps to investigate the substantial and unrefuted evidence of misconduct Chevron had placed before it--misconduct that in no sense is collateral or ancillary, but goes to the core of the case. And the Correa Administration is now actively promoting the Judgment enforcement abroad, including through diplomatic channels. We are, gentlemen, looking at a massive meltdown of the rule of law.

The basic proposition governing this arbitration is this: The state incurs international responsibility if it administers its laws to aliens in a fundamentally unfair manner. Your Tribunal is well acquainted with the various formulations that have sought to encapsulate a generic definition of denial of justice. Additional and related standards of State conduct as set forth in the Treaty itself, including the requirements of effective means, fair and equitable treatment, and non-discrimination.

I will not take time to repeat general abstract propositions. With your permission I will return toward the end of our presentation this morning to deal with

specific aspects of the subject, in particular the exhaustion requirement.

The voluminous evidence before you speaks for itself. What it shows is not indifference to fairness, but rather positive antagonism to this all-important value. Due process, it seems, is too good for foreigners who resist extortion. This case is a result of a quid pro quo alliance between a populist government and unethical plaintiffs' attorneys, its machinations enabled by the tragic reality of a subordinated judiciary. Knowing that any suit against a State-owned company would be dead on arrival in Ecuador's courts, the lawyers who represented the Plaintiffs early on waived their rights to file any claim against Petroecuador. And the lawsuit against Chevron was manna to the Correa Administration, which was keen to deflect attention away from Petroecuador's ongoing and harmful operations and to place all blame for all social ills in the Oriente on a long-departed U.S. multinational.

Early on, it was clear that this case was not one about science. When results from the judicial inspection process failed to substantiate their fanciful claims, the Plaintiffs, in Mr. Donziger's unforgettable words, decided to go over to the dark side. After independent experts rejected the need for remediation at Sacha 53, the

Plaintiffs pressured Judge Yánez to cancel the judicial inspection process and allow the Plaintiffs to select an ostensibly independent Court-appointed expert who would, as their lawyer secretly put it, totally play ball with them.

Judge Yánez was already embroiled in a jobs-for-sex scandal and thus vulnerable. After the Plaintiffs threatened to file a separate complaint against him, Yánez capitulated to their demand made in ex parte meetings to which Chevron certainly was not invited, that he appoint Mr. Cabrera. And while Ecuador's judiciary was allowing the Plaintiffs to manufacture evidence, its Executive was helping them create leverage by pursuing baseless criminal charges against key company officials, amongst the serious, most serious abuses there can be of sovereign power. This was part of Ecuador's coordinated efforts to undermine the Settlement and Release Agreement, which stood as a legal bar to the Plaintiffs' diffuse environmental claims.

Discovery of the Cabrera fraud through U.S. Section 1782 proceedings did not cause Ecuador to blink for a moment. Believing that the invocation of the word sovereign could shield even the most egregious misconduct and hoping no doubt that Chevron would at some point capitulate to the threat of a multi billion dollar

liability and pay some lesser amount but still astronomical amount, President Correa continued to give his heavy-handed support.

The Lago Agrio Court yet again changed the procedural rules to allow the Plaintiffs to file makeweight cleansing Expert Reports. Still, the Plaintiffs' counsel did not trust an Ecuadorian judge to write a judgment that could be enforced abroad. Thus, after being promised half a million dollars, Zambrano, insufficiently experienced to write even the most routine orders in civil cases, limited himself to signing the pre-drafted 18 billion-dollar Judgment put before him. Indeed, it seems unlikely Zambrano never even read the Judgment, considering his inability to recall basic parts of it during his RICO trial testimony. He has chosen not to come here for this Hearing, while his government had given him a cushy salary, but professes to have no means to influence his decision.

The politics have only escalated since the fraudulent judgment issued, with the Government doing all it can to promote its enforcement abroad. Correa has lobbied for its enforcement in State-to-State meetings. The Ecuadorian enforcement court lent its hand by purporting to pierce the corporate veil of Chevron and scores of its subsidiaries around the world, and the

Executive Branch continues to work hand-in-hand with the Plaintiffs, notably on the notorious Mano Sucia campaign, the glossy anti-Chevron media rampage replete with its own website and cameos by highly paid B-list celebrities whose primary qualifications for opining on environmental conditions seem to be that they have graced the covers of People magazine.

What are a few million dollars of investment in propaganda when you're trying to get your hands on billions of dollars from a designated villain? If you're looking for some comic relief in this sad affair, just Google, for example, Sharon Stone and Lago Agrio. It will lead you to a trail of cynicism and foolishness as long as your patience will allow.

But this is a profoundly serious matter. The rule of law is under attack. Forms of justice have been abused. The narrative of this case is saturated with five types of poison: Judicial fraud and corruption, gross violations of due process, Executive interference, Judgments which are a mockery of legal reasoning, factual findings taken out of thin air.

Looked at from the prism of law, each of these defects, if that's the word, standing alone constitutes a sufficient basis for attracting international responsibility. When they recur as comprehensively as in

this case and the State adopts an adamantly unrepentant stance and simply ignores the voluminous evidence of fraud as if it did not exist, we're faced with a denial of justice of historic proportions.

Sitting across the table from you, you have the Attorney General of Ecuador, who could tell you that his Government has reconsidered and is finally ready to disavow the corrupt judgment. That would be unexpected. This Tribunal has already given Ecuador several opportunities to correct this injustice, but it has elected to disregard your Interim Measures Awards and maintain its indefectible allegiance to Donziger and Fajardo. Contrast Ecuador's choice with other members of the conspiracy who have seen the light. The law firm of Patton Boggs not only withdrew from the case, it expressed its regret at becoming involved. Paid Chevron $15 million and relinquished its interest in the Judgment. A managing partner of the New York firm Constantine Cannon testified that he felt, his words, "physically ill" upon learning of Stratus's role in drafting the Cabrera Report, prompting his firm to withdraw. The Plaintiffs' principal funders have also resiled. Burford Capital announced that it had been fraudulently induced into the case, terminated its funding agreement, and disclaimed any proceeds from the judgment.

As for Joe Kohn, a well-known Philadelphia Plaintiffs' attorney, he walked away from the case notwithstanding the 16 years of work and the 7 million he had personally invested in it. Russell DeLeon transferred his stake in the Judgment and forfeited his $23 million investment in the scheme explaining that his law school friend Donziger, had, his word, "misled" him about important facts. And Stratus Consulting, the Colorado firm the Plaintiffs hired to ghostwrite the Cabrera Report, has disavowed all of its "findings and conclusions," their words, and specifically acknowledged the absence of any scientific data showing among other things, groundwater contamination and adverse health effects from petroleum.

Yet Ecuador's alliance with the Plaintiffs endures. Bear this in mind when the Attorney General's lawyers tell you that the Government would be more than happy to correct the very wrong which it is now actively seeking to enforce. If only Chevron would go to yet another Ecuadorian Court to complain about Zambrano's behavior, now under the Collusion Protection Act, and then sometime in what remains of this decade get a decision which can be appealed, gentlemen, to the very next-level courts which have already ratified the Lago Agrio Judgment without any consideration of its corrupt and fraudulent

foundation.

I will presently ask you to invite Mr. Bishop to address you on the core subject of the fraud and the corruption, which infuses the Lago Agrio Judgment. Next, Mr. Coriell will show that the Lago Agrio Case, as it was litigated and decided, concerns only diffuse environmental claims barred by the Settlement and Release Agreement. He will also analyze some of the more absurd legal features of the Judgment itself.

You will then hear Ms. Renfroe deal with environmental issues, with respect to which you will see that Ecuador's allegations backfire and backfire badly. Indeed, it was the inability of the Plaintiffs to prove their allegations of contamination and establish causation that led to manufacturing of evidence and other acts of fraud that bring us here today.

As you listen to their presentations, I urge you to ask yourself the question which Sir Gerald Fitzmaurice articulated in his remarkable contribution on denial of justice in the 1932 British Yearbook: "Is this a decision which an honest and competent Court could possibly have given?"

In fact, I would like to leave you with the context of that question. Fitzmaurice was reflecting on the accepted general rule that an erroneous conclusion of

law or fact, even though it results in a serious injustice, does not suffice to engage the State's responsibility. But he qualified this as follows, and I quote him again: "An unjust judgment may and often does afford strong evidence that the Court was dishonest; or, rather, it raises a strong presumption of dishonesty. It may even afford conclusive evidence if the injustice be sufficiently flagrant so that the Judgment is of a kind which no honest and competent Court could possibly have given."

Let those words resonate as you now listen, if you please, to Mr. Bishop.

PRESIDENT VEEDER: Thank you.

Mr. Bishop.

MR. BISHOP: Thank you, Mr. Chairman.

An unjust Judgment, that label aptly describes the Lago Agrio Judgment. The Lago Case involved a massive scheme of extortion, corruption, and fraud fully supported by the Government of Ecuador and with the willing participation of Ecuadorian judges, all for the purpose of fixing the outcome of the case regardless of its merits.

The result was a $9.5 billion Judgment, the largest in the history of the country by many factors, a judgment which has now been affirmed by the highest court of Ecuador and certified as enforceable without any review

of whether it was fraudulent or corrupt. And despite the overwhelming evidence of fraud, the government has embraced the Judgment and is willfully promoting its enforcement around the world in violation of this Tribunal's Interim Awards.

Now, you heard Professor Paulsson describe this as the most comprehensive and pervasive example of denial of justice in the history of international law, and it is, indeed, without precedent. So, how did we get to this point? How did the Lago Agrio Case come to this point? I'd like to step back and take just a few moments to give a broad overview of how we got here before I launch into the details of the case.

In 1995, the Republic of Ecuador settled all diffuse environmental claims with TexPet, with TexPet agreeing to remediate certain sites that were agreed by both Parties. Now, that left the remaining sites, however, as the responsibility of Petroecuador. TexPet performed its share of the remediation, and the Government certified and approved that remediation at every single site. And you've heard from Mr. Rosanía, who was the head of the environmental department of the Ministry of Energy at one of our earlier hearings. He testified before you that the remediation was done properly and that he was proud of it. And he was Ecuador's witness. They were the

ones who brought him to that Hearing.

But very importantly, the Government and Petroecuador chose not to spend the money to remediate their share of the sites, and that's a critical fact. If the Government and Petroecuador had fulfilled their own responsibilities, it's doubtful we would be here today, but they didn't. And that Government decision created the conditions for much of what has happened since in the Lago Case.

After the Settlement Agreement was signed, Ecuador changed governments and the new administration made a deal with the Plaintiffs. At the request of the Attorney General, the Plaintiffs' lawyer signed a waiver of claims agreement, what they also referred to as a quid pro quo agreement in which the Plaintiffs waived the right to sue or recover from either the Government of Ecuador or Petroecuador.

Now, that changed the political equation within Ecuador.

With little or no economic risk then, the Government was free to support the Plaintiffs politically, and it could shift the financial burden as it saw it of the remaining remediation away from Petroecuador and onto the shoulders of Texaco and Chevron, resulting in a windfall to the Government.

After he was elected the President of Ecuador, President Correa found a useful political and nationalistic issue in attacking a foreign company and Chevron in supporting the indigenous peoples of the Oriente. At that point, like a confluence of rivers coming together, there was a joining of interests between the Plaintiffs and the Government. And as you will see in the factual presentation, the Plaintiffs' schemes and misconduct grew bolder and bolder under the Correa administration, but the Government's support of the Plaintiffs and their case never wavered, no matter what occurred.

The Government sided with the Plaintiffs and became very much a partisan in this case. It made the Plaintiffs' case into a national cause. President Correa himself took strong public positions on issues in the case, and he called for criminal charges to be filed against Chevron's lawyers who had signed the Settlement Agreement, and after he changed the Prosecutor General, such charges were filed. During the course of the case, Correa also undermined generally the independence of the judiciary, purging judges who made decisions with which he didn't agree, and sending a strong signal to all judges in Ecuador to toe the Government line or face consequences.

There can be no doubt that President Correa was

trying to politically pressure and influence the courts, effectively to undermine their independence and impartiality.

Now, Steven Donziger, the Plaintiffs' lead counsel had to find a way to circumvent the Plaintiffs' causation problem with Petroecuador's operations, and he also wanted to inflate the size and significance of the case. He didn't like Petroecuador's $70 million estimate to remediate the area. He wanted damages hyperinflated into the billions, and that greed for big money has been a driving force throughout the Lago Agrio Case.

Now, to accomplish this, he needed a technical expert to provide some external validation of his claims, and he found the perfect vehicle in the sole Court-appointed global damage expert, Richard Cabrera, who was willing to sell his Report to the Plaintiffs for a price.

Now, even though Cabrera was a court auxiliary with obligations to the Parties of independence and impartiality, he accepted bribes, and he allowed the Plaintiffs to ghostwrite his Reports, but that fraud came undone and was publicly exposed in 2010. Now, since at that point the case was drawing to a close and Cabrera was the only basis for a large damage award, the Plaintiffs had to use his work, but they also had to disguise his

work through what they themselves referred to as "cleansing experts."

Now, with the Cabrera fraud exposed, the Plaintiffs' lawyers now knew, in fact more than ever, that they needed to control the contents of the Judgment. They had too many problems simply to leave the Judgment to chance. They had to make sure the Judgment's reliance on Cabrera was disguised. They had to justify suing the wrong party in Chevron. They had to justify why the Judgment could ignore Petroecuador's impacts, and they needed a trust in order to assure their funders that all the money wouldn't disappear.

So, when the opportunity presented itself with Judge Zambrano taking over the case, they made a corrupt deal to pay a bribe in exchange for being able to ghostwrite the Judgment. And having struck this deal, they then drafted the Judgment using what they had before them, which was their own internal memos and documents.

But that scheme was also exposed, and we might well ask: Once the Cabrera scheme was exposed publicly and the ghostwriting of the Judgment scheme was exposed, what happened in Ecuador?

Now, one would expect that a normal and neutral Government and judiciary would be outraged by this conduct. One would expect that they would demand and

aggressively pursue investigations to get to the bottom of the scandal and insist on it.

But what happened in Ecuador is very revealing because what happened in Ecuador is nothing, because the Plaintiffs had the strong political support of President Correa and the Government, and President Correa had committed the Government to the Plaintiffs' case as a national cause, so nothing was done.

So, even after the fraud and corruption was revealed, the Government continued to support the Plaintiffs and their attorneys, and it stonewalled all investigations. No one has been charged, no one has been punished. And the Government has chosen to support the fraudulent Judgment, and even to promote its enforcement abroad, thereby flouting the Interim Awards issued by this Tribunal to maintain the status quo.

But what about the appeals, you might ask? Well, in 2007, President Correa had battled with the Constitutional Court, and then he purged all the members of that Court somewhat violently and replaced them with his own supporters; and later the Judges on the National Court of Justice were also replaced, so with President Correa strongly supporting the Plaintiffs in their case, the appellate and cassation courts decided, well, they decided they just couldn't decide the claims of fraud and

corruption or even review those claims. They just didn't have jurisdiction, they said.

But they did have jurisdiction, it seems, to affirm the fraudulent Judgment and certify it as enforceable around the world, despite the evidence of fraud.

No words were wasted by the appellate courts on the possibility of remanding the case to a lower court to review the evidence of corruption before affirming the Judgment and allowing it to become enforceable.

So, where does that leave us? An Ecuadorian judge agreed to a bribe and allowed the Plaintiffs themselves to decide their own case and write their own Judgment and award themselves $9.5 billion. There was no impartial decision-maker. And knowing the Government's strong support of the Plaintiffs' case, the stacked appellate courts abdicated their constitutional responsibility and affirmed and certified the Judgment as enforceable. And despite the evidence of fraud, the Government has made the Lago Case into a national cause and is promoting the Judgment around the world as a first priority of the government's foreign policy.

In sum, the conduct of the Republic as a whole breaches the Settlement Agreement, it breaches your Interim Awards, it violates the Bilateral Investment Treaty, and it

constitutes a denial of justice.

Now, my task today is to outline key facts of the case, and I've organized my presentation to address six issues:

First, the Government's political interference with the case;

Second, the Cabrera fraud that taints the Judgment;

Third, the Plaintiffs' payments to Mr. Guerra to ghostwrite Court Orders favorably to them in the Lago Case;

Fourth, the Plaintiffs' ghostwriting of the Judgment;

Fifth, Zambrano's false testimony in the RICO case about how the Judgment was created;

And, finally, the Appellate Courts' failure to review the allegations of fraud and corruption.

And in due course, I'll also address Ecuador's factual arguments.

Now, in the course of this arbitration, Claimants have provided overwhelming evidence that at least nine of the Plaintiffs' internal documents that were never filed in the Court record were used in drafting the Judgment, and Ecuador itself admits that at least three of those documents were used in preparing the Judgment. The Fusion Memo, the Selva Viva Database, and the Clapp Report. And

here's why.

On Slide 10 what you'll see is Pages 20, 21, and 24 of the Judgment, and the highlighted portions that you see are the words that the Judgment took verbatim, word for word from the Plaintiffs' own Fusion memo. As you can see, almost every single word on the page was copied from that document. And the Fusion Memo is not found anywhere in the Court record.

Now, these facts alone established that the Plaintiffs ghostwrote the Judgment, but this is only one example. There is much more, and I'll return to this in more detail later in my presentation.

There are four characters who played key roles in implementing the fraudulent scheme that resulted in the Judgment. The first one is Steven Donziger, the Plaintiffs' lead lawyer in the Lago Case who sought to politicize the case, who, in his own words, intimidated the Lago Agrio judges, and who is the author of the now admitted Cabrera fraud. We have a video clip in which you can hear from Donziger himself about the litigation tactics that he pursued in the case.

(Video played.)

MR. BISHOP: Now, the second--

PRESIDENT VEEDER: Just help us, for the transcript, that's Exhibit C-360?

MR. BISHOP: Yes, Exhibit C-360, yes, that's correct.

ARBITRATOR GRIGERA NAÓN: Is my understanding correct that the lady is from Stratus?

MR. BISHOP: Yes, that was Ann Maest, who was from Stratus. That's correct. She was one of the consultants to the Plaintiffs for environmental issues. That's right.

Now, the second of the characters I'll mention is Rafael Correa who, after being elected President of Ecuador, adopted the Plaintiffs' case as a national cause. He endorsed the Plaintiffs' case. He condemned Chevron in the strongest possible terms, and he has embraced and promoted the Judgment as a matter of Government policy.

The third, there is Judge Nicolás Zambrano, who had been a corrupt criminal prosecutor, and he needed help in drafting even simple Court Orders, so he turned to his friend Alberto Guerra to ghostwrite Orders in the Lago Agrio case. Zambrano ultimately sold the Judgment to the Plaintiffs in return for allowing them to ghostwrite it.

And fourth and finally, there's Alberto Guerra. He was an insider to the fraudulent scheme. He was paid by the Plaintiffs to draft Court Orders favorably for them in the Lago Case, and he was Zambrano's intermediary in approaching the Plaintiffs' lawyers about a bribe in return for ghostwriting the Judgment.

Now, of these four, only Mr. Guerra is going to testify before you in the course of the next three weeks, and that's because we're bringing him. Guerra is here precisely because he agreed to provide evidence to Chevron, and then fearing for his safety in his native Ecuador, he came to the United States where Chevron is financially supporting him in what is effectively a witness protection program. Chevron would not be doing that, and indeed would not need to do that, if he weren't in danger in Ecuador.

In fact, what does it say about the Government, that both the President and the Vice President of the country have called Guerra a traitor, a traitor to the nation just for giving evidence in this case? Now, that's an attempt to intimidate a witness, and it comes from the highest political officials of the country.

But Mr. Guerra's testimony has been important for revealing the truth of what happened during the case because it was only after Guerra came forward, for example, that it was learned that Zambrano had solicited a bribe from the Plaintiffs. After that, Mr. Donziger was confronted about it in his testimony at the RICO trial, and he had to admit it. But that fact would never have come to light except for the testimony of Mr. Guerra.

Now, the question for this Tribunal with regard

to Guerra isn't his general character. He admits that, as a judge, he both solicited and accepted bribes. We're not bringing him here because he's a saint. The Claimants are bringing him to testify precisely because he was an insider to the scheme, to the fraud, and the specific question for you to decide is simply whether he's telling the truth about specific matters related to this case. And you certainly don't have to just take his word for it. You're undoubtedly going to want to know the extent to which his evidence is corroborated by independent evidence, and it is, and you can.

And you can look to the report of Mr. Adam Torres, an expert witness for us that you have before you, because he reviews that corroborating evidence in detail in that report.

Now, in fact, the documentary evidence that he discusses is, by itself, sufficient to prove the ghostwriting of the Court Orders and the Judgment. Mr. Guerra just explains it.

Now, Ecuador itself could have brought to this Hearing Mr. Zambrano to testify, but they're not. They could have brought Mr. Donziger or Pablo Fajardo, another of the key Plaintiffs' lawyers. And if their testimony would have been helpful to its case, they certainly would have brought them here to testify before you. But in the

course of the next three weeks you will not hear from any of those men.

Now, when Donziger took over as lead counsel in the Lago Case in late 2005, the Plaintiffs had a major problem on the merits of the case: They weren't finding significant contamination during the judicial inspections and the testing. Their own experts, David Russell and Dr. Charles Calmbacher, were telling them that in their e-mails, so Donziger responded by falsifying the Expert Reports of Dr. Calmbacher, and Dr. Calmbacher has testified to that fact under oath.

But the crowning blow to the Plaintiff's effort to mount a legitimate case fell at Sacha 53 in early 2006 when the five independent settling experts found that there was no significant risk to human health or the environment. Now, unfortunately, that was the only report that they were ever allowed to give because at that point the Plaintiffs changed their strategy. Donziger changed their strategy. He refocused it away from the merits of the case and on to two new prongs: First, politics as a way to pressure the judges, and second the appointment of a single global expert and one that he could control.

Now, in his own words, Donziger tells us why he focused on politics, and I will let him speak for himself.

(Video played.)

MR. BISHOP: I want you to note that last clip in particular, "we're mobilizing the country politically so that no judge can rule against us and feel like he can get away from it in terms of his career." That summarizes exactly why Donziger sought to politicize the case: To control the judges, to make them fear the Plaintiffs, to undermine their impartiality ultimately.

And Donziger found an eager ally in the newly elected President Correa. When President Correa took office in January 2007, he invited the Plaintiffs' lawyers to give a presentation to the cabinet of the new government, after which, according to Donziger, he appointed a commission to monitor the case.

But I want you to note in this slide the last statement made by Donziger: "This is becoming, as we had always envisioned, a true national issue." Now, that's important. He wanted the Plaintiffs' case to be adopted by the Government as a national issue because then no judge could rule against them and get away with it. That was the point.

President Correa strongly allied himself and his Government with the Plaintiffs at this point. He toured the Oriente with the Plaintiffs' lawyers in April 2007 and repeatedly proclaimed that the Plaintiffs had the full support and backing of the National Government, including

its assistance in gathering evidence.

He endorsed the Plaintiffs' case, taking a strong public position, and I quote him, "Texaco must be held liable," thereby sending a strong message to the courts about how they should rule in the case. And he even told the Plaintiffs privately that he would personally call the Judge. And the only reason to do any of that was to undermine the impartiality of the judges.

And so that no one would miss the point, he publicly called the Plaintiffs' lawyers true heroes, personally giving them his endorsement, and by contrast, he called Chevron's lawyers traitors to the nation, vende patrias. And he later called Chevron's witnesses and experts traitors as well, and the State published the names and personal information about Chevron's lawyers and experts, including their personal identification numbers.

Correa also called for criminal charges to be filed against the Chevron lawyers who had signed the Settlement Agreements; and, after that, criminal charges were filed. And repeatedly and during the case, he called Chevron "an open enemy of the country." "Enemy" and "traitors," now those are strong words. That's the language of a national interest, a national interest that's threatened by a foreign enemy and a national interest that's being betrayed from within.

And it's also the language of intimidation, seeking to foreclose Ecuadorian lawyers, experts and witnesses from working with Chevron.

So, in short, as Donziger had hoped, President Correa made the Lago Agrio Case into a matter of national interest, a national cause, and repeatedly signaled the courts his strong position on the case and that of the Government and what he expected them to do.

Now, the second issue that I will take up is that of the Cabrera fraud. You have seen the video clips of Donziger. He wanted a massive Judgment, and he wasn't willing to confine himself to the boundaries of the evidence. In his own words, he wanted to jack up the damage numbers into the billions so he could pressure Chevron. But to do that, he needed a vehicle, a vehicle that would provide external validation, and he needed to control that vehicle. Now, that vehicle was the sole court-appointed global damage expert, and Donziger gained control because of a weakened Judge Yánez was willing to appoint the Plaintiff's handpicked choice, Richard Cabrera, with whom they had already secretly been meeting and Cabrera was willing to sell his Report to them for bribes.

Now, although Judge Yánez had twice told Fajardo that there was no legal basis for terminating the judicial

inspections and Fajardo had reported that in e-mails, nevertheless, Donziger and Fajardo coerced Judge Yánez into ending those inspections. And we can see it in Donziger's own words in Slide 18, and I will quote him. He framed the issue this way: "Our issues first and foremost are whether the Judge will accept the renuncia of the inspections. If it doesn't happen, then we're in an all-out war with the Judge to get him removed."

You see the Plaintiffs' attitude brazenly reflected in that statement by Donziger. And what they did next was that they brought a mob of demonstrators to the Court to protest before the Judge, to intimidate the Judge. That was their strategy. And again, Donziger says it in his e-mails very clearly.

Now, after that demonstration, they then met with the Judge, and again Donziger tells us what happened: "Pablo Fajardo met with the Judge today. The Judge, who is on his heels from the charges of trading jobs for sex in the Court, says he is going to accept our request to withdraw the rest of the inspections. The Judge wants to forestall the filing of a complaint against him by us, which we have prepared but not yet filed."

And then Donziger tells us the ending of this part of the story: "Legal case: Going well with Yánez decision to cancel inspections. We wrote up a complaint

against Yánez, but never filed it, while letting him know we might file it if he doesn't adhere to the law and what we need."

Now, those statements by Donziger are striking. They're striking because of their clear intent to coerce the Judge, to undermine the impartiality of the Judge; that is, to get the ruling they wanted by whatever means were necessary to get it.

The Federal Court in the Southern District of New York in the RICO Case summarized exactly what happened next with respect to this. Donziger and Fajardo took advantage of a weakened Judge Yánez. They made him fear the Plaintiffs, and they coerced him into terminating the judicial inspections and appointing Cabrera as the global damage expert.

Now, as the global expert, Cabrera was an auxiliary of the Court, in the Court's own words in one of its Orders. He was the auxiliary of the Court for purposes of determining the scientific elements of the case on which the Judgment was going to be based, and he had an obligation to the Parties under the law of complete impartiality, independence and transparency, and that's again, provided in the Court Orders and the law.

But despite those obligations of independence, Donziger had something quite different in mind for the

independent--or the supposedly independent expert, and Donziger described several times in several ways exactly what he intended, and this is one of them. He said that what they were looking for in the global expert was someone who would "totally play ball with us and let us take the lead while projecting the image that he is working for the Court." Somebody who would let us take the lead and play ball with us totally, but project an image he's working for the Court. That's what he said.

He wanted somebody he could hold out to the world as an independent validation of their claims, but somebody he could secretly control. In other words, he wanted to corrupt the Court process, and that's exactly what was done.

Now, even though the Plaintiffs knew that Cabrera was obligated to be independent and impartial, they secretly met with him and planned his work. Now, Slide 22, which you see before you, is from a secret meeting of March 3, 2007, attended by the Plaintiffs' lawyers, their technical environmental experts, and Mr. Cabrera. You see Cabrera in the middle, Pablo Fajardo on the right and Luis Yanza of the President of the Amazon Defense Front on the left. This meeting took place before Cabrera was appointed, but the Plaintiffs had already wired his appointment with the Judge so they knew exactly

what was going to happen.

But I would also call your attention to the PowerPoint that you see behind them. This is the PowerPoint that Fajardo used in conducting the meeting, and it's entitled "Plan for the Global Expert Report." And this is a clip of Mr. Fajardo conducting that meeting.

(Video played.)

MR. BISHOP: "But not Chevron." "But not Chevron." Chevron was to be kept in the dark about this whole process, in Donziger's words.

Now, in the course of their secret meetings with Cabrera and with Judge Yánez, the Plaintiffs' lawyers used code names to describe Cabrera and Yánez, the cook and the waiter. Now, you've seen in previous hearings that we've had, this and other e-mails in which Plaintiffs use these code names, the cook to describe Judge Yánez, and the waiter to describe Cabrera.

Now, why would they do that? Why would they use code names? The only reason is because they knew what they were doing was wrong. They knew what they were doing was illegal. And the reason they were using code names is reinforced, in fact, by the fact that they were bribing Cabrera from what they themselves referred to as "our secret account." Our secret account. Those aren't my words. Those are the Plaintiffs' own words. They paid

Cabrera more than $100,000 from their secret account and they even gave him fringe benefits like insurance. And they installed as his Secretary one of the Plaintiffs' lawyers girlfriends and in their e-mails they said exactly why they were doing it: Which was to control Cabrera in his work.

Now, what did the Plaintiffs get in return from Cabrera? Well, as their secret meeting showed, they got to plan his work, they got to conduct his sampling and his testing. Donziger, in fact, has testified in the RICO Case that the Plaintiffs themselves prepared Cabrera's Work Plan, and they told him where and what to sample for. And they got to control his results and recommendations by ghostwriting his reports.

Now, Stratus Consulting Company is--was the Plaintiffs' main environmental consultants. They ghostwrote most of Cabrera's Reports. Getting the evidence out of Stratus to prove this wasn't easy. It required filing 1782 discovery proceedings in the United States and fighting many battles in court. Stratus resisted giving up their e-mails, and Donziger tried to obstruct the process, as the RICO Court found. But piece by piece the evidence came out, and now we know exactly what happened.

Douglas Beltman was in charge of this project for

Stratus, and he has now testified as to exactly what the fraudulent scheme was and how it played out.

What happened is that Stratus was asked by the Plaintiffs' lawyers to ghostwrite Cabrera's First Report, and they ghostwrote it in English, a language that Cabrera doesn't speak, and they ghostwrote it in the first person as if it were being written by "I," Cabrera, and they carefully kept their own involvement in this process secret per the instructions of Mr. Donziger. And also per his instructions, they came to exactly the results he wanted, recommending $16 billion in damages.

But that wasn't the ended of Stratus' work because Stratus was then asked by the Plaintiffs to prepare comments for the Plaintiffs to file in Court to the Cabrera Report criticizing it, saying it hadn't gone far enough, it hadn't considered all the damages, and the damages weren't big enough, so then Stratus prepared comments for the Plaintiffs to file to that report, which they themselves had ghostwritten, critiquing it. Then Stratus was asked to prepare Cabrera's Second Report responding to those comments that the Plaintiffs had filed in Court, that they had ghostwritten, and so they ghostwrote Cabrera's Second Report, and not surprisingly, accepted their own recommendations and increased the damages now to an incredible $27 billion.

This was a well-orchestrated scheme controlled by Donziger and Fajardo to, in Donziger's words, "jack up the damages" into the billions, to hold out Cabrera as independent validation for their case, and to pressure Chevron. But the Cabrera Reports were a fraud from the very beginning. Bought and paid for and controlled by the Plaintiffs.

And all of this is now admitted. Stratus has admitted under oath secretly ghostwriting the Cabrera Reports. Donziger has admitted it in his RICO testimony, and Ecuador doesn't dispute the key facts of this Cabrera fraud.

Now, when Stratus' e-mails were being subpoenaed and the fraud started to be exposed in 2010, one of the Plaintiffs' lawyers in Ecuador wrote to Donziger and said this: "The effects are potentially devastating in Ecuador. Apart from destroying the proceeding, all of us, your attorneys, might go to jail."

The Plaintiffs' Ecuadorian lawyers knew that what they had done was illegal, they said it right here, very clearly. And we might well ask, why didn't they go to jail? Why didn't this destroy the proceeding? Why weren't the Plaintiffs' lawyers investigated and charged? The answer undoubtedly lies in the strong political support they had obtained from President Correa and his

Government.

Now, having invested three years in the Cabrera Reports, the Plaintiffs couldn't get rid of Cabrera. This was three years of the case with Cabrera as the key component. So, while they couldn't get rid of Cabrera, though, they needed to disguise him, so Donziger hatched a new scheme which he referred to as the "cleansing process." The purpose was to cleanse the case of the taint of the Cabrera fraud. Although the time had long passed under Ecuadorian law to appoint expert witnesses, the Plaintiffs simply invented a new procedure. And Judge Ordoñez sanctioned that new procedure, entering what can only be referred to as a bizarre and biased order, allowing them to file what was called "specialist reports"--they couldn't call them experts because they couldn't have new experts, but to file specialist reports--and to do see in only six weeks. And as soon as that six weeks had expired and those reports were filed, Judge Ordoñez immediately closed the case.

Now, one of the Plaintiffs' lawyers said in an e-mail exactly what they had in mind for these cleansing experts. They wanted experts who would "rely on the same data as Cabrera and come to the same conclusions as Cabrera so Cabrera could be accepted as a valid basis for damages." That was the point: Use Cabrera but disguise

him.

Now, Donziger was asked in his deposition about these experts, and what they did to come to their conclusions, and this is his testimony:

"QUESTION: Did any of the new experts go to Ecuador?

"ANSWER: I don't believe so.

"QUESTION: None of them did new site inspection?

"ANSWER: That's correct.

"QUESTION: None of them did any new sampling?

"ANSWER: They did not as far as I know.

"QUESTION: Or environmental testing?

"ANSWER: That's correct.

"QUESTION: All of the experts prepared their reports in the span of approximately a month or less?

"ANSWER: That's about right, yes."

The new experts relied on the Cabrera Reports and data because they had to do so. None of them had ever been to Ecuador or done any sampling or testing of their own.

Mr. Barnthouse is an example of that. He testified very candidly that he based his ecological

assessment on the Cabrera Report, and yet the Judgment cites Mr. Barnthouse for ecological damages. This is an example of the Judgment relying on the Cabrera Reports in disguise.

Now, another place where the Judgment clearly relies on the Cabrera Report is in its finding that there are 880 pits to be remediated.

Now, the Judgment says that the Judge himself determined that number by interpreting the aerial photographs of the area.

Well, Mr. James Ebert, who among other things, is an expert in interpreting aerial photographs, says it's highly unlikely if not impossible for the Judge to have done that. Among other reasons, because there are no photographs for about a third of the sites. The photos were in black and white, they were monoscopic, and they were of low resolution.

So, what the Judgment says that the Judge did just isn't possible.

But, in fact, we know where the 880 number comes from. It comes from the Cabrera Report, Annex H-1. The Judgment says that the 880 pits are ones that have some Environmental Impact that cannot be attributed to Petroecuador. Well, Annex H-1 of the Cabrera Report lists certain pits and information about those pits. And when

you subtract from that number, the no-impact pits and those attributed to Petroecuador according to the comments in Annex H-1, what you're left with is a number, 880. So that number came from Cabrera's Reports itself. It didn't come from the Judge himself becoming an expert all of a sudden in reading aerial photographs.

And that pit number was important because it was an integral part of the calculation of how the Judgment reached the number of $5.4 billion for soil remediation. That $5.4 billion is a calculation of 880 pits times $6 million per pit for remediation. That's how the Judgment got there. Both of those numbers are grossly inflated, and I might add that the $6 million per pit, for example, that the norm in the industry is only about $75,000 per pit.

Well, looking at this same evidence, the Federal Court in the Southern District of New York found that the Judgment relied upon the Cabrera fraud in at least three ways: For the pit count, as we have just gone through, for the potable water damages, and by relying on the Barnthouse Report which, in turn, relied upon Cabrera. So, thus, the Federal Court found that the Cabrera Report, "played an important role in holding Chevron liable to the extent of more than $8 billion."

Now, Ecuador tells you that, well, the Judgment on

its face says it didn't rely on Cabrera, and that's the end of the story. That's their response. Well, it's not. We have to look at the substance, not merely the form. Formalistic declarations cannot substitute for a thorough investigation and analysis of the fraud. When there is fraud in a case, as there clearly is in this instance, a court cannot rely on the record without investigating the fraud, determining what happened, delineating the fraud and its effects very precisely, and ensuring that those effects are thoroughly expunged from the case. But neither the Lago Agrio Court nor the Appellate Courts ever engaged in that analysis. They never did that.

And because the courts refused to investigate and decide the fraud as well as delineate and expunge its real effects, they ensured that the taint of the Cabrera fraud would endure in the Judgment.

But regardless of the failure to investigate, the Judgment, as we have just seen, does rely upon the Cabrera Reports. Ecuador admits that the Judgment relies on the Cabrera data. The cleansing experts relied on Cabrera's data in his Reports to a significant extent, as they had to do, and the Rico Court itself found the Judgment, both directly and indirectly, relies on the Cabrera Reports.

The Plaintiffs had invested three years of this case in Cabrera. He was the only basis for a large damage

award, so the Judgment had to rely on Cabrera, and it did so.

I will turn next to my third point, that Mr. Guerra was paid by the Plaintiffs to ghostwrite Court Orders favorably to the Plaintiffs. In Ecuador, it's illegal for anyone other than the Judge to draft Court Orders or Judgments or to assist the Judge in doing so, as Dr. Velázquez testifies in his expert report which you have before you.

But following their pattern of ghostwriting the Cabrera Reports, the Plaintiffs also ghostwrote Judge Zambrano's Court's Orders in the Lago Case. Zambrano had been a criminal prosecutor from 1994 until 2008 when he became a judge, and he wasn't experienced though in either the substance or the procedure of civil cases. He needed somebody to help him with Court Orders in civil cases. And at that point in time, Mr. Guerra needed a job. So Guerra and Zambrano had a close long-standing relationship as they have both testified, so Zambrano asked Guerra to ghostwrite Court Orders for him generally in these civil cases.

And Zambrano himself has admitted that in his RICO testimony. He admitted that Guerra drafted Court Orders for him in civil cases in the period 2009 to 2012, which happens to be exactly the period when Zambrano was presiding over the Chevron Case. And he's also admitted

10:10 that Guerra would sometimes ship him drafts of the Court Orders using TAME Shipping, and you have the TAME Shipping records before you in this case.

So, now, the scope and extent of that ghostwriting is made clear by the Expert Reports of Spencer Lynch, who is a Digital Forensics Expert with the Stroz Friedberg firm. He's testified that he found on Zambrano's computers 82 Court Orders that were issued by him that ultimately had originated, however, on Guerra's computers, and at least 48 of those draft rulings were saved on USB devices which were shared between Guerra's computer and Zambrano's computer. So, there is no dispute that Guerra was ghostwriting Court Orders for Zambrano.

Now, Guerra has testified that his ghostwriting included the Chevron Case, but Zambrano denied that. When Judge Núñez was being recused in September 2009 and Zambrano was taking over for the first time, Chevron filed a motion to nullify all of Núñez's Orders because of the videotapes that showed him pre-judging Chevron's guilt during a bribery scandal. This was the first motion that Zambrano was asked to decide when he took over the case.

Around that time, Guerra contacted Chevron's Ecuadorian lawyers to fix that motion for a price, but Chevron declined. There is in the record of this case a contemporaneous Affidavit made in October 2009 by

10:12 Mr. Racines, who was one of Chevron's Ecuadorian lawyers which corroborates Guerra's testimony about this.

Now, when Chevron refused that bribe attempt, Zambrano then made an arrangement with the Plaintiffs and Guerra made his own deal with him in which he agreed that the Plaintiffs would pay him $1,000 a month in return for him ghostwriting Zambrano's Orders to come out favorably to the Plaintiffs, although occasionally throwing Chevron a bone to avoid suspicion.

Now, Mr. Guerra's testimony about the ghostwriting of these Court Orders is corroborated in at least five ways: First, by the Plaintiffs' own e-mails.

When Judge Núñez was being recused in September 2009, Fajardo sent an e-mail to Donziger, and he said this: "I understand that Zambrano himself asked Judge Núñez that Núñez help him with the Orders. The problem is who will carry more weight, Núñez or Guerra?" So, in the Chevron Case itself, the Plaintiffs were expressly recognizing in their own e-mails that Zambrano's Orders were going to be ghostwritten. And you can see their mental wheels turning as to who they would prefer to be writing those Orders: Judge Núñez, who was being recused because of a bribery scandal, or Guerra?

Now, second, as they did with the Cabrera fraud, the Plaintiffs again resorted to the use of code names,

10:14 this time to describe Guerra and Zambrano, the puppeteer and the puppet. "The puppeteer won't move his puppet until the audience pays him something," and "since we are paying the puppeteer." Well, again, we can ask ourselves why would they do this? Why are they resorting to code names for Guerra and Zambrano? Well, the answer again is they were secretly paying Guerra to ghostwrite these Court Orders, and that's illegal in Ecuador.

Now, the third corroboration you will find on Slide 43, and this is very important: This is very revealing. Because we have the bank records of both Mr. Guerra and of the Plaintiffs themselves, and we can match them up to show that Mr. Guerra's testimony that he was being paid $1,000 a month to ghostwrite these Court Orders is exactly right. It is corroborated by the documentary evidence.

Selva Viva is an Ecuadorian company that was set up by Donziger for one purpose, and that was to support the Plaintiffs in the Lago Agrio Case, and Donziger himself was the President of that company, that we have those bank records.

Now, you can clearly see on Slide 43 the pattern of what was occurring, and I would like to take you through it.

October 27, 2009, Fajardo e-mails Donziger: "The

10:15 puppeteer won't move his puppet until he's paid something." Two days later there is a $1,000 cash withdrawal from the Selva Viva account, and on the same day there is $1,000 cash deposit made into Mr. Guerra's account.

On November 26, again, there is a $1,000 cash withdrawal from the Selva Viva account and the next day a $1,000 deposit into Mr. Guerra's account. And on that same day, Yanza e-mails Donziger, the budget is higher since we are paying the puppeteer.

December 22nd, there is a $1,000 cash withdrawal from the Selva Viva account, and the next day the same amount of money is deposited into Mr. Guerra's account, and this time we have a signature on the deposit slip, and that signature is of Ximena Centeno, who worked for Selva Viva. She worked for the Plaintiffs.

So, we have here clear evidence that it was the Plaintiffs themselves who were making these $1,000 deposits into Mr. Guerra's account and paying him exactly as Mr. Guerra has testified.

On February the 4th, 2010, we see the same pattern playing out: A $1,000 cash withdrawal from the Selva Viva account, and the next day a $1,000 deposit into Mr. Guerra's account, again by an employee of the Plaintiff.

And this happened throughout Zambrano's first term

on the case, from October 2009 to February 2010, and there was no reason for the Plaintiffs to be paying Mr. Guerra except for him to ghostwrite Court Orders for them in the Lago Case.

Now, fourth, we can also look at the forensic examination of Mr. Guerra's computer. Mr. Lynch testifies that what he found on Guerra's computer were drafts of nine Court Orders ultimately issued by Zambrano in the Chevron Case. These drafts pre-date--on Guerra's computer, they pre-date the date of the issuance of the Orders later by Zambrano, and they're clearly drafts of those Court Orders. So, we see the forensic evidence also corroborates Mr. Guerra's testimony.

And we can put all of this together into the patterns with all of the documentary evidence, the TAME Shipping records, the computer records and the bank records. And I would like to take you through it on Slide 45.

Now, October 2009 was the first order Zambrano issued in the case when he took over for the first time. That was that order on Chevron's motion to nullify all of Judge Núñez's previous Orders. October 20th, draft Order is last saved on Guerra's computer. The next day, Zambrano issues an Order with text matching that found on Guerra's draft. And on that same day, Fajardo sends an e-mail to

the Plaintiffs' legal team: Things here are under control. Things are under control. They had made their deal with Guerra and with Zambrano, and they knew how things were going to come out. They were under control.

November 18th, a draft Order is last saved on Guerra's computer, and the next day the TAME Shipping records show that Guerra sent a shipment to the Lago Agrio Courthouse, and four days later, Zambrano issued an Order with text matching that found on Guerra's computer.

November 29, a draft Order is last saved on Guerra's computer, the same day the TAME Shipping records show that Guerra sent a shipment to the Lago Agrio Court, and the next day, Zambrano issued an Order with text matching that found on Guerra's computer. And this pattern plays out nine times.

Now, in short, Guerra's ghostwriting of Court Orders for Zambrano is fully corroborated by the documentary evidence, by Guerra's computer, by the Plaintiffs' own e-mails, by both Guerra's bank records and the Plaintiffs' bank records and by the TAME Shipping records.

Mr. Adam Torres, in his Expert Report, links all of this evidence together and concludes that it's consistent with widely recognized patterns of public corruption, and it's notable that Mr. Torres has not been

called for cross-examination by Ecuador.

Now, that brings me to my fourth point, and this is that the Plaintiffs ghostwrote the Judgment, and I will approach this subject in three ways: First by looking at the evidence of the bribery solicitation and the corroborating evidence; second, we'll focus on the Plaintiffs' documents that are indisputably copied into the Judgment; and, finally, we will look at the credibility of Zambrano's testimony in the RICO Case about how the Judgment was drafted.

Now, Zambrano, as I've said, presided over the Lago Case twice. This first one was this period October 2009 to February 2010. At that point, Judge Ordoñez became the President of the Court, and that meant he also became the Presiding Judge of the Chevron Case. But Ordoñez was recused in September 2010, and Zambrano again, for the second time, became the Presiding Judge in the case.

Now, when Zambrano took over the case for the second time, the case was drawing to a close, and at this point, Zambrano asked Guerra to solicit a bribe in return for ghostwriting the Judgment, first from Chevron, and when Chevron refused that offer, then from the Plaintiffs. Again, Chevron's Ecuadorian lawyers have filed declarations in the RICO Case that corroborate Guerra's testimony that

he did try to solicit a bribe from Chevron, and there is a contemporaneous Declaration to that effect in 2010, and that evidence is before you in this case.

Now, before going further, I want to respond to an argument that Ecuador makes here. When they say that Chevron could have avoided the corruption issues if it had just reported this bribery solicitation. When making this argument, Ecuador intentionally overlooks the obvious context, and context which it had created, namely the extremely hostile situation that Correa's Government created for Chevron in this case and the unwillingness of the Government to do anything that would help Chevron or that would derail or even slow down the case. And the way the Núñez bribery scandal was handled by Ecuador I think vividly illustrates this point, and it's certainly relevant to Chevron's actions.

Judge Núñez was caught on videotape talking to remediation contractors about a $3 million bribe in exchange for remediation work to result from the Judgment. Patricio García, who Ecuador acknowledges was a political coordinator for Correa's party, says on this videotape that they were acting for the Presidency, that the Government itself was the one behind this, and that of the $3 million bribe, $1 million was to go to the Judge and another $1 million to the Presidency.

Those statements provide a glimpse of what was happening behind the scenes. Judge Núñez met with the Parties, not once but twice, during this scheme. At the proper time in the bribery negotiations, Judge Núñez was brought into the room to meet with the contractors and answer their questions. And in the course of that, he affirmed that Chevron was guilty, that he would find them guilty, that the damages would be huge, and that the Judgment would be issued in a few months.

Chevron had nothing to do with creating these videotapes, but when they were brought to its attention, it reported them to the authorities in Ecuador.

But what happened next weren't condemnations of the bribery scheme by the Government, but instead Government attacks on Chevron for reporting this scheme. President Correa called Chevron's reporting of this scandal a desperate attempt to delay the proceedings. The Attorney General referred to it as a scheme organized by Chevron. The Secretary of Transparency called Chevron irresponsible and the video recording a crime. And the Prosecutor General himself referred to it as a trick.

The result of all this was that Judge Núñez, while temporarily suspended from the bench, ultimately stayed as a judge and even became a president of the Provincial Court of Sucumbíos later, and the Prosecutor General in turn

closed the investigation requested by Chevron calling Chevron's request "reckless and malicious" and even threatened to investigate Chevron's lawyers.

So, what happened when Chevron reported this bribery scheme is that the Government changed the focus away from the bribery and instead focused on the videotapes. And that way, they avoided taking any action on the bribery itself but instead implied that it was Chevron that had done something wrong.

Now, unlike the Núñez bribery scandal, Chevron had no video or tape-recording of the Judgment bribe solicitation, and without it, its lawyers could have been sued for defamation or even criminally charged, and the same could have happened to Chevron. Ecuador's Prosecutors had already shown their willingness to bring sham criminal charges against Chevron lawyers, and those charges were still pending at this time. And Chevron was not aware at that time, and certainly had no objective evidence then that Zambrano had struck a deal with the Plaintiffs themselves.

Chevron's lawyer, Adolfo Callejas, testified about this in the Rico Case, and what he said was this: "I was very mindful of what had happened when we filed a report regarding the illegal activities of Judge Núñez. Instead of having Núñez investigated, the Plaintiffs managed to

have him investigated, Chevron's lawyer. And he goes on to say: "And there was no recording of the phone call. The other person could have said it never happened. And he could have been charged or sued with having infringed on their honor and reputation."

So, who could Chevron have reported this situation to? The Ecuadorian Government was a partisan in the case. It had already taken strong public positions against Chevron, and now a videotape existed suggesting that it was the Government itself that was the one behind this. There were no impartial authorities to report this to.

If Chevron thought it could have obtained relief, it certainly would have sought it, but the Correa Government created such a hostile environment, such a hostile situation for Chevron, as an open enemy of the country, in Correa's words, they're reporting the bribe solicitation could not have helped Chevron's situation, but quite perversely, in the Alice in Wonderland world of Ecuador, could have only heard it.

But, finally, we don't have to speculate on what would have happened if Chevron had reported it, because we know, we can look now at what Ecuador actually did when the evidence of the bribe and the ghostwriting came to its attention. Now, did it arrest and prosecute Zambrano? No. In fact, Zambrano now works for a company controlled by

Petroecuador and makes more than he ever did.

Well, did Ecuador at least stay the Judgment until it could get to the bottom of this scheme? No, we know that didn't happen. It did not obey your Interim Awards.

What actually happened is that President Correa praised the Judgment as the most important Judgment in the history of the country, and a year later, after all of the evidence had come out and was public, he again praised the Appellate Decision. He and his Government continued to support the Plaintiffs, they viciously attacked Chevron, and they promoted the enforcement of the Judgment as they are still doing. So, this Government was not going to credit Chevron's complaints or do anything that would help derail or even slow down the case.

In the unique situation of this case, getting any relief in Ecuador for Chevron was at that time and is now futile.

Now, Mr. Guerra already knew Donziger and Fajardo well from ghostwriting the Court Orders during Zambrano's first term, but when Zambrano took over in the second term, Guerra sent an e-mail to Donziger in which he asked Donziger for help with his daughter in the United States on a personal basis, but his last statement is key: "I will support the matter of Pablo Fajardo so it will come out soon and well." Well, the matter of Pablo Fajardo is

exactly the Lago Agrio Case. And we certainly know what "come out soon and well" means now.

Because of Mr. Guerra's testimony, we now know that after Chevron rejected the bribe solicitation, at Zambrano's request, Guerra reached out to Fajardo and Donziger. He called Fajardo, and Fajardo then set a meeting at the Honey & Honey restaurant in Quito. Attending that meeting were Guerra and, on behalf of the Plaintiffs, Mr. Yanza, Mr. Donziger, and Mr. Fajardo.

And the only reason for them to meet with Guerra was because they knew he represented Zambrano, and the only thing he had to offer was to sell the Judgment through Zambrano.

Now, at that meeting, Guerra passed on Zambrano's proposal that the Plaintiffs pay him $500,000 in exchange for ghostwriting the Judgment. And Donziger, in his sworn testimony in the RICO case, has corroborated Mr. Guerra's testimony. He admits that, in fact, the Plaintiffs did meet with Mr. Guerra, and he admits that at this meeting Guerra did solicit a $500,000 bribe in exchange for fixing the case.

Where they differ is on the result. Guerra says that Donziger told him they regretted it but they just didn't have the money at that point in time. Donziger says he rejected the bribe outright. But Guerra has testified

that Zambrano later told him that he worked out a deal with Fajardo, with Zambrano agreeing to pay the Plaintiffs--excuse me, with Zambrano agreeing to allow the Plaintiffs to ghostwrite the Judgment in return for $500,000 to be paid out of the Judgment's proceeds.

Now, we know that this bribe solicitation to the Plaintiffs occurred. Donziger has admitted it in his RICO testimony. But what did the Plaintiffs do after that bribe solicitation occurred? Well, did they report it to the authorities? No, we know that didn't happen. Donziger has admitted in his testimony they didn't report it. What they actually did, after Guerra had solicited this bribe, is that Fajardo approached Guerra about being an expert witness for them in the RICO case in New York on the integrity of the judicial system in Ecuador. That's what they did. And Donziger admitted in his RICO testimony that he was aware that that approach took place.

So, the Plaintiffs certainly weren't outraged by this bribe solicitation. They later reached out to Guerra to be an expert for them.

Now, there were compelling reasons why the Plaintiffs had to ghostwrite the Judgment. They had many problems in the case and they had to take care exactly what the Judgment said. Zambrano clearly wasn't up to the task of writing this Judgment either by training or experience.

He had to have Guerra help him with even routine civil Orders. And having made so many deals with the devil already, the Plaintiffs couldn't leave the most important part of the case, the Judgment, to chance. They needed to control the contents of the Judgment.

First, because now that the Cabrera fraud was publicly exposed and they couldn't deny it, they needed to ensure that the Judgment would not expressly rely on the Cabrera Reports because that would endanger the enforcement of the Judgment abroad. The purpose of the cleansing experts was to use the Cabrera Reports but in a disguised form, so they needed to draft the Judgment very carefully to obfuscate its reliance on Cabrera.

Second, they also needed control because they had sued the wrong party. As Donziger himself had said, at one time expressly, that they sued the wrong party in Chevron. But now with the Judgment coming up they had to provide some justification for how they could prevail against Chevron. So what they did was to turn to their own internal documents which they had before them in drafting the merger section of the Judgment. They turned to the Fusion Memo and the Erion Memo, their own internal memos which were never filed with the Court, and they used those to carefully draft that part of the Judgment.

Third, they had a major problem with causation

because of Petroecuador's operations and the fact they didn't sue it and couldn't sue it because of their quid pro quo agreement with the Government. So they needed to write the Judgment in order to justify a decision against only Chevron and to ignore Petroecuador's impacts.

Fourth, in order to pressure Chevron, they also wanted to control the amount of the damages and the allocation of those damages, and we can see the Plaintiffs' fingerprints very clearly in this Judgment in the $8.5 billion punitive damage award, which they inserted as their bargaining tool. They put that in, conditioned on a public apology which would have effectively meant an admission. So, they put that in the Judgment as the Plaintiffs' own bargaining tool to pressure Chevron.

And finally, they needed to make sure that the money would go into a trust so that they could assure their funders the money wouldn't all disappear.

Now, it's telling that when Donziger was asked the question in the RICO case whether the Plaintiffs prepared a proposed Judgment, he evaded the question. In 12 words he gave three different answers: "I don't believe so. I don't know. It's possible." Now, that's not an answer, it's an obfuscation. It's a Richard Nixon-type answer. He knew the real answer--he knew the real answer--but he was trying to fudge it, but at the end he gave it away. "It's

possible." Well, in fact, it's more than possible. The Plaintiffs' fingerprints are all over the Judgment, and I would like to move now to that issue.

At least nine of the Plaintiffs' internal documents were used in drafting the Judgment. The list is on Slide 57 before you, and none of those documents were ever filed in the Court record.

Now, it's likely that the Plaintiffs used more of their own documents in drafting the Judgment, but we never obtained access to Mr. Fajardo's computer or his documents or those of the other Plaintiffs' Ecuadorian lawyers for the Plaintiffs, Mr. Yanza, Mr. Sáenz, or Mr. Prieto. Those documents were subpoenaed in the RICO case, but Fajardo ran to an Ecuadorian court, got an order blocking access to those documents and they were never revealed and never produced in the RICO case.

Now, as I noted earlier, Ecuador itself does not take issue with the fact that the Judgment relies on at least three of these Plaintiffs' documents in preparing the Judgment: The Fusion Memo, the Clapp Report, and the Selva Viva Database.

Now, the next slide is the three pages of the Judgment that I showed you earlier, Pages 20, 21, and 24, and what you see is that the highlighted words are words that were taken verbatim from the Plaintiffs' own Fusion

Memo.

Now, on the next slide, you see a split screen of Page 5 of the Fusion Memo and Page 21 of the Judgment. And I would like for you in particular to note on the left-hand side of the screen at bottom, the footnote, Footnote 12 of the Fusion Memo. The Judgment itself did not use footnotes, so the footnotes were put into the body of the Judgment. But note this footnote. There is an out-of-order numbering sequence, with the Number 6964 out of order, and in the footnote there is also a perfectly proper period at the end of it.

But watch what happens when the footnote gets put into the body of the Judgment. You see that the Judgment now copies verbatim, including the out-of-order numbering sequence that we had seen in the footnote, but also the period that was at the end of the footnote is now put into the middle of a sentence in the Judgment and is quite incorrect. It's a spurious period at this point, creating two sentence fragments.

But what we see here is clear evidence that the Plaintiffs were cutting and pasting from their own documents into the Judgment.

Now, the next slide shows you on the left the Clapp Report and the same words were copied into the Judgment.

And the next one is from the Fajardo Trust e-mail which is copied on the left into Page 186 of the Judgment, which is the Trust section. The highlighted words are words copied verbatim from that e-mail.

And I might add that the Fajardo e-mail and the Judgment contain the same idiosyncratic case citations and word choices.

Now, the Judgment also contains identical mistakes as those made in the Plaintiffs' own internal documents. What you see here is from the Plaintiffs' Index Summary, and you'll see the Court Record on the left with certain page numbers, for example, then the Plaintiffs' June Index Summary makes certain mistakes. It gets the page numbers wrong at various--in various places--614 instead of 612, et cetera--and at one point it puts a spurious accent mark in the word "ambientales," quite improperly.

But what you see is that the Plaintiffs' documents were making mistakes as compared to the Court Record, but then the Judgment copies exactly those same mistakes into the Judgment, showing that the Judgment was again copying from the Plaintiffs' documents. This, again, I think is evidence that the Plaintiffs were cutting and pasting from their own documents in the Judgment.

Now, the Judgment also copies extensively from the Plaintiffs' internal Selva Viva Database--that is an Excel

spreadsheet that the Plaintiffs used--and there are over 100 examples--about 100 examples--of the Judgment copying from this database. But since Ecuador admits that, I'm only going to give you one example. And this is an example of certain filed Lab Results that for certain samples show those Lab Results as being in micrograms per kilogram. But for exactly those same samples, the Selva Viva Database makes a mistake. It lists them incorrectly as being in milligrams per kilogram. And then, for exactly those same samples, the Judgment makes exactly the same mistake because it's copying from the Selva Viva Database.

As I said, there are about 100 examples of this in the Judgment, but since it's essentially admitted, I'm only going to give the one for now in the interest of time.

Now, another of the Plaintiffs' documents that the Judgment relies on is the Moodie Memo. Moodie, Nick Moodie, was an Australian intern who worked for the Plaintiffs and he wrote a causation memo discussing Australian and U.S. tort causation law, and this is another of the Plaintiffs' fingerprints in the Judgment.

Professor Michael Green, who is the reporter for the U.S. restatement of torts, has compared the Moodie Memo to the Judgment, and he's concluded that it's highly unlikely that the Judgment was prepared independently of the Moodie Memo for three reasons: First, because of the

same foreign law that they both address in the causation section; second, because of the same idiosyncratic choice of which U.S. law to address in both documents; and, third, because of the same mistakes that are common to both documents.

Now, the next slide shows you a chart of some of the commonalities between the Moodie Memo on the left and the Judgment on the right, and you will see virtually exactly the same legal propositions asserting to the same law in both documents, and this was one of the things that Professor Green was relying upon.

But Professor Green did not have all of the evidence at that time. Because since his Report, we have now found in the forensic examination of Zambrano's computer a December 21 Providencias--Providencias being a draft of the Judgment about the--as of December 21, it had about the first 107 pages of the Judgment.

But what we see now is clear evidence of copying from the Moodie Memo. You see, for example, that the Moodie Memo in its discussion of substantial factor cites to two U.S. cases: Whitley versus Philip-Morris and Rutherford versus Owens Illinois. Well, those cases are not in the Court Record. Mr. Juola has testified to that. In this Providencias, found on Mr. Zambrano's computer as of December 21, you see a discussion of the substantial

factor test, and what does it do? It cites to exactly the two same U.S. cases as are cited in the Moodie Memo.

And as I said, this is one of the important discoveries to come out of the forensic examination of Zambrano's computers, and we find from it that there was another of the Plaintiffs' documents that was copied into the Judgment, and that was the Erion Memo.

That memo cites--discusses certain legal propositions and cites in support of those propositions nine U.S. authorities. And those same legal propositions and those same nine U.S. citations in precisely the same form are found in the December 21 Providencias on Zambrano's computer. And you see one example, on Slide 67, patent injustice citing to the Penn Central Securities case with the same cite, and the manifest injustice citing to the Acushnet River case with an incomplete citation, but you see the same incomplete citation in both documents, although the Providencias never gives the full citation for that case.

On the next slide you see exactly the same pattern playing out with two more cases being cited in support of certain legal propositions in the Erion Memo, and for exactly the same propositions, those same two U.S. cases in exactly the same form are cited in the Providencias on Zambrano's computer.

So, what is Ecuador's response to all of this evidence? Well, Ecuador speculates that the documents, or at least some of them, just must have been filed but the Court clerk was just incompetent. It was just sloppy recordkeeping, they said. That's their defense.

Well, Dr. Patrick Juola, a professor at Duquesne University, performed an electronic search of the record. He checked the quality of the record, and he found it to be generally excellent. Where there were any issues, he performed a page by page hand search with two people working independently. He also searched the 69 CDs of the Court Record that went up on appeal, and his analysis confirmed that the Plaintiffs' internal documents, which are copied in the Judgment, the ones I've been talking about, are not found in the Court Record.

Independently, Mr. Samuel Hernandez of Morningside Translations, also conducted a hand review of the parts of the Court Record where you would logically expect to find any of these documents, such as in the Plaintiffs' own filings, but he also confirmed that the Plaintiffs' work product is not found in the record.

Now, very importantly, Ecuador itself has had full access to the Court Record, and if any of these documents were found in the Court Record over the last three years, they certainly would have called them to your attention.

But they haven't. Ecuador has failed to identify any of these documents anywhere in the Court Record, and they have not pointed you to any place where you can find them. And none of the RICO Defendants pointed in that case to where any of these documents could be found in the record.

Now, that hasn't prevented Ecuador from speculating, however, that, for example, the Fusion Memo was filed. There were some e-mails early on that indicated the Plaintiffs might file that document, but as the judicial inspection approached at which they were going to discuss with the Court the merger issue, Donziger sent several e-mails to another the Ecuadorian--another of the Ecuadorian lawyers, Juan Pablo Sáenz, insisting that Sáenz give him a list of every merger document to be filed at the inspection, and the word "every" was capitalized as an emphasis by Donziger. He wanted a list of every document they were going to file. And in response, he got that list, and that list lists every single document that they intended to file, and it does not include the Fusión Memo, and there is no dispute about that.

And we also have the Court's list of the documents it received at that judicial inspection, and there is no dispute that the Court's own list of the documents received does not include the Fusion Memo. So, we have both sides, what the Plaintiffs intended to file and what the Court

received, and the Fusion Memo is not in there.

Now, Ecuador suggests, however, that perhaps the judge was just informally shown the document or read the document. But we know that didn't happen, because Zambrano wasn't the Presiding Judge at this judicial inspection. In fact, he wasn't the Presiding Judge at any of the judicial inspections. They had already concluded before he became the Presiding Judge, so we know that Zambrano could not have been handed, shown or read the Fusion Memo in this way.

Now, Ecuador also speculates that the Clapp Report surely must have been filed. And, again, there were e-mails from the Plaintiffs suggesting that they might file it at one time. But when Cabrera was appointed as the global expert in March of 2007, the Plaintiffs changed their plans, and we can see it very clearly, because what the Plaintiffs did was they used the Clapp Report in drafting Annex K to the Cabrera Reports, but now having used the Clapp Report in drafting the Cabrera Reports, they couldn't very well file the Clapp Report into the Court Record without revealing the Cabrera ghostwriting scheme. And as I've said, nobody has found the Clapp Report anywhere in the Court Record, not Mr. Hernandez, not Mr. Juola, and not Ecuador itself.

Now, Ecuador also claims that the Fajardo e-mails

in December 2010 and January 2011 show that the Plaintiffs didn't know when the Judgment was going to be issued and thus couldn't have ghostwritten the Judgment. But this explanation just exalts substance over form--excuse me, exalts pretense over substance--and ignores the evidence in this case. Fajardo knew very well that the Judgment wasn't going to rely on the Plaintiffs' alegatos because he was already drafting the Judgment when he was sending these e-mails.

The first of Fajardo's e-mails that Ecuador points you to is dated December 17, 2010. But now, with the Zambrano hard drive examination, forensic examination, we have this December 21, 2010 Providencias found on Zambrano's computers, only four days after Fajardo had sent that e-mail. And what we see is that it was already copying from six--at least six of the Plaintiffs' internal documents.

But the Plaintiffs still needed to file the alegatos as a matter of form before the Judgment was issued. So, Fajardo, in the e-mails, was exhorting his team to finish the alegatos as soon as they can, but he couldn't tell the non-core team members that the fix was in. And by late 2010, when he sent these e-mails, Fajardo already knew very well that the e-mails might be subpoenaed in the United States, especially for U.S. team members.

That had already happened with Donziger and with Stratus, and other 1782s were already filed and proceeding in the United States at that time.

And very importantly, all of Fajardo's e-mails to which Ecuador points included either American members of the team who were recipients of those e-mails or very junior members of the team, but they weren't core members of that team.

The Federal Court in the RICO case noted this fact very expressly, saying that all of these e-mails went to non-core members of the team in saying there is no reason to believe that any of the core three--Fajardo, Donziger and Yanza--would have confided the fact that they had bribed Zambrano to any of the other recipients of the e-mails, and noting that this trio had a long record of keeping knowledge of questionable behavior as close to their personal vests as possible.

Now, by contrast, when there was truly sensitive information involved, Fajardo included only the core team members, as in these three e-mails which were confined to Fajardo, Donziger, and Yanza, and these e-mails are e-mails where they were discussing ghostwriting the Judgment.

So, in short, the Fajardo e-mails aren't proof of anything except that Fajardo and Donziger played it close to the vest when important information about questionable

conduct was involved, and these e-mails certainly don't explain or wash away the clear evidence that the Plaintiffs' unfiled documents were used in drafting the Judgment.

Now, Ecuador's defense to all of this, as I said, is just sloppy recordkeeping by the clerk, but that is not a defense under Ecuadorian law. Dr. Velázquez, in his Report, says that, under Ecuadorian law, documents must be filed to have any procedural or evidentiary value in a case, the normal rule you would find in any Court system. And he goes on to say that a judge may not base a judgment in Ecuador on a document that's not included in the record. That would illegitimize the judgment and should result in its nullity. And I might note that Dr. Velázquez has not been called for cross-examination by Ecuador.

Now, that brings me to my fifth point, which relates to Zambrano's testimony in the RICO case. Zambrano testified there that the Judgment--this judgment--was the largest and most significant decision of his career. In fact, we know that's true because it's the largest decision in the history of Ecuador by many factors.

And he says he spent months working on it. And he says he wrote every word of this judgment himself with no help from anyone else. That was his testimony. And the day after the Judgment was issued, Zambrano appeared at a

press conference with the head of the Judicial Council who called him a shining star, and I will let him--his words speak for themselves.

(Video played.)

MR. BISHOP: But despite the significance of this judgment to him, when Zambrano was asked at the RICO trial if he had any documents--any documents whatsoever--showing that he authored the Judgment, he had to answer "no."

Now, he says he had made notes, but he says he threw those notes away about a year later, even though he knew Chevron was appealing the Judgment, and even though he knew Chevron was claiming that the Judgment was ghostwritten, he cavalierly tossed his notes away. So, he has no documents evidencing that he wrote the Judgment.

And when he was asked about the contents of the Judgment, he couldn't answer even the basics. He was asked the very simple question of what theory of causation was adopted by the Judgment. Well, despite a several page discussion of this topic in the Judgment, he didn't know the answer.

He was asked what the English word "workover" means which appears in the Judgment twice. He didn't know--perhaps because that word was taken, was cut and pasted verbatim from the Fusion Memo by the Plaintiffs themselves.

He was asked what the term "TPH" means which is used in the Judgment 41 times, but he couldn't answer beyond saying it has something to do with hydrocarbons.

Well, Ecuador suggests that, well, maybe he was just confused because the proper acronym in Spanish is "HTP" and not "TPH," but this only proves the point, because the original Spanish version of the Judgment doesn't use the Spanish acronym "HTP." It uses the English acronym "TPH," and it uses it 41 times.

So, if Zambrano was confused about this as Ecuador says, it's because he didn't draft the Judgment.

And it's remarkable that Zambrano, if he did draft the Judgment, wouldn't know the term TPH, because this was precisely the term that was the basis for the largest damage award in the Judgment: The $5.4 billion for soil remediation. $5.4 billion was awarded precisely to clean up TPH, so it was of real significance in the Judgment.

Now, Zambrano also testified that the Judgment was drafted only on the new computer in his office, and, in fact, he repeated that testimony several times, and he was quite insistent on it. He even drew a map of his office, noted where the new computer was located, and said that his typist sat only there and only typed the Judgment only on the new computer. He was very clear about that.

But we know that testimony is false, and Ecuador itself admits that that testimony is wrong. Zambrano indicated he started drafting the Judgment in mid-November 2010, but the new computer wasn't even purchased until November 26th, and it wasn't activated until December the 7th. And from then until the Judgment was issued on February 14th, 2011, Microsoft Word was only open on the new computer for a total of 36 hours, not nearly enough time to draft the Judgment. So, Zambrano's repeated and insistent testimony that the Judgment was drafted only on the new computer is demonstrably false.

Now, Zambrano also testified that he personally hired an 18-year-old recent graduate, Evelyn Calva, to type the Judgment. He didn't use any of the court secretaries with the Court. He says he personally hired her, he personally paid her, and she worked only on the Chevron Case. He testified that he dictated almost every word of the Judgment to her, about 85 percent, and never handed her a document to type from. It was all done by dictation.

And he also testified that the remarkable Ms. Calva, 18 years old, did legal research for him and did legal research in foreign law, and that she's the one who found the U.S., English, and Australian case law discussed in the Judgment, and she found it on the

internet.

Now, I ask you: Is it plausible that the foreign law cases discussed in the Judgment were found on the internet, as Zambrano testified, by his 18-year-old assistant? Could you do legal research in a foreign language and on a foreign legal system which you don't know and could you have done it when you were 18 years old? I know I certainly couldn't. But the evidence is clearly inconsistent with Ms. Calva having done any of this.

First, Ecuador isn't bringing Ms. Calva to testify in this Hearing to corroborate Zambrano's testimony.

Second, there is no evidence whatsoever that she had any training or experience in doing legal research, much less in foreign law, or that she had the language skills in English and French to do so.

And, third, the forensic evidence on Zambrano's computer is inconsistent with his testimony.

And fourth, we can compare the Judgment again with the Plaintiffs' internal Moodie Memo and see plainly that the Judgment closely tracks that memo of the Plaintiffs, its legal propositions and the U.S. case law that it cites.

So, what's more plausible? That the 18-year-old

Ms. Calva did legal research in foreign law on the internet and just happened to find exactly the same cases that were cited by the Plaintiffs in their unfiled documents? Or that the Plaintiffs themselves ghostwrote the Judgment with their own documents in front of them?

And is it plausible--is it plausible--that Ms. Calva just happened to type from Zambrano's dictation the same identical mistakes that are found in the Plaintiffs' unfiled documents?

Now, the timing of Zambrano's testimony in the RICO case is also suspect. Judge Zambrano was dismissed as a judge in February 2012 for "inexcusable judicial error revealing notorious ineptitude or carelessness in the administration of justice." Now, he was dismissed because he released a high-profile--a major drug trafficker in a high-profile national police action--he released him from custody, and he was clearly suspected of corruption, of having accepted a bribe, but he was found guilty expressly of the inexcusable judicial error.

Well, he was also found guilty in a second incident and dismissed for, again, for inexcusable judicial error, for arbitrary action, totally contrary to the provisions of express legal rules. Yet this is the judge that Ecuador tells you wrote every word of the 188-page Judgment.

Now, Zambrano also had a history when he was a prosecutor of soliciting bribes. There are many complaints in the file from individuals, from attorneys accusing him of soliciting bribes as a prosecutor. One of those was a petition filed by 41 people in 2006, just two years before he became a judge. And this is what they said: "Our collective indignation is based not only on events that occurred recently, but also because we have become aware of a number of irregular and reprehensible acts of Zambrano, who has been unable to maintain an honorable track record as a public official, but has made his professional career by a path of extortion, blackmail and shame." That's what they said about him.

We also know that in 2004, the Napo Bar Association itself requested that the Prosecutor General suspend Zambrano for soliciting bribes. And we also know that when he was considered for judgeship, the national police certified that Zambrano had been arrested twice for theft.

Now, after being dismissed as a judge, Zambrano was then unemployed for a year, until he signed the Declaration in the RICO case in March of 2013. Just a month after that, he was then invited to a new job as a legal advisor to the Refinery of the Pacific, a large company, a major investment of Petroecuador and a company

controlled by Petroecuador, the national oil company of Ecuador. So, you can see that he was hired to this new position with--for a company of Petroecuador only a month after giving his RICO Declaration.

But at the RICO Hearing, it was interesting that Zambrano didn't even know the basics about his new employer. He had never visited the company's website and he didn't even know he had an e-mail address there.

And what was--you're undoubtedly going to ask, what was Zambrano's explanation for how these Plaintiffs' documents got copied into the Judgment? Well, this is from his RICO Declaration, Paragraph 16, and this is what he said: "I should mention that occasionally documents related to the case that were not incorporated into the process were left at the door to my office at the Court. This was relevant information that, as I read it, I realized it could be of use in my decision." That's his apparent explanation. He's saying he nontransparently and ex parte accepted unfiled documents and used them in drafting the Judgment.

Now, he tried to clean up this testimony by saying, well, he matched up the information in the documents to the record. He doesn't say he matched up the documents themselves. He says he matched up the information in them. But we know it's demonstrably untrue

for those Plaintiffs' documents that were copied into the Judgment.

But if this Declaration is correct, if his explanation is correct, that's a violation of Ecuadorian law. But, quite frankly, it's just not plausible. What's far more plausible is that the Plaintiffs themselves ghostwrote the Judgment using their own documents which they had before them.

And the Federal Court in the RICO case rejected Zambrano's testimony. It found that his testimony was unpersuasive for a host of reasons, among which were the many inconsistencies in it, and finding that Zambrano was a remarkably unpersuasive witness. Unfortunately, he won't be here this week so you can see exactly the same thing that the RICO Court saw.

Now, I would like to turn quickly to my final point--I think my time is starting to run short--and my final point is that the appellate courts abdicated their responsibility to review the fraudulent conduct.

Former Minister Álvarez, in his three Expert Reports which you have before you in this case--and Mr. Álvarez also has not been called for cross-examination by Ecuador--but in his three Reports he has chronicled the events of the Ecuadorian judiciary since the Correa administration took power. Since then, that

11:08 administration has purged the Constitutional Court, has twice replaced the judges on the National Court of Justice, and also the members of the Judicial Council. And the administration's own statistics for only an 18-month period show that they had dismissed 442 judges and suspended 334 judges. And, in fact, if we take into account all of the judges that were sanctioned in that 18-month period, it's well over half of the judges in Ecuador. As one news editorial said, those statistics show either widespread incompetence in the judiciary or political tampering with the judiciary, or both.

Now, you have seen this next slide before in an earlier Hearing. This shows just a few of the many cases in which the Correa administration has dismissed or suspended judges for the rulings in specific cases in which Correa took an interest. And we know that Correa has taken a specific interest in the Lago Agrio Case, not only endorsing the Plaintiffs' case, but also endorsing the Judgment as the most important judgment in the history of the country, and also endorsing the Appellate Decision.

Now, former Minister Álvarez has given the opinion that in the context of President Correa's efforts to control the courts, the Ecuadorian judiciary is not independent in cases in which the Executive takes an interest, and the Southern District of New York in the

11:10 RICO case found the same thing.

Now, Ecuador suggests that it's just Mr. Álvarez saying this, but it's not. Many former members of Ecuador's judiciary have publicly noted the lack of judicial independence during the Correa administration. A former Justice of the Supreme Court and former President of the Inter-American Court of Human Rights is one of them.

Another, in the second bullet point, is Carlos Estarellas. Now, Ecuador keeps referring you to their judicial reforms and they keep trumpeting their 2005 judicial reform over and over. But this is the man who was the Chairman of the Special Committee that selected the numbers of the Supreme Court in that reform, but this is what he's saying now in 2010 during the Correa administration: "The great misfortune of justice is that political interests are not resigned to have no interference in the courts. In Ecuador, I do not see the principle of independence, as contemplated in the Constitution, is being complied with."

Now, you don't have to go so far as to find a general lack of independence of the judiciary in Ecuador. Our point is that in the specific circumstances of this case, with President Correa and his Government making the Lago Agrio Case into a national cause, with them calling

11:12 Chevron an open enemy of the country, Chevron could not get a fair trial in Ecuador, and that's as far as you or we need to go.

Now, against this background, the Lago Agrio Judgment was appealed, but the Appellate Court, whose Constitution was manipulated, abdicated its constitutional duty to review the allegations of fraud and corruption and to correct the wrongdoing. And the National Court of Justice followed exactly the same pattern: Despite its constitutional duties, it also refused to look at the evidence of fraud and corruption.

Now, since then, despite at least 12 letters from Chevron requesting investigations over the past six years of this pattern of fraud and corruption, the Government has done nothing of substance. No one has been charged, and no one has been punished.

And, in fact, since the Judgment was issued, President Correa and the Government have stepped up their attacks on Chevron and strongly supported the Judgment. In almost every weekly national radio address, President Correa supports the Plaintiffs, the Judgment, and attacks Chevron very strongly. In fact, during a very critical stage of the enforcement proceedings for the Judgment in Argentina, President Correa flew to Buenos Aires, he met with the President of Argentina, and he told the press,

11:13 "of course we're going to support our citizens and try to ensure that the court ruling is complied with."

I would also point you to the fact that the Foreign Ministry has conducted many meetings abroad through the embassies, again attacking Chevron and supporting the Judgment, and the Foreign Ministry has even published a pamphlet, after your Interim Awards were published, calling the Lago Agrio Judgment "the first big triumph" and declaring that the Judgment is enforceable everywhere in the world. And Ecuador's Foreign Ministry, on the instructions of President Correa, has made this a matter of first priority for the foreign policy of the country, and I will let you hear that directly from the Foreign Minister.

(Video played.)

MR. BISHOP: With the case as a matter of first priority of Ecuador's foreign policy, then that means it's a matter of national interest, and it's a matter of government policy. And all of this has been done by the Government, it continues to be done in violation of the Interim Awards that you have issued.

With that, I will end my part of the presentation, and I'm going to turn the floor over to Mr. Coriell, but I suspect that all of us probably need a break at this point.

Thank you, Mr. President.
PRESIDENT VEEDER: I think you guessed right.
Let's have a 15-minute break, which is not more than 15 minutes, and we will resume with Mr. Coriell.
(Brief recess.)
PRESIDENT VEEDER: Let's resume.
Mr. Coriell, you have the floor.
MR. CORIELL: Thank you, Mr. President.
Members of the Tribunal, you've seen from Mr. Bishop the Judgment fraud this morning, and now I'd like to take a look at the Judgment itself, not for mere error, not as an appellate court would do, but at the egregious substantive holdings that show that in the words of Mr. Fitzmaurice, no honest and competent Court could have made them.
And I want to focus on the three most egregious legal absurdities in the Judgment. We've briefed a series of them, but I want to talk first about how the Judgment ignores and, in fact, breaches, to take you back to the Track 1 issues, the Settlement and Release Agreements.
Number 2, how it ignores the basic tort element of causation, a requirement in any legal system for Civil Liability, and third, how it ignores Ecuadorian principles of corporate separateness.
So, legal absurdity Number 1, relating to the

Release Agreements.
And you'll recall, of course, your Track 1 Award from a little over a year ago, and I've put the operative language on the screen at Slide 106. It's from Paragraph 112, Section 3, where you said that "the scope of the Releases" does not extend to "any environmental claim made by an individual"--and here you gave the standard--"for personal harm in respect of that individual's rights separate and different" from Ecuador's.
And you went on to say, though, that it does have legal effect under Ecuadorian law to preclude any diffuse claim under Article 19.2, whether it's made by Ecuador or by an individual not claiming, and here that language is again, "personal harm actual or threatened."
So, two key holdings here that we can key off of from your Award. The first is that diffuse claims under Article 19.2, which is the constitutional provision giving a right to a clean environment, are barred; and the second is that the standard for whether a claim is diffuse or individual for determining whether it's barred under these releases is personal harm. You say it twice here: An individual complaint as opposed to a diffuse complaint must allege personal harm, and an individual Judgment as opposed to a diffuse Judgment must vindicate personal harm

with personal harm findings.
Well, the Lago Agrio Judgment, we submit, has no personal harm findings. It vindicates only diffuse claims, claims that you held are barred by the Releases, and we can see this first by looking at the Plaintiffs' own words. My colleague's passing around what was an appendix to our Track 1B Reply Memorial in January of 2014, which contains the series of statements by the Plaintiffs, by Ecuador in this arbitration and Court filings and statements by the Ecuadorian courts showing at each level how this is a diffuse case. But let's look at Slide 107 to the words of Plaintiffs' lawyer Julio Prieta, where he said, "what we're claiming in this lawsuit has never been indemnifications for damages to individuals due to health reasons or for the death of a particular person." In other words, no individual damages. We're not suing for millions as indemnification for sick persons. We're demanding a compensation system for something that is diffuse, and that's public health.
Slide 108 is an excerpt from the Lago Agrio Plaintiffs' pleadings in a 2014 court filing before the Second Circuit in the RICO case describing the Lago Agrio Judgment that they had won, and you see at Pages 5 and 6, they say, the Provincial Court of Sucumbíos, that's the First Instance Appellate Court that affirmed the Lago

Agrio Judgment, "declined to hold Chevron liable" for what? For "individualized damages to inhabitants for injuries." So, look at those words: Chevron is not liable for individualized damages. It's not liable for actual injuries caused to personal--to particular individuals. So, no personal harm in the words of the Plaintiffs, and that should be the end of the story.
And Ecuador itself recognizes as much or at least it used to do so because it told you in no uncertain terms, before your Track 1 Award forced them to change their story, that this is a diffuse or a collective Judgment, not an individual one. You see Paragraph 35 from their preliminary jurisdictional objections back in 2010. "The environmental Plaintiffs have elected to narrow from Aguinda their requested relief in the Lago Agrio Litigation and not pursue personal-injury claims. So, not pursue personal-injury claims, full stop. In other words, again, no personal harm.
And Ecuador reiterated the point in oral argument at the May 2010 interim measures Hearing. I suspect it wasn't practical to be bring thousands of personal-injury claims." That's why they dropped it. Exactly. The reason that it wasn't practical is because as you know, Ecuador had and it has no class action mechanism. The Plaintiffs couldn't aggregate their individual claims in a

representative way like they could in the United States. They had to do it by signing up each and every individual as a named Plaintiff.

In Ecuador, you can't represent the individual rights of others who are similarly situated. You can only act in a representative capacity with respect to diffuse rights.

And what this means is that, absent a class action, this case can only be about one of two things. There's just two options: The first, if it's 48 individual claims, then we should see a judgment that assesses personal harm as to these 48, and only these 48, named Plaintiffs. But we know that the Judgment doesn't do that. And, in fact, Ecuador doesn't even argue before you that the Judgment does that. You've seen the Plaintiffs' words you've seen Ecuador's words before your Track 1 Award say affirmatively that it does not do that.

So, that's how we get to the inescapable conclusion that this Judgment vindicates only diffuse or collective rights. Again, personal harm, as you held, that's the key, and it's not in the Judgment as to these Plaintiffs.

Now, at every level of this case, the Ecuadorian courts have expressly said that the Judgment vindicates no individual rights because it finds no personal harm to the

named Plaintiffs. We can start with the Judgment at Page 33. The Plaintiffs have not requested personal compensation for any harm. They've "demanded the protection of a collective right according in accordance with the formalities provided by the EMA, the redress of environmental harm," that's the link to Article 19.2 of the Constitution, which you held the diffuse use of that was released, which has been alleged in this lawsuit and affects more than 30,000 people, those supposedly being undetermined.

So, a collective right to repair harm to a 30,000-member community of undetermined people. How can Ecuador tell you with a straight face that this refers to individual rights?

And remember, if the named Plaintiffs represent those 30,000 others that you just saw them identify in the Judgment, they can only do so as representatives of the diffuse community interest, and the reason for that is because, as Ecuador has said and as you've held in your Track 1B Decision, no one can represent another's individual rights in Ecuador without that person's express consent. It's at Paragraph 165 of your recent decision: "The Respondent acknowledges that the named Plaintiffs did not, and could not, represent anyone but themselves before the Lago Agrio Court."

So, again, those two options I mentioned earlier, they could represent just themselves, just the 48, or they could represent the community in a diffuse way under the EMA, and that's exactly what they ultimately did; that's what the Judgment purported to vindicate. So, that's the Judgment.

Move to the Clarification Order, which was even more precise because here you have an express disclaimer that the Judgment vindicated any individual rights, and it's at Page 24. "When mention is made of damage to persons, it is explained in the Judgment that what is involved is damage to their culture and damage to their health. This should not be confused with personal damage in the sense of damage to individuals. Rather, it should be understood as damage to persons or human beings in general." So, this is the Clarification Order instructing the Parties that if there is anything in the Judgment that even seems to be referring to individualized harm or to a vindication of individualized rights, that's not what the Judgment was doing. That's not what that language was intended to do. It's referring to damage to persons or human beings in general. This should not be confused with personal damage in the sense of damage to individuals.

So, again, no personal harm, to use your Track 1 Award's language. How could this language in the

Clarification Order be any clearer as to the nature of the rights being vindicated?

Same with the Appellate Decision at Page 3, "the economic losses suffered by the Plaintiffs" were "not alleged in the complaint." There's not any claim whatsoever for their compensation; the record contains no grounds that would justify ordering the Defendant to indemnify them. The complaint asks for the remediation of the environmental damage. There is that link to 19.2 again: Diffuse environmental damage, not personal harm. No claim, no grounds in the record whatsoever for individual economic losses suffered by the Plaintiffs.

And then the Cassation Decision comes out and says in as few words as possible, and you've seen this language before. It's at Page 185 of the National Court's Judgment, and it calls these so-called, "popular action lawsuits "having to do with diffuse rights under which Rule this complaint has been filed;" that is to say, they are collective rights.

So, Ecuador's national Court of Justice is telling us two things here: The first is that diffuse and collective rights are the same in the context of this particular case, Ecuador's attempts to play semantic games between these two terms notwithstanding.

But the second is that this is a diffuse-rights

case. You see it in black and white, "having to do with diffuse rights under which rule this complaint has been filed." That's it. So, Ecuador is here today telling you that this is an individual-rights case, and you see on the screen the National Court of Justice telling you that it's a diffuse-rights case. How can they do this with a straight face?

Now, speaking of the National Court of Justice, recall that Ecuador has a pending request before you to reconsider your final and binding Track 1 Award, based on the Cassation Decision that contradicted you, that disagreed with you, as you see in the language on the screen--and I'm not going to read it, but it's the operative language, by saying that the 1995 Settlement does not bar diffuse claims, by saying that Claimants were not released from diffuse liability under Article 19.2 of the Constitution.

You see, there has never really been a debate about the substantive rights that the Judgment purports to vindicate in Lago Agrio. You've seen the Plaintiffs, you've seen Ecuador, you've seen the courts say exactly what we are here saying here today, that this is a diffuse-rights case, not an individual-rights case. What Ecuador did was it fought Claimants' Track 1 claim originally, you will recall, on the ground that the

settlements didn't bar diffuse claims. That's what the Cassation Decision said. You see it on the screen. But Ecuador lost that argument with your binding Track 1 Award, and so the remaining piece of the puzzle, the last step which is that the Judgment is wholly diffuse and therefore barred by settlement, it just isn't seriously in dispute.

Now, aside from the words of the Plaintiffs, the words of Ecuador, what the courts have said at every level, the easiest way to see that is to look at the actual substance of the Judgment itself at each of the seven categories of harm that it found. And I've listed those on Slide 117, and the reason is because under each one of these, we see the same thing, which is a total lack of individualized findings and a confirmation of what the courts said, that this is a purely diffuse-rights judgment. I told you that it's a diffuse-rights judgment, if you look at the substance, which you pointed out was the primary thing to look at in your Track 1B Decision, it shows you that it is a diffuse-rights Judgment.

And we can take as the best example of this from these Categories, the most personal type of harm imaginable, which is the harm to health, but in this Judgment it's only talking about the harm to public health, a diffuse not an individual harm. And you can

look at the language that I've excerpted on the screen from Pages 138 and 139 of the Judgment and consider how impossible it is to square with the notion that this is a judgment based on individual claims. The Court says, "with regard to the harm to people's health," "proof has not been presented of the existence of harm to the health of specific persons." There exists harm to public health--that's diffuse--but "no medical certificates have been submitted to show the existence of harm or injuries to or a specific health problem of a given individual."

"The reparation of particular harm has not been requested." "The submitted evidence does not necessarily refer to the particular harm, but to the harm to public health." The fact that no particular injuries or harm have been proved--this is the Court's conclusion--the fact that no particular injuries or harms have been proved is irrelevant, and it goes on to say, the reason is because they're only analyzing the existence of harm to public health. So public health, not individual, not personal harm.

More specifically as to the health findings, potential cancer discussed in the Judgment, diffuse, not individual. Page 184, "there exists sufficient indications to demonstrate the existence of an excessive number of cancer deaths. However, "we must note that the

reparation of particular cases of cancer has not been demanded nor are such cases identified; thus, they're not remediable."

So, $800 million in this Judgment to address cancer where not a single particular case of cancer has been alleged or identified.

Now, that's an absurd result for a lot of different reasons, but it's certainly dispositive that this is not a judgment based on individual claims. And I hope that Ecuador would at least agree that if you're going to vindicate an individual cancer claim, you'd have to at a minimum identify an individual's instance of cancer.

The Clarification Order goes on in the same subject, Page 23. We're not going to have a list of affected persons because "it was clearly established" that we are facing "a situation of damage to public health and not to individualized claims for injuries or diseases." We're not even listing affected persons. Again, how can anyone say with a straight face that this means personal harm?

Now, what I've taken you through so far Ecuador doesn't like to spend time talking about. It doesn't like to talk about how the Plaintiffs have characterized the Judgment, how it used characterize it, what the courts in

11:47 Ecuador themselves have said characterizing the Judgment, and that's because they really don't have an answer to the overwhelming weight of the evidence that you've just seen. What they do is they point as their single defense to the 2002 Delfina Torres case, and they say Delfina Torres is an individual case. It's similar to Lago Agrio; therefore, Lago Agrio must be an individual case.

There's two points with respect to Delfina Torres. The first is the obvious one at the level of form, and that's that the Delfina Court, as you know, it's not in dispute, refers to the itself as a case vindicating individual rights under Article 2214 of the Civil Code. The Lago Agrio Case, at every level, as you've just seen, refers to itself as vindicating diffuse or collective rights. So, that's the distinction between the two.

But the second point is that if you dig into the substance of the two cases, you see that that confirms the distinction that the courts have made. One truly is individual, one truly is diffuse.

Now, you talked about the substance, as, of course you recall, of the Delfina Torres case in your Track 1B Decision, and I've put up your operative summary from Paragraph 174 of the Decision. In doing so, you recognized the key feature that distinguishes Delfina from Lago Agrio, which is the individualized harm findings.

11:49 So, you talk about how the Court did three things in Delfina. Number one, it acknowledged that "the normal relief for injury suffered by the Plaintiffs is pecuniary compensation." Number two, it held that "pecuniary compensation, due to those Plaintiffs" in Delfina as individuals and, in your words, "but no other person" amounted to $11 million; in other words, individualized findings of $11 million worth of harm to the Plaintiffs in the case.

And then, and only then, third, "in view of the desire expressed by the Plaintiffs, such amount was to be applied to remedial works to satisfy the needs of the community," but the cost of those works was "not to exceed the amount of $11 million." In other words, it could be used for the community, but the cost was not to exceed the amount determined of personal harm.

In other words, Delfina found specific harm suffered by the Plaintiffs "but no other person", in your words. It calculated that harm, and it awarded damages for that harm, but not a penny more.

Then, and only then, the Plaintiffs chose to use the money for the benefit of their communities, but they didn't have to do that. The Court commended them for it in its Judgment, but it said they didn't have to do it because it was their money for their harm, again your

11:50 language, "but no other person." And that's the distinction between Delfina and Lago Agrio: Individual harm findings and a damages amount linked only to that individual harm. If Lago Agrio were an individual case, then the $9.5 billion in damages, just like the 11 million in Delfina, would be linked to harm to the 48 named Plaintiffs and no other person. But as we've seen, it's not so linked.

And we can look a little deeper into how the Delfina Plaintiffs has acted on their own behalves in that case, while the Lago Agrio Plaintiffs acted on behalf of the diffuse community interests, another distinguishing factor. You see the citation from Page 5 of Delfina. "Nowhere in the complaint is it stated that the Party bringing the complaint does so as the representative of, nor on behalf of, the public interest." They're doing it for themselves. Contrast that with Section 6 of the Lago Agrio Complaint, filed in the Plaintiffs "capacity as members of the affected communities and in safeguard of their recognized collective rights." So, representative capacity, collective rights, no assignment of their individual interests to any other person or entity, the essence of a diffuse-rights case.

And, finally, we can look at the type of evidence that supported the respective harm findings in Delfina as

11:52 opposed to Lago Agrio. On the left, from Page 28 of Delfina, you see that personal individualized evidence, a detailed examination of each resident, mainly their "psychological health." A report from a doctor that "contains a detailed diagnosis and prognosis of the illnesses suffered" by all of those residents for whom she is, in fact, their "treating physician". So, individualized findings. That's what makes an individual-rights case.

Look at Page 138 of Lago Agrio, we have seen this earlier: "Proof has not been presented of the existence of harm to the health of specific persons. "No medical certificates have been submitted. No evidence in the entire Judgment showing that individualized harm, generalized findings, and that's what makes a diffuse-rights case.

So, that's the distinction between Delfina and Lago Agrio. Just like with Delfina, you recognize the importance of individualized findings in your comparison in your Track 1B Decision to the common law public nuisance case, and I'm pulling an excerpt from Paragraph 178, and here you're quoting in the italicized language the Leo case from New York, which says that, "in the absence of special damage," it's usually a "public authority" that corrects a public nuisance. But "one who

suffers damage or injury beyond the general inconvenience to the public at large may recover for nuisance damages" or get an injunction.

And then here is the standard for whether you get to do that or not: If there is some injury "peculiar" to a Plaintiff, a private action premised on a public nuisance may be maintained, and the Leo Court goes on to explain that in that case it was proved because the peculiar injury was to the commercial interests of commercial fishermen. So, there has to be injury peculiar to a Plaintiff beyond the harm done to them as members of the communities at large. An individual injury, for example, beyond harm to public health, so there has to be, to go back to the standard that you set up in your Track 1 Award, there has to be personal harm.

So, what this all adds up to is that the Judgment ignored the Releases by purporting to vindicate only diffuse rights. And we actually know why it did that, and the reason is because once the Aguinda Case was dismissed in New York, with no class action available in Ecuador, this was the only way for Donziger and his fellow RICO conspirators to get big money. They had to file a diffuse case because it was the only way that they could represent more than just the named Plaintiffs. And we see this from Plaintiffs' lawyer Cristobal Bonifaz's argument to the New

York Court in 1999 opposing the Aguinda dismissal: "What purpose will it serve for us to take 73 Plaintiffs, go to Ecuador, file suits, even if we were able to succeed because what are we going to get fixed? Plots of land, which are 8 acres apiece." In other words, the individuals' plots of land. "That is all we can seek in Ecuador." That's all they can seek. That's all they could have sought, and that's all that they could seek in Ecuador. No class action. Just individual damages for any named Plaintiffs.

Or what they did, in fact, seek and what they did, in fact, get in the Lago Agrio Judgment, which was a diffuse-rights judgment for the community, ignoring the Releases.

Now, I'd like to close on the Releases by pointing you to an Ecuador Court decision that perhaps best reveals the absurdity in Ecuador's attempt to convince you that the Lago Agrio Judgment vindicates individual rights. You recall from their briefing they say it does so because it does it through Civil Code claims, Articles 2214 and Article 5236.

What you see on the screen is an excerpt from an appellate opinion signed by Judge Zambrano in the Red Amazónica case. Now, as you know, the Lago Agrio case was heard under what's called the summary verbal procedure.

In this case, the Red Amazónica case tells us that only environmental harm cases under the EMA--in other words, only diffuse cases and only diffuse claims--may be heard under that summary verbal procedure.

Look at the quotes from Red Amazónica. "There has been an improper joinder of environmental and civil actions." "Only environmental claims may be considered because only environmental claims may be heard in summary verbal proceedings." "Environmental action protects a common good;" in other words, it's diffuse. "An action to recover damages seeks to protect an individual's property which, though important, cannot be compared to a good that belongs to everyone." In other words, it is individual. It cannot be compared to a diffuse good. "No claim connected to the compensation of purely civil damages can be considered in the resolution of this case." It's contrary to law, it's a violation of law to allow an environmental action for the purpose of claiming ordinary civil compensation.

So, Mr. President and Members of the Tribunal, this is Judge Zambrano clearly saying that individual actions under the Civil Code, actions for personal harm can't be heard the way that the Lago Agrio Case indisputably was heard. This is all the proof that you need, and you've seen an overwhelming amount of it

already, but this is all the proof that you need that Lago Agrio is in no way an individual-rights Judgment. Legally, it couldn't be because of the way that it was handled.

And if Ecuador wants to convince you otherwise, they have a simple way to do so. They can show us. They can show us the individual harm findings, they can show us the individualized damages findings, but they can't do that because they're just not there, and that's why you've seen the courts disclaim their being there.

The second legal absurdity is that the Judgment ignores the basic tort element of causation. And this one is simple and it's pretty obvious because the Ecuadorian courts actually couldn't keep their own story straight on this issue.

First, the Judgment pretended to consider Petroecuador's responsibility. We see that the Clarification Order Page 8, "no pit constructed by Petroecuador or spill caused by that company is covered by the Judgment." That sounds good. "The damage caused by Petroecuador has not been considered, using a time-based approach that divides liability", and then attributes it to the Operator at the time.

But if you look at the Judgment, you quickly realize that this simply isn't true. There are no

causation findings as to Petroecuador versus TexPet's liability. There is no time-based approach, and Ecuador can't point to you where the Judgment employs that time-based approach.

But you don't have to take my word for it because the Cassation Decision actually admits and celebrates the Judgment's refusal to perform a causation analysis with respect to this issue. Page 117 of the Cassation Decision, "the Court of Appeals was not responsible" "for analyzing Petroecuador's liability", much less to attribute some damage to Chevron and other to Petroecuador," violate due process and even worse.

So, that time-based approach that we were assured was done, it wasn't. To do it apparently would have violated due process or perhaps worse. You don't get more absurd than this type of so-called "judicial reasoning." To attribute harm to a particular tortfeasor somehow violates due process. Amazing. And then the National Court of Justice ignores the Clarification Order that we just saw pretending to do just that.

So, why does the Judgment ignore causation in this respect? The same reason as with the Releases: Money. Look at the yellow shaded area in the midst of Petroecuador's solo operations on the timeline of operations in the Concession Area. That's where the

judicial inspections took place. That's where all the alleged evidence of environmental contamination in this place came from. That's when it was collected. During a period of time well over a decade after TexPet had ceased operating.

So, the Plaintiffs' lawyers are getting money for what Petroecuador presumptively caused, and then, of course, Petroecuador and the State on the flip side get to push their liability for what they presumptively caused to Chevron. And again, you don't have to take my word for it because that was the deal that they made. Mr. Bishop referenced this earlier this morning: The beginning of their conspiracy. Look at what the Attorney General of Ecuador requested in this waiver of rights document, that "the compensation sought" in the Aguinda Case "be paid exclusively by Texaco." And then the Plaintiffs accepted that. They said, "we hereby expressly waive the right to file any claim against [the State], Petroecuador, its affiliates" or any public sector institution. In other words, I scratch your back, and you scratch mine.

And the Plaintiffs' lawyers knew what they were doing. They knew that Petroecuador was responsible for harm in this Concession Area. You see on the screen an excerpt from an e-mail from former Plaintiffs' environmental expert David Russell, and he's reporting on

a conversation that he had with Steve Donziger, and Mr. Donziger apparently told him "the analysis and reporting of GRO and BTEX data is self-defeating except to show that the contamination is much more recent than we would desire"--that's interesting phraseology--"and that would lead to an argument that the contamination is by Petroecuador rather than Texaco."

So, two things here: This is exactly the point that I was making with the timeline of operations on the previous slide. If you test in 2004, when Petroecuador has been operating alone for over a decade, then any harm that you'll find is presumptively Petroecuador harm.

And if you want to legitimately attribute it to TexPet, you have to show causation, but as you saw, the Judgment absurdly doesn't even purport to do that.

Third legal absurdity. It also ignores principles of corporate separateness. Now, both Parties agree that the legal standard for veil-piercing under Ecuadorian law is abuse of the corporate form. In the Lago Agrio Case, the courts pierced three different levels of corporate separateness, from TexPet up to Texaco, over to Chevron, and from the Judgment debtor Chevron down to its worldwide subsidiaries in the execution orders issued by the Ecuadorian enforcement courts purporting to enforce the Judgment. So, we should expect to see three recent

sets of reasoned findings of abuse of the corporate form--that's a particular standard--one for each of these veils that the courts pierce.

But again, we see none of that in the Judgment. And I encourage you to read it. You won't find any of this. No evidence of reasoning or findings of that particular agreed standard, abuse of the corporate form. There is no debate that that's what you have to find, but the evidence just isn't there, so the findings aren't there.

And I want to emphasize that this isn't an instance where we simply disagree with the Court having done this reasoning the way it did it. We're saying it's not there. They didn't make the findings to apply this standard that they agree is the standard, and so it's a juridical impossibility. It's not legal reasoning.

And the reason for this is actually twofold: For the first two veils to get to Texaco and to get to Chevron, the Plaintiffs just messed up. They sued the wrong party, and they had to try to fix it in the Judgment that they wrote, and so you see Donziger's diary saying this goes back to Alberto Wray's errors, suing the wrong party in the complaint.

And for the last veil, to get to the worldwide subsidiaries, well, the money against the Judgment debtor

Chevron Corporation is located where Chevron Corporation is located, which is the United States. But as you know from the RICO case, there is an injunction from preventing the enforcement of that Judgment. And so, where are the Lago Agrio Plaintiffs' lawyers going outside the United States to try to get money? Argentina, Brazil, Canada. But neither the Operator TexPet nor its parent Texaco, nor the actual Judgment debtor Chevron is present in any of these three jurisdictions, and so that's why the courts had to pierce that third veil to the worldwide subs. They had to write a judgment without being able to point to any evidence of abuse piercing these three different levels of corporate separateness.

So, you have seen that the Plaintiffs bought and paid for a judgment that ignores the Releases, ignores a key element of causation and ignores corporate separateness. Professor Paulsson will explain a bit later how doing that constitutes a denial of justice, just like the fraud that Mr. Bishop discussed with you constitutes a denial of justice, but first let me turn the floor over to Ms. Renfroe to discuss the environmental issues.

Thank you, Mr. President.

PRESIDENT VEEDER: Just one moment, maybe one question from the Tribunal.

ARBITRATOR LOWE: Just a question of

clarification. You said that the Judgment was not based on individual claims. Is it your position that the 7th May 2003 Complaint did not include individual complaints, or do you regard that as a separate matter?

MR. CORIELL: It is our position, and it continues to be our position that the Complaint did not include individual claims. A lot of the same evidence that you have seen from the statements of the Plaintiffs indicates that. It is, however, a separate matter because regardless of whether the Claim is articulated in individual complaints in the Complaint, the Judgment does not vindicate any, and that can be easily seen by what the courts say about it, and by looking at the substance of the harm findings in the Judgment.

ARBITRATOR LOWE: And that is something to which you might come back in the closing, I imagine, the relationship between the Complaint and the decision in the light of our decision on Track 1B?

MR. CORIELL: We will do so, thank you.

PRESIDENT VEEDER: Thank you.

Ms. Renfroe.

MS. RENFROE: Thank you, Members of the Tribunal.

Now that Mr. Coriell has addressed the legal absurdities in the Judgment, I am going to address the factual absurdities in three parts: First, the Settlement

Agreement itself, because it indeed resolves all environmental issues, any Judgment is an absurdity.

The second part I will address is the fact that the damage awards in the Judgment are grounded in fraud, not science and, therefore, in and of themselves represent a denial of justice.

And then my third point will address why Ecuador's new environmental experts in this arbitration case, why their ex post work does nothing to resuscitate this fraudulent judgment.

So, let me begin with the Settlement Agreement, which, as I say, and as we have demonstrated, resolves all environmental issues concerning diffuse rights.

I take you back first to the Settlement Agreement itself agreed by the Parties in 1995; and, in that critical instrument, the Parties agreed on a process to evaluate the environmental extent of the Consortium's operations, they agreed on the critical remediation techniques that would be used; and, perhaps most important for this controversy, they agreed on the precise areas within the former Concession Area that TexPet was to address, and you can find those areas listed in the annexes at the back of the Settlement Agreement.

Then in the more detailed Remedial Action Plan, or RAP as we sometimes call it, the Parties provided the

specific items for remedial work that TexPet was to accomplish; and, so between these two instruments, they provide the Tribunal the critical framework you need to evaluate any environmental claim and any environmental evidence.

Looking at these two instruments more carefully and in more detail, what we see from them is that everything not expressly allocated to TexPet for remediation in the tables at the back of the Remedial Action Plan remained the responsibility of Petroecuador and Ecuador to address. This is a very, very, critical point to realize about the core part of the Parties' agreement, and that is: Number one, the Parties did not agree to require TexPet to remediate the entire Concession Area. To the contrary, they agreed only that TexPet was required to remediate certain features at certain sites. And so, when we look at the Remedial Action Plan, we see that only certain features were assigned to TexPet at 157 sites. The balance of those sites remained the responsibility of Petroecuador.

Likewise, we see from these two critical instruments that 187 sites were not assigned for any responsibility to TexPet whatsoever, again remaining the responsibility of Petroecuador.

Now, this division or allocation of

responsibilities for remedial work made perfect sense when you think about the fact that Petroecuador was, indeed, the majority partner of the Consortium, and between it and Ecuador having collected over $22 billion over the life of the Consortium, while TexPet earned approximately $500 million.

And then a very second important practical reason also explains this division of remediation responsibilities, and that is that Petroecuador was continuing to operate this Concession Area throughout the time that TexPet was doing its remediation.

So, the key takeaway, the key framework for the Tribunal is that there was no one site that was allocated to TexPet in its entirety, and certainly not the entire Concession Area. And so, what we get with this framework is the distinction between the RAP areas specifically listed in the back of the Remedial Action Plan--and when I say RAP areas, I mean those RAP items that TexPet was supposed to take care of--and everything else is a non-RAP area or non-RAP feature.

Let me illustrate this distinction with a little more detail.

On this slide, on the left, I'm so showing you a drawing of the Lago Six well platform. The wellhead itself is in the middle of this yellow platform. And then

when you look at Table 3.1 from the Remedial Action Plan, you will find that only one out of the two pits at this site, Pit 1, was assigned to TexPet for remediation. The other pit, Pit Number 2 was not assigned to TexPet for remediation, nor was anything else surrounding the platform.

So, what we take away from looking at this Remedial Action Plan table, is that there was a single pit allocated to TexPet with a balance remaining Petroecuador's responsibility.

And so, this illustrates my point and the framework for the Tribunal to use of this RAP versus non-RAP distinction.

Now, further proof that it was never the Agreement of the Parties that TexPet was supposed to remediate either the entire Concession or even an entire site, further proof of that can be found in the language of the Settlement Agreement itself. When you look at Section 5.1 of the Settlement Agreement, you will see that in 1995, when that Agreement was signed, the Government of Ecuador and Petroecuador released TexPet at that time for all non-RAP liabilities. And then upon completion of TexPet's remediation work, which has been documented in great detail in the Woodward Clyde 2000 Report, upon completion of that work, then the Government of Ecuador

and Petroecuador released TexPet for the so-called "RAP liabilities."

So, these two documents again confirm that the Parties' agreement was only that TexPet was to remediate certain discrete portions of the Concession Area.

Further evidence confirming this as the agreement of the Parties can be found in the testimony of two senior ranking Ecuadorian environmental officials. On the top, I have summarized the testimony of Manuel Muñoz, who was then the Director of DINAPA, the environmental arm of Ecuador's Ministry of Energy and Mines.

In 2006, he told Ecuador's Congress: "Texaco has completed the remediation of the pits that were their responsibility; this was 33 percent of the total." But in the intervening decades, Petroecuador had done little. And then again, before this Tribunal in 2012, Giovani Rosanía Schiavone, who at that time was the Undersecretary of Environmental Protection for the Ministry of Energy and Mines, he told this Tribunal, as Mr. Bishop mentioned earlier, he insisted that the "technical work and the environmental work was done well," and they accepted, meaning the Government of Ecuador accepted, that "the environmental problem" in the areas assigned to TexPet had been corrected.

There is no question that at the time that

Ecuador and Petroecuador executed the Final Release that I showed you a moment ago, they were fully aware that TexPet had not remediated the entire Concession Area nor had remediated even an entire site. They knew that and that's because that was the agreement of the Parties. That is specific items as identified in the Remedial Action Plan schedules, those are the only items assigned to TexPet.

Now, notwithstanding this irrefutable evidence of what the Parties agreement was, now in this arbitration case, for purposes of justifying this fraudulent Judgment, we find that the Government of Ecuador has taken a completely opposite position in asserting and complaining that TexPet did not remediate the entire Concession Area or even remediate an entire site. But, Members of the Tribunal, as I have just shown you, that was never the agreement of the Parties, and the evidence is irrefutable on that point.

Now, in this arbitration case, instead what we see from the Government of Ecuador and its experts is a litany of complaints about TexPet's work, not coincidentally the very same complaints that were urged against Chevron in the Lago Case, and I have summarized those complaints on the left-hand side of the slide. Again, the Settlement Agreement and Remedial Action Plan give you the framework you need to consider these.

12:17 Let me give you an example, you perhaps have read about the complaint we now hear from Ecuador and its Experts that TexPet closed pits before June of 1990 when it handed over operations to Petroecuador, and that those are somehow now hidden pits, and they complain that TexPet did not remediate those pits.

Members of the Tribunal, you have only to look at Section 3.1.2 of the Remedial Action Plan and you will see that the Parties recognized that category of pits and made specific provision for what was to be done with those. And I quote here. The Remedial Action Plan says: "Sites with pits closed prior to 1990 were investigated for any visible soil contamination." Two such pits were found. And they were added to the TexPet remediation program. So, it cannot be said that those pits closed by TexPet before June of 1990 were hidden. The Parties were fully aware of them and reached agreement on how to deal with them.

A second example illustrates my point, that the Settlement Agreement and RAP are your framework. That is now the complaint we hear that TexPet's work was inadequate because it used composite sampling to evaluate soils and sludges. Once again, the Remedial Action Plan, Section 2.4.3, you will find that the Parties expressly agreed on the use of composite sampling.

12:18 And a third example makes my point. The complaint now that TexPet's remediation of pits was inadequate and that the TCLP procedure and the criteria of a thousand parts per million was an ineffective measure of the efficacy of TexPet's remediation of the pits. But if you look at the Remedial Action Plan, Section 2.4.4, once again, Members of the Tribunal, you will see this is what the Parties agreed to.

And so too as you go down the rest of the list of complaints, every one of those complaints is answered in full by the Settlement Agreement and the Remedial Action Plan that was the agreement of the Parties. And so that is why I say the Judgment in any amount whatsoever is a complete absurdity.

But now, this brings me to my second point, which is the fact that the damages awards in the Judgment are grounded in fraud and not any valid scientific data. The evidence shows us that to be the case, and let me illustrate that.

But let me first make this point: Claimants are not here quibbling over an erroneous environmental finding or two in the Judgment. Instead, our position is that the evidence of the damages awarded in the Judgment and the lack of evidence to support those damage awards, is so overwhelming and those damage awards, on their face, are

12:20 so unreasonable that they amount to a denial of justice.

Now, Mr. Bishop showed you a little while ago in very, very graphic detail how the Plaintiffs accomplished their fraudulent Judgment, and I'm now going to show you why they resorted to fraud over science.

We have only to look at the private confidential communications of the Plaintiffs' lead environmental Expert, David Russell, which I have summarized on this slide. In his e-mail communications to Steven Donziger spanning the Years 2004 to 2006, he's telling Donziger, "Texaco may be right when they say the remediation is performing as designed. From the data I have seen so far, we are not finding any of the highly carcinogenic compounds one would hope to see when investigating the oil pits." And, third, "I have seen no data which would indicate there is any significant surface or groundwater contamination caused by petroleum sources."

Now, this is Mr. Russell's candid assessment of the lack of data, notwithstanding the fact that the judicial inspection process has been under way for some two or three years.

Now, when he could not provide Mr. Donziger the evidence that Mr. Donziger wanted to support a substantial Judgment, Donziger replaced them with the Stratus Group. And on this snapshot from the crude outtake that

12:22 Mr. Bishop played for you early, I have captured some of the key findings in a confidential conversation that Ann Maest of Stratus had with Steven Donziger, and you can listen to this discussion yourself when you listen to this Crude outtake, but for now, the key point to take from this is Ann Maest tells Steven Donziger: "We have no evidence of groundwater contamination, and right now all of the reports are saying it's just at the pits and the stations," referring to the production stations, "and nothing has spread anywhere at all."

That is the testimony--pardon me--that is the confidential assessment conveyed by Ann Maest of Stratus to Steven Donziger in a private lunch before the Judgment was issued.

Now, in response to this candid assessment by a second team of environmental experts that the data doesn't exist to support a substantial Judgment, Steven Donziger told his expert team the following which, and again you can listen to and you did hear earlier from the Crude outtake that Mr. Bishop played you, he told them: "Hold on a second, this is Ecuador. You can say what you want, and we can get money for it because at the end of the day, this is all for the Court, just a bunch of smoke and mirrors and bullshit. It really is."

Well, Members of the Tribunal, eventually when

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12:24 the technical basis for the Lago Plaintiffs' case was indeed revealed to be just a bunch of smoke and mirrors, those environmental experts who had told Steven Donziger privately, confidentially before the Judgment was issued, there was no data to support a significant Judgment, they reaffirmed under oath and told and stated under oath exactly what they had told him before the Judgment was issued.

As to the $5.4 billion soil remediation Award in the Judgment, David Russell declared under oath: "I had seen no evidence of any widespread contamination, and the idea that the cleanup of the oil pits would require billions of dollars is nonsense. I am confident that the damages number in the Judgment has no basis in fact." The sworn testimony of David Russell, which is in this record.

The damage awards for groundwater remediation and potable water remediation in the hundreds of millions of dollars are equally lacking in any scientific basis. According to the sworn testimony of Stratus Expert Doug Beltman and again, the testimony of David Russell.

Turning now to whether there is any basis for the health-related awards in the Judgment. Again, in the billions of dollars, a $1.4 billion healthcare Award as to that and the Awards for excess cancer claims of $800 million, you again have the sworn testimony of Lago

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12:25 Plaintiff environmental experts who have said, in the case of Dr. Charles Calmbacher, he never found that any of the sites that he inspected had contamination to such an extent that it would endanger human health. And Doug Beltman concurred. He had never seen any scientific data that would show any adverse health effects caused by contamination--contamination from Petroleum Operations in the Oriente.

Now, Members of the Tribunal, these candid assessments of the lack of data to prove widespread contamination and human health risks from the Lago Plaintiffs' experts themselves is perfectly consistent with the findings of the Chevron experts from the Lago Case, many of whom are now experts in this arbitration case.

And for the convenience of the Tribunal, I have summarized who those experts are and their critical findings on this slide.

Most important and collectively, they establish that there is no legitimate scientific basis for the Judgment or any of the damage awards in the Judgment. What they do tell us is that TexPet performed the Remedial Action Plan, but that Petroecuador has yet to complete its share of the remediation work. And for that reason, we will find that there are areas within the former

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12:27 Concession Area that are impacted around the oilfield facilities, the well platforms because Petroecuador, while it has done some remedial work, it has not completed all of it.

But even as to those limited impacts, we still find that there is no drinking water contamination based on legitimate data as concluded by these experts. There is no human health risk.

But what has happened in the last 25 years and has been documented in the record that Claimants have provided is that Petroecuador has operated these oilfields for the last 25 years and has expanded them dramatically with the effect that the conditions in the Concession Area have irrevocably changed from the time when TexPet handed over operations in 1990.

Now, this brings me to my third point, which is the fact that Ecuador's new environmental Experts in this arbitration case cannot justify in a post hoc fashion the Judgment. I say that because their work is flawed at many levels and for many reasons, the key important ones of which I have summarized on this slide, and I will go through these points now briefly.

First, there is the fiction that the Ecuador Experts support the Lago Judgment, according to the Memorials from the Republic of Ecuador. Members of the

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12:29 Tribunal, respectfully, that is simply not the case. On this slide I quote from the LBG Report where they say: "The Judgment's assessment of damages was reasonable," and yet in the four reports that they have issued and I have put on this slide, not one of those Reports do they offer any endorsement of any of the damage awards in the Judgment. Not one of those reports and not one of the damage awards do they support.

Now, they dodge this issue by saying, well, quantum is reserved for Track 3, but Members of the Tribunal, this is not about quantum. This is about Claimants' case, which has now been fully established, that the amount of these Judgments--the damages in the Judgment, the damage awards themselves, are so excessive and unreasonable that they constitute a denial of justice, and that's the case that has been established by Claimants and their Experts, and that issue is completely unanswered by Ecuador's new Experts in this arbitration case.

A second major flaw in the work of Ecuador's Environmental Experts is that they completely ignore the Settlement Agreement and Remedial Action Plan by their own admission, claiming it to be irrelevant. They ignore that critical framework that should be considered in assessing whose activities caused a particular impact.

Third key flaw in their work is that they also

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12:30 ignore the operations and environmental impacts of Petroecuador, admitting as they say in this excerpt from their Report they've made no effort to try and allocate pollution liability between TexPet and Petroecuador.

But, Members of the Tribunal, as you know, Petroecuador has, indeed, operated these oil fields for the last 25 years with great effect. I am going to show you now an image or a screenshot from Claimant's mapping tool, C-2444. And I would ask to draw your attention to the screen.

In green, you see the green icons represent the well platforms that were constructed by the Consortium through 1990. Now, if you watch the screen, you will see the new red--the red icons represent the new wells that had been constructed by Petroecuador and/or Ecuador's State-owned oil companies since 1990. And as you can see with your own eyes, the operations of Petroecuador in the last 25 years have overwhelmed those of TexPet.

Now, taking this point and going from a high level to the facts on the ground, what do we know about Petroecuador's operations? Well, we know that Petroecuador has operated nearly every single facility that TexPet ever operated, almost all the well platforms and, indeed, every production station. We also know from its own publicly available information that Petroecuador

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12:32 has spilled over 125,000 barrels of oil throughout the Concession Area just through the Year 2009. And on an annual basis, it conducts over 338 well workovers at the platforms which create opportunities for spills on and off the platforms.

So, faced with this overwhelming record of impacts by Petroecuador, Ecuador's new experts purported to collect new samples from areas that they characterized as "TexPet only." But this exercise on their part is flawed for many reasons and deserves no weight by the Tribunal.

Some of the problems with this recently acquired data are listed here, perhaps the most important of which is that it was never available to the Lago Court. This is again evidence outside of the Lago record now being offered to justify in a post hoc fashion the validity of the Lago Judgment. It simply fails. But even to the extent that the Tribunal were to consider this data, it's very problematic because of the manner in which it was collected. It's a very limited and biased data set. And notwithstanding how it's been characterized by Ecuador and its Experts from TexPet-only areas, the opposite is true.

On this slide, I have listed the 13 sites where Ecuador's Expert LBG took new samples and the areas where they sampled at each site. And then in the third column,

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12:34 I have provided for you the key fact, and that is whether Petroecuador has operated these 13 sites or in any way, form or fashion touched them. And the truth is, Members of the Tribunal, when you look at the record evidence that is in this case, we find that Petroecuador has had some touch, some operation, some activity, at every one of these 13 cites. So they can in no way be classified as TexPet only sites.

And then when we look at the question of where were the samples taken? Were they taken from areas that TexPet remediated, those RAP areas, or were they taken from areas that TexPet was not responsible for remediating those non-RAP areas? Well, from these 13 sites, LBG, Ecuador's Expert, sampled in 32 areas, and of those 32 areas, 28 of them are non-RAP areas, for which TexPet had no remediation responsibility whatsoever.

So, this limited dataset tells us absolutely nothing about the remediation work of TexPet. If it tells us anything at all, it's simply about areas within the Concession Area that Petroecuador has yet to address.

Moving then on to the next major problem with the Ecuador expert's new work to try and make their case of widespread contamination and human health risk, they have to resort to extreme measures in terms of sampling protocols and protocols for how human health risk is

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12:36 calculated. There are many problems with their work, and I've summarize just a few here on this slide. But I leave you with this point of common sense: Does it really make sense that new experts coming to this Concession Area, 25 years after TexPet left it, that they could possibly find data to prove wide spread contamination and human health risk when the Lago Plaintiffs' multiple groups of Experts couldn't do that? It makes no sense. And when you put a microscope to the work done by the Ecuador's experts new work, you find it will not withstand scientific scrutiny.

The last point on this slide is the one I want to go to next. And that is the critical question, the important question of human health risk.

Although Ecuador's expert, Dr. Harlee Strauss, purports to calculate human health risk, I want to explain to the Tribunal that when you evaluate the epidemiologic evidence between exposure to petroleum compounds in the Oriente and adverse human health effects, when you do it using valid and widely accepted scientific protocols, as Claimant's epidemiologist, Dr. Moolgavkar, has done, you find there is no causal relationship between exposure to conditions in the Oriente and adverse human health effects.

I would note that Dr. Moolgavkar is the only expert who has actually done his study and published it.

12:37 It's been subject to peer review. And then when you take the judicial inspection data from the Lago Case and you apply it to a quantitative risk assessment Protocol, as Claimants' risk assessment and toxicologist expert, Dr. Tom McHugh, has done, you will also find from a quantitative perspective, there is no adverse human health effects to people in the Oriente based on the data that was collected during the Lago Case.

Now, contrary to these findings by these two highly qualified experts, Ecuador offers the testimony of Dr. Harlee Strauss and they characterize her opinions has having established "widespread human health risk from TexPet's operations." But, Members of the Tribunal, the facts are, when we give a critical evaluation to her work, we see just the opposite. If anything, she confirms the absence of human health risk for these reasons: First, she admits in her reports that she has no proof of any actual cancer or non-cancer health impacts to any person, any family or any neighborhood in the Oriente in the former Concession Area.

So, at most, what she is able to do is calculate a theoretical health risk, and she does that based only on the recently acquired data that LBG collected. And even then, only at limited pockets of nine sites--nine of 344 Concession sites--there are many problems and flaws with

12:39 her calculations, as you will be hearing in the coming weeks. But even those calculations are very limited and depart from widely accepted methods.

But even if the Tribunal were to give them any weight at all, they are based only on data from non-RAP areas. She does not calculate a human health risk from any area, any RAP area, that TexPet remediated.

Now, her findings of an absence of health risk based on the quantitative data actually correspond perfectly with the opinion of her colleague Dr. Grandiean, Ecuador's epidemiologist, who in his very first report after assessing the epidemiologic evidence, he too had to confess and acknowledge an absence of evidence to support any association between exposure to conditions in the Oriente and adverse health effects, though he urged the Tribunal to set aside that absence of evidence.

But Members of the Tribunal, as you know from your own experience, your own common sense, an absence of evidence is no evidence at all to support the health awards in the Judgment. And in a broader sense, that absence of evidence that we find from Ecuador's health related Experts characterizes the weight of the evidence that was in the Lago record about the fact that there is a lack of human health risk proven from exposure to conditions in the Oriente and actual adverse health

12:41 effects.

What I have summarized for you on this last slide and given you an enlarged copy of, are the expert reports that came from multiple sources and that were available in the Lago Case except for the new reports that had been submitted in this BIT arbitration.

You don't have to take Chevron's word for it. You don't have to rely only on the Chevron experts. What you find is a body of expert reports, many of which were placed in the Lago record and which come from the Lago Plaintiffs' experts themselves, which come from the Sacha 53 settling experts appointed by the Court, and which even come from some of Ecuador's own environmental investigation agencies. When you look at all of their work and you see that it's--I've organized their reports according to these key findings, we find an absence of evidence to support any claim of widespread contamination or human health risk, and for those reasons we can see that the damages awarded in the Judgment have no scientific basis and represent a denial of justice.

And with that, I will hand it over to my colleague, Mr. Paulsson, who will further discuss the denial of justice and the violation of the Bilateral Investment Treaty.

PRESIDENT VEEDER: Thank you very much.

12:42 Mr. Paulsson.

MR. PAULSSON: Members of the Tribunal, let's try to put this concatenation of outrages into some kind of a conceptual framework that shows us where all this will lead. I will seek to deal, in sequence, with three aspects of denial of justice: the legal standard, the ripeness of Chevron's claim and its merits.

I will also remind you of Ecuador's breaches of specific provisions of the BIT.

As shown by the evidence summarized this morning, the meltdown of the rule of law in Ecuador has left a depressing wasteland saturated with the five types of poison listed on the slide. What is the applicable international law standard? Many formulations seeking to define denial of justice were quoted in my Reports filed earlier in this case. I should pause to note that in light of the Tribunal's invitation that I join Counsel table, those reports are obviously not evidence and, as was confirmed in the Claimants' letter of June the 2nd, 2014, are not being cited as evidence, but, of course, the Claimants continue to rely on the Legal Authorities referred to.

One general formulation is that of the International Court of Justice in Barcelona Traction. Denial of justice occurs in the case of such acts as

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12:43 corruption, threats, unwarrantable delays, flagrant abuse of judicial procedure, a Judgment dictated by the Executives or so manifestly unjust that no court which was both competent and honest could have given it.

It seems particularly useful, though, to consider formulations that pertain to the specific manifestations of denial of justice in this case: First, bias against foreign litigants. In his well-known treatise on the diplomatic rights of citizens abroad, Edwin Borchard wrote that customary international law guarantees aliens "fair courts, readily open to aliens, administering justice honestly, impartially, without bias or political control."

A second type of denial of justice, very pertinent here, is the refusal to address and correct evidence of malfeasance. The proposition that this is an international delict has venerable antecedents. To take just one example, in 1886, the Commissioner in Coles and Croswell found that a Haitian Court denied justice when it refused to annul a conviction for theft that resulted from a corrupt process.

Closer to us in time, the European Court of Human Rights has consistently found countries to be in breach of the European Convention if their Appellate Courts do not have the power to correct First Instance Decisions tainted by bias. I refer you to the Kingsley case, whereas here

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12:45 complaint is made of a lack of impartiality in the first-instances court, the reviewing Court must not only consider the complaint, but have the ability to quash the impugned decision. That should certainly ring a bell with anyone familiar with the record in this case.

A third type of denial of justice: Improper influence by the Executive Branch. You have some citations on this slide, I hope. Note that one single letter evidencing undue influence was enough to condemn the Respondent in Petrobart versus the Kyrgyz Republic. Compare that with President Correa's constant and relentless public diatribes against Chevron and his emphatic resolute, triumphant endorsement of the Lago Agrio Judgment.

And, finally, a fourth type of denial of justice: The egregious misapplication of law, the legal absurdities discussed by Mr. Coriell, or an outcome manifestly inconsistent with the evidence before the Court, the factual absurdities discussed by Ms. Renfroe.

Flawed legal analysis and factual findings can, to use Fitzmaurice's words, evidence a decision which no honest and competent Court could possibly have given. And as held in the case of the Oriente, a decision given in direct opposition to so strong a preponderance of the evidence of testimony cannot be entitled to respect. It

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12:46 indicates strongly a pre-determination on the part of the Judge. I now turn to ripeness.

Despite the numerous and gross violations of due process embodied in the Lago Agrio Judgment, despite the failure of Ecuador's higher courts to correct or even consider them, and despite the ongoing efforts of the Correa administration to have the Judgment enforced abroad as a matter of declared highest policy priority, Ecuador insists that Chevron has yet to suffer any cognizable injury and that further remedies remain to be pursued within Ecuador. It's preposterous. The refusal of the higher courts to consider the evidence of fraud is itself a freestanding denial of justice. It's grotesque to present it as a justification for now sending Chevron on a wild goose chase under something called the Collusion Prosecution Act.

The denial of justice here was consummated when the Appellate Court in willful disregard of your Interim Measures Awards affirmed and certified the Judgment as enforceable in Ecuador and, more to the point, abroad. This proposition is at the heart of the case.

As Sir Hersch Lauterpacht wrote in his Separate Opinion in the Norwegian Loans Case, the requirement of exhaustion of remedies is not a purely technical or rigid rule. It is a rule which international tribunals have

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12:48 applied with a considerable degree of elasticity. The inquiry is inherently contextual. May I, therefore, ask you to put yourself in the Chevron's position on the 3rd of January 2012. That was the day when the Appellate Court in question, namely the Provincial Court of Justice of Sucumbíos, wholeheartedly affirmed Judge Zambrano's Judgment.

Let us engage in a mental exercise. You're Chevron, 11 months ago you had been ordered to pay billions of dollars on the basis of the say-so of a dishonest man wearing the robes of a judge, an opaque and interminable Judgment with not the slightest demonstration of exactly how the preposterously successful Plaintiffs had proven any damage whatsoever as a matter of elementary causation. Let alone how this added up to such a breathtaking amount.

You might have thought that this robed judge would be disavowed by any responsible public authority. The purpose of the exhaustion of remedies rule is to give the State in question the opportunity to disown the aberration and to nullify its effect on the victim. Frighteningly while statements by the President of the country would have made you nervous, particularly given the many reports of neutral international observers to the effect that the judiciary is an instrument of executive dictats. But today, on the 3rd of January 2012, is the opportunity for

12:50 Ecuador as a subject of international law to come to its senses through its appellate jurisdiction. Here is the test that matters: Does the rule of law obtain in Ecuador? I'll ask for your worst fears to come to reality, the Judgment is blithely affirmed in its entirety, every jot and tittle. Ecuador has no intention of disowning it.

From the President who uses Texaco as his whipping boy on his weekly basis, to every single official who has had the occasion to consider the iniquity of the Lago Agrio Judgment but instead lauded it, Ecuador has plainly indicated that there will be no remedy for Chevron.

This process of ratification starts with the appellate Judgment, so let me remind you of a few of its depressing elements.

First, the Appellate Court did not purport to reassess the evidence independently as a court of appeal, but instead deferred to the ostensible sound judgment, sana critica, of Zambrano in all material respects. Let me quote from Page 12. Article 115 of the Code of Civil Procedures states that evidence must be assessed as a whole pursuant to the rules of a sound judicial Judgment. In the present case, the trial court has complied with the provision just mentioned.

And now, Page 8. In the division's estimation, what the trial judge did in the appeal Judgment was exactly

12:51 this: Consider the evidence as a whole and not just the documentary evidence that the Defendant demands, and establish the facts in an indisputable and conclusive manner.

More from Page 12: It is the collection of information coming from various sources that undoubtedly has created in the trial judge the conviction of the existence of damage, allowing him at the same time to have a minimal margin of error in applying the interpretation method of sound discretion to assess scientific evidence.

And moving over to Page 13: The appeal Judgment proposed the detailed appraisal of all the body of evidence and finds the existence of environmental damages legally proved. The division considers the lower court's appraisal in this part to be coherent and of good legal logical judgment because it stems from the body of evidence presented in the trial to which the trial court referred precisely.

In sum, the Appellate Court deferred to the ghostwritten Judgment on all counts. You will search in vain in the Appellate Judgment for words like, for example, "soil" or "water" for any weighing of the evidence, for any justification of the billions awarded in damages except assertion. The appeals judges might have just as well written this: The deed is done. Let's not get involved.

12:53 Or, as the French say, courage, fuyons!

Second, the Appellate Court stated that it had no competence to consider Chevron's evidence of fraud in the procurement of that Judgment, although it provided no explanation for this apparent paralysis. That's the bell I hope I rang when I referred to the European Court of Human Rights Judgment a few moments ago.

But the Plaintiffs were not satisfied with the Appellate Court acting as Pontius Pilate. They wanted to act as a subservient accessory. So, they asked the Court for a clarification to explain that when it said we have no competence, it actually meant that it had, in fact, considered and rejected the evidence of fraud. All right. Thank you very much, responded the Appellate Court. That's exactly what we meant to say. And so the clarification order transformed no competence into the obedient finding that, yes, such allegations have been considered, but no reliable evidence of any crime has been found.

This all speaks for itself, except to note that the Appellate Court's contradictory ipse dixit was too outrageous even for the National Court of Justice, which preferred the lesser outrage--but still an outrage--of evasion. When it got ahold of the case, it ruled that the Court reviewing Zambrano's bombshell of a judgment after all did not have the authority to consider whether it was

12:54 fraudulent, and that was dispositive.

The assertion of impotence from both the Appellate Court and the National Court of Justice are on the slides.

At this moment, your Tribunal enters center stage.

You had already heard the Parties on the issue of whether irreparable harm would arise if Ecuador allowed the tainted Judgment to set sail around the world.

On the 16th of February, 2012, you issued the second Award on Interim Measures. In the fact of the Appellate Decision, this decision strengthened your earlier directive, moving from ordering Ecuador to take all measures at its disposal to prevent enforcement, now for it to take all measures necessary--necessary--to suspend or cause to be suspended the enforcement and recognition within and without Ecuador of the Judgments. This imposed an obligation of result.

What did the judges of the Sucumbíos Court do? The very next day, February 17th, the Provincial Court of Justice of Sucumbíos declared the Judgment to be enforceable. On March 1st, the Court attempted to justify its recalcitrance on the odd and unexplained ground that its immediate enforcement was required by human rights principles, an argument that popped up, it seems, like a Jack-in-the-Box. I quote: "The members of the division have no obligation to assume this responsibility under

orders from a commercial arbitration panel who do not consider the conflict of international obligations they generate by ordering measures that restrict human rights."

Two days later, on March 3rd, Correa publicly condemned the Tribunal's Second Interim Award. He said this: "And now a United Nations arbitration center, invoking the Bilateral Investment Treaty dated 1997, is trying to stay the sentence. They're setting in motion the UN itself to carry out a judicial monstrosity according to their interests. This is very serious, fellow countrymen. very serious."

Correa elaborated his meaning in a July 2013 speech to ALBA. Referring to your Interim Measures Award, he said: "This is outrageous. This is intolerable. These are the mechanisms of a new empire, the empire of capital, the new imperialism, or a double standard of boundless hypocrisy, using these international forums, arbitrations completely biased, corrupt arbitrators, to try and force our countries into submission."

I've tried in vain to understand on what basis Correa could declare urbi et orbi that Messrs. Veeder, Grigera Naón and Lowe are corrupt arbitrators. The only answer seems to be that he is the President and has the power to designate the guilty without explanation. I shudder to think what he makes of advocates who are not

convinced by his rhetoric.

All of this confirms the existence of a consummated delict. Professor Fawcett wrote in the British Yearbook in 1954: "The exhaustion of local remedies is necessary to establish beyond doubt that the wrongful act or denial of justice complained of is the deliberate act of the State, and that it is willing to leave the wrong unrighted."

Ask yourself the question: When has the State as a system, as an institution, made clear that it has no interest in correcting the outlandish denial of justice in progress? It is an uncontestable fact that Ecuador has never signified anything but a constant, explicit, indeed, militant refusal to acknowledge or correct the wrongdoing. And this comes from the Head of State, again and again, ever more stridently. Praising the Zambrano Judgment as the most important in the nation's history. Branding lawyers who advised Chevron of its rights as vende patrias. When is enough enough? When does a State lose the occasion international law gives it to undo a denial of justice? When is a denial of justice a deliberate act of the State, as Fawcett put it? When--what does one need more once the head of State has spoken and plainly articulated his contempt for international legal obligations?

Isn't there a world of difference between, on the

one hand, a routine first-instance Judgment which has been decided in disregard of an alien's right to due process but which has attracted no attention at all by higher national authorities of any stripe, and, on the other hand, an instance of denial of justice which the Head of State hails as the most important judgment in the history of his country?

The difference becomes even starker when the Judgment is dutifully affirmed on appeal without any consideration of the evidence that it was procured by fraud. When that Judgment is certified as enforceable in contravention of a binding order of an international tribunal and when the effective enforcement of that judgment around the world has been declared a matter of priority governmental policy, why are not the unequivocal statements of the Head of State in a country with a subjugated judiciary a sufficient and conclusive indication of the State's lack of interest in any opportunity to correct a Judgment of which it is, to the contrary, very proud?

Why is it not decisive that the head of State disaffirms any intention to countenance reconsideration?

Exporting the Judgment outside Ecuador was certainly a dispositive event. Ecuador's courts have no jurisdiction beyond the country's borders. They cannot

reverse a foreign court's decision to freeze assets or to enforce the Lago Agrio Judgment.

And so, your Tribunal recognized that Chevron faced irreparable harm when--when--the Ecuadorian judiciary declared the Judgment to be enforceable. You recognized this when you granted Interim Measures to prevent that eventuality. And this is what you wrote: There are increasingly grave risks that enforcement and execution of the Lago Agrio Judgment against the First Claimant with its subsidiary companies will imperil to a very significant extent the overall fairness and the efficacy of these arbitration proceedings.

The Declaration of the Judgment's enforceability did two things: It exacerbated the injury to Chevron and it rendered the Ecuadorian system powerless to correct it. With the remaining avenues of recourse rendered ineffective, Ecuador attracted international responsibility.

Gentlemen, as of this moment, there is no room left for the exhaustion of Ecuadorian remedies. The $9 billion Judgment has been set loose like noxious spores and it is no longer within Ecuador's power to contain them.

To use the words of the Ambatielos Tribunal, "Remedies which could not rectify the situation cannot be relied upon by the Defendant State as precluding an

international action."

Now, Ecuador's inconsistent versions about what additional recourse should have been pursued are quite revealing. Let me explain. After the Appellate Court's decision of January 3, 2012, Chevron filed a cassation petition to the National Court of Justice. In February of 2013, while cassation was pending, Ecuador, in its Track 2 Counter-Memorial on the Merits, confirmed that this was the proper course, and that Chevron could have its due process complaints heard by that National Court of Justice and subsequently the Constitutional Court.

This is what Ecuador told you. There are two effective remedies available to Chevron that it has failed to exhaust: Appeal to the National Court of Justice, which is currently pending. If that is denied, also an extraordinary action before the Constitutional Court. Like the National Court of Justice, the Constitutional Court can overturn the Lago Agrio Judgment. That's what they told you.

But the National Court of Justice, in its decision later that year affirming the merits of this Judgment, contrary to what Ecuador told you, stated that it did not have the authority to address fraud and, thus, affirmed without any inquiry into the Judgment's bona fides and thus disregarded the dossiers presented by Chevron. So much for

that remedy.

Now what did Ecuador do in these proceedings? It instantly backtracked. In its Track 2 Rejoinder, having never so much as whispered of it before, Ecuador proclaimed that the only possible recourse for judicial fraud all along had been something called a Collusion Prosecution Act claim, a separate and collateral action against Zambrano himself. How amazing is that? Would Ecuador's counsel with a straight face say that you haven't exhausted recourse against, let us say, Barclay's Bank, until you have brought a personal tort action against the Branch Manager who executed your purchase of the shares that went down? For that matter, do they see no irony in faulting Chevron for pursuing the very recourse that they once insisted was the proper path?

The CPA, the Collusion Prosecution Act, was first brought on stage as a deus ex machina by the National Court of Justice in an attempt to justify its claimed paralysis. It was an afterthought, a fig leaf. As a purported remedy, it fails at several levels.

For one thing, although Ecuador seems to posit a CPA claim against Zambrano, this would not address the full measure of the delict, which goes well beyond the ghostwritten Judgment itself. Consider the falsified Calmbacher Report. The Cabrera fraud. The Government's

anti-Chevron extortion campaign. With different actors involved in the separate facets of this expansive fraud, Chevron would need to bring not one but several independent actions under the CPA.

Ecuador's 11th-hour remedy thus stands athwart international law which does not require Claimants to pursue oblique and collateral avenues of relief. Something as serious as fraud in the Judgment must, in any functioning system, be a central issue on direct appeal, if not the central issue.

The refusal of the appellate and cassation courts to consider Chevron's evidence of fraud cannot be reconciled moreover with Ecuador's lex specialis promise to provide effective means for the vindication of rights as set forth in Article II(7) of the BIT.

Both Parties agree furthermore that the doctrine of ultima ratio applies here, meaning that actions under the CPA are available only where there is no other potential recourse. As explained by Dr. Coronel, one of the experts on Ecuadorian law whom Ecuador has not chosen to call here, the Appellate Court had--he's very clear on this--the Appellate Court had the constitutional power and duty to consider the evidence of fraud presented by Chevron.

In its Rejoinder, Chevron does not dispute the

import of constitutional commands such as the right to a fair and transparent proceeding. It instead attempts to delineate a point of procedure and a footnote, Footnote 116: If evidence of the fraud is contained within the case record itself, the Appellate Court, it says, can consider it. If instead the evidence of fraud is extrinsic to the case record, the only recourse is the CPA.

In other words, Ecuador concedes that Chevron would have satisfied the exhaustion requirements with its direct appeal if only the proof of malfeasance here were contained in the record of the case itself.

What type of system is this? The fraudulent Judgment does not speak its name. The guilty party doesn't produce evidence of the fraud because it wants the fraud to be successful. The innocent party does not produce it because the fraud is secret, and it is ignorant of it. At least in theory, furthermore, the Constitution of Ecuador is supreme and must be applied directly, not subordinated to rules of procedure. This is just double speak. Ecuador is unable to cite any authority or any examples of this esoteric distinction.

Let us nonetheless accept arguendo Ecuador's unattractive assumption that its judicial system positively prevents appellate courts, as a matter of procedure, from considering whether the judgment under review was corrupt,

01:07 procured by fraud. Even under this dubious hypothesis, it is undisputed by Ecuador that the CPA Court could not--cannot--stay enforcement of the underlying judgment during its review. Page 39 of the Rejoinder. That makes this already implausible remedy perfectly pointless.

Chevron, please recall, did try to stay enforcement. But its entreaties were rejected by both the Appellate Court and the National Court of Justice. Without a stay, the CPA is not a remedy. It's a detour, and a lengthy one at that.

Ecuador concedes that it typically takes almost a year-and-a-half just to get a first instance judgment under the CPA--Page 40 of the Rejoinder. That would be followed by several more years of appeals which, in this case, would go to the very same appellate courts, appellate and cassation courts, that emphatically affirmed the multi-billion dollar Judgment in the first place without showing any interest in the proof of its corrupt origin.

Ecuador's suggestion of sending Chevron down the CPA rabbit hole is perfidious. It would serve to tie the hands of this Tribunal for several years while President Correa continues his campaign to promote the Judgment's enforcement abroad. International law is not so anemic.

Recall here that in addition to pursuing recourse before the National Court of Justice and the Constitutional

01:09 Court, as Ecuador once recommended, Chevron transmitted evidence of fraud to the Office of the Prosecutor General as it became available. As Mr. Bishop recounted, while Chevron has been accused by the Prosecutor General of malicious--of making reckless and malicious accusations, no action has been taken against any of the Ecuadorians implicated by the evidence.

For the most part, the Prosecutor General has been content to simply ignore the evidence presented to him. But in September 2013, he took the unusual step of actually rejecting and returning three boxes of Judgment ghostwriting evidence, stating, as if it were an explanation, that the case in question is a civil proceeding in which the Prosecutor General office does not participate. No interest in criminal activity. That's Exhibit C-2305.

The official investigations of the Office of the Prosecutor General does continue to languish, going nowhere slowly. This is an exercise in hypocrisy. There are, in short, no effective remedies in Ecuador for the injuries Chevron has suffered and may suffer as a result of Ecuador's breach of the Tribunal's Interim Awards. And this, of course, assumes that Chevron is running on a dry race track when it steps into an Ecuadorian court room, as to which I hardly need say anything at all.

01:10 As has been well documented in this arbitration, after ten years of repeated restructurings and removals, the judiciary is now securely under the thumb of the President. Although Ecuador attempts to spin the successive reorganizations as progressive reform, they have only further destabilized the judiciary and allowed for greater political intervention through various removals and appointments. Recall the statistics: Two-thirds of the Ecuadorian judiciary sanctioned by either removal, suspension, fines or reprimands in the course of 18 months in the Years 2011 and 2012.

You may have heard the proverb, perhaps unfairly attributed to the Chinese, but certainly an ultimate manifestation of Machiavellian thought: Kill one, warn a hundred. Judges know full well the personal and professional risks they would be taking if they were to rule against the Government's interests. This is doubtless what Donziger told his friends--that the trial and appellate judges hearing the Lago Agrio Case don't have to be intelligent enough to understand the law, just as long as they understand the politics.

The politics here were not difficult to understand. Correa publicly called Chevron an enemy of the nation. Chevron must be held liable, with a sanction to be imposed in the hands of the courts. Enforcement of the

01:12 Judgment is today a matter of first priority for the Government, and Ecuador's efforts to coerce Chevron into an inequitable settlement continue unabated.

Earlier this month, April 8th, Correa tweeted to an article from the Plaintiffs' NGO--that's Amazon Watch--and wrote "the world should know Chevron, corrupt and corrupting company."

Given the turmoil in the judiciary over the past 11 years and the direct political interference in the Lago Agrio Case, it is risible--it is risible--for Ecuador to be speaking of a presumption of regularity. It was precisely the institutional weakness and corruption of the judiciary that allowed the conspiracy between Plaintiffs and the Correa Administration to flourish.

But the denial of justice and its consummation does not require you to issue sweeping criticisms of Ecuador's entire judicial system, however deserved they may or may not be. It is more than enough to observe what the courts have done in this case and how the highest authorities of State have applauded their misdeeds in this case. And how both the courts and the head of State have shown their contempt for your Tribunal and for international law.

Finally, some brief observations on the merits. The details of this massive denial of justice have been set

01:13 out in the Memorials. I need not say very much at all, particularly in wake of the presentations this morning. You see key references on the following slide. Your Tribunal also has the benefit of the decision issued by the RICO court in New York. After conducting a seven-week trial, Judge Kaplan meticulously documented the evidence that led him to conclude that the decision in the Lago Agrio Case was obtained by corrupt means.

It is noteworthy that Judge Kaplan's conclusion was reached primarily on the strength of evidence obtained outside of Ecuador, mostly through U.S. discovery proceedings. That is hardly surprising but noteworthy. It is not surprising because of Ecuador's refusal to investigate the fraud in Ecuador. It's offered various changing and contradictory reasons for stonewalling Chevron in its effort to obtain relevant evidence in Ecuador. The stance of the appellate jurisdictions has hovered over these proceedings like something Lewis Carroll might call the "Cheshire" remedy. You are told it's there, but when you approach it, there is no remedy, only its mocking smile.

Ultimately, unable to respond to the evidence that Chevron has gathered elsewhere, Ecuador's courts sat stone dumb. Ecuador's counsel today nitpicked feebly at the margins of select portions of the overwhelming evidence

01:15 against them, but the fact is that this fraud was so big that Chevron has remarkably been able to prove it through evidence obtained almost exclusively outside Ecuador.

The federal judge in North Carolina who granted Chevron the discovery into the fraud that was flatly denied in Ecuador said that this 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.

Across the Atlantic, the Court in Gibraltar that heard the case against the Plaintiffs' offshore funders in 2014 refused to give res judicata effect to the Ecuadorian Appellate Judgment on which Respondent places so much reliance here, explaining that, I quote, "if the Appeal Courts in Ecuador had anything before it like the evidence which has been put before me, it is, indeed, surprising on the face of it that at the least a rehearing was not ordered. It would be difficult to have confidence in an Appeal Court which made the findings which it did and upheld the First Instance Decision if the Claimants' allegations are correct."

Our written materials show that the Ecuadorian Constitution obliged the appellate and cassation courts--you see it on the slide--obliged the appellate and cassation courts to address Chevron's allegations of fraud

01:16 and corruption. But even if the Ecuadorian Constitution had been silent on this subject, and even if its Code of Civil Procedure like none other in the known universe obliges its judges to hear no evil, see no evil, speak no evil, there has still been a denial of justice. A judicial system that is incapable of addressing prima facie evidence of judicial fraud falls below international standards. That is not a legitimate appeals process. It violates any conception of due process.

I pause to note Ecuador's remarkable assertion that the actions of Cabrera and Zambrano cannot be attributed to it. This ignores that all of their malfeasance was performed in their official capacities, Cabrera as an auxiliary of the Court, Zambrano as the Presiding Judge.

In all events, as explained in the papers, Ecuador is an undeniably responsible for the Judgment, that is the sum product of their acts and omissions.

Ecuador's challenge to this Tribunal's jurisdiction over the denial-of-justice claims is equally frivolous. There is jurisdiction under Article VI(a)(1(a)(3) of the BIT because the denial-of-justice claims concerns litigation arising out of and relating to the investment and the relevant investment agreements. That is the 1973 Concession, the 1995 Settlement that this Tribunal

01:17 has held are inextricably linked.

Ecuador furthermore cannot be permitted to blow hot and cold on Chevron's status. Having held Chevron liable for TexPet's alleged activities under the '73 Concession on an alter ego theory, it cannot now be heard to deny Chevron the benefits of international law attached to that investment.

In addition to constituting a denial of justice, Ecuador's conduct also violates other provisions of the BIT, including effective means, Fair and Equitable Treatment, full protection and security, arbitrary treatment and non-discrimination. You have the relevant pleadings--the citations to the pleadings on the slide.

Now, a discussion of the merits would be incomplete without saying a few words about remedies.

A combination of three distinct remedies is necessary and appropriate to address the uniquely grave circumstances in which Chevron finds itself today.

First, because it is a denial of justice, the Lago Agrio Judgment must be declared a nullity under customary international law.

Second, Ecuador must be instructed to take all measures necessary to prevent enforcement of the fraudulent judgment in Ecuador or abroad.

Third, Chevron is entitled to the damages

traceable to Ecuador's breaches of international law in an amount to be determined in Track 3.

Of the three requests, the first is by far the most important. As a result of Ecuador's willful breach of the Tribunal's Interim Measures Awards, Chevron now faces the threat of multiple enforcement actions around the world. The remedy must be tailored to this reality: Ecuador has made clear enough through its statements and actions on this and other arbitrations that it will not comply with international law obligations. One must therefore be realistic about the value of an injunction or of a monetary Award.

You've already heard about these three remedies in the Track 1B Hearing and Mr. Kehoe will in all likelihood have more to say about them at the conclusion of this Hearing. It's basically a legal argument which does not depend in any measure on the testimonial evidence, so it naturally seems to belong in the closing arguments.

But I wish to give notice that when we get there I will also ask for the opportunity to say a few words about Ecuador's remarkable effort to tempt you to conduct your own retrial of the Lago Agrio Case pursuant to what they present as their offset theory.

There is no precedent for such an outlandish event, and that is hardly surprising. It would add to the

requirement of exhaustion of remedies, the need for the International Court or Tribunal to engage in a hypothetical reconsideration of the merits imagining how the case against the foreigner would come out if one eliminated the unfair elements.

This would mean the denials of justice could be consummated without cost. Most victims do not mount international cases anyway, and if a victim did and won, all that would happen is that the case starts over again.

So much is wrong with this theory that it would take more time than I have to deal with it in any detail. I will simply make one quick observation right now because it takes the problem off the table instantly: The argument in these proceedings is not ripe. The offset theory could apply only with respect to the Claimants' request for monetary damages.

Of course, the prospects of Ecuador paying billions of dollars in compensation are bleak. Who could believe that Ecuador will compensate future harm that it now refuses to prevent? It's clear as day, isn't it? Through its offset theory, Ecuador is prematurely seeking a reduction in damages that it never intends to pay, but quantum has been reserved for Track 3.

To conclude our presentations, I find it impossible to improve upon what Professor--now Judge--James

Crawford said on behalf of Chevron at a Hearing on Interim Measures held here in Washington in February 2012. This is what he said:

If Ecuador had actually applied its constitutional values much flaunted during the course of this litigation, we wouldn't be in this situation. If Chevron had had the constitutional rights to an impartial and independent judge providing due process, we wouldn't be here. The same is true if the various responsible branches had investigated and prosecuted the bribery and fraud in connection with the Cabrera Report and the Judgment and thereby protected Chevron's rights as a litigant. It's precisely because Ecuador has constantly ignored its own Constitution, laws and procedures, as well as the BIT and international law, that we have been forced to bring this case.

As Mr. Pate has repeatedly told this Tribunal in his various appearances before you, Chevron has no desire for conflict with any sovereign, nor can I imagine is this Tribunal anxious to find a sovereign in breach of its obligations under international law. But as Professor Crawford explained, Ecuador's conduct has left no choice. The evidence here is overwhelming and the task at hand is clear. If international law is to maintain its force and relevance, the travesty of the Lago Agrio Litigation must be condemned and sanctioned in the strongest possible

terms.

The narrative of this case is that of a massive effort to shift liability from Petroecuador to Chevron, to ignore settlement agreements, legal requirements, basic notions of justice and fairness, all so that the State could shirk its own cleanup obligations and so that unscrupulous lawyers and their funders, aiders and abettors could make a lot of money. So, they procured the Lago Agrio Judgment.

The crime against the indigenous population may be real and it may be tragic, but that crime is the indifference of a government in far-off Quito, happy to act on the principle that the subsoil hydrocarbons belong to the State and not to the local populations, with the result that very little of the riches paid to the coffers of the central government from the sale of output of the wealth--from the wells operated by Texaco, an amount which is nearly 50 times greater than the income to Texaco itself, ever made its way back to the impoverished Oriente.

Now a scapegoat with deep pockets has been found, but this is a case where lawyers don't deserve their title, where supposedly independent officers of the court are for sale, and where so-called "judges" have no shame. What they gave birth to in this case cannot be called a judgment at all. It's a fraud masquerading as one.

And if it were allowed to stand, to play that role as a court judgment in enforcement courts around the world, then the U.S.-Ecuador BIT would no longer serve as a mechanism for investment protection. Because if the BIT cannot stop a State from destroying the value of an investment through bribery and ghostwriting and pressure tactics and manipulation of the judiciary, and if all this can be shielded from the usual consequences simply because it was accomplished partially through judicial acts, then a State cannot not be held to its promises not to engage in extortionate behavior of this kind. And the cost of investment would inevitably rise, to the disadvantage of the poor who will ultimately suffer from the erosion of the rule of law and the drying up of foreign investment.

Is international law an illusion? Today, gentlemen, you are its guardians.

Thank you. That concludes the Claimants' opening presentations.

ARBITRATOR LOWE: If I can ask a question for clarification, and you said that the denial of justice was consummated when the Appellate Court affirmed and ratified the Judgment as enforceable in Ecuador. And should we understand that as meaning that, prior to the date of the Court Judgment, January 2012, there was no denial of justice?

MR. PAULSSON: Of course there was. Hence the inquiry into whether or not there is a possibility of reversing it. There was a denial of justice both in the Lago Agrio Judgment and in the conduct of the State itself in seeking to procure judgments in the conditions that I've talked about.

ARBITRATOR LOWE: It's perhaps a point that I at least would welcome a little more being said on when we come to the closings, but the question of the dates at which the breaches of the Treaty are said to have taken place. In the light of the fact that the Notice of Arbitration was put in in September 2009 is, I think, a technical-legal question where I'd appreciate some guidance from the Parties.

MR. PAULSSON: Thank you. It's noted.

PRESIDENT VEEDER: We have now come to the end of the Claimants' opening oral submissions. We will now break for lunch. We shall be back at 2:30 to hear the Respondent's opening oral submissions.

(Whereupon, at 1:28 p.m., the Hearing was adjourned until 2:30 p.m., the same day.)

AFTERNOON SESSION

PRESIDENT VEEDER: Let's resume.

The Respondent has the floor for its opening oral submissions.

OPENING STATEMENT BY COUNSEL FOR RESPONDENT

MR. BLOOM: Thank you.

The Honorable Attorney General of Ecuador.

ATTORNEY GENERAL GARCÍA CARRIÓN: Thank you, Mr. President, Members of the Tribunal.

I address you in my capacity as Attorney General of the Republic of Ecuador, on behalf of my country, in order to submit the Republic's arguments.

For years, my country has been portrayed by Chevron both in this arbitration as well as in other judicial actions related to the environmental damages in the Ecuadorian Amazon in a manner that has no relation to reality. The Ecuador described by Claimants within the different scenarios of the judicial disputes and as part of their public relations campaign is an Ecuador that only exists in Chevron's imagination.

The truth of the matter is that Ecuador's courts have always been available to Claimants as they have been for any national or foreign investor, and Claimants have availed themselves of such right, once and again not only with respect to the environmental case, but also with

respect to other cases--with results which have been favorable to Claimants.

Claimants cannot ignore their many legal victories in Ecuador when simultaneously comparing accusations of fraud and corruption in every single legal defeat. At present Claimants still have a pending extraordinary action for protection before the Ecuadorian Constitutional Court.

And while Claimants paint Ecuador's judiciary with a broad brush, a study made in 2014, sponsored by the United States AID and carried out by the Latin American Public Opinion Project found that Ecuador actually now ranks first in South America and fifth in all of the Americas when it comes to citizens' trust in the national government's capacity to enforce the rule of law. Grouping Ecuador with the United States and Canada, the study observed, and here I quote, "that a pattern stems out of Ecuador, consistently registering among the region's highest levels of trust."

Notwithstanding the above, Claimants described the judicial system in Ecuador in a manner not consistent with reality and the existing studies using political actors opposed to the Government as if they were impartial legal experts; the same way as Claimants seek to portray the distorted image of Ecuador, their description of the

environmental disaster in the Oriente bears little resemblance to fact.

LBG Expert Reports submitted by Ecuador in this arbitral proceeding showed the existence of substantial contamination in the Ecuadorian Oriente. Notwithstanding their claims to the contrary, an extensive portion of that contamination is directly attributable to TexPet and Chevron. The information obtained by the Republic's legal representation in the 1782 actions in the United States of America, including the written and audiovisual Registries of the Claimants' pre-inspection of the contamination area demonstrates Chevron's conduct both as a party to the litigation, as well as their exploration exploitation practices. Suffice for now to recall the existence of thousands of pages and numerous hours of videos made available to this Tribunal that demonstrate how Chevron implemented a plan aimed at hiding from the Court the environmental pollution caused by TexPet and Chevron.

Honorable Members of the Tribunal, there is an obvious reason why Claimants opposed a site visit for so many years. Claimants do not want this Tribunal to evidence the reality of the contamination caused by TexPet in the Oriente in Ecuador. The Tribunal should have the opportunity to observe that which served as the basis for the Ecuadorian Court's decision in the Lago Agrio

Litigation. The refutable evidence of the damage caused by the Claimants, which is still visible in the region, will be verified in the site visit scheduled for June this year.

In 2009, when these arbitral proceedings were initiated against the Republic, Claimants' arguments were different, but they have mutated in such a form that their initial claims are now unrecognizable, evidencing that their arbitral claim was filed prematurely.

In the course of these proceedings, Claimants have incorporated arguments about the standard of protection and effective means, the purported ghostwriting, and in general the denial-of-justice claims regarding decisions that had not been issued to their initial claim of breach of the Settlement Agreement.

Claimants now submit to this Tribunal Mr. Guerra's testimony, who comfortably lives in the United States at Chevron's expense, and request that this Tribunal grounds its decision on the testimony of a person that recognizes having changed his version of the facts in several occasions and in whom Claimants have tried to use as their star witness without any type of shame due to the conditions under which he is being protected by the Claimants. Ecuador has had to defend themselves for a very long time during this arbitration as a result of a

private litigation between Chevron and the Lago Agrio Plaintiffs, but it was TexPet and Chevron, however, who dragged Ecuador to this dispute to which it is not a party, and now pretending to have this dispute in connection with public statements by Ecuadorian authorities that have nothing to do with the administration of justice is just another maneuver by the Claimants that are ignoring the efforts in making any efforts to have a negative impact on the name of Ecuador.

In the midst of all of the noise and all of the incriminations and unfair accusations by Chevron against Ecuador, it is all too easy to forget the fact that there are real victims whose rights may be harmed in a proceeding to which they are not a party, the same way as their right to obtain reparation in the courts of the United States was frustrated. The reality is that Chevron and TexPet do not want that the real injured parties be heard at all.

As we have stated repeatedly and you will hear now, the Republic has many concerns about these proceedings. We believe it is clear that there can be no jurisdiction over an alleged investment dispute involving Chevron because Chevron never invested in Ecuador. As this Tribunal correctly found, Chevron is not a party to an investment agreement.

We believe that it is equally clear under international law that Claimants' claims are deficient because Chevron has chosen not to exhaust the remedies available to them in Ecuador filing the Request for Arbitration prematurely. There can be no serious doubt that Ecuador's collusion prosecution action act is specifically designed to offer redress for any legal adjudication that is the product of fraud.

The Republic of Ecuador has appeared before this Tribunal during these last six years despite its Objection to Jurisdiction in the hope that the Tribunal finally reaches a decision that objectively applies the principles under international and Ecuadorian law.

I now give the floor to Mr. Bloom, who will continue with the Republic of Ecuador's argument, and I thank you, Mr. President and Members of the Tribunal.

PRESIDENT VEEDER: Mr. Bloom.

MR. BLOOM: Thank you.

You may remember about five years ago, in May of 2010, when this Tribunal convened the initial procedural meeting in this case, it combined that procedural meeting with what turned out to be the first of many successive interim-measures hearings. We had no idea back then what we were in store for.

From the very beginning, Ecuador found itself in

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02:38 the difficult position of constantly responding on each occasion quite quickly to allegedly newfound evidence that Claimants contended required on each occasion your immediate attention or else they would face imminent and dire consequences.

At the same time Claimants were in the midst of amassing quite literally millions of documents, both through their investigators and through their respective 1782 actions around the United States, about 35 or 40 in all. We, at least, were on a carousel of sorts, a carousel that was moving much too fast. As a practical, I think as we all know, it is far easier and certainly faster to make allegations than it is to consider and settle upon a reasonable fact investigation, to conduct that fact investigation with the resources available, and given the time afforded. But notwithstanding Claimants' repeated assertions that it would suffer dire consequences if the Lago Agrio Judgment were to become enforceable, to this day, it has paid not out a single dollar in any enforcement action to the indigenous Plaintiffs, nor is there even today a reasonable prospect that it will have to do so in the imminent future.

But by driving the arbitral processes, as they did, by articulating their narrative with a certainty that was mirrored today, Claimants sought to prompt the

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02:39 Tribunal to take measures based on this Tribunal's understandable sense of justice perhaps just a bit more than, say, on principles of international law. But the facts are not as Claimants present, and they never were.

Weeks before this arbitration was filed, on August 31, 2009, Chevron went public in an extraordinary way to publicize their bombshell allegation that it had videotaped evidence of a bribery scheme implicating the then-Presiding Judge, Judge Núñez. You may recall that it took time, a lot of time, time for us to subpoena documents, subpoena witnesses, subpoena Mr. Borja for us to establish that the two alleged good samaritans who conducted the operation were, in fact, a Chevron contractor named Diego Borja and a convicted drug felon by the name of Wayne Hansen. We later learn that Borja availed himself of Chevron's unique witness protection program and received more than two million dollars in benefits.

Things are not always as they seem. He himself was quoted as saying there was no bribery, and a U.S. Federal District Court Judge, then a Magistrate, likewise found that the tapes he reviewed contained no evidence that Judge Núñez was bribed. And I refer you to our Track 2 Counter-Memorial at Appendix C.

So, too, Claimants once argued that the

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02:41 indigenous Plaintiffs never even authorized the environmental lawsuit, only to later drop that argument when the Plaintiffs all reaffirmed that they, in fact, had authorized that lawsuit and reaffirmed their commitment to the case publicly.

And you may also recall Claimants repeatedly declared that the Government of Ecuador, directly and indirectly, inserted itself into the decision-making processes of the Lago Agrio court, but now we learned from their star witness, from Mr. Guerra in a recorded conversation that he had with Chevron's investigators, that the Government of Ecuador, in fact, never interfered. In his words, "They never butted in. Never."

Now, we will spend the better part of the next several weeks deconstructing the Claimants' case. Simply, their allegations are not backed up by the very evidence they cite oftentimes out of context, but we'll have that opportunity.

The Claimants' claims fail in the first instance as a matter of law. We on this side of the room represent a sovereign, and if this system of BITs is to flourish and I would submit even to survive, the law must be applied in accordance with the intent of the Contracting Parties, here the Republic of Ecuador and the United States; otherwise, the credibility of the BIT system itself is

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02:43 damaged because, frankly, we lose the buy-in, the confidence of the respective States.

But while the law must be applied consistently, Claimants time and again have asked this Tribunal to apply legal principles differently in this case than every other treaty case. Time and again, Claimants seek novel exceptions to bedrock international legal principles. They ask you to grant treaty rights to Chevron and assert jurisdiction over Chevron's claims, even though Chevron never invested even a single dollar in Ecuador. In so arguing, Claimants are asking this Tribunal to go where no Tribunal has before gone.

Claimants likewise ask this Tribunal to disregard principles of exhaustion, for example, on the basis that the Lago Agrio Judgment as currently enforceable, notwithstanding that has never been an exception divined by any Arbitral Tribunal and notwithstanding that they alone had the power to stay the Judgment about which they now complain. And when everything else fails, they argue for futility, which is their catch-all, their catch-all defense.

Five years ago, when I first appeared before you, I noted that the indigenous Plaintiffs, Ecuadorian citizens, had by then been seeking to have their day in Court for the better part of 17 years. The clock

continues to run, and we are now at 22 years and counting. According to media coverage of yesterday's RICO proceeding, it sounds like that Court had some of the same concerns: 22 years and counting. And whatever else might be said about the underlying litigation, it is about contamination. There is a tragedy that has unfolded and that is still unfolding.

Precisely because of this proceeding, the Attorney General's Office and outside counsel and our experts have spent substantial time trudging along in the rainforest, and you know what? The Lago Agrio Court got it right, and we're going to show that in part during this Hearing and in Ecuador. There is widespread contamination.

And I think our experts will tell you that the more they studied, the more they saw, the more they reviewed Chevron's own data and all of the available data, the more they recognized exactly how bad the situation is. That's what the Lago Agrio Case is about.

And if you recall, we provided Witness Statements from a couple of residents of the Oriente. Chevron did not call them to testify. They do not want this case to have anything to do with their plight. Claimants are, instead, using this proceeding--and make no mistake about it--as an insurance policy so that it will never be held

to account for the contamination for which they are truly responsible. But if justice is to be served, this Tribunal cannot ignore the contamination for which Claimants are responsible. Today and over the next couple of weeks, you will hear from new voices on this side, some from Winston, some from our distinguished colleagues from Dechert, and the office of the Attorney General.

Let me briefly just take you through what we anticipate our presentation to be. Part one, we're going to be dealing with the jurisdictional issues over Chevron's claims. And it is a point to note that this was an issue that took about 30 seconds of Claimants' presentation. They hurried up through the law, we would submit, because they want their rather tainted narrative to drive the law in this case.

After we deal with the lack of jurisdiction over Chevron, we're going to turn to the failure to exhaust local remedies. At that point, we will ask for a break. We have Part 3 which--I'm sorry, after Part 3, we will ask for a break. Part three we're going to deal with the lack of any viable treaty claims. Then we will ask for a break. In the last session, we're going to deal with specifically the factual predicates alleged by Chevron to constitute their alleged denial of justice, and that's going to have several parts.

This is in your slide packet, so you will be able to follow along. I will note that we will also present a response to Mr. Wade as it relates to Track 2, and I suspect that we will begin with that in our second session. On that Note, I'd like to turn the floor over to my colleague, Mr. Silva Romero.

MR. SILVA ROMERO: Thank you, Mr. Bloom, Mr. President, Members of the Tribunal. I shall now address Ecuador's jurisdictional argument.

Put simply, Ecuador has been forced to defend itself against a massive and very costly lawsuit before an international investment--and I say "investment" twice--Tribunal, despite the fact that the Tribunal, we say, has no jurisdiction over TexPet's and Chevron's claims.

As Mr. Bloom just said, Claimants didn't say a single meaningful word on jurisdiction this morning because they want you to forget what an investment arbitration is made for. We shall see what they say during their Closing Arguments at the end of these hearings. And we will see if they make new arguments.

Because as you have noticed, Members of the Tribunal, in a familiar pattern, every time Ecuador responds to one of Chevron's arguments, including jurisdictional arguments, another one shows up. In the

interest of time, however, I will address only Chevron's own claims as direct investor, and I refer to Ecuador's written submissions for all other jurisdictional arguments.

My presentation today, Members of the Tribunal, will establish that Chevron has never had any investment or Investment Agreement in Ecuador with any relationship to its denial-of-justice claim. With respect to Chevron's denial-of-justice claim, the central facts are very clear:

First, Chevron has never contributed anything of value to Ecuador's economy, much less participated in the oil concession that was the source of the Lago Agrio Litigation, as you can see, for instance, at Paragraph 4.25 of the Tribunal's Third Interim Award on jurisdiction.

Second, Ecuador's consent to investment arbitration extends, as you know, only to claims arising from investments of economic value and from investment agreements.

From these very two simple propositions, it follows, Members of the Tribunal, that you don't have jurisdiction ratione materiae over Chevron's denial-of-justice claims.

Now, before addressing Ecuador's objections to jurisdiction in relation to Chevron, I will briefly refer

to the Tribunal's Third Interim Award on jurisdiction. In that award, the Tribunal made a narrow finding in Chevron's favor. It decided that TexPet itself is an indirect investment of Chevron's covered by the Treaty, which means that Chevron can bring indirect claims with respect to Ecuador's treatment of TexPet. This narrow finding, however, has, we submit, no consequences for Chevron's denial-of-justice claim. The Award explicitly excluded the Lago Agrio Litigation and related claims from the scope of its conclusion about jurisdiction.

As you can see on the screen, "The Tribunal reserved for the future any Final Decision in regard to the Respondent's jurisdictional objection to Chevron's own claims as a direct investor." This is Paragraph 4.27.

Similarly, although the Tribunal later found that Chevron was a Releasee under Ecuadorian law, it didn't decide whether Chevron had a covered Investment Agreement that could support jurisdiction for its Lago Agrio claims and related claims under the Treaty. In short, the Tribunal decided to postpone until now all of the most important questions regarding jurisdiction in this case.

For these questions, contrary to what Claimants alleged in their last written submissions, the prima facie standard that Chevron enjoyed during the jurisdictional phase of the arbitration does not apply anymore. As this

Tribunal announced in its Third Interim Award on jurisdiction, Chevron now bears the full burden of proving its claim of jurisdiction, and faces, we submit, an insurmountable task.

Turning now to Ecuador's Objection to Jurisdiction, I will advance two very simple propositions. I will begin my presentation by explaining why Chevron has no investment agreement that could possibly generate jurisdiction in the circumstances. I will then make clear why Chevron has no investment relevant to the Lago Agrio Litigation and to its related denial-of-justice claim.

Turning to my first proposition, Chevron has no investment agreement. To begin, Chevron contends that the Settlement Agreement is an investment agreement conferring the Tribunal with jurisdiction over its denial-of-justice claim. We say that it is not for two different reasons:

First, for there to be jurisdiction under Article VI of the Treaty, Chevron not only must be entitled to certain contractual rights under the Settlement Agreement, but also the Settlement Agreement must be an Investment Agreement. Contrary to what Claimants imply, this question wasn't settled by the finding that Chevron was a Releasee. As the Tribunal indicated in its recent decision on Track 1B, "the Respondent strongly denies all claims for denial of justice on the merits and also

disputes the Tribunal's jurisdiction to decide any such claims in this arbitration. Those parts of the Parties' dispute cannot be decided, even indirectly, by the Tribunal in this Track 1B".

Even if the Tribunal found that Chevron was a Releasee, the Tribunal also found that the 1995 Settlement Agreement, by itself, was not an investment agreement. It found specifically that it is only when that 1995 Settlement is considered along with the 1973 Concession Agreement that it forms part of an investment agreement. This is Paragraph 4.36 of the Third Interim Award on jurisdiction.

The Tribunal also found that Chevron was not a party to any Concession Agreement. This is Paragraph 4.38 of the Third Interim Award on jurisdiction.

As a consequence, Chevron has failed to establish that it is a party to any Investment Agreement.

Second point, and ex abundante cautela, Chevron's argument rests on the premise that the Lago Agrio Litigation concerned only the limited diffuse claims released by the 1995 Settlement Agreement. Chevron has no choice but to make this assumption because the Tribunal decided in its First Partial Award on Track 1 that the Release is limited to the right to be free from such diffuse claims. This is Paragraph 112 of that award.

However, the recent Track 1B Decision has proven Chevron wrong on this very issue. The Tribunal decided that, and I quote here, Paragraph 183 of the Decision: "The Lago Agrio complaint, as originally filed, does include individual claims and cannot be read (as the Claimants assert and the Respondent denies) as leading 'exclusively' or 'only diffuse claims.'" As the Tribunal will determine, the Lago Agrio claims have nothing to do with Chevron's right to be free from those limited diffuse claims defined under Article 19.2 of the 1998 Ecuadorian Constitution that were released. Therefore, Chevron presents no dispute arising out of, or relating to, the 1995 Settlement Agreement as required under Article VI(1)(a) of the Treaty.

Aside from having no investment agreement, and I come here to my second proposition, Chevron has no relevant investment in the circumstances. According to the Claimants--and this first quote is quite remarkable--its investment here is, and I quote, "The 1973 Concession Agreement, the amounts invested and the oil operations and activities in Ecuador, all agreements with Ecuador and Petroecuador, including the Settlement Agreements, and the rights and interests associated with the Lago Agrio Litigation, including both substantive and procedural rights."

Members of the Tribunal, that is not a description of an investment. It is a list of vaguely related items designed only to confuse. In fact, this very list that you can read on the screen does not even distinguish between the two Claimants TexPet and Chevron.

When Chevron goes on to connect its denial-of-justice claim to the BIT's standards, it becomes patently clear that even the Claimants know that the Tribunal has no jurisdiction, and you can see this from the second quotation on the slide.

A more rigorous analysis is required to cut, as the Tribunal put it, this Gordian knot. I will explain first why Chevron has no relevant investment of its own for the purpose of granting the Tribunal jurisdiction on its own denial-of-justice claim; second, why Chevron's investment in TexPet is of no help; third, why Chevron's other attempts to manufacture an investment are similarly untenable; and, lastly, why the so-called "amalgamation" of Chevron and Texaco is of no help to Chevron's ill-founded claims.

First, Chevron, Members of the Tribunal, did not contribute directly, indirectly, or otherwise to the oil production and economic activity that took place under the 1973 Concession Agreement. The facts speak plainly. As the Tribunal acknowledged, Chevron acquired its interests

in TexPet in 2001, while TexPet's Concession ended in 1992, years earlier. Chevron was not the indirect owner of TexPet at the time of any economic activity in Lago Agrio. Its indirect investment in TexPet is not a direct investment in the oil concession.

Chevron did not contribute resources in the Ecuadorian territory that benefited the local economy as the Tribunal, for instance, in GEA Group and Occidental I have required. How could Chevron be an investor? It simply was not on the scene at the times when it would have been possible to make an economic contribution.

Second point, Chevron argues that it has a covered indirect investment in TexPet, a fact that the Tribunal recognized, as I said, in the Third Interim Award on jurisdiction. However, Chevron goes on to claim that these indirect investment suffices for jurisdiction over its denial-of-justice claim because it says it has a right to limited liability protected by the investment treaty. This is simply incorrect. As you can see on the screen, the Tribunal found that its decision that TexPet was a covered indirect investment did not resolve the question of whether it had jurisdiction over Chevron's claims regarding the Lago Agrio Litigation. And we say that it has no jurisdiction--the Tribunal has no jurisdiction--for the following two reasons:

First reason, a right to limited liability under U.S. law--or under Ecuadorian law, for that matter--is not an investment treaty right regarding an investment in Ecuador. This argument confuses national and international law. It might be true that U.S. law and Ecuadorian law establish rights to limited liability, but investment treaties establish their own set of rights, and only breaches of those treaty rights grant jurisdiction. There is no clause in the U.S.-Ecuador BIT that establishes or guarantees a right to limited liability in an investment. Limited liability is not a right conferred or created by this Treaty as required under Article VI(1)(c) of the Treaty.

Second reason, the Lago Agrio Litigation could not have affected Chevron's rights with respect to TexPet because it bore no consequences for TexPet. TexPet was not a party to that very litigation. The litigation affected only Chevron. It could not have affected any right with respect to the investment conferred or created by the Treaty or by any other source of legal rights for that matter as required by Article VI(1)(c) of the Treaty.

I come to my third point: Chevron also claims that it was entitled to all procedural rights and substantive legal defenses of TexPet which they say formed part of Chevron's protected investment under the BIT. It

simply attempts to cobble together an investment from such rights, as well as its rights as a Releasee and its right to limited liability, and to pass them off as an adequate basis for jurisdiction. However, this argument misunderstands the nature of the covered direct investment. Investment tribunals like Occidental I and GEA Group have consistently found that without any contribution to or relevant economic activity within the host State's territory, there is no covered investment, and not just any commitment of resources in the territory of the host State will make it.

As opposing counsel has recognized, that commitment must typically contribute to the development of the State.

For all of these reasons, a legal right is not by itself an investment. Again, those sorts of legal rights simply do not involve any economic contribution or any economic activity at all. It made simply no sense to say that they are "investments."

Fourth and last point, contrary to what Claimants allege, the so-called "amalgamation" of Chevron and Texaco does not extend the Tribunal's jurisdiction. Compulsory jurisdiction or jurisdiction out of fairness considerations is foreign to international law and arbitral practice. A tribunal has jurisdiction over a

claim only in virtue of a State consent. The purported amalgamation does not change the scope of Ecuador's consent to investment arbitration for three reasons:

First reason, investor status matters. International investment arbitration protects only investors regarding their investments, not just any foreign national regarding any complaint. As explained, Ecuador extends that privilege only to the investors who have contributed to its economy. This fundamental fact doesn't change when foreign nationals allege that they have suffered a denial of justice.

Second, privity also matters. As is typical of investment treaties, the U.S.-Ecuador BIT grants jurisdiction only to those Parties that have their own investment or Investment Agreement. It does not provide for a transfer of jurisdiction separately from a covered investment or Investment Agreement absent language in the Treaty to the contrary.

And, third, and above all, legal systems matter. There is an important legal difference between liability under municipal law and jurisdiction under international law. The so-called "amalgamation" of Chevron and Texaco or TexPet under Ecuadorian law for liability determination does not imply that amalgamation under international law is proper when this Tribunal determines jurisdiction. The

liability analysis determines whether corporate formalities or corporate separateness are observed at the time of Judgment, while the jurisdictional analysis determines whether the Claimant established an investment.

Although my colleague, Mr. Leonard, will explain further the details, it is sufficient for the time being to stress that Chevron depleted Texaco and TexPet of resources in an attempt to escape liability in the Lago Agrio Litigation. It now asserts those same actions against the nemo auditur principle as the basis for jurisdiction in the current arbitration. However, what matters for jurisdiction is the relationship of Chevron to Texaco and TexPet while the oil concession, the only possible investment was ongoing, not the relationship at the time of the Lago Agrio Judgment.

So, investor status matters, privity matters, and legal systems matter. All three explain why this Tribunal cannot amalgamate Chevron with Texaco or TexPet when determining whether it has jurisdiction.

Let me summarize our main conclusions on this jurisdictional point:

First, as this Tribunal all but explicitly decided, Chevron's claims are unrelated to a covered investment agreement. The Tribunal already decided that Chevron was not a party to any concession agreement and

that, without a concession agreement, the 1995 Settlement Agreement was not an investment agreement.

Second, Chevron cannot be considered a direct investor. The oil Concession ended in 1992 while Chevron acquired TexPet in 2001.

Third, Chevron's claims regarding the Lago Agrio Litigation are not related to its indirect investment in TexPet itself for jurisdiction to exist on that basis. The Claims do not concern alleged breaches of rights with respect to TexPet because TexPet was not involved in and was not affected by that litigation.

And, fourth, and last, the municipal Court's so-called "amalgamation" of Chevron with Texaco or TexPet is irrelevant to jurisdiction because jurisdiction for international arbitration depends only on State consent. The scope of a State consent to jurisdiction does not change based on a municipal Court's legal analysis on liability.

In sum, Ecuador has already defended this arbitration, Members of the Tribunal, at great length and great expense, despite the Tribunal's lack of jurisdiction. It is now time to recognize that Ecuador has simply not consented to this investment arbitration.

With that, Members of the Tribunal, I conclude my submission, and with your permission, I hand over the

floor to Dra. Blanca Gómez de la Torre.

PRESIDENT VEEDER: Thank you very much.

Just before you disappeared, on you Slide 12 you have a reference to the GEA Group Case. I didn't catch the exhibit number. If you had it easily available, it would be useful to write it in. If not, we can come back to it.

MS. SILVER: RLA-648, Mr. President.

PRESIDENT VEEDER: Good. Thank you very much. Please.

MS. GÓMEZ de la TORRE: Thank you, Mr. President, Members of the Tribunal.

I will devote the next 14 minutes to the issue of exhaustion of local remedies and Claimants' failure to comply with this rule. I will address some aspects of the Republic's case as they touch upon matters of Ecuadorian law and will then turn the floor to my esteemed colleagues to address the subject upon an international law perspective.

There really is no dispute that exhaustion of local remedies is a substantive element of a Claim for Denial of Justice. No claims based on denial of justice can be brought without prior exhaustion of local remedies. In the words of Claimants' own counsel, "there can be no denial before exhaustion." To put it more precisely, the

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offending State must be given a reasonable opportunity to correct actions which otherwise would ripen into delicts.

There is also no dispute that it is for the Respondent merely to prove that the particular procedural remedy was available than it is for the Plaintiff to adduce the evidence and prove that the particular procedural remedy was ineffective.

The Republic has satisfied its burden of showing that the Ecuadorian legal system provides Chevron with remedies specifically intended to redress exactly the claims which Claimants have brought before this Tribunal. I will address this premise and will let Professor Mayer speak about Claimants' inability to show that those remedies are ineffective.

Specifically, Claimants asserted two basis for their denial-of-justice claim: First, arguments regarding an alleged legal error in the Lago Agrio Judgment; and, second, their unsupported claim on judicial fraud.

On my first point, there are two reasons why Claimants' claims failed: Claimants have yet to exhaust remedies available to Chevron in Ecuador. Even if Claimants were somehow relieved from the strictures of exhaustion-of-remedies rule, their claims are held to a high evidentiary standard, which Claimants cannot meet.

I will let Mr. Leonard address the Tribunal on

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the frivolous nature of Claimants' allegations of legal and procedural error. I will simply state here that Claimants' claims predicated upon alleged legal error in the Lago Agrio proceedings are premature and not ripe for adjudication by this Tribunal.

Chevron filed an extraordinary action for protection with the Constitutional Court on December 23, 2013. Chevron presented the Constitutional Court with substantially the same issues Claimants raised in this arbitral proceeding. There is no dispute that the Constitutional Court offers an effective remedy for Chevron's claims relating to the legal basis for the Lago Agrio Judgment. In fact, should the Constitutional Court find that the Lago Agrio Court, the Appellate Court or the National Court violated Chevron's constitutional right, it has the power to invalidate the underlying decision and remand the case to the corresponding Court to continue from the point where the violation occurred until a decision is reached. Chevron's pending constitutional action itself is evidence that Claimants have yet to exhaust available domestic remedies in respect of their claims of legal and procedural error. Such failure is fatal to Claimants' claims here. There is no reason or basis to exempt Claimants from the rule of exhaustion.

I now turn to my second point: Chevron's

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argument on judicial fraud, which is the Claimants' principal basis for their denial-of-justice claim, specifically the alleged ghostwriting of the Judgment.

The National Court dismissed Chevron's claims of procedural fraud noting correctly that, first, the Appellate Court do not have original jurisdiction over such claims, but Chevron nonetheless has a clear remedy under the Collusion Prosecution Act, which I will refer to as CPA.

Chevron may file a CPA action until February 14, 2016, when the limitations period will run. But Chevron has thus far chosen to ignore this remedy. There is no dispute about that. Also beyond dispute is the fact that under the CPA quoted by the National Court, an action may be brought by an aggrieved party alleging that a proceeding has been tainted by fraud. And should the aggrieved party succeed in proving its claims, the judge shall issue all necessary measures to void or invalidate the collusive proceeding and to restore the things prior to the collusion and obtain a judgment for damages.

Claimants' attorneys know this all too well. One of Chevron's lead counsel, while serving as a Supreme Court Justice, confirmed that an action under the CPA is an effective remedy to address allegations of corruption

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or collusion in legal proceedings. In Claimants' letter to the Tribunal on December 2, 2013, they declare: If this Tribunal concludes that Claimants fail to exhaust local remedies, then it can rule accordingly. And that is precisely what I ask this Tribunal to do.

These are the very remedies that Claimants have sought from this Tribunal in their request for nullification of the Lago Agrio Judgment. There is no dispute that CPA action is an available local remedy that would permit Claimants to address and, if supported by persuasive evidence, obtain effective redress for Chevron's claims of fraud and ghostwriting of the Lago Agrio Judgment.

Now Claimants cannot afford to concede this point and have tried their level best to evade the exhaustion-of-remedies rule. Claimants first argue that the exhaustion-of-remedies rule does not apply to Chevron. Alternatively, Claimants contend that even if the rule applied to Chevron, the CPA is not available to it.

Third and finally, Claimants speculate that, even if the CPA were an available remedy, it would have proved or would prove inviolate now or any time before the statute of limitations run ineffective or futile.

Each of Claimants' arguments fails either as a matter of international law or as a matter of Ecuadorian

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03:21 law. I will briefly refer to Claimants' contention that the CPA is not available to Chevron.

First, the CPA is available to any person who has suffered harm in any way by an act of collusion including the deprivation of property rights or of other rights that are legally due to such person.

Chevron's own Expert, Dr. Coronel, expressly disclaims Claimants' theory that the CPA action is only available for real estate transactions. In a somewhat hidden footnote in his Expert Report of May 7, 2014, in Dr. Coronel's own words: "The text of law currently in force leaves open the possibility for the action for collusion to be filed as well when other types of rights are affected." Claimants' contention that the CPA is only available for real estate transactions finds no basis in the statute or Ecuadorian legal practice and must be dismissed. If nothing else, Claimants' own Expert testimony should put this matter to rest. In fact, after they appeared to be in agreement, as they have dropped this frivolous argument.

Second, CPA Article 5 makes clear that, pending appeals do not bar litigants from also filing a CPA action. It expressly establishes that the judge shall request the record of the proceeding where the collusion allegedly played a role, as well as that of the associated

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03:23 proceedings, if any. And if the requested proceedings are ongoing, for example, on appeal, the judge hearing the CPA action shall order copies of the record in the underlying case.

There is no merit to Claimants' contention otherwise. At least for the following reasons.

Neither the Appellate Court nor the National Court afforded Chevron a forum to obtain judicial review of Chevron's purported evidence of fraud and corruption since they had no competence to rule upon those materials. The reason is a simple one: Chevron's allegations necessitate the production of evidence outside the trial court record. But the applicable rules of procedure do not allow for the production of any evidence at the appellate or cassation levels. Applicable Rules of Procedure are crystal clear. Article 838 of the Code of Civil Procedures precludes the submission of any evidence at the appellate level in oral summary proceedings. For the record, RLA-198.

And Article 15 of the Law of Cassation excludes the possibility of submitting new evidence on cassation. RLA-558. Claimants' Expert, Dr. Coronel, attempts a way around this legal provisions by suggesting that a distinction needs to be made between (a) evidence pertaining to the merits of the dispute; and (b) evidence

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03:25 of fraud in the procurement of the Judgment. Dr. Coronel suggests that, while the former is precluded by procedural rules, there is no impediment for the production of the latter, and thus Chevron's evidence of fraud should have been admitted and ruled upon by the Court of Appeals.

But Ecuadorian law makes no such distinction. It thus comes as no surprise that Dr. Coronel offers not one authority or judicial precedent in support of his fabricated theory. Nor does applicable procedure allow for the introduction of new evidence at the Constitutional Court level. The Court has explained as much in multiple occasions and in ambiguous terms, the alleged violation of a constitutional right must instead be clear, direct, manifest, obvious, and evident from the trial court record. For example, these cases can be found in the Respondent's submission and Legal Expert Report. Here is one of them.

The Constitutional Court may examine only the records of the proceedings before the trial court. The Court of Appeals and the National Court. Again, Dr. Coronel purports to know better and offers another fabricated excuse in aid of Claimants' position. Specifically, Dr. Coronel asserts that the prohibition against submission of new evidence before the Constitutional Court was lifted with the enactment of the

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03:27 Statute known as the Organic Law on Judicial Guarantees and Constitutional Oversight in 2009. From that point on, he submits, new evidence is allowed, and the Court's judicial determinations to the contrary are no longer relevant.

In support, Dr. Coronel points to some provisions of general application to all proceedings before the Constitutional Court. I will not address here those provisions because Dr. Andrade's Second Supplemental Foreign Law Report at Paragraphs 43, 44, and 45 puts the matter to rest.

In his response, Dr. Andrade explains that, in addition to laying out rules of general application for all proceedings before the Constitutional Court, the Organic Law of Jurisdictional Guarantees and Constitutional Control, for the record RLA-459, contains rules of a special application to the extraordinary action of protection. And under Ecuadorian law, rules of a special application prevail over those of general application.

And as expressly stated by the Constitutional Court on multiple occasions, after the enactment of this Statute, the rules of procedure specifically applicable to extraordinary actions of protection do not permit the production of new evidence.

By conflating rules applicable to different proceedings, Dr. Coronel creates another one of his legal fictions, underscoring once again the misleading nature of his testimony.

Mr. President, Members of the Tribunal, under Ecuadorian Law, filing and pursuing a complaint under the CPA is the only correct procedure for Chevron to air its allegations of fraud and corruption. Claimants' contentions otherwise have no basis in Ecuadorian law, and Chevron has chosen not to pursue this remedy, although it is still available. Which, as a matter of international law bars their fraud and corruption claims in this forum and is, thus, fatal to their denial-of-justice claim.

Mr. President, this concludes my presentation; and, with that, I'm now turning the floor to Professor Mayer. Thank you.

PRESIDENT VEEDER: Thank you.

Professor Mayer.

PROFESSOR MAYER: Mr. President, Members of the Tribunal, in addition to its objections as to the availability of the recourses under Ecuadorian law, which Dra. Gómez de la Torre has just refuted, Chevron raises two objections as to the conformity of these recourses, particularly the CPA action with the requirements of international law.

The first of these objections is purely formal and will not call for a long rebuttal.

According to Chevron, the CPA action would not constitute a suitable recourse with regard to the requirement of exhaustion of local remedies because it is not a vertical recourse such as an ordinary appeal or a cassation appeal. However, Chevron does not mention any authority for this proposition.

What international law demands is that the recourse otherwise available constitutes an effective remedy, and if that requirement is satisfied, why should there be an additional and purely formalistic requirement? Either the CPA action can provide an effective remedy or it cannot.

And as I will show under international law and as Dra. Gómez de la Torre has shown under Ecuadorian law, a CPA action could have been effective or could still be effective. And that suffices: the recourse that should have been tried.

The second objection, on which I will spend the rest of the time allocated to me, around 30 minutes, is that the recourse which Chevron has chosen not to use is futile. It is indisputable that no satisfaction--if no satisfaction can be obtained through the exercise of a given recourse, it would be absurd to require that it be

exercised, and international law is perfectly clear in that respect. But why should a CPA action be futile in this case? Chevron invokes two distinct arguments:

First, there would be no reasonable hope that the Court seized of the CPA action would have decided in favor of Chevron.

And, second, the fact that the Judgment rendered by the Ecuadorian Court is enforceable, would render even a favorable outcome of the CPA action ineffective.

Before addressing these two arguments, I would recall Ecuador's position as to how the futility argument should work in international law, in the light of precedents and doctrinal opinions.

There are two distinct issues: the burden of proof and the standard of proof.

First, the burden of proof. Contrary to what Chevron contends, authors are unanimous in saying that it is for the self-styled victim of the denial of justice to prove that using a certain available recourse would have been futile.

The Special Rapporteur on Diplomatic Protection in the International Law Commission, Professor Dugard, explains the following in his Third Report. "The Respondent State will be required to prove that local remedies are available, while the burden of proof will be

on the Claimant State to show that such remedies are ineffective or futile." He refers here to the Claimant State because he has--he envisages the Diplomatic Protection, but, of course, that applies to any Claimant victim and in particular an investor.

Professor Paulsson has quoted the very same passage of Professor Dugard's Report that I just read, obviously approvingly. After the quotation, he mentioned: "The relevance in terms of denial of justice is direct and evident, and what goes for the Claimant State in espousal cases also goes for any other Claimant."

However, Chevron, or Claimants in their Track 2 Reply Memorial relied for the opposite view on the Opinion of Sir Fawcett. That's what they say: "It is Ecuador, not Claimants, that bears the burden of proving that its so-called "remedies" are available and effective, and would, in fact, offer any real relief." And in the footnote, they refer to J.E.S. Fawcett, The exhaustion of Local remedies: substance or procedure.

But, in fact, if one goes to the very article by Sir Fawcett, what he says is: "The burden of proof rests upon the Respondent State to show that local remedies were available"--that's the reference that was made in the Claimants' Memorial--but then it continues: "If it discharges his burden, the burden of proof falls on the

Claimant State (here investor) to show that the local remedies indicated were not in the circumstances of the case effective." Therefore, all authorities agree the burden of proof of effectiveness rests on the Claimant.

Now, what about the standard of proof? Here there is no unanimity. There are various views on this issue. According to some decisions and some authors, the self-styled victim should make the futility obvious. The criterion is obvious futility.

For instance, in the Finnish Shipowners arbitration, the arbitrator said or comes to the conclusion that "the appealable points of law obviously would have been insufficient to reverse the decision of the Arbitration Board," and commenting upon that case, Professor Amerasinghe said: "The Finnish Ships arbitration made it clear that the test is obvious futility of manifest ineffectiveness."

In the Ambatielos Case, it was held that it is essential that such remedies, if they had been resorted to, would have proved to be obviously futile.

Professor Amerasinghe not only opted for a certain standard, but explains why that standard is the right one and must be extremely high, and he ties that to the idea of sovereignty: "The sovereignty of the host or Respondent State requires that it be given a fair

opportunity of doing justice through its own system, and there seems in the past to have been a general tendency to recognize only those limitations which are really necessary."

Now, it is true that there are other views and then some decisions and authors adopted a different standard. A remedy would not need to be pursued in the absence of a reasonable possibility of effective redress. Although gallons of ink have been spent in favor of one or the other standard, practically the difference seems to be minimal, and I focus here on the second standard, the one on which the Claimants rely:

First, no reasonable possibility of effective redress is not equivalent to the existence of a reasonable doubt as to the effectiveness of a remedy. A reasonable doubt does not suffice, and there is unanimity on that point.

Second, when can it be said that there is no reasonable possibility of effective redress? It is, in fact, a very high standard. If the word "reasonable" had not been used, simply no possibility, that would have meant that there would be not the slightest chance for the Claimant to obtain redress. The action would be doomed to failure.

Now, there is the word "reasonable," and that

word introduces the idea that there might be a tiny chance of success, but so tiny that it would not be reasonable to even try.

I say "tiny," not "small." If there is a small chance of success of redress, it is reasonable to try it when you have been sentenced to pay billions of dollars if you have a small chance to win in a new recourse, you certainly must not miss it. And not only do you owe it to yourself, but you owe it to the State because, accusing the State of denial of justice without having tried anything would be unfair. It would be unfair to the State for the Claimant to say: "Your judicial system must be declared guilty of denial of justice, although I did not try a certain recourse. I didn't because I found my chances of effective redress to be small, and I had good reasons to find them small. I might have obtained redress. It was not impossible, but it's so much more simple not to try and to consider that denial of justice is already established," and that is unfair to the State.

I will now show that Chevron does not establish that--supposing, of course, there has been collusion--its chances of winning a CPA action would have been tiny; therefore, whether the standard is obvious futility or no reasonable possibility of effective redress, Chevron should have introduced a CPA action.

I come now to the Claimant's first futility argument. According to them, the available remedies are futile because there would be no hope of success before the Ecuadorian courts.

Chevron's argument here is that the whole system of justice, every court, every judge in Ecuador is partial or corrupt and in addition, that an investor's action is doomed to fail because there are pressures by and even threats by the Government. Although the burden of proof does not rest on Ecuador, Ecuador has shown in these proceedings that this description of its judicial system is contradicted first by the assessment of that system by independent organizations and, second, by actual decisions rendered in favor of Texaco or Chevron.

During the past eight years, Ecuador had made an impressive series of reforms, including, among others, the ratification of a new Constitution which recognizes the separation of powers doctrine and judicial independence, the establishment of a Constitutional Court, the reform of the Organic Code of the Judiciary, the introduction of a merit-based selection process for appointing all judges. And these reforms have been praised by, inter alia, the General Secretary of the United States, the Special Rapporteur of the United Nations on the Independence of Judges and Lawyers, the Carter Center and the European

Union.

Well, of course, what is important is how the system works in practice, but for that, also, we have available an objective assessment. USAID, the United States Agency for International Development, has made a study in 2014 which concludes, in terms of trust in justice system, that among 25 countries of North America, Central and South America, Canada is first, Ecuador is sixth, and the United States only eighth. Then indicting Ecuador's judicial system would be tantamount to indicting the judicial systems of almost all the States in the Americas, including the United States.

Also, even Claimants' Experts have praised the impartiality of Ecuadorian courts in cases involving foreigners. Dr. Alejandro Ponce Martínez in his supplemental Affidavit in 2000 wrote: "Multinational and oil companies are generally treated by the Ecuadorian Court in equal conditions to national companies or individuals."

Dr. Jose Perez-Arteta wrote: "Ecuador's courts have adjudicated, and continue to adjudicate, many cases involving all companies in an impartial and fair manner."

Even more revealing, Claimants themselves have more than once won their cases against the Government in various Ecuadorian courts. In 2000, Texaco and other oil

companies have gone before the Supreme Court against the Government. In 2002, Texaco prevailed in three cases before the Superior Court of Quito. The Supreme Court Judgment was--or is R-812, and these three cases are R-809 to R-811.

In 2007, Texaco received a 1.5 million U.S. dollars Court Judgment against the Government. That's a Judgment of the first Civil Court of Pichincha, R-816. In 2008, an Appellate Court reversed the dismissal of another multimillion dollar Texaco case against the Government, and that's R-808.

A distinct accusation is that Ecuadorian justice is not independent from the Government. In specific instances such as the Lago Agrio Case, President Correa or a high governmental personality would exercise a pressure on judges, even threaten them if they did not issue the desired Judgment. These are unproven accusations. You must not only accuse, you must prove the truth of what you accuse the person of. And as Mr. Bloom reminded us in his presentation, even Mr. Guerra, in circumstances in which it was clear that he was not lying, said that there had been no interference by the Government in the Lago Agrio Case.

As to public statements by Ecuador's President or other officials against Claimants in relation with the

Lago Agrio Case, what counts after all with regard to the futility argument is whether Ecuadorian courts are influenced by these statements or not. And by their Judgments, they have proved that they remain independent. One notorious example is the dismissal of the criminal charges brought in 2011: dismissed by the National Court of Justice of criminal charges brought in relation with the Lago Agrio Case against two of Claimants' attorneys.

So, why wouldn't a court seized of a CPA action show the same impartiality and independence?

I now come to the second aspect of the futility argument. According to Claimants, the available remedies are futility also because the Lago Agrio Judgments are already enforceable. There are two aspects in that argument:

First, enforceability in itself would have made further recourses futile; and, second, Ecuador would have violated international law by disobeying the Tribunal's Order to stay enforcement of the Lago Agrio Judgment.

First aspect, according to Claimants, because the Lago Agrio Judgment is enforceable, no further remedy is to be sought, it would necessarily be futile. In his first Opinion, Jan Paulsson, as Expert--as he then was--says that he's not aware of any other case with a factual pattern matching the present one, a Judgment that

is enforceable and which its beneficiaries try to enforce in other countries. I'm wondering whether the reason for that lack of precedent may not be that no one had yet had the strange idea to pretend that because the Judgment is already enforceable, no further remedy is to be exhausted. At least from Jan Paulsson's remark, it results there is no basis under international law for the proposition that exhaustion of remedy does not apply when a judgment is enforceable.

The only exception to the obligation to exercise local recourses is when a recourse would not constitute an effective remedy. Effectiveness is the only logical requirement.

And it is true that in some situations there is no possibility of redress when a first instance or appeal judgment has been enforced, and the Claimants give an example. The European Commission on Human Rights has held that if an order to extradite or expel a foreigner has been made, a court action that would not suspend the Order does not need to be exhausted. But that is obvious, because if you are expelled or, in particular, extradited, the harm is beyond repair, and the setting aside of the Order does not constitute an efficient remedy.

But the situation here is completely different. The question is: Do the enforceability and the ensuing

attempts to enforce the Lago Agrio Judgment in various countries constitute an unrepairable harm. And the answer is no for two reasons: First, the respective duration of a CPA action and of enforcement proceedings. Chevron could have started a CPA action in 2011. A statistical review of court practice in Ecuador reveals that CPA judgments, on average, issue approximately 17 months from the date of commencement of the proceedings. In other words, assuming that the Court seized of the CPA action had found that there had been denial of justice in the Lago Agrio Judgment already today any attempt to enforce the Judgment in any country would necessarily fail.

It's true that according to Chevron a CPA action would have taken, in fact, years. But first, that's contrary to the statistics I have mentioned, and, second, since Chevron did not start a CPA action, it cannot prove how long it would have taken to obtain a judgment, and the burden of proof rests on the Claimants.

In addition, the Lago Agrio Plaintiffs are not close to enforcing the Lago Agrio Judgment against Chevron. One has here to distinguish enforcement in Ecuador and enforcement abroad.

In Ecuador, the Plaintiffs have attached certain trademarks concerning the lubricant business. But these trademarks have no value because, in the framework of the

sale of the lubricant business to Swiss Oil, Chevron has consented a royalty-free license to Swiss Oil. And no one else at Swiss Oil--than Swiss Oil--can be interested in these trademarks. For that reason, no transfer of the trademarks to the Plaintiffs have occurred--has occurred--and if, even if someday it did, these trademarks have no value.

Abroad--abroad--Plaintiffs have started actions for recognition of the Judgment in Canada, Brazil, and Argentina. They have obtained no success yet and no success is to be expected before years, for several reasons: First, if really Chevron--as Chevron contends, there has been a denial of justice, and Chevron can convince the courts in these countries, then Plaintiffs' motion for recognition will be denied.

Secondly, even if Chevron does not convince these courts, the undisputed Expert Report submitted by Ecuador for the three countries show that enforcement proceedings with the various levels of appeal that are open would demand a period of several years before any money could be collected. These Reports have been drafted by George Pollock for Canada, Marcelo Rufino for Argentina, and Juliera Anginoni for Brazil.

Therefore, it is even more certain that had Chevron started a CPA action in 2011 or even later or even

now, it would not have completed its actions for enforcement before the CPA action would have been adjudicated. It would be for Chevron to prove the opposite. And it's an impossible proof, first because you cannot prove what is false, and, second, because the only way to know for certain would have been for Chevron to start the CPA action.

The second reason for not following Chevron is that even if the Lago Agrio Judgment was enforced before the hypothetical successful CPA action was completed, the money would have to be given back to Chevron. As the Tribunal knows, the Lago Agrio Court ordered the Plaintiffs to establish a commercial Trust with the Amazon Defense Front as beneficiary. If a CPA Court annulled the Lago Agrio Judgment, the trust would be forced to give back the money, which it would not have had time to spend.

Now, Chevron also blames Ecuador for not having stayed the enforcement of the Judgment contrary to what the Tribunal has ordered. Three remarks:

First, the argument is not relevant, since the attempts to enforce would have failed in case of a successful CPA action and the enforceability could have caused no harm to Chevron if it had chosen to start a CPA action.

Second, the reason why the Judgment is

enforceable is not that there has been any special action by the State to make to it enforceable. It is enforceable by the operation of the law, as is normal in all civil law countries when you have had an appeal. It's, in fact, Chevron which could have stayed the enforceability by posting a bond, but it did not post a bond, and it did not even request the Court to fix the amount of a bond. And such a bond in Ecuador, as has been shown in these proceedings, generally represents between 1 percent and 5 percent of the amounts at stake.

And, third, there was no other way under Ecuadorian law to stay the enforceability. Here, we have to respectfully disagree with the Tribunal's statements in its Fourth Interim Award that, I quote: "Ecuador could not be excused for the failure to fulfill through any of its branches the obligation to stay the enforceability"--this obligation created by the Tribunal itself.

The Court of Appeals had to decide in the context of a dispute between two private parties: Chevron on one side and the Plaintiffs on the other side.

The Plaintiffs benefited of an enforceable Judgment. There was no way for the Court, under Ecuadorian law which it has to apply, to deprive the Plaintiffs of the enforceability of their Judgment. In

addition, that would have meant violating Article 25 of the American Convention on Human Rights, to which Ecuador is a party, as the Court of Appeals noted.

We have on the Slide two extracts of the decision: "Article 25 of the American Convention on Human Rights imposes on Ecuador (as a member State) the obligation to guarantee the right of access to justice, that is, an effective judicial protection, which necessarily includes the guarantee of the enforcement of a judgment, since the absence of enforcement would render it entirely ineffective."

Second quotation: "This Chamber determined that, in the event we were to act outside the boundaries of the law, as requested by Chevron, and take special measures to 'prevent the enforcement of the Judgment,' this Court would be allowing the perpetration of a violation to the human rights obligations of Ecuador."

I leave aside the questions whether, one, an international tribunal has the power to create an obligation that would bind a State under international law, and, second, whether a tribunal has the power to interfere with the internal functioning of the institutions of the State.

To conclude, for all these reasons, Chevron should have exhausted local remedies, particularly the CPA

recourse, and having failed to do that, its denial-of-justice claim is not ripe. These recourses, and particularly the CPA action, is in no way futile. Chevron has not established that the Court which would have been seized would not have been independent and impartial, and it has not established that there would have been a risk of enforcement in Ecuador or abroad before the CPA action would have been completed.

I'm now turning the floor to Ricardo Ugarte, who will deal with another aspect of the exhaustion of remedies.

MR. UGARTE: Thank you, Professor Mayer.

Members of the Tribunal, I will briefly expand upon the doctrine of exhaustion and its specific application to the ghostwriting allegations.

During other parts of this Opening Statement, my colleagues will highlight how the vast weight of evidence demonstrates that the ghostwriting allegations are simply false, but those claims fail for an additional reason: All of the Claims filed before this Tribunal that arise from those ghostwriting allegations failed by virtue of the doctrine of exhaustion. I will demonstrate this by first describing the timing of Claimants' ghostwriting allegations and, second, by demonstrating that Chevron had numerous effective procedural remedies available to them

to address precisely these types of allegations before the Judgment was ever issued.

So, first, let's discuss the timing of Claimants' allegations.

On the slide before you, you will see a timeline of the ghostwriting allegations. As you see, the slide is presented in two colors to separate fact from fiction. In blue are the undisputed facts. In red are Claimants' unproven allegations that derive from affidavits that Chevron submitted as evidence in the RICO litigation, and the exhibit numbers to those sworn affidavits are referenced in the timeline.

I would like to briefly run through this timeline with you.

First, in October 2009, according to Chevron, Dr. Guerra allegedly advises Chevron that he could fix the entire case for Chevron through Judge Zambrano. Shortly thereafter, in February 2010, Judge Zambrano steps down as judge of the Lago Agrio Litigation when Judge Ordoñez is elected President of the Court.

Next, in August 2010, Chevron successfully recuses Judge Ordoñez, thereby reinstating Zambrano as the Presiding Judge of the Lago Agrio Case as of October 2010. Next, in October 2010, according to Chevron, Chevron was allegedly tipped off to information that supposedly led

Chevron's attorneys, including its lead trial attorney, Mr. Callejas, to understand that Judge Zambrano was sure to reach an agreement with Plaintiffs to issue the Judgment in their favor.

A few months later, on February 14, 2011, Judge Zambrano nevertheless proceeds to issue the Judgment.

As you can see from the allegations referenced in red in this timeline, on Chevron's own allegations, Chevron says it was aware of the ghostwriting allegations well before the Judgment was issued. And if you accept, assuming arguendo, the ghostwriting allegations, you cannot cherry-pick. You have to accept the entire ghostwriting case, including the sworn evidence that Chevron presented to Judge Kaplan about what they say they knew about the purported ghostwriting scheme in October 2010. This pre-Judgment knowledge by Chevron is sufficient to shut the door on these allegations and all the international claims that derive from them.

By no later than October of 2010, if Chevron wanted to hold the entire State of Ecuador accountable under international law for these allegations, Chevron was duty-bound under the doctrine of exhaustion to pursue the procedural remedies that the Ecuadorian judicial system put in place for Chevron to address such matters at the trial level, and the Legal Authorities for this

proposition are set forth in our Track 2 Supplemental Counter-Memorial of November 2014 at Pages 116 through 118.

I want to highlight two of these authorities very briefly.

First, the Appeals Chamber of the United Nations held in the Dilalic case that "a Party should not be permitted to refrain from making an objection to a matter which was apparent during the course of the trial to raise it only in the event of an adverse finding against the Party."

Or, as Professor Paulsson put it, "the exhaustion rule requires not only the pursuit of appeals, but also, while the earlier proceedings were in progress, that the complainant availed himself of existing procedural mechanisms."

But Chevron ran afoul of these Basic Principles of international law. Chevron by-passed all available procedural remedies and refrained from making any objection to a matter which they say was apparent to them while the trial proceedings were in progress. It is uncontested that Chevron failed to report its views to any Ecuadorian judicial authorities during the months prior to the issuance of the Judgment.

Now, Ecuador has refuted the ghostwriting

allegations on the merits and does not believe in the ghostwriting fairy tale for one minute, nor should this Tribunal. But if Chevron did, then Claimants needed to come forward to test and address these allegations during the trial proceedings by bringing a motion to recuse Judge Zambrano or by seeking to remove him by an application with the Judicial Council, or by reporting this information to the local bar authorities. But Chevron did none of these things at that time.

It is uncontested that Chevron failed to use any of these available and effective remedies in Ecuador during the Lago Agrio Trial court proceedings during the critical months before the Judgment was issued.

The existence of these remedies and the relevant code provisions under Ecuadorian law that make clear that these remedies were available to Chevron are cited in our Track 2 Supplemental Rejoinder on March 17, 2015, at Paragraphs 89 and 97.

Claimants do not contest that these procedural remedies, such as recusal motions, were available to them during the trial court proceedings. Rather, Claimants' claim that these remedies were futile because President Correa allegedly controlled the judiciary. But that assertion is pure speculation and is uncontradicted and--excuse me, is contradicted by the evidence of the

successful recusal motions that Chevron itself brought during the Lago Agrio Litigation.

Recall from the timeline that we just reviewed that Chevron, in fact, had just successfully recused Judge Ordoñez, and Chevron had no hesitation in bringing a motion to recuse Judge Ordoñez on the grounds of being biased. Chevron's application for recusal, as you can see from the next slide, was based on allegations of undue delay and bias by Judge Ordoñez.

The fact is that Ecuador's Executive Branch has never prevented Ecuadorian judges from being recused as evidenced by the fact that Chevron successfully removed judges in the Lago Agrio Litigation itself, so Chevron cannot establish that these remedies were futile.

Furthermore, it is uncontested that Claimants did not whisper a word of this fairy tale to even this Tribunal until after the Judgment was issued. Just as Chevron could have pursued municipal remedies in Ecuador before the Judgment was issued, Claimants could have sought Interim Measures from this Tribunal to prevent the harm of which they now complain.

Remember that Claimants say that Zambrano was shopping around the Judgment to both the Plaintiffs and Chevron. They never alleged that Zambrano was acting on orders from higher authorities. Ecuador and this Tribunal

were kept in the dark during the pre-Judgment period of the knowledge that Chevron says they possessed. Instead, the--Chevron saved these allegations for Judge Kaplan. Chevron first surfaced these allegations within 24 hours of the Judgment being issued. At R-1320, Chevron had filed a pleading in the RICO case in which they said "Chevron suspects that Judge Zambrano received secret assistance drafting the Judgment, and anticipates requesting discovery on this issue shortly."

Members of the Tribunal, Chevron wants you to hold Ecuador's entire judicial system accountable for the ghostwriting allegations under principles of customary international law and under the Treaty. But under international law, Chevron cannot ask this Tribunal to help Chevron when they did not help themselves at the trial court level.

Ecuador is responsible for the final product of its judicial system, but what Ecuador is not responsible for is Chevron's deliberate and strategic decision to bypass effective procedural remedies that were available during the trial court level that would have addressed the ghostwriting allegations then and there.

For these reasons, Ecuador would submit that Claimants failed to satisfy a critical substantive element of their denial-of-justice claims. Indeed, as my next

presentation will make it clear, when Chevron chose to bypass effective procedural remedies to address the ghostwriting allegations at the trial level, they also forfeited their right to bring any treaty claims based on those allegations.

And with that, Ecuador concludes its oral submissions on certain legal aspects of the denial-of-justice claim, and I would like to say next a few words about the most prominent legal flaw in Claimants' treaty claims.

With respect to Claimants' treaty claims, later this afternoon my colleagues will highlight the fundamental flaws in both Claimants' evidence and their due process allegations. I will focus on another important difference that divides the Parties: That is whether the requirement to exhaust local remedies constitutes a substantive element that Claimants must satisfy to establish the specific treaty breaches that Claimants have pled before this Tribunal.

Ecuador submits that the doctrine of exhaustion of local remedies applies with full force to defeat all of Claimants' treaty claims. This is clear for two reasons:

First, all of Claimants' treaty claims ultimately depend on how Ecuador's judicial system conducted itself in the Lago Agrio Litigation.

Second, investment treaty jurisprudence makes clear that when an investment treaty claim arises out of judicial conduct, exhaustion of local remedies constitutes a substantive element that the investor must satisfy.

So, let's begin with an analysis of Claimants' allegations. Ecuador submits that each Treaty breach that Claimants have asserted requires this Tribunal to find that somehow that the Ecuadorian judicial system violated the substantive standards of the Treaty. Every single allegation involves either just the judiciary or hybrid allegations that allege that somehow Ecuador's Executive interfered with the judiciary's handling of the Lago Agrio proceedings.

What I am contending can be put another way: Would the Claimants have filed this treaty arbitration but for the existence of the Lago Agrio Litigation? Of course not. The allegations underpinning their treaty claims are intimately focused on that litigation and the way the Ecuadorian judicial system acted in that litigation.

Indeed, this Tribunal, at Paragraph 5 of its March 2015 decision, found that, "it has become increasingly clear during this arbitration that the Claimants' principal claim under the USA-Ecuador BIT is made against the Respondent for multiple denials of justice within the Ecuadorian legal system."

The characterization of Claimants' case is fully supported by Section 13 of Claimants' January 2015 Memorial, where you will find Claimants' latest iteration of their Request for Relief. As you can see from the highlighted portions of the slide before you, the Lago Agrio Judgment appears in every single one of their requests for declaratory and injunctive relief. Even in Claimants' request for damages, the sole basis for indemnification concerns the Judgment issued by the Ecuadorian courts.

In other words, while they accuse Ecuador's Executive of interfering with the judiciary or their purported rights under the Settlement Agreement, there is no basis upon which the actions of Ecuador's non-judicial organs caused Claimants an independent harm or damage. Every treaty claim and claim for relief ultimately stems from the results of the Lago Agrio Litigation and the judiciary's handling thereof.

Now, this is an important determination because if the crux of Claimants' allegations concern the conduct of the Ecuadorian judicial system, then this Tribunal cannot allow Claimants to circumvent the requirement of exhaustion of local remedies.

Now, I would like to briefly turn to the law on the applicability of exhaustion of treaty claims based on

judicial conduct.

First, in his comprehensive treatise on the subject, Professor Paulsson states: "To repeat, States may, and do, enter into treaties that provide for direct access by foreigners to international tribunals without first having to exhaust local remedies. Such waivers give foreigners the assurance that internationally wrongful conduct will not be swept under the rug indefinitely.

In the particular case of denial of justice, however, claims will not succeed unless the victim has indeed exhausted municipal remedies, or unless there is an explicit waiver of a type yet to be invented. This is neither a paradox nor an aberration, for it is in the very nature of the delict that a State is judged by the final product--or at least a sufficiently final product--of its administration of justice."

Likewise, numerous investment tribunals have expressly held that when an investment treaty claim is premised upon the judicial action of the host State, the claim cannot succeed unless the Claimant has exhausted all effective available remedies.

This was the holding by the Arbitral Tribunal in the well-known and highly instructive case of Loewen versus the United States. As you can see from the following slide, in that case, the Tribunal dismissed

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04:18 Loewen's investment treaty claims because Loewen had failed to prove that it had exhausted the available remedies under U.S. municipal law. Nor can Claimants avoid the same fate as the investor in Loewen simply because Loewen's treaty claims arose under NAFTA.

The point is simply that when assessing an act of the judiciary, the law imposes a systemic obligation on the host State, not a requirement that every judge or lower court be infallible. Indeed, there are numerous non-NAFTA decisions that support Ecuador's position. For example, in the Jan de Nul arbitration, the Claimants there also implored the Tribunal to jettison the requirement of exhaustion and evaluate Egypt's judicial system as part of the supposedly broader fair-and-equitable-treatment standard. The Tribunal categorically rejected that argument.

As you can see, the Tribunal held that, where a judgment lies at the core of the treaty claim, the relevant standards to trigger State responsibility for its judiciary are the standards of denial of justice, including the requirement of exhaustion of local remedies. The Tribunal found that the investor could simply not circumvent the requirement of exhaustion by dressing up its denial-of-justice claims as treaty claims just as Claimants seek to do here.

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04:20 There is also the matter of Pantechniki versus Albania arising under the Greek Albania BIT. In that case, Professor Jan Paulsson, acting as a Sole Arbitrator, analyzed the denial-of-justice claim in the context of a Fair and Equitable Treatment provision that was incorporated in the Treaty by agreement of the Parties. Professor Paulsson rejected the investor's claim without hesitation because it was based on the Claimants' purported mistreatment at the hands of Albania's lower and appellate courts, and yet the Claimant has failed to pursue his appeal to the top Court in that country.

In a quote that is fitting here, Professor Paulsson stated: "Denial of justice does not arise until a reasonable opportunity to correct aberrant judicial conduct has been given to the system as a whole."

And as with denial of justice claims under customary international law, there is no hard-and-fast rule regarding direct versus indirect remedies when assessing which remedies must be exhausted to establish a treaty claim. The issue of directness is not the determining issue. The test is whether or not the local remedy is effective to address the harm complained of, period.

Thus, for example, Claimants cannot argue that the CPA is not an effective remedy on the basis that they

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04:21 consider it to be indirect. Indeed, the remedy that the Claimant in the Loewen Case failed to pursue was far more indirect than the ones available to Chevron here.

Loewen's mortal sin was failing to petition the U.S. Federal Supreme Court to strike down a bond requirement imposed by the Mississippi State Courts which Loewen could not afford to pay to stay the enforcement of the State Court's judgment. That remedy is far more indirect than the effective remedies which Chevron has available here.

Again, all effective municipal remedies must be pursued, and whether a so-called "indirect remedy" is effective or not is a determination that must perforce be made by an investment tribunal on a case-by-case basis just as Professor Paulsson indicated when he was the sole arbitrator in Pantechniki, as you can see from the bottom of the slide that is before you.

The finding that the requirement of exhaustion applies to all those treaty claims that arise from the judicial conduct of the host State, as held in Loewen, Jan de Nul, Pantechniki and others, applies here with full force. Like the investment treaties at issue in those cases, there is nothing in the express language of the BIT between the U.S. and Ecuador that expressly derogates from the requirement that local remedies must be exhausted when

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04:23 judicial action is the basis of the Treaty breach.

It would be unprecedented for this Tribunal to find that the U.S. and Ecuador implicitly or tacitly agreed to jettison or waive this well-established principle of international law when the Treaty breach is based on judicial conduct. Such a waiver would have necessarily been explicit or express, and no such waiver exists in the present Treaty.

Indeed, the cases to have interpreted the U.S.-Ecuador BIT in evaluating claims arising out of judicial conduct support Ecuador's position here. For example, even the Commercial Cases Award upon which Claimants so heavily rely noted the importance of general principles of customary international law in interpreting the U.S.-Ecuador Treaty.

The Commercial Cases Tribunal, in its Partial Award, found that the effective-means standard contained in Article II(7) and general denial-of-justice principles were inextricably linked. The Tribunal on that case stated "given the related genesis of the two standards, the interpretation and application of Article II(7) is informed by the law on denial of justice."

While the Commercial Cases Tribunal ultimately rejected a strict exhaustion of local-remedies standard without explaining what "strict" means in this context,

that Tribunal nevertheless still found that the Claimants in that case must have adequately utilized the means made available to them to assert claims and enforce rights in Ecuador in order to prove a breach of the BIT.

Similarly, in Duke versus Ecuador, the Tribunal in examining the judiciary's conduct also found that Article II(7) "seeks to implement and form part of the more general guarantee against denial of justice."

It then proceeded to determine whether the investors' failure to pursue local remedies was justified. In other words, all of these cases found that the investors' exhaustion of adequate and effective local remedies was required to prove their treaty claims.

Claimants also rely heavily on the Petrobart versus Kyrgyz Republic Case and the White Industries Award as the only examples Claimants have been able to find where Claimants allege that the Tribunal appeared to relax the exhaustion requirement.

Claimants' interpretation of those Awards is simply incorrect. Neither of those two decisions expressly discards the exhaustion requirement when analyzing the conduct of the judiciary. In Petrobart, the Tribunal focused on the conduct of the Executive Branch in imposing liability under the Treaty. There, the Executive Branch stripped the assets of a State-owned company

leaving that company insolvent and unable to satisfy the debts owed to the Claimants. And in contrast to the situation here, the Kyrgyz Republic never argued that there were any further remedies to exhaust in their courts.

Nor is there an Investment Treaty Award that applies the legitimate expectations tests so broadly as to constitute a waiver of the exhaustion requirement when the treaty claims at issue are based upon judicial conduct.

There is not a single case that stands for that proposition. The closest case to do that was the White Industries decision that Claimants rely upon, but even that case never held that the exhaustion requirement did not apply as a general matter to treaty claims based on judicial conduct.

As we'll be seeing from the next slide, the White Industries Tribunal simply never reached the issue of exhaustion on the one claim that was assessed under the legitimate expectations test. It didn't have to because it was easier for the Tribunal to simply show how ill-suited a test that relies on specific assurances is, when it is clear that no State's judicial system gives unambiguous and specific assurances to a specific investor or unidentifiable group.

Ecuador submits that the legitimate expectations

test does not apply under this Treaty, particularly when treaty claims are founded upon judicial conduct. But if the Tribunal is minded to disagree, then Ecuador submits that the only legitimate expectations that Chevron could have reasonably had here was that Ecuador's judicial system would comply within the bounds of well-established principles of international law which includes the requirement of exhaustion.

Finally, the White Industries Award is of no moment here for another reason. That case involves a systemic undue delay in a court system, an issue which can indeed constitute an exception to the exhaustion requirement, if proven. Chevron's case here has nothing to do with a systemic delay by Ecuador's judicial system.

In conclusion, Members of the Tribunal, Ecuador would submit that this Tribunal should uphold the applicability of the exhaustion requirement as a substantive element of Claimants' treaty claims because they are all intimately founded upon the conduct of Ecuador's judicial system. Claimants' clear and deliberate failure to exhaust local remedies means they have failed to satisfy a critical substantive element concerning each and every one of their treaty claims.

And on that, Ecuador concludes its submission for this part of its Opening Statement.

PRESIDENT VEEDER: Thank you very much. I think that was the time when you were indicating we might have a mid-afternoon break.

MR. BLOOM: Exactly.

PRESIDENT VEEDER: Well, let's break now for 15 minutes. We'll come back at quarter to 5:00. Thank you.

(Brief recess.)

PRESIDENT VEEDER: Let's resume.

MR. BLOOM: Mr. President and Members of the Tribunal, we now turn to our final session. Having covered this morning jurisdiction, exhaustion, and Treaty, we now turn to the denial-of-justice issues.

Claimants contend that the Court's application of Ecuadorian law represented a legal absurdity, and Claimants also contend that the Court's resolution of certain other Ecuadorian legal issues represented a denial of due process. In truth, and in fact, the Ecuadorian legal issues raised by Claimants relate to ordinary and oftentimes mundane matters of Ecuadorian law, the resolution of which were hardly extraordinary. In each instance, the Court's resolution of these issues was appropriate and proper, and well within the ambit of the juridically possible.

Mr. Leonard will address these issues.

At the conclusion of that, he will then respond

to Mr. Coriell's presentation regarding the implications of the Track 1B Decision of March 12, 2015. At that point, Mr. Leonard will hand the microphone over to Mr. Ewing and to Ms. Silver. They will address and respond to the Claimants' factual absurdities argument. Mr. Ewing will address the issues relating to contamination in the Oriente, while Ms. Silver will address the health concerns.

Finally, we'll respond to Claimants' claims of corruption, and in this regard you'll be hearing from Mr. Ewing, my colleague, Mr. Goldstein and me. And with that, I'll turn the fining phone over to Mr. Leonard.

MR. LEONARD: Thank you, Mr. Bloom.

Mr. President, Members of the Tribunal, always a pleasure to appear before you.

The topic that I'm about to address, is not as pleasant, but the good news is that my presentation should take no more than 20 minutes, so please bear with me while I address Claimants' allegations of legal error and due process violations in the Lago Agrio Litigation.

I must admit to a certain level of reluctance in addressing this topic. That Claimants' arguments are meritless as a matter of municipal law seems almost besides the point. What is most objectionable about these aspects of Claimants' case is that their arguments do not

belong in these proceedings. They are appellate-type arguments that ought to be raised and were, in fact, raised before the courts of competent jurisdiction over those matters. This is not one of those courts. With all the respect that is due to this Tribunal, you do not sit here as a supra-national court of appeal and should decline the Claimants' invitation to do so. There is extensive authority against the possibility of international tribunals substituting their Judgment for that of a municipal Court. I do not intend to address any of that today, and will simply refer the Tribunal to the Republic's submissions on this subject, but I do want the record to be clear about the Republic's objection in this respect.

It is respectfully submitted that unless you find that Mr. Fajardo wrote the Judgment, a hypothesis that you will find is wholly unsupported by the evidence, you must refrain from engaging in any exercise intended to second-guess the findings of Ecuador's courts on these same issues that Claimants have now put before you. An international tribunal may substitute its Judgment for that of a municipal Court only in the most extreme and unusual circumstances. Such circumstances are not present here.

Claimants were required to overcome the generally

accepted presumption in favor of the judicial process by means of clear and convincing evidence of highly egregious conduct. Claimants have utterly failed to meet their burden, and their bid to turn these proceedings into an additional layer of appeal is without basis in international law and must be rejected.

Now, turning to Claimants' specific complaints, they include the following eight allegations.

First, the causation analysis in the Lago Agrio judgment is substantively absurd; second, the Judgment improperly amalgamates TexPet, Texaco, and Chevron; third, the Judgment Awards extra petita damages to the Plaintiffs; four, it improperly joins claims under the oral summary proceedings; five, it allows for the retroactive application of the EMA; six, the Court improperly allowed the Plaintiffs to withdraw their earlier request for the production of certain judicial inspections; seven, the Court improperly appointed Cabrera as a global expert;

And, eight, the Court purportedly refused to consider Chevron's essential error petitions.

While examining these issues, the Tribunal will find that some of Claimants' arguments are clever ones, but will also conclude that not one of them is supported by Ecuadorian law or by the facts on which it prefers to

rely.

For example, as to the first of Claimants' complaints, Dr. Coronel and Dr. Barros argue that the Judgment does not establish a causal connection between TexPet's operations and the alleged harm at issue. This assertion is factually incorrect. Starting at Part 6 of the Judgment under the heading "Civil Liability, the basis of the allegation," and concluding at Part 10, the Court engages in an extensive discussion about the evidence of widespread contamination in the former Concession Area and the causal nexus between such contamination and TexPet's operations.

Claimants themselves quote the Judgment's introduction to the relevant causation analysis in their most recent submission. At Paragraph 141 of their Supplemental Reply in Track 2, Claimants quote the following language from the Judgment, which you can see on the screen, and I quote: "As has been explained, the strict-liability regime favors the victim of the harm, who must only prove the harm and the resulting causal nexus in order for his action for harm to succeed. In view of the foregoing, what truly needs to be analyzed is causation."

Part 7 through 10 of the Judgment described the Court's analysis and its findings that the record shows sufficient evidence of pollution arising from TexPet's

operations as well as a credible threat of contingent harm to those exposed to the contaminated lands and waters.

Claimants also rely, albeit for different purpose, on the Court of Appeals examination of the lower court's causation analysis, and I quote from Page 13 of the appellate Decision in Lago Agrio; this language can also be found at Paragraph 142 of Claimants' Track 2 Supplemental Rejoinder. You have the language on the screen, and I quote: "The division considers that the analysis of Civil Liability, clear in the lower Judgment, is the appropriate one. The analysis of the relationship between damage and cause in the Ecuadorian Amazon is sound and derives from the examination of the items of evidence that exist in the record. Then, the damages to the environment are legally proved and considering the causal relationship between the result of damage, and the action of the operations of the then TexPet, the division does not find reasons to modify what was ordered in the lower court's Judgment."

The factual predicate of Claimants' complaint is just lacking, so Claimants resort to misdirection and argue through their experts that the Court's analysis is not based on the, "technically applicable evidence," for determining the causation between an event and a particular harm.

Now, this argument is most intriguing. What is the technically applicable evidence really is anybody's guess. Dr. Coronel maintains that in his expert testimony, while another one of Claimants' Experts, Dr. Wright, asserts that judicial expectations are it. Dr. Andrade shed some light on this nonsense and explained that establishing causation in cases of strict liability is not particularly complex where the alleged harm is a natural consequence of the risky activity at issue. The presence in a rainforest of crude oil chemicals and heavy metals used in drilling and extraction of hydrocarbons is a natural consequence of hydrocarbon activities. It cannot be attributed, for example, to the farming activities of native inhabitants of the area.

The law of torts in Ecuador adopted an objective or strict-liability regime in cases involving risky activities such as this one. Technically, this regime adopts a rebuttable presumption of liability for any and all harm that is a natural consequence of such activity. This presumption can be reversed only if the Defendant can break the causal link between the risky activity and the alleged harm. This can be done on three grounds, each showing that the harm is a product of either one, force majeure; two, the exclusive fault of a third party; or, three, the exclusive fault of the victim.

The record evidence shows that Chevron was simply not in a position to meet this burden. Thirty years of oil drilling and extraction operations using arcane techniques such as unlined pits to this charged crude and drilling mud containing heavy metals and chemicals or discharging billions of gallons of toxic production waters resulted in widespread and extensive contamination, and the Court found this. The Court's analysis in Chapter 7 through 10 of the Judgment finds this causal link between TexPet's activities, and the existing contamination has been sufficiently established. That's Point 1.

There is another aspect to Claimants' argument: Claimants complained that Petroecuador's activities contributed to the pollution that is being imputed to Chevron. And make two different allegations on this basis:

First, Claimants argue that the courts should have made every possible effort to determine which percentage of the harm was attributable to Petroecuador and factor that percentage into its final determination on damages. For example, in Claimants' view, the Court should have determined how much of the contamination that is migrating from TexPet's unlined pits originated in any discharge that Petroecuador may have dumped into those pits.

But that is not the law in Ecuador. The laws in Ecuador impose joint and several liability on all joint and consecutive tortfeasors, subject, of course, to the Defendant's right to seek contribution from the other tortfeasors. It is not the Plaintiffs' burden to allocate percentages of liability among possible joint tortfeasors, nor is it the Court's to do so, a burden, that if real, would indirectly inure to the detriment of the Plaintiff.

Quite on the contrary, it is the Plaintiffs' prerogative to seek full damages from anyone, some or all of the joint tortfeasors. Petroecuador's alleged contribution to the pollution derived from TexPet's operations does not prevent the entry of a judgment against Chevron.

Second, Claimants assert that the Court found Chevron liable for contamination, which Chevron allegedly proved was exclusively attributable to Petroecuador. But this contention is belied by the Judgment's express representations that harm exclusively attributable to Petroecuador was not being considered in the Judgment. To make this claim, Claimants rely not on their scientific experts or on any concrete evidence otherwise in this record. Claimants rely, instead on the bare assertions of their legal experts, Dr. Coronel and Dr. Barros neither of which proffers any evidence to support their assertions.

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05:00 There simply is no basis on this record to conclude that the Court erred in imputing to Chevron liability for conduct only attributable to Petroecuador.

Claimants' next argument challenges the Court's determination to pierce the corporate veils separating TexPet from Texaco and Texaco from Chevron as, and I quote, "so deeply flawed that it could only have been the product of bias or corruption."

Claimants do not dispute that it was within the Lago Agrio Court's competence and discretion to pierce the corporate veil of these companies. Both Parties agree that this mechanism is available to any court confronted with the alleged abuse of the corporate form. Claimants simply disagree with the analysis and ultimate conclusions of the Ecuadorian courts on this topic. The Republic offered a detailed analysis of the elements that Ecuador's courts considered while examining this matter. I will not embark on this same level of analysis today. I trust the Tribunal has reviewed or will review the Republic's submissions in due course. I will simply make two somewhat general points:

First, Claimants have put before this Tribunal claims on arguments that have already failed and been rejected by courts in Claimants' home country. Delaware courts, the courts of the state where Chevron is

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05:01 incorporated, have articulated several factors that, if present, give rise to a presumption that a corporation is operating a subsidiary as its alter ego. In those cases courts have disregarded the formal corporate separateness of the corporation and its subsidiary. Those factors include:

One, whether the corporation was solvent or undercapitalized;

Two, whether the Shareholder siphoned corporate funds;

Three, whether there is identity of corporate officers and Directors;

And, four, generally, whether the corporation simply functioned as a facade for the dominant Shareholder.

All of these factors are present in the case of Chevron and Texaco. While Texaco was a viable and well capitalized operation throughout the duration, entire duration of the '73 Concession, the record shows that after the merger, Chevron turned Texaco into an empty shell. For example, we know that Chevron acquired all of Texaco's capital stock and remains Texaco's only Shareholder. Texaco transfers all of its money daily to one of Chevron's corporate accounts. Texaco thus requires financing from Chevron for any number of purposes.

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05:03 Chevron's Treasury Department handles all wire transfers for Texaco. Chevron pays Texaco's U.S. liabilities, tax liabilities. After the merger, Chevron sold Texaco's former headquarters in New York and moved all operations to its own California facility. Since then, Chevron and Texaco have shared at least 15 officers and Directors.

And, finally, Chevron designates Texaco as a non-operating company with no ongoing commercial enterprises.

These facts are undisputed.

Now, presented with these facts, a jury in a Mississippi state Court trial recently concluded that Texaco is Chevron's alter ego, that Texaco is Chevron's alter ego, justifying the Court's piercing of the corporate veil between them. Chevron later lost its appeal to intermediate appellate court. I refer to the Decision in the Simon v. Texaco case, which the Republic discussed at large in written submissions starting with its Track 2 Counter-Memorial in February of 2013.

Second, the Lago Agrio Court considered similar factors--similar factors--and in its discretion concluded that they warranted a finding that Texaco was Chevron's instrumentality and that upholding their corporate effectiveness would perfect an abuse of the corporate form to the detriment of third parties, here the Plaintiffs.

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05:04 Claimants naturally disagree, and it is quite possible that the Tribunal too might have reasons to disagree with the reasoning and the ultimate conclusion of Ecuador's courts. Reasonable minds can disagree. But this is not a retrial, nor is it an appellate proceeding before a court of competent jurisdiction. This Tribunal's limited jurisdiction is not vested with discretion to substitute its Judgment for that of Ecuadorian courts absent clear and convincing evidence of egregious misapplication of the law.

That is not the case here. The Ecuador court's decision to pierce the corporate veil between Chevron and Texaco mirrors the analysis employed by not one but two U.S. courts that reached the same conclusion regarding the same corporate entities on the basis of the same facts. I submit to you that those facts more than sufficiently support the Ecuadorian Court's findings, but at a minimum, the fact that both the first instance and appellate courts of Mississippi found it appropriate to pierce the corporate veil of these companies speaks at least to the reasonableness of the decision of the Ecuadorian courts to do the same and place that decision comfortably within the ambit of the juridically possible.

Similar evidence supports Ecuador's Court's decision to disregard the corporate separateness between

Texaco and TexPet. I just spoke of Texaco and Chevron. Now, I'm going to address the evidence justifying the piercing of the corporate veils between Texaco and TexPet.

And the Lago Agrio Record shows that, first, Texaco considered TexPet as its Ecuadorian division, not a separate entity. Routine administration matters such as tenders for catering, cleaning, and entertainment services were handled and authorized by Texaco. The Court made the same observation with respect to daily operations such as contracting equipment and personnel.

And just as the case of Chevron and Texaco, TexPet and Texaco also had overlapping officers and Directors. As a trial court noted, "Both the important decisions as well as the trivial ones passed through various levels of Executives and decision-making bodies of Texaco, Inc., to the extent that the subsidiary depended on the parent company to contract a simple catering service."

Again, these factors are substantially similar to those upon which U.S. courts concluded that Texaco was Chevron's alter ego. Claimants cannot indict the Ecuadorian Court's Decision to disregard TexPet's and Texaco's corporate separateness as egregious or offensive to the most basic sense of justice without simultaneously indicting the wrong judicial system.

Claimants' extra petita damages are equally without basis, and I will not address them in the interest of time. Claimants' other allegations of legal error are similarly without basis in law or in fact. For example, Claimants complained that the Courts in Ecuador retroactively applied the EMA. The contention is predicated on the premise that the EMA Article 43 created new substantive rights concerning the diffuse claims. The plain language of Article 43 shows this premise to be false and reiterated decisions of Ecuador's highest court confirm the procedural nature of this relation.

As the National Court explained, the Civil Code determines the substantive rights underpinning the Plaintiffs' claims, and Article 43 establishes the applicable procedure.

Claimants' next contention that the Court improperly allowed Plaintiffs' claims under tort provisions of the Civil Code to be heard in oral summary proceedings is also belied by the express mandate contained in Article 43, that all claims in tort for damages originating in environmental contamination be heard in oral summary proceedings. Lest there be any doubt, the Republic and its Expert presented evidence of other decisions that confronted and rejected substantially the same argument that Claimants advanced in these

proceedings. This shows that Claimants are not the only ones to have made this argument, but also shows that the same argument has been rejected every time that it has been raised.

Moving on, Claimants' claims of due-process violations fare no better. There are complaints about the Plaintiffs' withdrawal of their earlier request for a certain number of judicial inspections or the allegedly improper procedure for appointing Cabrera as a global expert, and the Court's handling of Chevron's repetitive essential error petitions are fabrications only facilitated by Claimants' Experts' willingness to misrepresent applicable rules of civil procedure and the relevant facts. I expect that Claimants will address the minutiae of each of these allegations during their examination of Dr. Andrade, and, therefore, intend to expand on these issues when I address the Tribunal again a few weeks from today in Closing Argument.

This concludes this segment of my original submission. With your permission, I would like to devote some time now to address Mr. Coriell's presentation of this morning on Track 1 issues.

And I will also take the opportunity to touch upon certain aspects of the Tribunal's recent decisions on those issues.

While the Republic appreciates, really appreciates, the hard work of this Tribunal and, of course, the result of that analysis, we remain concerned about the direction that the Tribunal appears to be taking in respect of the nature of the Claims at issue in the Lago Agrio Litigation. We have always been candid with this Tribunal and intend to continue that practice for the duration of these proceedings and beyond. We recognize the challenges inherent to the task of interpreting the laws of a legal system that is foreign to the majority of this Tribunal, and it is with candor that I tell you that we do recognize this Tribunal's discernible efforts to understand these issues and to find the path to the correct answer to the questions before it.

But Claimants have succeeded in creating a legal fiction by importing into a civil law system legal constructs developed in common law and which really have no place of recognition in Ecuador's legal system. Claimants have spent enormous resources to square a circle, and in the process have made this Tribunal's task a daunting one. The Republic continues to regret that in its final and First Partial Award, the Tribunal took a stab at interpreting some aspects of Ecuadorian law and came out on the opposite extreme of what Courts in Ecuador have established on those same issues.

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Certain aspects of the Tribunal's recent decision on Track 1 raised concerns that the Tribunal may continue to misunderstand relevant aspects of Ecuador's legal system, which may lead in turn to critical decisions that may not have a sound basis in Ecuadorian law.

For example, in its most recent decision, the Tribunal adopted definitions of what it considers to be individual claims and diffuse claims to, "denote categories of Claims that the Tribunal has identified as relevant to its legal analysis of the Parties' respective cases in this decision." This language appears at Paragraph 157 of the decision.

At Paragraph 156, the Tribunal adopts the following definition of a diffuse claim, and I quote: "Under Ecuadorian law, a diffuse claim may belong to a community of indeterminate people with the remedy indivisible, and it is not an individual claim." But, Mr. President, with utmost respect, I wonder what might be the source of this definition. This definition is prefaced by the phrase "under Ecuadorian law," but there is no statute on the record or elsewhere, really, that might contain any of the elements of this definition. There is no precedent in the history of Ecuador's jurisprudence from which one could derive those elements, nor is there academic support for it.

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Mr. President, this definition simply does not comport with Ecuadorian law. This is not Ecuadorian law.

And allow me to illustrate the danger of having to create definitions to accommodate Claimants' legal arguments. At Paragraph 164 of the Decision, you identify certain claims raised in the Lago Agrio Complaint that, under the proposed definition of individual and diffuse claims, "could be read as including something other than individual claims." And you list there the popular action under Article 2236 of the Civil Code. You will recall that the National Court confirmed in its decision that Article 2236 of the Civil Code is one of the primary bases for relief, the relief sought in the complaint and granted in the Judgment, and I will turn to that in a few minutes.

Under the Tribunal's proposed definition of diffuse claims, Claimants would argue that any claim under this provision, Article 2236, by a member of an indeterminate class would necessarily be a diffuse one; that is, that it would not be an individual claim.

The jurists of ancient Rome who gave birth to this popular action would respectfully beg to differ. Think of the Year 1861, 19th century, when the drafters of Ecuador's Civil Code adopted the same popular action as well as the one we find in Article 990 of the same code. There was no concept of diffuse rights back then. The

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legal community began developing the notion of diffuse rights more than a century and a half later. How could one assert that Article 2236 was nonetheless enacted as a mechanism to assert only diffuse claims? Note that the Civil Code lays out the rights of the individuals and that individuals have been afforded standing to file a popular action under this provision for more than 150 years. Any determination that these provisions falls within the Tribunal's definition of a diffuse claims or in other words that it is not an individual claim would be an error.

But I submit to you that the real issue is not whether an action under Article 2236 is a diffuse one. Bear with me here. That is not the point. The real issue is whether an individual's right to bring a popular action under this provision falls within the scope of the Release contained in the 1995 Settlement Agreement. It is not, and it could not, for a number of reasons.

To elaborate on this point, I would like to focus on the nature and purpose of the popular action under Article 2236. Let's call it a 2236 action. And to understand this 2236 action, we must first take a step back and revisit Ecuadorian tort law more generally.

Though you may recall that the three primary tort provisions of the Civil Code are Articles 2214, 2229, and

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2236. Articles 2214 and 2229 embodied the traditional notions of tort law; that is, anyone who causes harm to another is liable to that other person for such harm. That's liability for discrete harm, harm that has already occurred, giving rise to what we know as a cow claim. Let's call that a 2214 action. To be clear, this action represents what we know as a cow claim to which Mr. Coriell referred to this morning as a claim for individualized harm.

But tort law in Ecuador has two components. While we have on the one hand these 2214 actions focusing on harm that has already occurred, we also have on the other hand actions in tort to prevent the occurrence of prospective harm. Article 2236 embodies this latter form. It is a tort mechanism afforded to individuals to pursue a claim in tort to prevent the occurrence of harm by causing or forcing the tortfeasor to remove that which creates the risk of prospective harm. That action is pursued in the form of these popular action, and this component of Ecuadorian tort law is of critical importance to understand the Lago Agrio Litigation. Claimants have done their level best to conceal the second component and offer a rigid binary approach. Either you have a class action or you have a 2214 action. There is nothing in between. And as everyone agrees, Ecuador does not have a class

action, but that contention is absolutely wrong. It's incomplete. It ignores the popular action under Article 2236 which, as we've stated several times, is akin to a class action, but it's not a class action. There are substantial differences.

Think of it this way: If existing contamination of the environment has already caused the final injury to, say, a thousand people, the affected residents have the right to seek reparation from the tortfeasor under article 2214, as our cow claim. Now, if the contamination raises also the specter of harm in the future, harm to their lives, harm to their health, their property, any one of those people affected by the threat of harm may assert a popular action under Article 2236 to cause the tortfeasor to remove the contamination that is creating a threat of contingent harm. To what? To their individual rights to their persons. This is not a cow claim. This is not a claim for compensation of reparation of harm that has already occurred. This is a claim to prevent that harm from occurring to exactly the same rights, but it's prospective in nature.

In both instances, the Plaintiffs would seek to vindicate their individual rights, but it is to protect their health, their family, their livestock, their property. They're not seeking to vindicate any esoteric

kind of right to the environment or a right of the environment to be clean from contamination. This is to protect themselves.

Now, under Article 2236, anyone has standing to bring this kind of action, unless the threat of harm affects a finite or determinate universe of people, in which case only a member of such class has standing to bring such popular action. And you will recall that Professor Douglas used the example of a person who lives by the river, any stream of water. He's not the only one. He has neighbors, there are many people. And upstream there is a company, a plant that is about to start or has already started dripping highly toxic material into that water stream contaminating the water stream from which these neighbors take water to drink, to bathe, to feed their cattle. One of the members of that class decides to file a popular action under Article 2236 to force that plant to remedy the problem, to prevent that toxic materials from keeping dripping into the water.

But if that person does the same thing that the Lago Agrio Plaintiffs did, that person will also invoke Article 2214 to force that person to remediate the harm that has already occurred.

So, for the action under 2236 is intended to prevent that plant from continuing the pollution of the

waters. Now, this is only one neighbor that files the claim, and that neighbor does have standing under the plain language of Article 2236.

Now, because it's a popular action, that neighbor is, in a sense, acting on behalf of the entire community of neighbors, but there is a distinction to be made. That person is not asserting their own--the neighbors' individual rights to property or to life or to health. This is a procedural right. This is a right to file a popular action, to have the plant remove that which is causing a threat of harm. This toxic waste will result in sickness and death and in problems to the property of all these neighbors.

Now, if this person succeeds, the benefit of this action, the reparation will benefit himself, but by definition will also benefit the entire members of the class. This person settles a claim in exchange for an all expenses paid vacation to Disney World, then anyone else, all the neighbors continue to be exposed to a threat of harm, and everyone has standing to file this claim.

This is the nature, the basic nature, of an action, a popular action, under 2236 of the Civil Code. Now, this right of action is a civil right. This is not the government's right, so even if a governmental entity could also assert claims under this provision, what is

clear is that there is no authority for the proposition that the Government can or could ever dispose of any person's right under that provision by way of a settlement. You may recall that the Civil Code explicitly forecloses any possibility that a party may settle rights belonging to others. You may also recall that Articles--well, these Articles on the screen, Articles 2349 and 2354 embodied this notion.

So, no matter how you qualify an action under 2236, be it individuals or diffuse or otherwise, what is important is that neither Petroecuador nor the Ministry of Energy of Ecuador could have settled claims that any person in Ecuador has a right to pursue under Article 2236 since the enactment of a Civil Code in 1861, and we know that any attempt to do so would have rendered the Agreement null and void by virtue of these provisions that you have in front of you. Such right of action under Article 2236 is not within the scope of the 1995 Settlement Agreement.

You may also recall that, up until recently before this arbitration called for a need to veer off-road and speak from the other side of the mouth, Claimants' Experts admitted and represented to a Federal Court in New York that claims brought under Article 2236 would not be barred by the 1995 Settlement Agreement. Indeed, not one,

not two or three, but five of Claimants' Experts testified under oath to that effect. You must be familiar with the statement on the screen. I will not read the whole of it, but the conclusion you see is: "Therefore, the possibility of bringing those claims is not affected by the 1995 Settlement Agreement."

Mr. Reis Veiga, Texaco's lead negotiator of the 1995 Settlement Agreement, he, too, admitted in cross-examination that he agreed with this statement. He had made the same representations to the inhabitants of the former Concession Area on multiple occasions prior to the formal execution of the Settlement Agreement.

As interpreted by this Tribunal, the Release does not extend to, "claims made by third persons acting independently of the Respondent and asserting rights separate and different from the rights of the Respondent." This is at Page 81 of the Tribunal's First Partial Award.

At Page 112, the Tribunal clarifies further that the Release precludes only, "diffuse claims against Chevron under Article 19.2 of the Constitution made by the Respondent"--that's clear--"and also by any individual not claiming personal harm actual or threatened." I submit to you that this action, the right of action under Article 2236 is no doubt a mechanism to assert rights, "separate and apart or different from the rights of the

Respondent."

Mr. President, Members of the Tribunal, it is with the most respect that I urge you to resist the temptation of revisiting these issues de novo. The Lago Agrio Court, the Court of Appeals in Ecuador's highest court all rejected as baseless Claimants' contention that the Claims at issue in the Lago Agrio Litigation had been settled by Petroecuador and the Government under the 1995 Settlement Agreement. There are powerful reasons why those who preceded us in development of international law uniformly rejected the possibility that international tribunals substitute their Judgment for that of municipal courts interpreting their own municipal laws. The likelihood of error is chief among them.

The same broad equitable relief that Plaintiffs requested in Aguinda was requested in the Lago Agrio Complaint and granted by the Lago Agrio Court under Articles 2236 of the Civil Code and EMA Article 43. One might read the Tribunal's characterization of the Aguinda claim as one limited to cow claims based on the most recent decision. I do not believe that that would possibly be the case, but in the interest of caution, I will respectfully refer the Tribunal to the Republic's submission describing the nature, scope, and extent of the Aguinda Complaint as seeking extensive remediation of the

environment in a former Concession Area.

The slide on the screen has a reference to each one, each opportunity where the Republic addressed this issue.

But I do wish to address Mr. Coriell's reliance on the Republic's statement explaining that the Aguinda Plaintiffs dropped their personal injury claims. And, indeed, they did. There is no inconsistency in the Republic's case here. We stand by that statement, but also need to make clear that those personal-injury claims refer to their cow claims, their claims for reparation or compensation for their individualized harm. Discrete, past harm. Mr. Coriell emphasized the fact that Plaintiffs did not offer evidence of personalized harm in Lago Agrio, nor did they seek compensation for any personalized harm suffered. That would be a 2214 type of action.

And Mr. Coriell is correct: The Lago Agrio Litigation is not a 2214 type of case. You may have noticed that no money will ever flow to the pockets of the Plaintiffs. Rather, all funds have been ordered to flow into a trust fund which sole purpose is to fund the remedial works necessary to remove the contamination that is posing raising a threat of harm to which each of the Plaintiffs is exposed.

The Lago Agrio Litigation is a 2236-type case. It's a case about the removal of that which is causing a threat of harm to the inhabitants of the former Concession Area. This popular action entitles anyone in that area to assert this popular action precisely for the purpose of obtaining the removal of the threat.

I also wish to address Mr. Coriell's reliance on the Aguinda Decision. Mr. Coriell argued this morning that Ecuador relies on the Delfina Decision as its last resort, but this is an error. Claimants misread the Decision and misrepresent the relevance to its case, to this case.

To be clear, the Republic invoked Delfina for a limited purpose: To show that Claimants' contention that, in 1995, no individual could assert a claim under Article 19.2 was false. Delfina, one of the legal bases for Delfina is 19.2, and that's the reason why the Republic initially brought the Tribunal's attention to that case.

In its Track 1 Decision the Tribunal somewhat rendered--or rendered this decision somewhat irrelevant by carving out from its decision the right of an individual to file a claim under 19.2 to the extent that the Claimant asserted or alleged personal harm. That's exactly what happened in Delfina. We can no longer rely on Delfina.

That the relevance of that case is relative at best.

Now, Delfina was a 2214 type of claim. It was not a 2236 action. It wasn't a class action. It was not a diffuse claim. It was a 2214 type of claim. And your recent decision reflects your understanding of that fact. Delfina sought compensation for individualized injuries and sought monetary compensation for those injuries, although at the end of the day, it chose to apply those funds to Public Works instead of putting it in their own pockets.

Now, we also drew a parallel between Delfina and Lago Agrio simply because the factual predicate of both cases was very similar. There was environmental contamination affecting the neighbors of a particular area. In one case, Delfina, 2214-type action, the neighbors chose to pursue or seek remediation, reparation for the harm, historical harm, that had already occurred. Monetary compensation for that harm. In Lago Agrio, the existence of environmental contamination is a factual predicate for a 2236 action. That environmental contamination poses the threat of multiple different kinds of harm, and my colleagues will address that in a few minutes.

In essence, it establishes a factual predicate for that claim, and the claim seeks an order from the

Court instructing the tortfeasor to remove that threat of harm, in this case by way of environmental remediation.

Mr. President, this concludes my submission to this issue. I have already exceeded the time that I had allotted for this. We will have an opportunity to address this matter in closing again, but given the possibility of confusion, it is also very possible that Post-Hearing Memorials may be warranted in this case. I'm sure that we will have ample time to discuss that. So, with that, I will turn the floor to my colleagues, Greg Ewing and Nicole Silver.

PRESIDENT VEEDER: Thank you.

MR. EWING: Good afternoon, Members of the Tribunal.

When I started working on this case, environmental issues were a bit of a mystery. As a human being it was obvious to me why the people of Ecuador would not want oil in their backyards and in their water. But at the same time I read the reports written by Mr. Connor, Dr. Hinchee and the rest of the Claimants' team and I thought I must be missing something.

As we heard this morning there was and is no problem in the Ecuadorian Oriente as a result of TexPet's oil operations from 1972 to 1992. So, as any good lawyer does, I dove into the details to figure out the truth. I

would like to take about 15 minutes to 20 minutes this afternoon to talk you through some of what we have found.

Put most simply, our analysis of the Lago Agria record and our own experts' sampling has shown a very straightforward truth. TexPet caused environmental contamination that continues to exist in the Oriente and negatively impacts its residents. I will be primarily discussing the first two pieces of this conclusion, and my colleague, Nicole Silver, will be discussing the third.

In the third week of this arbitration, you will also hear from the Republic's Experts Dr. Ed Garvey and Mr. Ken Goldstein of LBG and Dr. Harlee Strauss on these same topics.

But to start, I would like to take you back to the beginning of TexPet's time in Ecuador. When Texaco entered the Oriente in the late 1960s, the area was mostly untouched rainforest. Lago Agrio 1 was the first well drilled by TexPet. Marketable quantities of oil were found. Immediately after completing this well, TexPet moved to drill Lago Agrio 2. Lago Agrio 2 is a well that the Republic's Experts have done some analysis on, and a well which we will be showing you during the site visit. So it will serve as my first example. But I want to make sure we don't get lost in my examples. TexPet operated at least 344 sites throughout the Concession. My examples

today are just that: Examples. We have found similar conditions at almost every site we visited. The judicial inspections during the trial show the same. This is not surprising, though, since TexPet's practices were the same throughout the Concession. All of the examples I will be showing you today are the direct result of TexPet's practices. Keeping that in mind, let's look back at my example.

This is an aerial view of Lago Agrio 2 in 1976, the earliest date on which we have a clear picture of the well. There are two pits here. You may be having a hard time seeing them, and you may be thinking this is a lot like those "Where's Wally" games or, as they're called here in the States, "Where's Waldo?" Searching for pits brings us to two of my first points.

First, TexPet did not keep records of at least five main facts about each well site. The number of pits dug, the location and dimensions of those pits, what they put in those earthen pits, how and when those earthen pits were closed, spills that escaped public attention. This poor recordkeeping forces all of us to attempt to piece together the history of each and every one of these sites. For instance, we know where many pits are from the aerial photographs, but there are surely many more still hidden.

The second point is that piecing together the

history of these sites is a significant effort that requires looking at many different pieces of evidence. The Parties in the Lago Agrio Litigation recognized this, and presented the Court with aerial photographs like this one, witness accounts, historical documents and over 100 Expert Reports interpreting it all.

And on top of that, the Lago Agrio Court visited over 50 of these sites to see them firsthand. Looking back at the aerial photo of Lago Agrio 2 in 1976, we first identify the platform. I've outlined it for easy viewing. And I'll tell you, Chevron's internal documents took some of the fun out of this "where is the pit" game by telling us where Chevron thinks the pits are. So, I have cheated and highlighted them for you. One is immediately northwest of the platform. This pit was the focus of LBG's investigation of Lago Agrio 2 in 2013 and 2014, and it's one pit that we know is still causing problems for the residents and continues to threaten them with future problems.

The second pit that you can see further to the north of Lago Agrio 2 is most likely a test pit. Test pits were used by TexPet to test the output of a newly drilled well, hence the name.

We know very little about this smaller pit at Lago Agrio 2 because Chevron has ignored it in all of its

investigations, probably because, as LBG found too, it is now difficult to get to.

So, I will shift our focus to Shushufindi 34, another site which LBG investigated and another site which we will show you during the site visit to give you a clearer view of a test pit.

At this site, you can see the platform and one large pit immediately to the east of the platform. This unlined earthen pit called a cuttings pit or a reserve pit was most likely where TexPet dumped the dirt and rock from drilling. But when the drill hit oil, that oil filled this pit. And that is most likely why this pit is midnight black in these photos. I want to direct your attention to the smaller pit to the north. This is the formerly hidden pit that LBG found in 2014 during its investigation of the site. This is most likely a test pit that TexPet used to test the wells' oil production volume. According to an internal TexPet memorandum, as soon as a well was drilled, TexPet would dig a small deep slush pit for well tests, like this one we were just showing you. They would then connect the newly drilled well to a pipe that emptied in this pit. TexPet would then open up the valves for a period of time and let the oil flow into this test pit. The engineers would measure how much oil came out during this time period and could then calculate the

well's flow rate. Once the test was done, according to the memo, these pits were filled in and the location graded over.

As you can see from this one test data drilling report from Lago Agrio 16, TexPet engineers opened the well to flow into a test pit for 12 hours and during that time 300 barrels of oil, which equates to over 47,000 liters of crude oil, went into a pit that was then simply covered with dirt.

But how do we know that TexPet just left this oil in the pits? Well, in 1996, when Woodward-Clyde came to the Oriente as part of the RAP, they pumped over 34,000 barrels of liquid oil out of the pits they remediated.

We also know TexPet left oil in their pits because we can still see liquid crude in and around pits like those at Shushufindi 34, and when we sample in and around other pits throughout the Concession.

I've now walked through how bad the pits themselves are, were and are in the Oriente, but I would like to walk through something that is probably much worse. These pits did not actually contain the oil that TexPet put into them. TexPet constructed their platforms on high ground with the pits generally downhill. Then many times the pit walls collapsed releasing the oil to the surrounding environment. In other cases, the oil

would simply flow over the top of the pits' walls. As one example of this, at Aguarico 2, a site operated by TexPet only, there was a pit that was filled with oil and water. Obviously, we're in the rainforest so, it rains a lot. And when it rains, that rain fills the pit. But let me let Mr. Connor explain.

(Video played.)

MR. EWING: From what we have seen, this was not an uncommon event. In addition to overtopping the pits' walls, oil contamination leaked out of the pits through the ground. The contaminated water and crude mixture then flowed into nearby wetlands and streams.

To see an example of this, I will turn to Aguarico 6. You can see in the aerial image the large amount of rainforest that was cleared to prepare this site. According to Chevron, there are at least seven pits here. In 1993, when environmental auditors came to inspect Aguarico 6, they found that these pits had seeped and had contaminated the wetland. LBG went to Aguarico 6 in 2014 and found that the problem is still there, and that it is huge. We will show you this site during the site visit.

All of what I have told you has brought us to the first conclusion we have drawn from analyzing the data in the Lago Agrio Litigation and LBG's more recent

investigations. TexPet caused contamination in the Oriente that continues to exist in the Oriente and negatively impacts its residents.

Let me quickly address some of Claimants' main responses to what I have just shown you. This morning, Claimants relied on statements by David Russell and Douglas Beltman, supposedly proving there is no contamination in the Oriente, and refer to Slide 149 and 153.

First, we have responded to these exact e-mails and statements numerous times in our Memorials, but Claimants have not yet responded to them and still do not address any of our arguments today.

Second, the first two of Russell's e-mails which Claimants cite, come either 1) before the labs had completed a single JI report, or 2) after only four of the 54 had been completed, and the third was a part of Russell's cease and desist letter when relations had already deteriorated. Moreover, these general e-mails are directly contradicted by e-mails addressing their actual preliminary findings. For instance, in October 2004, Russell says, and I quote: "The bottom line is, that even by conservative standards, we are finding PAH concentrations in the soils as much as 200 times permissible exposure limits." And that's R-1303.

And, third, Claimants rely on Douglas Beltman's statement disavowing his work on Cabrera to show that there is no contamination in the Oriente anywhere. Not only is this larger conclusion not in Beltman's statement, but Beltman testified that Chevron drafted that declaration, and he was forced to sign it.

To give just two citations, please see the Respondent's Track 2 Supplemental Counter-Memorial from November 7th, 2014, at Paragraphs 471 to 474, or Respondent's Track 2 Rejoinder at Paragraphs 62 to 63, and the attached Annex A.

But Claimants also look at all of what I have just said and say, but oil in the environment weathers, what Claimants describe as turning to asphalt over a period of months. So, if this oil is still liquid now, it must not be TexPet's oil. To be clear, we do not disagree that oil exposed to air, nutrients, bacteria will weather and slowly turn to a more solid state. As these pictures show, we will see some of this weathered oil at Aguarico 6, for instance. But if the oil is not exposed to air and nutrients, weathering is largely arrested, and the oil will remain as it came out of the ground, a liquid. Dr. Short, the Respondent's petroleum chemistry Expert, testified to this, but Claimants chose not to call him, and how do we know that TexPet oil is not exposed to

air or nutrients? Well, we found buried pits. When we look at aerial imagery of a site like Shushufindi 34, for instance, we can see the pit we were discussing earlier is there in 1976 and then it is covered over in 1985. And when LBG found the pit in 2014, it was still covered over.

Again, this is a common sequence of events.

During LBG's investigation in 2013 and 2014, they found liquid crude oil in the pit areas and in the groundwater monitoring wells they installed around the pits. Covering a pit like we saw at Shushufindi 34 is a very effective way to remove oxygen, and without oxygen, weathering all but stops. This is exactly what Dr. Short found. What Claimants want you to do is to look at one data point, oil that all of the Parties are finding is liquid, and then blindly conclude that since it is liquid, it must be recent. But that conclusion just does not comport with the facts.

There is a lot more evidence that demonstrates that TexPet's contamination continues to exist in the Oriente, and that it negatively impacts its residents, but I want to move on to my next point:

Chevron knows this contamination exists and actively sought to hide and minimize that fact from the Lago Agrio Court and now from you.

First, you have read extensively about the

pre-inspections in our Memorials, a pre-inspection in and of itself is not necessarily a bad thing. We are obviously conducting them before this Tribunal's site visit. What makes Chevron's pre-inspections bad is that they were secret, unauthorized, and used to skew the results presented to the Lago Agrio Court. In their pre-inspections, Chevron sent their Experts out to the well sites to find where contamination was so that they could avoid it during the actual judicial inspections. We now know much more about these pre-inspections and how Chevron used them, but getting this information was not easy. It required filing numerous 1782 discovery proceedings, and Chevron resisted them at every turn, but piece by piece the truth has come out. Based on these 1782s, we can look in on some of these interactions because some were caught on tape. In this video that I'm about to show you, Rene Bernier, a Chevron representative, is looking at sample cores taken near Shushufindi 21. There are a couple of key points I would like you to notice.

First, Chevron was out trying to find clean locations;

Two, contamination had spread further than they expected;

And, three, the contamination they found was at

depth. It wasn't on the surface.

(Video played.)

MR. EWING: You will hear much more about these PIs over the next three weeks, so I will leave it there and move to my third point.

You by now are very familiar with the fact that LBG investigated a few sites in 2013 and 2014, but I want to start from the beginning of their involvement in this case. We retained LBG in 2013 to analyze the data in the Lago Agrio Court record. Chevron had made allegations against the Lago Agrio Plaintiffs' data, so we asked LBG to review only Chevron data to assess whether Chevron's data alone was adequate to conclude that the Lago Agrio Judgment was reasonable. Using only Chevron's data, LBG came to numerous conclusions, but one is primary. The Judgment's finding that contamination exists is reasonable.

Now, Claimants said this morning during their presentation on pollution in the Oriente that LBG's conclusion was not adequate because it did not provide a specific dollar value. But Claimants have never alleged that the damages Award was just too high. They have always said it should have been zero. The question is whether the Judgment's damages were reasonable. LBG answered that question. They are.

As part of understanding Chevron's data, LBG has also come to a few more conclusions:

First, as I discussed a few minutes ago, Chevron used the results from their PIs to avoid certain soil sampling locations during the judicial inspections. LBG found that Chevron at times sampled at different depths or at different locations altogether when a pre-inspection result came back contaminated. LBG analyzed Chevron's pre-inspections and judicial inspections and found that Chevron did not randomly select its judicial inspection locations.

Second, LBG's Dr. Garvey will explain to you that he took Chevron samples and calculated the amount of crude oil in the soil in and around TexPet's former pits. Dr. Garvey's calculation that there are approximately 3.4 million-barrels of crude oil, the equivalent of 540 million-liters, make the Oriente contamination equivalent to six Exxon Valdez spills, or three quarters of BP's Deepwater Horizon.

Now, Chevron takes issue with our characterization of the Oriente environmental contamination as unprecedented, and maybe they are right. This much oil has been spilled before. The difference is, BP and Exxon and similar others have paid billions of dollars for their environmental damage. BP, for instance,

has set aside $43 billion to remediate and settle anticipated individual claims. Chevron wants you to believe that the 40 million--that's million, not 40 billion that BP is paying--is adequate that it paid to clean up a few sites in the 1990s should erase its liability to all of the individuals harmed. That is unprecedented.

Third, produced water is water that comes up with oil from deep underground. The water is extremely salty and contains emulsified oil and significant concentrations of metals. From 1972 to 1992, TexPet admits to having simply released this water through pits into the environment. LBG estimated that TexPet released between 306,000 and 1.2 million-kilograms of oil.

Fourth, Chevron has admitted that it sought out clean samples during the judicial inspections to delineate the sites. We will talk more about the effectiveness and meaning of Chevron's delineation strategy, but for now I want to point out a corollary point. By loading the record with known clean samples, Chevron skewed all of the percentages so it can make claims like 100 percent of groundwater samples are clean or 90 percent of samples are below relevant thresholds. These claims make it sound like the Concession Area must be clean. But they actually only show that Chevron understands statistics and how to

skew them.

The real question isn't what the total samples taken show. It is what do the samples show where contamination is expected or, as Mr. Bernier alluded to in the earlier video, what do the samples show from locations where contamination wasn't expected, yet was still found.

Before I cede the floor, I want to discuss one final topic that will lead you to the presentation Ms. Silver will make next.

TexPet has caused contamination that continues to exist in the Oriente. When I was at Lago Agrio 2 in 2014, it had been raining for a few hours, typical for the rainforest, and we found oily water dripping from the pipe TexPet left in the side of the pit. As you will see when you visit, this occurs directly above the stream and marshland that is so highly contaminated. And here is the problem, if it isn't obvious. The people who live at Lago Agrio 2 come into contact with that contamination in that stream and marshland on a daily basis.

Similarly, at Shushufindi 55, the cows drink out of the contaminated stream.

At Lago Agrio 16, the people drink the water, bathe in the water, wash their clothes in the water. As I said at the beginning, these sites are just examples. There are plenty more from LBG's reports, Chevron's

pre-inspections, the judicial inspections, and interviews with local residents.

Having started with TexPet's historic operations, having shown that contamination still exists, and now having briefly discussed how people in the environment continue to come into contact with TexPet's contamination, I hand the floor to Ms. Silver to explain the health effects this contamination causes.

MS. SILVER: You have just heard from my colleague, Mr. Ewing, about how TexPet's practices devastated the environment in the Oriente Region of Ecuador, but TexPet has done more than harm the environment. Its practices have put at risk tens of thousands of people who continue even to this day to be exposed to the toxic chemicals in the crude oil that TexPet left behind. The health risks that the Oriente residents face are real, and they are substantial.

Claimants seek to sanitize for the Tribunal the risks of contamination, making this a battle between the Experts, and Claimants' Experts would like you to believe that the oil TexPet left in the soil, sediment and water is harmless. It is not.

Despite what Claimants suggest, it is not the same as the petroleum that can be found in products like Hershey's Chocolate or Johnson's Baby Oil. There is not

one single person in this room who would spread crude oil on a child as if it were baby oil. There is not one person in this room who would eat a petroleum bar or drink a glass of crude. Why not? Because contaminants in crude are toxic and carcinogenic. The adverse effects from exposure to crude oil are well documented, including by the petroleum industry itself. Toxicology data as well as occupational and epidemiology studies of people who have been exposed to oil in similar settings, consistently document increased risks of respiratory problems, dermatitis, skin cancer, decreased immune function and neurological problems. These ailments are, of course, the same ones reflected in reports of Concession Area residents who have been exposed to TexPet oil.

That crude oil is harmful to human health, should not be a controversial statement. Yet in this arbitration, Claimants have taken the position that crude oil is not harmful to humans. Claimants' Expert, Dr. Moolgavkar, has testified that no epidemiological study has confirmed a causal link between petroleum and cancer or other non-cancer causes of death. Perhaps realizing that this is an untenable position, Claimants have backpedaled some in their recent pleadings, claiming that regardless of whether crude is toxic, the people living in the Oriente are not currently exposed to oil or

at least not in quantities sufficient to cause them harm.

Claimants now argue that the Republic's Experts rely on junk science because neither the Plaintiffs nor we have shown that any particular individual has actually been exposed to crude at a level high enough to cause toxicological harm. And, indeed, Mr. Coriell is correct. The Lago Agrio Case does not seek to address personal injury claims or health harms specific to any one person. But as you have heard from my colleague, Mr. Leonard, individual in this context, in the context of Ecuadorian law has to do with individual rights, not harms.

That the Judgment at times refers to public health, does not mean that the rights at issue in the Lago Agrio Case are diffuse ones or, indeed, that they are the same as the diffuse rights that Claimants allege were settled under the 1995 Settlement Agreement. Thus, whether any particularized harm has been shown is not the question before this Tribunal. Nor was it the question before the Lago Agrio Court.

The Lago Agrio Court did not Award health-related damages based on past or existing injury to any specific person or persons. Instead, it recognized the obvious risk to the Plaintiffs, and it was on this basis that the Court granted an Award sufficient to pay for the medical monitoring of those put at risk by exposure to TexPet's

contamination.

Therefore, the only questions we must ask here are did TexPet expose the Oriente people to health risks? Did the Ecuadorian Court reasonably find that TexPet's contamination has resulted or could at some future point pose an increased risk of harm to a maximally exposed hypothetical person. The answer to these questions is, of course, a resounding yes.

The Republic's Expert, Dr. Strauss, has performed several risk assessments that show that cleanup is required because people who have been or may at some future point be exposed through a variety of pathways to unsafe concentrations of chemicals in the sediment, streams, groundwater and soil at specific locations in the Oriente. The residents at these sites come into contact with oil on a daily basis. They ingest contaminated water when drinking and cooking and they repeatedly touch contaminated water, sediment and soil when farming, bathing, swimming, doing laundry, and playing.

Dr. Strauss' risk assessments show that exposure at all of these sites is sufficient to result in increased risks of adverse health effects both non-cancerous and cancerous, requiring that further investigation and cleanup be performed. Claimants dispute the usefulness of Dr. Strauss' risk assessments, arguing that they do not

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show that oil actually caused adverse health effects to specific individuals. But to be clear, and however Claimants wish to mischaracterize the purpose of her work, Dr. Strauss' risk assessments were never conducted to establish historical harm to any one person.

Dr. Strauss' task, instead, was forward-looking to determine whether TexPet's contamination presently results or could in the future result in health risks to the people, risks sufficient to warrant the cleanup ordered by the Judgment.

Due to time constraints and the vastness of the area, Dr. Strauss could not conduct a comprehensive risk assessment at all of the former TexPet sites in the Concession Area. She did, however, investigate nine sites at the former Concession Area and at every single one of them she found elevated risks of cancer and non-cancer health problems. There is no reason to believe that what she found at these sites wouldn't be replicated at most all of the 344 TexPet-operated sites spread across the Consortium.

You will hear from Dr. Strauss later in these proceedings, and she will explain what the purpose and results of her human health risk assessments are.

Of course, Dr. Strauss is not the Republic's only health Expert. Our other health Experts established that

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a causal link to exposure to petroleum and cancer likely exists in the Oriente. But Claimants have elected not to question Dr. Laffon and Dr. Grandjean about their findings. Their conclusions, therefore, stand un-rebutted.

In her Expert Report, Dr. Laffon demonstrates that exposure to oil leads to an increased risk of cancer. Her earlier studies relating to the Prestige oil spill off the coast of Spain, found that those who helped to clean up the oil experienced significant damage to their DNA, which in turn has been shown to increase a person's risk of developing cancer. Crude oil contains many genotoxic chemicals, chemicals that are capable of damaging a person's genetic material or DNA. Studies have shown that there is no permissible safe level of exposure to these genotoxic chemicals. In other words, there is no amount of exposure that does not entail some risk.

Dr. Laffon's Prestige studies, which were not performed in connection with any litigation, showed lasting damage to human DNA after only several months of exposure. The DNA damage was still present two years after exposure to the Prestige oil had ended but not detectable after seven, though the subjects continued to experience immunological alterations. Of course, unlike the cleanup workers involved in the Prestige study, the

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Oriente residents have been ingesting and touching TexPet's oil on a daily basis for decades, and they are still exposed to it today.

Claimants have also elected not to call the Republic's epidemiologist. Dr. Grandjean has shown that cancer deaths associated with exposure to TexPet's oil are likely significantly underestimated in all of the studies done to date. In his Expert Reports, Dr. Grandjean shows that Dr. Moolgavkar's epidemiology study of cancer deaths in the Oriente suffers from serious shortcomings and is wholly uninformative.

Dr. Moolgavkar's study certainly does not prove that there is no causal association between petroleum exposure and cancer as even he has admitted in other contexts. Dr. Grandiean explains that Dr. Moolgavkar interpreted uncertainties in his own data to conclude that exposure to petroleum in the Oriente did not cause cancer, but gaps in data cannot be used to prove that no association exists. Instead, such gaps typically mask or underestimate health hazards. Absence of evidence is not evidence of absence.

Moreover, the study design chosen by Dr. Moolgavkar generated skewed data that minimized findings of cancer mortality. For example, Dr. Moolgavkar based his findings on death certificates but in the

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Oriente, they are inherently unreliable and cannot be used to show that there is no increased incidents of cancer among the populations living in the oil-producing areas.

As a matter of practice in Ecuador, the cause of death is not put on any death certificate unless it is medically certified, and in the Oriente only about half were prior to 2005.

Additionally, Dr. Moolgavkar's classification of the exposed population is misleading because he incorporates categories of people who have never been exposed to TexPet's contamination. By including people who live in cities removed from the contamination, Dr. Moolgavkar, perhaps deliberately but definitely systematically, dilutes the overall data and minimizes findings of cancer mortality.

In conclusion, all of the Republic's health experts agree that crude oil is a hazardous substance and that exposure to it increases the risk of developing serious health problems which require monitoring and treatment. This should not be a controversial proposition.

The Republic's experts' collective conclusion supports the Judgment's findings. Proof of specific causation or injury is not required to order remediation or to set aside funds for medical monitoring and

treatment. The damages awarded for healthcare-related costs did not compensate any one individual for the harm she or he suffered. Rather, they recognize that the people who have been and continue to be exposed to TexPet oil are at risk of suffering adverse health consequences including diseases as serious and fatal as cancer. Impacts from exposure can be mitigated only through monitoring, treatment, and remediation.

Nothing you have heard or will hear from Claimants today or over the course of this Hearing can show that the Judgment's Award for damages was unreasonable. To be sure, Claimants are not simply arguing that healthcare-related damages are too high.

On the contrary, according to Claimants, any amount for damages for healthcare costs or excess cancer would be excessive. In their world view, crude oil poses no health risks at all, and not a single person living in the Concession Area has been harmed or can suffer harm in the future from exposure to oil.

But Claimants are gravely mistaken. The evidence shows that those who have been exposed to oil will require some form of treatment and monitoring of their health. This is exactly what Dr. Laffon recommended be done after the Prestige oil spill. And following the Deepwater Horizon spill, BP set up a multi-billion dollar settlement

fund in part to compensate the many coastal residents and clean-up workers who said they were made ill or were injured as a result of exposure to oil. The Judgment damages are no different.

Claimants are not comfortable talking about the Oriente's indigenous population, but TexPet has put their futures at risk. Although the Oriente residents are not part of these proceedings, they are real people who continue to face real danger from TexPet's contamination absent remediation. During this proceeding we will show that Claimants created this risk and that they should bear the burden of mitigating it.

And with that, I turn the presentation back to Mr. Bloom.

PRESIDENT VEEDER: Thank you.

MR. BLOOM: So now we turn to the final part of our presentation, the last 50 minutes or so, which addresses Claimants' allegations of State corruption. As I noted earlier, Claimants have over the years made a number of allegations that they later dropped. In some instances, when it has suited their purposes, they appear to leave their allegations in for atmospherics but literally never address the evidence that has been offered by the Republic.

The presentation this morning included many, many allegations, and it appears that they are hoping something

will stick. Before we turn to the specific allegation of ghostwriting, I want to clear out some of that underbrush, some of the odds and ends of their allegations.

Specifically, let's take [audio disruption] the case of Charles Calmbacher. Claimants' allegations in short is that Steven Donziger changed his own Expert's report at the last minute without his Expert's consent.

First, there is no allegation of State conduct. Dr. Calmbacher is not a State actor. The Plaintiffs are not State actors.

And even Claimants do not allege that the Lago Agrio Court ever considered Dr. Calmbacher's report in reaching its verdict. The Judgment is quite explicit on this point, and it is on the screen. That should probably end the discussion as it relates to Dr. Calmbacher, but with your indulgence, I want to dwell on Claimants' allegation for just a little bit longer because I think it illustrates the point that we have repeatedly noted, whereby Claimants begin with its conclusion and yet work backwards.

It is, in fact, a common tactic, most especially, I would say, in the case of prosecutors to seek out possible witnesses who may be hostile to your adversary. As the old adage goes, the enemy of my enemy is my friend, even though he may be a little bit less than credible.

Here, Claimants solicited the services of Dr. Calmbacher who was already embroiled in a heated dispute in litigation with Mr. Donziger over non-payment, and in an e-mail dated July 28th, 2005 to Steven Donziger, Dr. Calmbacher threatened Donziger: "I have not been paid for work," he said. "Please simply pay up. Don't start a war. Wars have no rules, and people can suffer irreparable, professional, psychological, and physical damage as a result. You don't want that."

I was going to go on with a number of additional slides as it relates to Calmbacher, but I will skip over them in the interest of time. Suffice it to say, however, that not only are Dr. Calmbacher's allegations not corroborated, but his own contemporaneous e-mails repeatedly contradict his sworn deposition testimony. I will not, however, go through all of the examples now.

And, of course, Claimants have long relied on their allegation that the Cabrera Report was drafted by the Plaintiffs' paid experts. But in doing so, the Claimants conflate the Plaintiffs with the Republic of Ecuador, and I really want to be clear: We represent the Republic of Ecuador. We do not represent Stephen Donziger, and we do not represent the Plaintiffs.

It may be a strategically understandable tactic, but it is also clearly error for them to conflate the

Plaintiffs with the Republic.

And first under Ecuadorian law, any fraudulent activity on behalf of an expert can never be attributed to the Court and, hence, the State, because court-appointed experts are not public servants or agents of the Court. This too has been briefed most recently in our Supplemental Counter-Memorial at Pages 86 to 88 and our Supplemental Rejoinder beginning at 113.

Second, even Judge Kaplan in his decision found that the Lago Agrio Court was misled. It too was a victim.

And then, three, it is up to the Court to accept or reject the opinions expressed by any expert, including a court-appointed expert. Where is the State conduct where the Court itself expressly declines to rely on the Cabrera Report? And the Claimants know this, which is the reason why they scratch and claw and try to find some hook and infer and intuit and try to find something in the Judgment that they can say, ah-ha, this must come from Mr. Cabrera's Report.

But, first, Claimants speculate--these are the three grounds that the Claimants rely on. First, they speculate that the theories or categories of damages adopted by the Court must have come from the Cabrera Report. Even Judge Kaplan rejected that contention,

noting that the Cabrera Report identified only seven categories of damages, and he also found that it was much more likely that the categories of damages would have come from the Plaintiffs' alegato.

Second, Claimants contend that the Court indirectly relied on Mr. Cabrera by relying on the Plaintiffs' supplemental experts who themselves allegedly relied on Cabrera, but as these experts have repeatedly testified, they either did not rely on Cabrera at all or, when they did, they independently verified the information on which basis they were relying from Mr. Cabrera, and I would refer you respectively to Track 2 Counter-Memorial Appendix E at Paragraphs 60 to 62, and the testimony cited therein. And for his part Judge Kaplan also rejected this theory.

Finally, Claimants speculate that Judge--I'm sorry, that Mr. Cabrera's Report is the only record source to the Court's finding that 880 pits required remediation. To be clear, Mr. Cabrera's Annex H-1 identified 916, not 880--916 pits. Claimants try to back into the 880 number by adding and subtracting different categories, but that takes their speculation to a new level. Even their experts disagree as to how they got to the number and what should be excluded and included, and I'll simply refer this Tribunal to our Supplemental Counter-Memorial at

Track 2 at Pages 78 to 82.

What else have Claimants relied on? They now are relying on, and I guess they have for some time, on political statements made by Mr. Correa in which he offers support and sympathy to the Plaintiffs. But where should his sympathies lie? You may recall a year ago I offered many statements of President Obama in sympathy with the victims of the Gulf Oil spill. You may recall a number of quotes where he says, "and BP will pay. And BP will pay." Of course, there is sympathy to one's own citizens.

And I will add, in this case, Chevron has not done much to make--to make people and make its own supporters proud of the company. I refer you to the about 20-page introduction in our Supplemental Counter-Memorial where we went through a number of acts by Chevron--and I'm not passing Judgment on the company outside of the acts as it related to this specific case, but you will recall their purchase of Mr. Borja, its contractor. Mr. Borja himself said that after he met with Chevron, that's when he went back to Ecuador and did a fourth video.

There were pressure tactics employed by Chevron. They quote to Mr. Beltman's Witness Statement. They don't talk about the pressure brought on him or his testimony in deposition in which he said that every paragraph of his Witness Statement was edited by Chevron's lawyers. And

that was a condition of a settlement with Chevron.

You have the preliminary inspections where they clearly were trying to hide evidence of contamination. You have their failure to take any company responsibility for facts. They have taken extreme positions, including in this arbitration, as to the issues of contamination. I would submit that they have not done themselves proud.

And there are also institutional and personal factors when you look at the real world and Mr. Correa's comments. He's responding to a very aggressive public relations campaign that has gone on for years, much of it personally directed to him. When you attack someone, he will respond.

And Claimants--Claimants, in addition to relying on these statements, have invoked this morning the fact that there was a criminal investigation, including of two of their attorneys. But let's be clear that criminal investigation was of 12 people, only two of whom are associated with the Claimants, and it was for making false representations as it relates to the remediation.

Two, even if Claimants' claim were otherwise accurate, Ecuador's system of justice self-corrected when the case was dismissed over the prosecutor's objections. That is, it's the same court and courts that they now wind up attacking.

Three, Claimants have never responded to Ecuador's Annex B of Respondent's Track 2 Counter-Memorial where we explained in detail the regularity of the criminal justice system as it related to the criminal prosecution.

And, four, whatever the Lago Agrio Plaintiffs' motives may have been, there is nothing to impugn the integrity of the Prosecutor General.

And, five, we will show you evidence of contamination and ultimately of the false representations as it related to the remediation.

We submit that this evidence--I'm sorry--we submit that this case really--their denial-of-justice claim really comes down at the end of the day to their allegation of ghostwriting. There was approximately year-and-a-half after this arbitration was commenced that the Lago Agrio Judgment was issued. And, at that time, Claimants, literally within hours, claimed that the Plaintiffs ghostwrote that judgment. Having taken that position immediately upon its issuance, Claimants then sought to back up their claims, twisting and contorting every piece available so it would fit their narrative. And, in reality, I submit that's what this arbitration has become.

Now, I will note at the outset that this Tribunal

is now in a far better position than Judge Kaplan ever was to resolve the competing allegations. One, over our protestations, Mr. Zambrano's hard drives are parts of this record, and you will hear substantial testimony and argument on that.

Two, the Plaintiffs' lawyers were parachuted in to conduct that trial about a month, I think, maybe two months before that trial. They didn't know the evidence. They didn't even know that the evidence--that was in the possession of their own clients.

Three, of course, Ecuador is a different party. We don't have to defend and we are not defending the conduct of the Plaintiffs, and I want to make that clear. We're defending the conduct of the Republic of Ecuador. We submit that the record here--and you'll see it over the next few weeks--affirmatively establishes that the Plaintiffs did not draft the Judgment, no matter what the Claimants' evidentiary burden is. But in this instance, of course, Claimants bear an exceedingly heavy burden in proving State corruption by clear and convincing evidence to leave no doubt in this Tribunal's mind.

And before I turn the floor over to my colleagues, I wanted to address the issue of the presence of Mr. Guerra.

When Claimants first introduced Mr. Guerra to this

Tribunal, it was with much fanfare. We know, because Mr. Guerra testified to it, that Claimants' counsel worked with him to prepare his successive declarations. Chevron also included in its submission his forensic evidence; that is, from his computers--bank records, shipping records, his diary. He was to be their breakthrough witness, much like Diego Borja was supposed to be their breakthrough witness in 2009.

But a funny thing happened along the way. This Tribunal wound up affording us time on the eve of the Track 2 Hearing in January of 2014, and Claimants' evidence is not what it has ever been made out to be. We will explore that in depth over the next few days.

But for purposes here, it is sufficient to note what Claimants and Mr. Guerra already admit: That Claimants have paid him in financial benefits an inordinate sum. $18,000 in cash in Quito. $10,000 for a 10-page document. $12,000 every month. Housing. A computer. Hundreds of thousands, if not millions of dollars, in payments for his lawyers, his immigration lawyer, the immigration lawyer for his son. Criminal counsel. His own personal counsel. Tax counsel.

And we have recently learned that Chevron has agreed to pay all of his taxes and all of these financial benefits for Tax Year 2013 and 2014. These tax payments

alone are likely to be in the hundreds of thousands of dollars.

The Respondent moved to strike this Witness from this Hearing candidly because we do not believe any witness who gets paid gobs of money should be allowed to testify. And we believe this not only because the Witness is inherently unreliable, is inherently tainted, but because the issue extends well beyond this little proceeding. Allowing a witness to testify under such circumstances suggests to lawyers everywhere that they can pay witnesses whatever the justification. And I don't mean to get into a dispute with Chevron over the ethics of this. To their credit, they went out and they paid money to legal ethicists who blessed this transaction. For us, it is a bigger issue.

Nor is it sufficient, I would add, for the Claimants to say that the payments to Mr. Guerra merely go to the weight of the evidence, not to its admissibility. Not when the Witness has been prepared 53 times as of a year-and-a-half ago, four to six hours a day. Not where his every statement has been choreographed, his every facial expression has been choreographed, his every mannerism has been choreographed.

At bottom, he is an admitted liar who is receiving a substantial payment for his cooperation and who continues

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to have every incentive to help his benefactor. Given the Tribunal's determination to hear from him, we will, of course, avail ourselves of our right of cross-examination, but we do object to his presence for the reasons just noted.

I will now turn the floor over to my colleague, Mr. Ewing, who will now discuss the forensic evidence before this Tribunal, and then we will conclude our discussion of Claimants' denial-of-justice allegations with my colleague Mr. Goldstein.

PRESIDENT VEEDER: Thank you.

Mr. Ewing.

MR. EWING: As Mr. Bloom just indicated, I will be taking a few minutes today to talk through what we have found as a result of the forensic analysis of Mr. Zambrano's hard drives. I'm going to start with the objective facts that both Parties' Experts found and what those facts tell us. And then I'm going to walk through some of the speculative objections Claimants make to try to avoid the import and muddy the meaning of those facts.

I think you will find throughout the next three weeks that this dichotomy is a theme to what we will be presenting to you. We have said in our pleadings numerous times that Claimants' arguments do not match what their Experts say or what the evidence shows. We have tried to

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give you examples of that disparity over the last few years but will now try to show you exactly what we mean.

And let me give you a quick example from this morning.

Slide 44 from the Claimants purports to show that forensic analysis of Guerra's computer indicates that Guerra, the green pictures, has Draft Orders that were last saved on Mr. Guerra's computer at the various points of time. What they don't tell you is that Mr. Lynch's Report actually found that Mr. Guerra doesn't have any of these Draft Orders or there is no forensic evidence that he has any of these Draft Orders until July 23rd, 2010, approximately here in the timeline.

But let's jump to the specifics of this case. As you know, we believe that the forensic analysis clearly shows that the Lago Agrio Judgment was created on Mr. Zambrano's computer when he took the bench at the beginning of his second term, and the Judgment was edited and saved hundreds of times on Mr. Zambrano's computer between then and when it was issued on February 14, 2011. And, as one would expect, for a document drafted over almost five months, the snapshots we have of that document during the drafting period have increasing amounts of text. But let me show you what I mean, and not just tell you.

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Computer forensics allows us to piece together some of the history of a file. Using forensics, we can piece together information about when the Judgment file was created, when, where, by whom it was completed and submitted, and some information about what happened in between.

The first place we can look is on Zambrano's computers themselves. The filesystem, Microsoft Windows, and Microsoft Word stored data about their files. It's called metadata. And I will start with the filesystem metadata.

This chart contains the filesystem metadata as reported by Claimants' Expert Mr. Lynch. Document 15 on this list is the file that contained the Lago Agrio Judgment on Mr. Zambrano's computer. Incidentally, this is the only place anywhere that anyone has found the Lago Agrio Judgment before it was published. The rest of the files here are snapshots recovered by Mr. Lynch of that final Judgment. Each of these files is a snapshot of what the Lago Agrio Judgment looked like at that moment.

Now, I've highlighted the create date. I've highlighted the filesystem metadata for the Lago Agrio. In this row, it should be on Document 15. This is the date when this file, the Lago Agrio Judgment, was created: October 11th--in the bottom right you'll see this--October

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11th, 2010, at 7:46 p.m.

Before Document 15 on this list you will see we have four earlier snapshots of the Judgment. We know when these snapshots were taken based on their last written dates. The first document, Document 12, has a last written date of December 28th, 2010. And here is one of the details I want to emphasize: The create date that we were just looking at was set on October 11th, 2010, when the Providencias.docx file was actually created for the first time on Mr. Zambrano's computer. This snapshot of Providencias.docx that we are looking at, Document 12, is from December 28th, 2010. The point here is that some metadata is set in a file when that file is created, and it's generally never changed.

Now, as you'd expect, create date is one such field. Last written date, on the other hand, is generally updated every time a file is saved. So, for instance, each time a Word document is saved, the last written date is generally updated.

Now, I would like to jump over to the application metadata. This is the metadata maintained by Microsoft Word. This table from Mr. Lynch's Report is the application data from the snapshots of Providencias.docx as recovered by Mr. Lynch. If you look at this table, you see it contains overlapping but slightly different

information. We now see the last saved by and author names, for instance.

But first let's look at what's familiar or similar: The file created field. You will see that the first three snapshots all have a file created date of October 11th, 2010, at 7:46 p.m. This is the same date we saw with the earliest filesystem create date and confirms that both the operating system and the application, Microsoft Word, think that the Providencias.docx file was created on Mr. Zambrano's computer on October 11th, 2010.

The next thing you will see here is the last saved by date. These are the dates when these snapshots were last saved. There are three key dates: December 21st, December 28th, and March 4th. These are the dates when these snapshots were last saved.

You will notice the December 28th date is the same as from some of the filesystem metadata we saw earlier, but that the December 21st date was not in the filesystem metadata. And this is the second point I want to make.

Forensic data is not always complete, so while we can piece together the story, we don't have every single detail.

Next, I want to point out the number of revisions and edit time. The number of revisions, as you see in the

slide, is a counter of the number of times the document was saved. So, based on the first line, we now know that between October 11th, 2010, when the Providencias.docx file was created, and December 21st, 2010, the Judgment file was saved 286 times.

We can also do some math and calculate that between December 21st and December 28th, the file was most likely saved an additional 29 times.

Total edit time shows us that between October 11th and December 21st, 2010, the Judgment file was edited for 2,107 minutes. As with revisions, we can do the math and calculate that between December 21st and December 28th, the file was most likely edited for an additional 1,046 minutes.

In addition to looking at the metadata, Mr. Lynch compared the text in each of these snapshots with the final Lago Agrio Judgment. You can see in the far right column on Mr. Lynch's table the percentages. This table means that the December 21 snapshot of the Judgment has 42 percent of the text of the final Judgment, according to Mr. Lynch's calculations. And the December 28th snapshot has 66 percent. And that by March 4th, when the Clarification Order was issued, Providencias document has 99 percent of the Judgment.

We will discuss this with Mr. Lynch next week,

but I submit to you that you will likely see that that 99 percent is substantively 100 percent, not 99 percent. But like I said, we will take up Mr. Lynch's calculations or percentages next week.

I would like to turn away from Zambrano's computer forensics for a moment, and look at another data point indicating that Mr. Zambrano wrote the Judgment. Mr. Lynch says that "there is no evidence that the Ecuadorian Judgment was uploaded from either of the Zambrano computers."

But Mr. Lynch makes that assertion based on incomplete information. Sometime before Mr. Zambrano's second term in the Lago Agrio Case, the Ecuadorian Judiciary Council started to implement a system whereby the courts uploaded Orders to a database. We requested all log entries from the SATJE system, the name of this system. Claimants' counsel requested logs based on what turned out to be incorrect assumptions. The information you can see now is the most relevant information from the complete SATJE logs for this case, of the Lago Agrio Case. There are 32 columns. I have just shown you seven--or six. The Exhibit 4 to Mr. Racich's March 16th, 2015 Report has the remainder if you would like to see them.

On the left, you can see the official date and time of the Providencia and the log-in name for the person

who uploaded the Judgment. In this entry, it appears that ZambranoN, presumably Nicolás Zambrano, uploaded the Judgment. Next, you see the system date, which appears to be the date and time when the log entry was created. Here, it is February 14th, 2011, at 9:15 a.m.

Next is the last modification date, which is also February 14th, 2011, at 9:15 a.m. And finally, you see the machine from which the Judgment was uploaded, cnjs, and a few other letters and numbers, which is Mr. Zambrano's old computer. These two last entries are the most important for this dating exercise as they show that the Judgment was uploaded 38 minutes after it was officially published in print.

So, now let's put all this together.

Judge Zambrano retook the bench in October 2010. As we saw earlier, the Judgment file was created at about the same time. The next snapshot we saw was December 21st, and that snapshot contained 42 percent of the Judgment, according to Mr. Lynch. The next snapshot Mr. Lynch found was from December 28th, 2010, and it contained 66 percent of the Judgment.

Now, we know that the Judgment was complete on February 14th, 2011, because the Parties all received it that day. But we also know that it was completed and uploaded by Mr. Zambrano from his computer that same

morning from the SATJE logs. The presumption of regularity, i.e., the presumption that the judge wrote the Judgment as expected in the normal course, is fully supported by the forensic data, and nothing more should need be said.

Before I hand the floor to Mr. Goldstein, I want to briefly address three of Claimants' arguments from this morning that to them to prove that Zambrano did not write the Judgment.

First, Claimants point out that we don't have a stand-alone file dated February 14th, 2011, that contains only the Judgment. Mr. Lynch has said that he thinks Mr. Zambrano should have created a backup copy or should have saved the final copy as a new final version of the document. And I'm not here to comment on what best practices are, and I do advise that everyone backs up their data, but I don't think that that is what we are here to judge.

What we should look at is Mr. Zambrano's past practice, and we see that in another file he created for this case, CasoTexaco.doc, in that file, Mr. Zambrano seems to have all of the other Orders he drafted and issued in this case from October 21st, 2009, until February 18th, 2010. Ten of them. And again, that may not be the way that Mr. Lynch would organize his files or

that I would organize my files, but that seems the way Mr. Zambrano's work and organized his files. So, the fact that the Providencias.docx has three Orders in it, the final Judgment, a Procedural Order on February 21st, 2011, and the March 4th, 2011, Clarification, is absolutely consistent with Mr. Zambrano's practice.

But what does Mr. Zambrano's practice mean in forensic context? It means that although Mr. Zambrano had the complete Judgment on his computer on February 14th, 2011, as we can see from the SATJE logs, that when Mr. Zambrano wrote the February 21st, 2011, order and then the March 4th, 2011, Clarification Order in the same file, he overwrote the last written dates in the metadata.

Second, Claimants point to the fact that Zambrano had two computers--what we call, with the very technical names, the old computer and the new computer. Claimants then point to Mr. Zambrano's testimony at the RICO trial that he wrote the Judgment on the new computer.

First off, we know that Mr. Zambrano didn't get the new computer until December 7th, 2010, but that he started work on the Judgment in October on the old computer. But from Mr. Zambrano's perspective, he worked on the Judgment for almost three months with Ms. Calva using the old computer and he was using the new computer, it is understandable that he would testify that he used

the new computer the whole time as it was the most recent and longest computer that he used drafting the Judgment.

It cannot be a denial of justice that a judge doesn't remember that he received a new computer partway through his drafting process. Nor can it be a denial of justice that Mr. Zambrano used the new computer to access the old computer across the network, which we know that he did. Or that he had Ms. Calva typing his dictations on the old computer.

As with Mr. Zambrano's use of a single file to write multiple different Providencias, I'm not here, and I don't think any of us are here, to judge his working style. That Mr. Zambrano prefers to dictate, a practice I can't imagine despite Mr. Bloom's insistence that it is much easier and preferable even to him, cannot be a denial of justice. We will get into some of the more technical differences next week as to why this new computer/old computer distinction is a red herring, so I will leave that for now.

Third, the Claimants make much hay over the speed at which Mr. Zambrano typed the Judgment. Claimants point to a one-week period where the Judgment increases at an average rate of 17 pages per day, but neither Party contests that Mr. Zambrano may have used his own notes to type those pages. Yes, Claimants speculate that

Mr. Zambrano must have copied those pages from the Lago Agrio Plaintiffs, but there is simply no forensic evidence that this actually happened.

But maybe more importantly, I don't think we are hear to judge Mr. Zambrano's typing speed either. Surely, having a fast typist can't be a denial of justice. But let's put this in perspective: Mr. Zambrano wrote a 188-page Judgment, single-space Judgment, in 126 days.

Judge Kaplan, Claimants' handpicked judge for the RICO proceedings, wrote an 485-page Judgment and an 85-page Appendix--that's total of 570 pages--and he did that in 98 days.

To make this comparison fair, let's double space Mr. Zambrano's Judgment and make it--it's 376 pages.

So, over the almost five months that Mr. Zambrano wrote, he averaged 2.98 pages per day. In contrast, over the time Judge Kaplan was working, he averaged 5.8 pages per day. If Mr. Zambrano's typing speed is a denial of justice, then Judge Kaplan's is a double denial of justice, if such a thing existed.

But you understand my point. Typing speed is not a denial of justice. That is a summary of what we found in our forensic analysis of Mr. Zambrano's computers. All of the forensic evidence supports the presumption of regularity. The forensic evidence supports the conclusion

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06:49 that Mr. Zambrano wrote the Lago Agrio Judgment in the normal course. After you have heard from the Experts on these issues, we will revisit them in closing, but I expect you will find what I have talked and walked you through today to be true. I have now reached the end of my allotted time and hand the floor to Mr. Goldstein.

PRESIDENT VEEDER: Before we proceed any further, how much longer do the Respondents need? Because I think you have run out of time.

MR. GOLDSTEIN: Mr. President, I anticipate under 20 minutes.

COURT REPORTER: Could we take a short break?

PRESIDENT VEEDER: I think we need a five-minute break, and I think you need to reconsider your position. You had four hours. That expired five minutes ago. If it's 20 minutes for you, how many minutes after you?

MR. BLOOM: Mr. President, if I can address that, he is the last presenter, so it's only 15 to 20 minutes to go. I will note that in our last Hearing the Claimants had gone on, I think it was, an extra 30 minutes--we can check--we indulged them, although we then got a little bit more at closing. So, it certainly asks for the same courtesy that we extended the Claimants--

PRESIDENT VEEDER: Not for us. It's really, as you well know, for the interpreters and the shorthand

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06:50 writers. It's been a very, very long day, and we need to finish the oral opening submissions today. It doesn't make much sense to hold it over till tomorrow morning, and I think we did count on both sides sticking to their four hours. But we have got to have a break for the shorthand writers. Let's have 15 minutes' break, and then we'll come back and see where we stand.

(Brief recess.)

PRESIDENT VEEDER: Let's resume.

The Respondents have the floor, but let's be as efficient as we can and get this long day finished as soon as practical.

MR. GOLDSTEIN: Thank you.

Let's begin our final discussion of what remains of Claimants' ghostwriting case by addressing the elephant in the Claimants' living room. Despite their unprecedented access to the Plaintiffs' attorneys' files, despite pursuing tens of Section 1782 discovery actions, and despite their unprecedented and purchased access to Guerra and his documents, despite their immense resources, Claimants have found no draft of the Lago Agrio Judgment anywhere other than Judge Zambrano's computers. They found no evidence that the Plaintiffs ever complied the draft judgment. They found no e-mail transmitting a draft judgment from the Plaintiffs to the Court. Even alone,

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07:05 but especially in contrast to the openness with which the Plaintiffs' attorneys discussed their communications with Mr. Cabrera, the utter lack of any evidence supporting Claimants' ghostwriting charge is telling. There is no evidence of ghostwriting because the Plaintiffs did not ghostwrite the Judgment. And, in fact, there is persuasive affirmative evidence that the Plaintiffs did not ghostwrite Judgment.

Our discussion of this evidence has to begin with e-mails that Claimants long ignored, contemporaneous e-mails among the Plaintiffs' counsel in the months before February 2011 indicating that they had absolutely no idea when or in whose favor the Judgment would issue. I would like to highlight just a few of them.

On December 17th, 2010, 56 days before the Judgment issued, Pablo Fajardo explains to the rest of the team "that the judge can issue a writ for judgment at any time, any day." He stresses that the Plaintiffs must have their legal argument ready because Judge Zambrano was "very firm and exercises a great deal of authority."

This e-mail, by the way, in which Fajardo characterized Judge Zambrano as firm and exercising a great deal of authority is consistent with how even Guerra says Zambrano first received Fajardo. He threw him out of his office, "destroy[ing] him," "never talked" to him, and

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07:06 never [even] gave him a chance."

By December 31, 2010, the Judgment still had not issued, and Mr. Fajardo reached out again to Mr. Donziger, saying that, "no one knows when the Judge may issue his Judgment; he could do so within two weeks, or within many months or even years." Here too no awareness as to when the Judgment would actually issue; and, in fact, it did not issue two weeks, many months or even years later.

Finally, on January 8th, 2011, after Chevron had filed its alegato, its final brief, Mr. Fajardo sent two further e-mails. He worried first that the judge "could be convinced by Chevron's theory." He explained that "the one who strikes first has greater success." The obvious inference from these e-mails is that Fajardo's concerned that Chevron would have an advantage with respect to the Judgment because it filed its final brief first.

Claimants now parrot Judge Kaplan's speculation in the RICO decision that these e-mails should not be taken at face value but instead demonstrated a calculated coverup. That speculation, in turn, is based on Judge Kaplan's unprompted surmise that the e-mails before him went to recipients, including U.S. lawyers from the then-Patton Boggs law firm, who would not necessarily have known about a judgment-ghostwriting scheme. Judge Kaplan's conclusion was wrong, which is not entirely

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surprising given that he reached it sua sponte.

For one thing, each e-mail that Claimant showed you on their Slide 76 this morning was sent before the Plaintiffs and Zambrano would have even agreed to a bribe, according to Claimants' own case. Moreover, at least one e-mail that neither Judge Kaplan nor Claimants address included only people who would have known of a scheme if there was one. On December 21, 2010, Fajardo e-mails Donziger and Juan Pablo Sáenz reminding them that the Plaintiffs must present the alegato. Obviously, Donziger would have been complicit in any scheme.

And despite Claimants' implicit dismissal of Sáenz as a junior rather than as a core member, to use Judge Kaplan's words, of the Plaintiff's legal team, he too would have known. After all, according to Claimants, it was Sáenz's job to coordinate Plaintiffs' alleged payments to Guerra during the same time period. They trusted him.

Indeed, Claimants recognized that these e-mails contradict their theory of a judgment-ghostwriting scheme. For example, they included the December 31 and January 8th e-mails that we just discussed on the so-called "judgment fraud timeline" that they submitted to the RICO Court. But after realizing that these e-mails, in fact, undermined their case, Claimants removed them from the

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timeline they submitted to this Tribunal. This is another example of Claimants' preference for working backward from their pre-determined conclusion, discarding along the way evidence that undercuts that conclusion.

Between these e-mails and the forensics that my colleague Mr. Ewing discussed, the affirmative contemporaneous evidence contradicts Claimants' ghostwriting narrative. So, where does that leave the Claimants' case?

Well, they have one expert, Professor McMenamin, who claims to have analyzed the Judgment and concluded that Judge Zambrano did not author it, but on what is that opinion based? It's based on the same pseudoscience we have seen before from an earlier expert of Claimants, Professor Turrell. But whom did Professor Turrell accuse as the likely ghostwriter? She accused an attorney who later went to work for one of Chevron's own law firms. Unsurprisingly, we haven't heard from Professor Turrell since. This too demonstrates Claimants' penchant for simply ignoring unfavorable evidence.

Claimants also place much stock in what they claim was Judge Zambrano's deliberately false testimony during the RICO trial, as you heard this morning, and they find it fundamentally important that Zambrano now works as a contractor for a company of which Petroecuador owns

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51 percent.

On this front, however, it is helpful to keep in mind a few things about Judge Zambrano. He and his family have not been relocated to the United States by a party to this arbitration. His taxes are not being paid by a party to this arbitration. And neither his RICO deposition nor trial testimony were the result of preparation or coaching by a party to this arbitration.

Judge Zambrano is not Guerra. He was a cold witness whose recollections were not always correct but whose mistakes such as testifying that he drafted the entire Judgment on his new computer even though he began drafting it before he received that computer were understandable. This is particularly so, given that he was asked about details from almost three years earlier.

Claimants are left, then, arguing that the Judgment must have been ghostwritten because it contains excerpts from the Plaintiffs' unfiled work product. In other words, Claimants seek to persuade this Tribunal that it should win this arbitration based on fewer than ten pieces of evidence. There may be 100,000 or more pieces of evidence out there. Claimants simply ignore the rest.

Moreover, Claimants' argument assumes without proving that the Lago Agrio Record exists today in full and is fully searchable such that one can definitively say

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which documents are or are not in it. And it assumes further that certain of the Plaintiffs' documents were never lawfully filed with the Court, despite persuasive contemporaneous evidence that they were. Both assumptions are wrong.

To begin, it is undisputed that the Lago Agrio Record, including the copy examined by Claimants' expert Professor Juola, is incomplete. Examples of deficiencies in the record abound. For example, on October 14th, 2010, in less than an hour, Chevron filed 39 separate motions challenging a single court order. This summary lists them. Five days later, the Lago Agrio Court issued this order addressing all 39 motions, yet only 35 of Chevron's motions actually appear in the official record. As you can see, Cuerpo 1989, ends with Chevron's 35th motion filed at 5:44 p.m., and the next Cuerpo, 1990, begins with the Court's Order addressing all 39 motions.

Claimants have failed to reconcile their claim to have searched the entire record with this plain example of documents that undisputedly were filed but yet cannot be found in any copy of the record. The Republic has raised this particular example in at least three filings with no response from Claimants. Once again, we see them ignoring unfavorable evidence.

Additionally, both Parties submitted many, many

documents along with CDs and DVDs at the various judicial inspections. You will see examples of this over the coming days in video recordings of some of these inspections. Given the conditions under which those inspections occurred, it is hardly surprising that some of the evidence was not properly docketed.

I will pass over my next example of a record deficiency in the interest of time and say that, finally, we know of at least one instance in which a document was misplaced initially but later found. The record contains this acknowledgment by Court Secretary Liliana Suárez in May of 2008, that she had just discovered a brief that was filed six-and-a-half months earlier, in November of 2007.

Undoubtedly, there are more examples. These are just some of the more obvious ones. It is quite impossible under these circumstances for any person to know the universe of the lawfully submitted documents, yet Claimants press ahead with their pre-determined conclusion, brushing aside any evidence calling into question the basis for that conclusion.

As the Tribunal will recall, Claimants fought viciously for the Lago Agrio Litigation to go forward in Ecuador rather than in U.S. Federal Court in New York. They won that battle, knowing that it would leave them without an electronic docketing and filing system and with

courts unaccustomed to a case that would grow to be 2,000 times the size of the typical Ecuadorian lawsuit. Claimants should not now be heard to complain about the unsurprising reality that the length and complexity of the Lago Agrio Litigation resulted in documents not being properly docketed.

Nevertheless, the cornerstone of Claimants' ghostwriting case remains their allegation that the Judgment contains excerpts from the Plaintiffs' so-called "unfiled work product." This is a classic example of the conclusion-first approach. It tracks the following premise: If a particular document did not turn up during Claimants' partial review of the record, but some of its text appears in the Judgment, then the Plaintiffs must have ghostwritten the Judgment. Of course, this premise is flawed given what we just discussed regarding the incompleteness of the record itself.

And let's take a step back. Claimants' case is premised on a presumption that defies common sense. It presumes that the Plaintiffs would have drafted the Judgment relying on documents that they knew were not in the record. The reason this is nonsensical is that Donziger was served with Chevron's Section 1782 discovery subpoena on August 9 of 2010, as you can see on this slide. This was a full six months before the Judgment

issued. Indeed, as you saw on Slide 74 this morning of Claimants' opening presentation, Chevron had filed at least five 1782 actions by October 2010.

So, the Claimants would have this Tribunal believe that the Plaintiffs ghostwrote the Judgment during Judge Zambrano's second term which began after Donziger and the Plaintiffs were on notice that all of their documents would be turned over to Chevron and, therefore, that the Plaintiffs' use in a judgment of any unfiled documents could easily be traced back to them.

In fact, the Plaintiffs knew specifically that Chevron could and would make this connection, having previously challenged Cabrera's use of the Plaintiffs' allegedly unfiled work product before the Lago Agrio Court. Yet, Claimants say Plaintiffs did so anyway with billions on the line. Here, too, we see Claimants simply ignoring context that undermines their theory.

To be clear, the Republic does not dispute the text from some of the Plaintiffs' documents appears in the Judgment as Claimants have identified. Rather, the dispute is over whether Claimants have proved that these documents were never filed with and, thus, not properly relied on by the Lago Agrio Court. Claimants assuredly have not proved this. Instead, they ignore persuasive evidence that these documents were, in fact, filed. Let's look briefly at just

one of the documents in question: Fusion Memo.

The Tribunal will recall that the Fusion Memo discusses Chevron's merger with Texaco. Not only did the Plaintiffs argue the legal effect of that merger to the Lago Agrio Court at the June 2008 judicial inspection at Aguarico, but the oral argument tracks the Fusión Memo's structure almost identically. This makes sense considering that previous contemporaneous e-mail correspondence between Plaintiffs' counsel reveals their intention to file the memo and its accompanying exhibits at that judicial inspection. Numerous pleadings discuss these e-mails. In the interest of time I will not get into them here.

And, in fact, the Lago Agrio Record reflects the submission of the memo's exhibits, as this page demonstrates. It is, therefore, likely an administrative error that the record also does not reflect the memo itself. In fact, we know that the Court's docketing process was rife with errors on the very day on which the Fusión Memo's exhibits appear. Some pages, like this middle one on this slide, are unnumbered. Other pages are out of order, and mistakenly alternate with pages that should have been appeared roughly 60,000 pages earlier. We see the record jump on this slide from a page starting with 153,000 to one starting with 92,000 and then back up to 153,000.

In response, Claimants say, whatever the Plaintiffs' original intentions, they must have changed their minds. They decided not to file the Fusión Memo or other documents. This is nothing more an attempt to wish away unfavorable evidence.

Mr. President, Members of the Tribunal, we respectfully submit that Claimants' assertion not only fails to carry their burden of proof, but more fundamentally it cannot be squared with the evidence. There are no e-mails saying the Plaintiffs changed their mind, and there is no further discussion amongst Plaintiffs' counsel of these documents at all after the dates on which they were most likely filed. To side with Claimants, one would need to, as they do, assume the very conclusion they have the burden of proving.

To be sure, Claimants have their theory of the case, and they bob and weave through the evidence trying to create a narrative that is not inconsistent with it. We will show over the next several days that, despite those efforts, Claimants' narrative is inconsistent with the evidence. We will address many of Claimants' points and contentions through witness examinations. We have not tried to address them all in the limited time we have for this opening presentation. For now, it suffices to say that, even if Plaintiffs--Claimants were able to construct

a story not inconsistent with the evidence, that is not tantamount to proving their case. It is speculation at every turn. It ignores a wealth of evidence, and it contorts other evidence, and it does not prove their case even by a preponderance, much less does it carry their substantially heavier burden.

Mr. President, Members of the Tribunal, thank you. This concludes the Republic's opening presentation.

PRESIDENT VEEDER: Thanks very much. We will start again at 9:00 tomorrow.

We have certain housekeeping matters we need to address at that time, but the first witness will be Mr. Lynch. So, until tomorrow, we stand adjourned.

MR. BLOOM: May I just inquire, are we starting at 9 or 9:30? The Order said 9:30. Do you want to begin earlier tomorrow?

PRESIDENT VEEDER: I think we should start at 9:00.

(Whereupon, at 7:20 p.m., the Hearing was adjourned until 9:00 a.m. the following day.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

DAVID A. KASDAN